



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J52/25

In the matter between:

DANIELA KHOZA

Applicant

and

ABF LEGEND LOGISTICS (PTY) LTD

First Respondent

FOUCHE BLIGNAUT

Second Respondent

Heard: 6 May 2025

Delivered: 13 August 2025

JUDGMENT

ENGELBRECHT, AJ

Introduction

[1] On 13 March 2025, my sister Madam Justice Phehane ordered the second respondent (Mr Blignaut), the manager of the first respondent (Legend Logistics), to appear before this Court on 6 May 2025 to show cause why he should not be held in contempt for failure to comply with a certified arbitration award under case number RFBC70675 dated 17 December 2024. Failure to do so could lead to the respondents being found guilty of contempt, resulting in a fine and/or incarceration. The order obtained in *ex parte* proceedings was to be served personally on Mr Blignaut, and Mr Khoza was to file with this Court proof of service of the order and the application 10 court days before the hearing – i.e. by 16 April 2025.

[2] On 6 May 2025, the parties appeared before me.

Relevant facts

[3] From 5 May 2019, Legend Logistics employed the applicant (Mr Khoza) as a truck driver. On 26 April 2023, he was dismissed, having been found guilty on a charge of dishonesty.

[4] Aggrieved by his dismissal, Mr Khoza referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). Conciliation failed, and arbitration followed before Commissioner Mngomenzulu (the Commissioner). The Commissioner found in Mr Khoza's favour and awarded backpay in the amount of R115 184.00 and reinstatement (the Award). It appears from the documentation serving before this Court that the Award was sent to Legend Logistics on 6 September 2024.

[5] In this founding affidavit in this application, Mr Khoza states that he reported for duty on 30 September 2024, but he was told to go home, because Legend Logistics intended to take the Award on review.

[6] On 4 December 2024, Mr Khoza approached the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) to have the Award

certified in terms of section 143 of the Labour Relations Act¹ (LRA). The application was served on Legend Logistics on 4 December 2024, as appears from a letter from the NBCRFLI inviting it to make representations, together with the email under cover of which it was sent to, amongst others, 'H[...]']

[7] The certification was signed and issued by the senior commissioner of the CCMA on 17 December 2024.

[8] Mr Khoza asserts that, despite being fully aware of the Award and its subsequent certification, Legend Logistics are refusing to reinstate him and to make payment of the amount contemplated in the Award.

[9] On the basis of these allegations, Mr Khoza obtained the order that called upon the respondents to provide an explanation or face a finding of contempt.

[10] According to a return of service dated 24 April 2025, the papers in the *ex parte* application and the order were served on "MR MAARTENS – PR CLERK". Attempts to serve personally on Mr Blignaut were said to be unsuccessful.

[11] In an affidavit of 5 May 2025, Legend Logistics' Human Resource Manager stated that:

- 11.1. the order of 13 March had not been served personally on Mr Blignaut;
- 11.2. the respondents had received the Award of 2 September 2024, ordering Mr Khoza to report for duty on 30 September 2025;
- 11.3. Mr Khoza never reported for duty on or after 30 September 2024;
- 11.4. the respondents had not "*seen any award under case RFBC70676 dated 17 December 2024*"; and
- 11.5. Legend Logistics had learnt from the records of the NBCRFLI that Mr Khoza had accepted alternative employment.

Preliminary issues

¹ Act 66 of 1995, as amended.

[12] It is common cause that the *ex parte* application and the order had not been served personally on Mr Blignaut. The requirements of the order granted in the *ex parte* application in this respect were not met. Mr Khoza's representative accordingly indicated an intention to abandon the relief sought against Mr Blignaut. The case for contempt against Mr Blignaut is no longer before this Court.

[13] The second issue is that there was short service of the order on Legend Logistics. Its legal representative, however, did not take issue with the short service, in circumstances where Legend Logistics was placed in a position to file an affidavit and where its legal representative could make representations to the Court. To the degree necessary, this Court condones the short service.

