

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG.

Not Reportable

Case no: J 1632/19

In the matter between:

MOTONG JOHANNES SIPHO

Applicant

And

**THE GAUTENG DEPARTMENT OF
EDUCATION**

First Respondent

**HOD AN THE OFFICIALS EMPLOYED BY THE
RESPONDENT**

**Second to Further
Respondents**

Heard: 29 November 2019

Delivered: 29 November 2019

Edited: 21 January 2019

EX TEMPORE JUDGMENT

MOSHOANA, J

[1] Before me is an application to commit certain respondents to imprisonment because of their non-compliance with the order of this Court dated 31 July

2019. The applicant, Mr Motong, Johannes Sipho, is appearing in person, and prior to the commencement of the hearing of this matter, I enquired from him whether he would need legal representation, and that was prompted by my reading of the papers that were defective in many respects, however, he indicated that he shall continue with the matter without legal assistance.

- [2] I pointed out those difficulties, the first difficulty being that the respondents have not been mentioned, it is only stated as the “Gauteng Department of Education, HOD and the officials employed by the respondent”. That is not sufficient. The Constitutional Court had recently in the *Merafong* judgment made it very clear that in contempt proceedings parties who are responsible to carry out the court order must be named appropriately because this involved imprisonment, or civil imprisonment, and takes away rights of people.
- [3] The second difficulty is that there is no proper service. These documents and/or order was just handed to a clerk, it was not even served through a sheriff. With all those difficulties, Mr Motong insisted that this application be heard. Nonetheless, Mr Ngutshane, appearing for the respondents, indicated that an offer was made to comply with the order, and the applicant is actually refusing.
- [4] Clearly one of the requirements as set out in the *Faki* judgment is that there must be a clear intention, particularly where there is imprisonment for not wanting to complying with the order. Now, this application does not meet those requirements, and for that matter the application is dismissed with no order as to costs.
- [5] In the result I make the following order:

Order

1. The application is dismissed with no order as to costs.

G. N. Moshwana

Judge of the Labour Court of South Africa

LABOUR COURT