

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 1991/19

In the matter between:

SHASHE TRADING (PTY) LTD t/a

MOPANI SUPERSTAR, MOPANI TOPS, GIYANI

SUPERSPAR AND GIYANI TOPS

Applicant

and

ECONOMIC PIONEERS TRANSFORMATION

AID SOUTH AFRICAN WORKERS UNION

(EPTASAWU)

First Respondent

AUSTIN MABASA

Second Respondent

In re

SHASHE TRADING (PTY) LTD

Applicant

and

AUSTIN MABASA

Respondent

Heard: 14 February 2020

Delivered: 20 February 2020

Summary: Return day – Strike interdict – confirmation academic. The only live issue is costs – rule discharged with no order as to costs. Contempt proceedings, the order not clear in respect of Mabasa – regarding performing trade union duties. Contempt application dismissed with no order as to costs.

JUDGMENT

MOSHOANA, J

Introduction

[1] Before me serves two applications. The first one is the return day for a strike interdict granted on 30 September 2019. The second one is the contempt application against Austin Mabasa (Mabasa) for breach of the order of 30 September 2019. Both applications are opposed by Mabasa and the first respondent, Economic Pioneers Transformation Aid South African Workers Union (the trade union).

Background facts

[2] On 30 September 2019, this Court issued a *rule nisi* which interdicted office bearers and/or officials of the trade union and Mabasa from damaging property belonging to the applicant. Further, interdicting the office bearers and officials of the trade union and Mabasa from entering and or blockading certain named premises of the applicant. Further, the Court interdicted participation in an unprotected strike action.

[3] What led to the *rule nisi* being granted was that the trade union sought to be granted organizational rights. On 16 August 2019, Mabasa and other employees blockaded the main entrance of the applicant's premises and

demanded receipt of a memorandum. This action prevented customers from entering the premises of the applicant. These actions continued on 23 September 2019. The employees who participated in the actions were issued with final written warnings. Eight of the employees, who demonstrated aggression during the actions were dismissed for misconduct. On 27 September 2019 Mabasa arrived at the premises and indicated that the applicant would be closed down unless it immediately re-instated the dismissed employees. Attempts were made to remove Mabasa on the day. He threatened to return on 30 September 2019 to close down one of the shops owned by the applicant. Following that threat, the applicant approached this Court for an order. On the return day, the strike was long called off; the employees were dismissed and the actions that led to the *rule nisi* being issued dissipated.

Evaluation

Confirmation of rule nisi

[4] With regard to the strike action and actions of blockading and damaging property, much as the respondents do not seriously challenge the acts, it became common cause on the return day that all those belongs in history. That being the case, there is no longer a live dispute between the parties in that regard. The only live issue is that of costs. In that regard, it would be purely academic to confirm the rule. Thus, I intend to discharge the rule with no order as to costs.

[5] When it comes to costs, this Court retains a very wide discretion. I do accept that the actions of the respondents, prompted the applicant to approach this Court. I also accept that the opposition of the order was unreasonable. There is no collective bargaining relationship between the trade union and the applicant. With all that, I still take a view that a cost order is not warranted in this matter.

Contempt application

- [6] The allegation around this application is that Mabasa was ordered by this Court on 30 September 2019 not to enter the premises of the applicant. Despite that on 4 October 2019, at or around 10:00 am, Mabasa entered the premises and attempted to disrupt a disciplinary hearing which was underway at that time. Mabasa allegedly left an hour later after the police were asked to interfere. Later on in a media release, it was alleged that Mabasa referred to the order of this Court as being a fake order.
- [7] Mabasa does not deny entering the premises, but he states that the trade union members were to appear on the day and he wanted to seek clarity as to whether the union can attend to assist its members or not. In fact, the letter that was handed to the chairperson of the hearing was more a request for particulars for the hearing. What is clear to the Court is that on the day in question a disciplinary hearing was scheduled. One of the functions of a trade union, registered or unregistered is to represent its members during disciplinary hearing¹. The reason this Court ordered that Mabasa should not enter the premises, as it was alleged Mabasa was entering the premises to act unlawfully, was for him not to enter with an intention to act unlawfully. In fact, in my view, the order must be understood as such.
- [8] As I pointed out, the reason Mabasa entered the premises on the day in question was to assist the members of the trade union, an act that is not unlawful. I do not believe that on any interpretation the order gagged Mabasa from lawful entrance. Where a party ignores the terms of a court order, such a party is guilty of contempt. On the preponderance of probabilities, Mabasa was there for a lawful purpose. The fact that the media recorded that Mabasa referred to the order as a fake order is a red herring. If he was defiant of the order, Mabasa would have returned to the premises on 1 or 2 or 3 October. The fact that he returned on 4 October when a disciplinary hearing of the trade union members was scheduled lends credence to Mabasa's version of why he on that day entered the premises. It appears to be so that the persons tasked with

¹ See *MacDonald's Transport Upington (Pty) Ltd v Amcu and others* [2017] 2 BLLR 105 (LAC)

the running of the disciplinary hearing may have called upon the police for no valid reasons. All what was required was for the Chairperson of the internal hearing to rule on the request by Mabasa. What then follows is the question: Is the Mabasa guilty of contempt though?

- [9] This is the question I am now turning to. The requisites of a contempt order are (a) the existence of the order; (b) the order must be duly served on, or brought to the notice of the contemnor; (c) there must be non-compliance with the order; and (d) the non-compliance must be willful and *mala fide*.
- [10] It was held in *Pheko v Ekurhuleni Municipality (No 2)*² that while the courts do not countenance disobedience of judicial authority, it needs to be stressed that contempt of court does not consist of mere disobedience of a court order, but of the contumacious disrespect of judicial authority. All that is required is evidence that the contemnor is obstinately disobedient or rebellious. It ought to be shown that on the balance of probabilities the non-compliance was born out of willfulness and *mala fide*.
- [11] As to the standard of proof, the applicant before me is seeking an imposition of a fine or incarceration and as such, it must prove beyond reasonable doubt that the first respondent is guilty of contempt.³ The applicant failed to prove beyond any reasonable doubt that when Mabasa entered the premises on the day in question, he did that in order to carry out an unlawful act, it being the basis of him being gagged in the first place. His version that he went to the premises in order to champion the rights of the members of the trade union is reasonable and possibly true. As a result, Mabasa cannot be guilty of contempt.
- [12] For all the reasons set out above, I am unable to confirm the order of 30 September 2019 nor to find that Mabasa is guilty of contempt.

² 2015 (5) SA 600 (CC).

³ See: *Matjhabeng Local Municipality v Eskom Holdings Ltd and others* 2017 (11) BCLR 1408 (CC) at para 67.

[13] In the results the following order is made:

Order

1. The *rule nisi* issued on 30 September 2019 is hereby discharged with no order as to costs.
2. The contempt application is dismissed also with no order as to costs.

GN Moshwana
Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate M Van As.

Instructed by: Moss Marsh & Georgiev, Johannesburg.

For the Respondents: Mr Austin Mabasa (Union Official).