The test in contempt

[14] The leading judgment on contempt of court is *Fakie NO v CCII Systems (Pty) Ltd*² (*Fakie*). The Supreme Court of Appeal (SCA) explained in that judgment that:

'It is a crime unlawfully and intentionally to disobey a court order. This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court. The offence has, in general terms received a constitutional 'stamp of approval', since the rule of law – a founding value of the Constitution – 'requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained'.³

[15] It observed, further, that a contempt of court application:

'[7] ... is a most valuable mechanism. It permits a private litigant who has obtained a court order requiring an opponent to do or not do something (*ad factum praestandum*), to approach the court again, in the event of non-compliance, for a further order declaring the non-compliant party in contempt of court, and imposing a sanction. The sanction usually, though not invariably,

² *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA).

³ *Ibid* at para 6.

has the object of inducing the non-complier to fulfil the terms of the previous order.

[8] In the hands of a private party, the application for committal for contempt is a peculiar amalgam, for it is a civil proceeding that invokes a criminal sanction or its threat. And while the litigant seeking enforcement has a manifest private interest in securing compliance, the court grants enforcement also because of the broader public interest in obedience to its orders, since disregard sullies the authority of the courts and detracts from the rule of law.⁴

[16] The SCA went on to recount the requisites for contempt as follows:

‘[42] ...

(c) In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and *mala fides*) beyond reasonable doubt.

(d) But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and *mala fides*: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and *mala fide*, contempt will have been established beyond reasonable doubt.’⁵

[17] There are four points to be highlighted in the present case:

17.1. First, proof of the requirements for contempt – the order, service or notice, non-compliance, and wilfulness and *mala fides* – must be established beyond a reasonable doubt.

17.2. Second, actual service of the order is not required; notification of the order may suffice.

17.3. Third, the requirement of wilfulness and *mala fides* suggests that contempt is committed not only by disregarding the court order but also by deliberately and intentionally violating the court’s dignity, reputation, or authority, which this demonstrates; and

⁴ *Fakie* at paras 7 – 8.

⁵ *Ibid* at subpara 42 (c) and (d).

17.4. Finally, the shift of the evidentiary burden onto the respondent to prove that his non-compliance was not wilful and *mala fide*, once the first three requirements for contempt —order, service or notice, and non-compliance, have been satisfied, implies an inference of wilful and *mala fide* non-compliance in such circumstances, which the respondent must then rebut by providing evidence.

[18] However, as regards the standard of proof, the Constitutional Court in *Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited*⁶ explained that:

‘Summing up, on a reading of *Fakie*, *Phoko II*, and *Burchell*, I am of the view that the standard of proof must be applied in accordance with the purpose sought to be achieved, or differently put, the consequences of the various remedies. As I understand it, the maintenance of a distinction does have a practical significance: the civil contempt remedies of committal or a fine have material consequences on an individual’s freedom and security of the person. However, it is necessary in some instances because disregard of a court order not only deprives the other party of the benefit of the order but also impairs the effective administration of justice. There, the criminal standard of proof – beyond reasonable doubt – applies always. A fitting example of this is *Fakie*. On the other hand, there are civil contempt remedies – for example, declaratory relief, mandamus or a structural interdict – that do not have the consequence of depriving an individual of their right to freedom and security of the person. A fitting example of this is *Burchell*. Here, and I stress, the civil standard of proof – a balance of probabilities – applies.’

Discussion

[19] In contempt proceedings, the questions to be asked are the following:

- 19.1. first, is there a valid and binding order, duly granted?
- 19.2. second, was the order directed at the respondents?
- 19.3. third, do the respondents have knowledge of the order?

⁶ 2018 (1) SA 1 (CC) at para 67.

19.4. finally, did the respondents wilfully and intentionally disobey the order?

[20] In the present case, the first requirement is clearly met: before this Court is an award, certified by the CCMA on 17 December 2024 in accordance with section 143(3) of the LRA.

[21] The second requirement is also met: the award clearly identifies Legend Logistics as the respondent, and Legend Logistics does not contend otherwise.

[22] The third requirement is not so easily disposed of.

