

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: JR448/17B

In the matter between:

MINISTER OF WATER AND SANITATION

Applicant

and

OLIPA MASEKO

First Respondent

NEHAWU

Second Respondent

THOMAS NTIMBANA N.O.

Third Respondent

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Fourth Respondent

Heard: 16 January 2020

Delivered: 14 February 2020

JUDGMENT ON COSTS *DE BONIS PROPRIIS*

HARDIE, AJ

[1] On 29 January 2020, I handed down judgment in which I dismissed the Applicant's review application, and gave the Applicant's attorneys, Koikanyang Attorneys 10 court days from that date, to address me on why I should not order costs *de bonis propriis* against them. In my judgment, I set out in detail, the serial negligence on the part of the Applicant's legal representatives, and in paragraph 14 of the judgment, specified the reasons why I was considering granting costs *de bonis propriis*. That paragraph reads as follows:-

"[14] I am of the view that unless the Applicant's legal representatives can persuade me otherwise, which opportunity I will give them to do, they did not

properly read the legislation relating to Labour Court reviews, nor the case law relating to it. Had they done so, they would have filed the portions of the CCMA record necessary for this Court to decide the review. That they didn't in the circumstances described above, and particularly in the face of the defence raised by the First and Second Respondents, that they were presenting a different case to this court than that which served before the Commissioner, appears to smack of negligence of a serious degree."

- [2] It is now apparent that not only did the Applicant's legal representatives not properly read the legislation relating to Labour Court reviews, nor the case law relating to it, but that they also did not deem it necessary to read my judgment before addressing this court on why costs *de bonis propriis* should not be granted against them. This is borne out by the fact that in paragraph 3 of an affidavit that was served and filed on this issue, and which is deposed to by Mr Elijah Ramonyai, a director of Koikanyang Attorneys, he states as follows:-

"3. This affidavit is deposed to in compliance with the above Honourable Court's judgement of 29 January 2020, especially paragraph 2 thereof. Ms. Matjeni who attended the noting of the judgement advised me that the Honourable Judge indicated that the attorneys must explain why there was no appearance on the date of hearing of the matter, hence a cost *de bonis propriis* against the attorney."

- [3] Mr Ramonyai then proceeds to set out the reasons for why the Applicant and its legal representatives did not attend the hearing on 16 January 2020. They apparently did not receive the notice of set down.

- [4] Given the serious consequences for the legal representatives, should an adverse costs order be granted against them, I cannot accept that Mr Ramonyai would simply have relied upon the say- so of Ms Matjeni before deposing to the affidavit. And if he did, he was grossly negligent in doing so. As a result, there is nothing before me, to persuade me otherwise, not to grant an order of *cost de bonis propriis*.

- [5] The Applicant's review application was stillborn and fell to be dismissed, directly as a result of the Applicant's attorneys having conducted themselves in a seriously negligent manner. Had they read the legislation relating to Labour

Court reviews, and the case law relating to it, and taken seriously the First and Second Respondent's protestations, that they had not compiled a competent review record, their client, the Applicant may have had an opportunity to successfully review the arbitration award in question. In addition, as a result of Applicant's serious negligence, the First and Second Respondents have been put to unnecessary expense in opposing the review application. Not only was the Applicant done out of that opportunity by the Applicant's attorneys serial negligence, but the taxpayer has had to fit their bill. The Applicant should therefore also give serious consideration to the recovery of fees and disbursements paid in this matter, to the Applicant's attorneys.

[6] Having dismissed the Applicant's review application, I therefore make the following order:

Order

1. Koikanyang Incorporated is to pay the First and Second Respondent's legal costs *de bonis propriis*.
2. The Registrar of the Labour Court is directed to serve a copy of the full judgment on the Legal Practice Council.

S B Hardie

Acting Judge of the Labour Court

Appearances:

For the Applicant:

Koikanyang Inc Attorneys

For the First and Second Respondents:

Advocate M Sekhethela

Instructed by:

Thaanyane Attorneys