



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

CASE NO: J1660/16

J1661/16

J1662/16

In the matter between:

WILLIAM SANA MAHLANGU & 2 OTHERS

Applicant

and

LAUDIUM TAXI ASSOCIATION

First Respondent

RASHID ISMAIL

Second Respondent

Heard: 15 June 2018

Delivered: 2 November 2018

Summary: An application for contempt of court cannot succeed when the applicants have not shown that non-compliance with a court order by the respondents was both deliberate and *mala fide*.

JUDGMENT

Lallie, J

[1] The parties in the 3 matters referred to above agreed that they be argued simultaneously as they involve the same respondents and all the matters are based on the same facts. The applicants are employed by the first respondent. Pursuant to their suspension from work they referred unfair labour practice disputes to the Commission for Conciliation Mediation and Arbitration (the CCMA). The disputes were resolved in terms of settlement agreements which were entered into on 10 May 2016. The terms of the settlement agreements are the same. They are the follow:

- '1. The suspension of the Applicant is uplifted with immediate effect.
2. The Respondent undertakes to invite the Applicant and his employer to a meeting where the outstanding salaries will be discussed.
3. The meeting shall be held by not later than Friday the 20th of May 2016 at the Respondent's premises.'

[2] The first respondent failed to comply with the settlement agreement. The applicants approached this Court in terms of section 158(1)(c) of the *Labour Relations Act*¹ to have the settlement agreements made order of court. The orders were granted on 26 October 2016. The first respondent failed to comply with the orders and the applicants enforced them by launching applications for contempt of Court against the respondents. On 17 August 2017 a rule nisi was granted requiring the respondents to show cause why they should not be found to be in contempt of Court. When this application was argued the second respondent denied that the respondents were in contempt of court and submitted that they complied with the court order but could not reach an agreement on the amounts due to the applicants. The applicants denied that the respondents had complied with the order.

[3] The test for contempt of court is stated as follows in *Fakie NO v CCII Systems (Pty) Ltd*²:

'The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and

¹ 66 of 1995

² 2006 (4) SA 326

mala fide'. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be *bona fide* (though unreasonableness could evidence lack of good faith)'.

- [4] During argument it became clear that the respondents had attempted to comply with clause 2 of the settlement agreement but the parties could not agree on the amounts due to the applicants. A reading of the settlement agreement which was made a court order (the order) and a consideration of the submissions on behalf of the parties support the conclusion that the respondents complied with clause 2 of the order in that the parties did discuss payment of outstanding salaries. They, however, did not reach an agreement on the issue. It must be noted that the order limits the respondents' obligation to discussing outstanding payments. It is common cause that the discussion did take place. The respondents therefore complied with clause 2 of the order.
- [5] The settlement agreement was made a court order on 26 October 2016. Clause 3 of the order required that the meeting be held not later than 20 May 2016. As the order was granted after 26 October 2016, the respondents cannot be held not to have complied with clause 3 of the order. It was impossible for them to comply as the compliance date had already passed when the order was granted.
- [6] The applicant denied that the respondents have complied with clause 1 of the order as they had not lifted their suspension. The purpose of a contempt of court proceedings is both to enforce court orders and to penalize parties who deliberately disregard them. As the respondents have partially complied with the order the applicants did not establish that they deliberately and *mala fide* disregarded the order. An order enforcing clause 1 of the order is, in the circumstances appropriate.
- [7] In the premises, the following order is granted:

Order:

1. The respondents are not in contempt of Court.
2. The first and second respondents comply with clause 1 of the settlement agreements which were made orders of Court on 26 October 2016 under case number J1660/16, J1661/16 and J1662/16.

Z Lallie

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate Matlala

Instructed by Mahlangu Mashoko Inc

For the Respondent: Mr Ismail of Laudium Taxi Association

LABOUR COURT