[23] The founding papers include the certification of 17 December but do not allege that the certification award was served on or sent to Legend Logistics. Mr Khoza relies on an allegation that the respondents are '*fully aware of the arbitration award and its subsequent certification*'. Unfortunately, the allegation that Legend Logistics was fully aware of the certification is a conclusion pleaded without factual basis, which is not acceptable in motion proceedings where affidavits serve not only as pleadings but also to present the essential evidence supporting the cause of action.

[24] On behalf of Legend Logistics, the human resources manager states that the company received the original award dated 2 September 2024; however, the respondents '*have not seen any award under case RFBC70676 dated 17 December 2024*'. Unfortunately, this denial, phrased in very specific terms referencing a case number, creates its own issues: firstly, the case number in the affidavit does not match the one in the court order; secondly, it is clear that the case number in the order pertains to the certification of the award dated 2 September 2025, and the respondents seem to rely on a typographical error to avoid addressing the real question. Due to the detailed manner in which the denial was crafted, there is no denial before this court of the allegation that the respondents were aware of the certification.

[25] The issue for Legend Logistics is this: section 143(1) of the LRA states that an arbitration award is final and binding, '*and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, unless it is an advisory arbitration award*'. It is true that section 143(3) states that an arbitration award may only be enforced after certification, but the award intended for enforcement remains the original award. In this case, Legend Logistics admits that it received the original award. Section 143 of the LRA does not require a fresh service of the certification; it only requires that the applicant seeking to enforce the order has obtained such certification. Here, it has been shown that Legend Logistics was aware of the award intended for enforcement through contempt proceedings, and Mr Khoza demonstrated that he had the award certified prior to initiating the contempt application.

[26] That, however, is not the end of the matter. I now turn my attention to the question whether this is a case of wilful and intentional disobedience, which is the final requirement that must be met.

[27] In *Kubeka and others v Ni-Da Transport (Pty) Ltd*⁷ (*Kubeka*), the Labour Appeal Court (LAC) held that:

'[35] The decision of the Constitutional Court in *Hendor* therefore leaves little doubt that a reinstatement order does not restore the contract of employment and reinstate the unfairly dismissed employees. Rather, it is a court order directing the employees to tender their services and the employer to accept that tender. If the employee fails to tender his or her services or the employer refuses to accept the tender, there is no restoration of the employment contract. If the employer fails to accept the tender of services in accordance with the terms of the order, the employee's remedy is to bring contempt proceedings to compel the employer to accept the tender of services and thereby to implement the court order.

[36] As the employees in *Hendor* in fact tendered their services and were reinstated, the Constitutional Court was not called upon to decide what the position would have been had the employees failed to take up reinstatement

⁷ [2021] 4 BLLR 352 (LAC).

pursuant to the order. However, it follows plainly from the reasoning in both judgments that an employee granted retrospective reinstatement is not entitled to any of the contractual benefits of reinstatement, including back pay, without the contract being restored through actual reinstatement.

...

[38] A requirement that back pay is only due and payable on reinstatement is in keeping with the remedial scheme and purpose of section 193 of the LRA. As Mr Watt-Pringle SC, counsel for the respondents, correctly submitted, if an employee in receipt of a reinstatement order could on the strength of the order alone claim contractual payment for the retrospective part of the order without actually seeking reinstatement (tendering prospective services), it would convert a reinstatement remedy (which requires a tender of services) into a compensation award (which does not), in excess of the statutory limitation on compensation awards. Such an outcome would be inconsistent with the purpose of sections 193 and 194 of the LRA. An unfairly dismissed employee must elect his or her preferred remedy and if granted reinstatement must tender his or her services within a reasonable time of the order becoming enforceable. If reinstatement has become impracticable through the effluxion of time, for instance where the employee has found alternative employment, he or she should seek to amend his or her prayer for relief to one seeking compensation.’ (Emphasis added).

