



**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD IN DURBAN)**

Case no: D 601/2023
Not Reportable

In the matter between:

AMAMUGAM GOVENDER

Applicant/Respondent

and

THE KWAZULU NATAL OFFICE OF THE PREMIER Applicant /Respondent

Heard: 6 December 2024

Judgment delivered: 20 February 2025 (Electronically)

JUDGMENT

WHITCHER J

Introduction

[1] Two applications serve before me, a contempt application filed by Mr Govender (Govender) on 27 November 2024, and an application to declare Govender a vexatious litigant as contemplated in section 2 (1)(b) of the Vexatious Proceedings Act, 3 of 1956, which application was filed by the KwaZulu-Natal Office of the Premier (the KOTP) on 13 March 2024.

Relevant background facts

[2] On 16 August 2023, the General Public Service Sector Bargaining Council issued an arbitration award. In terms of the award, it was found that the KOTP had unfairly dismissed Govender and the KOTP was obliged to reinstate him and pay him backpay in the amount of R 9 449 977.48 (less any lawful deductions).

[3] On 19 October 2023, the KOTP filed to have the award reviewed and set aside.

[4] On 8 November 2023, following attachment proceedings initiated by Govender and an urgent application by the KOTP to interdict same, the Court issued an order crafted by the parties.

[5] In terms of the order, the operation of the arbitration award was suspended pending the determination of the payment of security by the KOTP; Govender was restrained from removing the attached property of the KOTP pending the finalization of the review proceedings; Govender had to file an opposing affidavit by 22 November 2023 and the KOTP a replying affidavit by 6 December 2023.

[6] Four important facts arise from this order:

- (i) Evidently, the KOTP did furnish security in terms of section 145(7) of the LRA to suspend the operation of the award. Presumably, that is why the KOTP agreed to pay the costs of the execution incurred by Govender.
- (ii) Govender filed his opposing affidavit as ordered but the KOTP did not file a replying affidavit.
- (iii) The order did not have a return date and there is no sign in the application before me that the KOTP made any effort to have the security

issue enrolled and finalized. In fact, by the time the review was heard almost 10 months later, the matter of their failure to furnish security had not been resolved. They left that important matter to languish.

[7] On 7 February 2024, Govender filed a contempt of court application calling upon the KOTP to show cause on 16 February 2024 why it should not be held in contempt of court for failing to comply with the above court order.

[8] On 16 February 2024, following discussions with the legal representatives of the KOTP and the court, Govender withdrew the contempt application, but withdrew it 'without prejudice' to any right he may have to reinstate it.

[9] On 4 March 2024, Govender essentially reinstated that contempt application.

[10] In response, on 13 March 2024, the KOTP filed their application to have Govender declared a vexatious litigator as contemplated in section 2(1)(b) of the Vexatious Proceedings Act, 3 of 1956.

[11] The above contempt application was dismissed (ex tempore) on 15 March 2024. Why it was dismissed is not explained by the KOTP.

[12] On 16 July 2024, Farrell AJ dismissed the review application with costs. Written reasons were delivered on 5 September 2024.

[13] On 19 September 2024, the KOTP filed for leave to appeal the whole of the judgment of Farrell AJ, and, on 4 October 2024, they filed their submissions in support of the application.

[14] On 27 November 2024, Govender filed the contempt application that serves before me.

The contempt application

[15] In terms of this application, Govender seeks to hold the KOTP and the Premier in contempt for failing to comply with arbitration award issued on 16 August 2023.

[16] Given the KOTP's application for leave to appeal and when the application and the required submissions were filed, the contempt application falls to be dismissed with costs. Costs, because the contempt application was filed long after the aforementioned filings and, on 15 October 2024, the KOTP pertinently reminded Govender that they had filed all the necessary papers in their application for leave to appeal and pertinently warned him against his threat to bring this contempt application. However, for reasons explained further on, I shall not make a cost order against Govender.

