



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR791/23

In the matter between:

MORGAN LESESE

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

COMMISSIONER NATHALIE WILEMSE N.O.

Second Respondent

ESKOM HOLDINGS (SOC)

Third Respondent

Heard: 10 October 2024

Delivered: 10 October 2024

Reasons: 25 February 2025

REASONS FOR ORDER

PHEHANE, J

[1] On 10 October 2024, this Court issued an order in the following terms:

- ‘1. The explanatory affidavit delivered by the respondents on 26 July 2024 is struck out.
2. The applicant’s affidavit delivered on 09 September 2024 in reply to the respondents’ explanatory affidavit is struck out.
3. The applicant’s notice of confirmation delivered on 02 August 2024 is struck out.
4. The contempt of court application is dismissed.
5. The applicant is to pay the costs.’

[2] The brief reasons for the order follow below.

Background

[3] The applicant launched a review application on 8 May 2023 in this Court under the same case number, to review and set aside an arbitration award by the second respondent.

[4] On 29 May 2023, the first and respondents (collectively referred to as the Commission for Conciliation, Mediation and Arbitration – CCMA), filed a notice in terms of the former Rule 7A(3) of the then-Rules of this Court.¹

[5] On 8 June 2023, 6 September 2023 and 13 November 2023, further notices in terms of the former Rule 7A(3) were filed by the CCMA.² In addition, a further notice in terms of the former Rule 7A(3) was filed on 8 December 2023 following a reconstruction meeting that was held on 30 October 2023, attaching the reconstruction ruling.³

¹ GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court (repealed, 17 July 2024). pp 15 to 16.

² pp 18 to 26.

³ pp27 to 30.

[6] The applicant subsequently launched an application on 9 February 2024 to compel the CCMA to file handwritten notes, a copy of the arbitration award and the tape recording of the proceedings of 14 July 2022.⁴

[7] The CCMA filed correspondence dated 30 April 2024, indicating that at the conclusion of the reconstruction meeting, the CCMA handed a flash drive to the applicant containing the missing audio of the arbitration proceedings and that the applicant was provided with the second respondent's typed notes. Further, that the complaints of the applicant regarding the procedure at the CCMA are a matter for the review court to determine.

[8] On 28 May 2024, this Court per Molotsi AJ issued an order directing the CCMA to provide the applicant with specified documentation relating to the record of the arbitration proceedings within 30 days of that order (the Court order).⁵ The court order was served on the respondents on 3 June 2024.

[9] The Court file is in a state of disarray. It transpired that on 26 July 2024, the CCMA filed an explanatory affidavit. It is unclear why this explanatory affidavit was filed. On receipt of this explanatory affidavit by the CCMA, on 9 September 2024, the applicant filed a voluminous "answering affidavit" in reply to the CCMA's explanatory affidavit delivered on 26 July 2024.

[10] Thereafter, the applicant launched this present application, a contempt of Court application on 23 August 2024.⁶ The CCMA filed a notice to oppose this application on 12 September 2024, together with its opposing affidavit. No replying affidavit was filed.

[11] The opposed contempt of Court application served before me on 10 October 2024.

⁴ See: notice of motion in the application to compel.

⁵ p 14.

⁶ Notice of Motion, pp 1 to 4.

[12] The CCMA's explanatory affidavit and the applicant's "answering affidavit" were struck out as at the time of their filing, there was no dispute between the parties relating to the application to compel the filing of parts of the record.

[13] The CCMA avers in its opposing affidavit, that it has complied with the Court order. It explains that no handwritten notes by the second respondent exist, as stated in the Court order, but typed notes, which had been provided to the applicant. In addition, the applicant confirms that it filed the recording of 13 January 2023 as far back as 13 November 2023. In the premises, the CCMA contends that no case has been made out for contempt of Court and the application must accordingly be dismissed with costs as the application is frivolous and vexatious.

Evaluation

[14] In *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and others*,⁷ the Constitutional Court restated the requirements to succeed in a contempt of court application and held as follows:

'... [I]t is trite that an applicant who alleges contempt of court must establish that (a) an order was granted against the alleged contemnor; (b) the alleged contemnor was served with the order or had knowledge of it; and (c) the alleged contemnor failed to comply with the order. Once these elements are established, wilfulness and *mala fides* are presumed and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established.'

[15] The applicant has failed to prove that the CCMA failed to comply with the Court order. It has not demonstrated any contumacious disrespect of judicial authority by the CCMA.⁸

Costs

⁷ [2021] ZACC 18; 2021 (5) SA 327 (CC) at para 37.

⁸ See: *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others* [2017] ZACC 35; 2018 (1) SA 1 (CC).

[16] The applicant did not disclose to this Court that the CCMA issued a variation ruling explaining that typed and not written notes existed; he also failed to disclose to the Court that he was furnished with the recordings of 13 January 2023. Being an *ex parte* application⁹ it is trite the applicant had a duty to disclose all material facts to the Court. He failed to do so. This alone is a basis for dismissing the application.

[17] The CCMA took steps to assist the applicant to proceed with his review application, yet at every turn, he filed a total of five applications to compel the CCMA to file records¹⁰ and filed this application when he had already been served with records and in circumstances where the CCMA was not in contempt of Court.

[18] The conduct of the applicant as aforesaid is an abuse of Court process and warrants a costs order.

[19] In view of the afore-going, the above order was made.

M. T. M. Phehane
Judge of the Labour Court of South Africa

⁹ Although served on the respondents.

¹⁰ See: para 9.2 to 9.11 at pp 6 to 7.