[28] Following the judgment in *Kubeka*, my sister, Madam Justice Prinsloo, held in *Tshenolo Waste (Pty) Ltd v Sekgoro and Others*⁸:

‘As was confirmed in *Kubeka*, there is a crucial difference between an order for reinstatement and actual reinstatement pursuant to the right to reinstatement which the reinstatement order grants to an employee. An employee who is the beneficiary of a reinstatement order can elect not to enforce it. If the employee does not enforce the order (by tendering services and seeking committal for contempt if the offer is declined) the employment contract is not restored and the relationship does not resume. There can be no legal basis for any contractual claim for arrear wages until such time as the

⁸ (2021) 42 ILJ 2693 (LC) at para 26.

contract is restored by the agreement of the employer to accept the tender of the employees in respect of future services. Rights to backpay flowing from the reinstatement order can only arise once the contract is restored. Prior to the employer agreeing to restore the contract pursuant to an order to do so, there is no contract in existence and thus no juridical basis for a claim for arrear wages.’

[29] The result of these judgments is that, unless Mr Khoza tendered his services and Legend Logistics accepted the tender, he cannot enforce payment of the arrears wages under the award. Therefore, in order for Mr Khoza to succeed in these contempt proceedings, it must be shown that he tendered his services, and that Legend Logistics failed to accept the tender, in breach of the obligation, thereby wilfully and intentionally failing to comply with the award.

[30] Legend Logistics says that Mr Khoza did not tender his services. Here, unlike the case of the narrow denial on knowledge of the certified award, it provides an expansive denial, asserting that Mr Khoza did not tender his services at all, whether on 30 September 2024 or thereafter.

[31] This allegation introduces a dispute of fact. I accept that a real dispute of fact arises most obviously when the respondent denies material allegations made by the deponents on the applicant’s behalf and produces positive evidence to the contrary,⁹ and that a *‘bare denial of [an] applicant’s material averments cannot be regarded as sufficient to defeat [an] applicant’s right to secure relief by motion proceedings’*.¹⁰ However, in context, what more can the deponent for Legend Logistics be expected to say other than that Mr Khoza did not tender his services? It cannot make positive additional allegations to prove a negative.

[32] Mr Khoza’s representative asked this Court to infer on a balance of probabilities that Mr Khoza did tender his services. This, because his application for certification was made on 8 October 2024, not long after the 30 September date.

⁹ A C Cilliers, C Loots and H C Nel, *‘Herbstein & Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa’*, Juta at p 296.

¹⁰ *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) (*Room Hire*) at 1165.

Why, the question is rhetorically asked, would he have done so if he had not reported for duty and been shown the door?

32.1. The issue here is, firstly, the applicable standard of proof. Mr Khoza's notice of motion does not explain what the consequence is that he seeks if Legend Logistics is to be found in contempt, but the *ex parte* order envisages imposition of a fine or imprisonment, i.e. criminal consequences, not civil remedies such as a structural interdict. If the higher standard of proof applies, it does not assist Mr Khoza to rely on the balance of probabilities.

32.2. The second issue is that, according to Mr Khoza's version, he only presented himself for duty once, on 30 September 2025. There is no allegation in the founding papers that, after he obtained his certification, he returned to Legend Logistics to offer his services again, this time with the benefit of the certified order. Why should this Court infer that the application for certification was made after he presented himself and offered his services? An application for certification does not prove that Mr Khoza actually tendered his services.

32.3. The third point I wish to raise is that, considering the allegation Mr Khoza makes, he fails to provide any details that would assist the Court in determining that his version (that he tendered his services) should be preferred. Had Mr Khoza stated that he visited the offices of Legend Logistics at a specific time, and identified the person he approached (such as human resources, the security guard, or the manager), Legend Logistics would have needed to do more to disprove his claim. However, a simple statement that he attended and was told there would be a review is easier to dismiss, especially since there is no evidence before this Court that Legend Logistics actually initiated such a review.

[33] In the circumstances of the case, where a dispute exists about whether Mr Khoza presented himself to Legend Logistics, this Court cannot conclude that the non-compliance was wilful.

Conclusion

[34] Mr Khoza has failed to meet the requirements for contempt. His application fails, but this Court does not consider it appropriate to grant a costs order.

[35] In the result, I make the following order:

Order

1. The application is dismissed.
2. There is no order as to costs.

M Engelbrecht

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant: S Seepamore

For the respondent: A Kleynhans (Yusuf Nagdee Attorneys)