The application to declare Govender a vexatious litigant

[17] In this application, filed on 13 March 2024, the KOTP seeks an order in the following terms:

- (i) declaring [Govender] a vexatious litigant as contemplated in section 2(1)(b) of the Vexatious Proceedings Act, 3 of 1956;
- (ii) declaring that no legal proceedings shall be instituted by [Govender] against [the OTP] without the leave of this Court, or any Judge of this Court, as the case may be, and such leave shall not be granted unless the Court or the Judge, as the case may be, is satisfied that the proceedings [Govender] wishes to institute, are not an abuse of the process of the Court and that there is a *prima facie* ground for the intended proceedings;
- (iii) costs of the application on a scale as between attorney and client.

[18] Section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956 provides that:
“If, on an application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons,

the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any court or any inferior court without the leave of the court, or any judge thereof, or that inferior court, as the case may be, and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.”

[19] The SCA in *MEC for the Department of Co-operative Governance and Traditional Affairs v Maphanga*¹ held as follows:

It is clear from the ordinary wording of this provision that it brings within its purview **actual or prospective litigation** brought or threatened by a person who has **persistently**, and without any reasonable ground, instituted legal proceedings...The purpose of the provision is ‘to put a stop to persistent and ungrounded institution of legal proceedings ... in the Courts’ i.e. to ‘put a stop to the making of unjustified claims... **So, an applicant who seeks the protection of the provisions must establish, first, that the respondent has in the past instituted legal proceedings in a court against her...persistently and without reasonable cause. Secondly, she must prove that further litigation has been brought against her or is reasonably contemplated.**

² [Emphasis added]

[20] On the meaning of the word “*persistent*” in this context, the SCA agreed with the court *a quo*’s interpretation:

Due account must be given to the language, context and purpose of the legislation. Although constitutionally valid, the legislation must nonetheless be accorded a narrow construction as it interferes with a protected right and restricts the right of access to courts, to avoid undue limitation of the right... The meaning envisaged in the present context must be a ‘recurring’ or ‘constantly repeated or continuous’ institution of legal proceedings in a court.

¹ (652/2018) [2019] ZASCA 147 (15 November 2019).

² Paragraph 12.

[21] Notably, the relief provided for in section 2(1)(b) of the Act is prospective in nature. It seeks to protect a person against the institution of future persistent and ungrounded legal proceedings. The Act does not afford protection against existing vexatious proceedings, or an abuse of process in respect of legal proceedings that have already been instituted. As pointed out by the SCA:

“...Secondly, she must prove that further litigation has been brought against her or is reasonably contemplated.”

[22] The SCA also cautioned that:

A court must, in granting this type of relief, proceed very cautiously and only in a clear case, make a general order prohibiting proceedings between the same parties on the same cause of action and in respect of the same subject matter where there has been repeated and persistent litigation, and craft such order to meet only the immediate requirements of the particular case. The stringent onus on the applicant who seeks the relief and the need for the court's caution in exercising this power obviously arise from the fact that the relief curtails a litigant's access to court.³

[23] Is Govender a vexatious litigant? Did he harass the KOTP with persistent legal proceedings that had no reasonable grounds? The answer is a clear No.

[24] A proper consideration of all his legal proceedings, save for the last one, indicates that in his own lay manner he had attempted to enforce his award when he had every right to do so given the KOTP's failure to furnish security and thereby suspend the operation of the award. The fact that the KOTP agreed to pay the costs of execution incurred by him speaks for itself.

[25] It is also evident that the contempt applications filed by Govender on 7 February and 4 March 2024 which triggered the KOTP 'vexatious' claim related to the court order of 8 November 2023 was essentially an attempt by him to secure compliance with the court order and finalise the issue of security. Yes, the KOTP

³ Paragraph 26.

was not obliged in law to file a replying affidavit, but as stated above, they had been obliged to take steps to have the matter finalised, which they never did.

[26] Accordingly, it cannot be found that prior to the 13 March 2024, Govender had persistently and without reasonable grounds instituted legal proceedings against the KOTP.

[27] Ultimately, the application to declare Govender a vexatious litigant itself was brought in bad faith, hence my decision not to make a cost order against Govender.

Order

1. The contempt application filed by Govender on 27 November 2024 is dismissed.
2. The application to declare Govender a vexatious litigant is dismissed.

Benita Whitcher

Judge of the Labour Court of South Africa

APPEARANCES:

For Mr Govender:

In person

For the KwaZulu-Natal Office of the Premier:

MTK Moerane SC, with SM Luthuli, instructed by the State Attorney, KwaZulu-Natal