



THE LABOUR APPEAL COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable
Case no: CA 1/25

In the matter between:

ROBERTSON AND CAIN (PTY) LTD

First Appellant

THEO LOOCK

Second Appellant

and

RANDALL MOSES

Respondent

Heard: 4 November 2025

Delivered: 14 January 2026

Coram: Molahlehi JP, Djaje AJA and Kganyago AJA

JUDGMENT

MOLAHLEHI JP

Introduction

[1] The issue in this appeal is whether the Labour Court erred in finding that the appellant was in contempt of court for failing to assist the respondent in completing the application forms for medical incapacity. The respondent instituted contempt proceedings arising from the arbitration award issued by the Metal and Engineering Industries Bargaining Council (MEIBC) under

section 143 of the Labour Relations Act¹ (LRA). The arbitrator issued the arbitration award on 09 August 2023, which required the appellant to assist the respondent in completing the Unemployment Insurance Fund (UIF) application forms.

Background facts

- [2] The issue that led to the contempt of court proceedings arose from the settlement agreement between the parties, which had been made an arbitration award and enforced as such in terms of the LRA. The settlement agreement was concluded following an alleged unfair dismissal dispute concerning the respondent, Mr Moses, who was employed as a carpenter by the appellant.
- [3] It is apparent that due to injuries sustained, Mr Moses was unable to attend work and, accordingly, exhausted his sick leave. During August 2019, the appellant convened an incapacity inquiry, which was finalised in November 2019.
- [4] The respondent did not dispute that he worked only thirty-two days due to his back injury. He told the incapacity inquiry that he was awaiting a neurosurgeon's report to confirm his health condition, which he never submitted.
- [5] It is apparent from the record that the issue of the respondent's incapacity arose after he sustained work-related injuries. He attended Milnerton Medi-Clinic, where the attending doctors prepared a medical report on his injuries to comply with the requirements of the Occupational Injuries and Diseases Act.²
- [6] On 17 January 2020, the Department of Labour enquired of the appellant regarding the respondent's condition following receipt of the UI 19 form, which stated that the reason for the termination of his employment was "*ill-health/medically boarded*." The appellant responded that the form had been erroneously sent by its payroll department.

¹ Act 66 of 1995, as amended.

² Act 130 of 1993.

- [7] Aggrieved by his dismissal, the respondent referred an alleged unfair dismissal dispute to MEIBC. The parties settled the dispute amicably at the bargaining council on the following terms:

“10.1. The Respondent agrees to assist with the completion of the forms as required by the Applicant, as applicable to the employer.”

- [8] The respondent's case was that the appellant was obliged to assist him in completing the forms required for an application for permanent medical disability benefits under the Unemployment Insurance Fund. In addition, in the founding affidavit, he contends in paragraph 22.4.1 that the appellant *“ignores the terms of the binding award to re-employ me.”*
- [9] After signing the agreement, the respondent went to the Medi Clinic, which he described as a follow-up visit, and requested assistance in completing the UI 2.2 form of the Unemployment Insurance Fund. He was advised to seek assistance from the physician who boarded him.
- [10] In December 2022, the respondent met with the appellant's representatives to discuss the implementation of the settlement agreement. As the meeting achieved nothing, the respondent approached the MEIBC for assistance. The MEIBC wrote to the appellant requesting feedback on the settlement agreement. Ms Lategan of the appellant responded to the bargaining council's query as follows:

“... the company will assist with his application as per the MEIBC Settlement Agreement (signed on 11 February 2020); however, we do require documentation from his doctor/treating physician, indicating that he is medically unfit for work. Unfortunately, in the absence of such documentation, we are unable to assist with his disability application, as the documentation forms the basis of the application.

We have informed Mr Moses that, should he submit such documentation from his doctor/treating physician, the company will assist with the information required to be completed. To date, Mr Moses has not returned to the company to submit the required documentation.”

- [11] On 15 April 2024, the respondent requested that the appellant either assist him in completing the UI 2.2 forms or forward them to the doctor who recommended his medical boarding. The relevant parts of the email read as follows:

“Ms. Karin Lategan as you know on my Certificate of Service and UIF form it says I'm medically boarded from work. Ms. Karin Lategan can you please ask the Specialist Doctor who medically boarded me from work, to complete my MIBFA Permanent Disability, Medical Examination Reports on Working Capabilities and my UI-2.2 form of the Compensation Fund at the Labour Department. Because I don't know who's the Specialist Doctor who medically boarded me from work.”

- [12] The head of the human resources department, Ms Lategan, responded on 23 April 2024 to the above as follows:

“Dear Randal

I trust that you are well. Unfortunately, I am unable to assist you in this regard as I am not aware of a specialist doctor who medically boarded you. Your services with the company were terminated based on your confirmation during the incapacity hearing, that you were unable to work.”

- [13] The respondent followed up on the above request by calling the human resources manager, who advised him to obtain a medical report from the doctor who had medically boarded him.

- [14] In light of the above uncertainty on the part of the respondent, he approached the MEIBC for advice. He was advised to apply to have the agreement between him and the appellant declared an arbitration award under section 142 of the LRA.

- [15] The settlement agreement was accordingly made an arbitration award on 9 August 2023 and subsequently an order under section 143 of the LRA. The order was then served on the appellant. Upon receipt of the order, the appellant responded that it was unable to comply.

- [16] For the reasons stated above, the respondent brought contempt of court proceedings before the Labour Court to enforce the arbitration award made in his favour.

The Labour Court

- [17] The Labour Court found the appellants guilty of contempt of court on 19 September 2024. It accordingly ordered the appellants to pay a fine of R100 000,00 within thirty days of the order. The payment was suspended on condition that the appellants: (a) refer the respondent to a neurosurgeon, (b) pay the costs of the assessment, and (c) assist the respondent in completing the UI-2.2 form, the MIBFA Permanent Disability forms, and the Medical Examination Reports on Working Capabilities forms.
- [18] In making the above order, the Labour Court reasoned that it was common cause that the appellant had failed to comply with the terms of the arbitration award, which had been made an order of the court. It also found that although the order was silent as to the specific forms the appellant was to assist the respondent with, those forms were apparent in the context of the agreement. In this regard, the rules governing the interpretation of court orders and other documents were applied. It rejected the appellant's contention that the parties' agreement was ambiguous because the forms at issue were not specified.
- [19] The other point noted by the Labour Court concerns the appellant's denial that the respondent was medically boarded; instead, he was dismissed for incapacity. It found, having regard to the fact that the appellant provided him with a UI-19 form and a Certificate of Service recording that he was medically boarded, that the dismissal was indeed for medical boarding. The Court rejected the appellant's assertion that the issuance of these two documents to the Department of Labour was erroneous.

The Appeal

- [20] The appellant contends that the Labour Court mistakenly found the appellant guilty of contempt of court, rather than recognising that the respondent, Mr

Randal Moses, did not establish a case of deliberate, *mala fide*, or wilful contempt of the court order. It further argued that the Labour Court's interpretation of the parties' agreement was flawed, particularly with respect to the appointment and funding of a neurosurgeon to examine the respondent. Concerning the settlement that had been made an order of the court, the appellants argued that the agreement was drafted in a manner that was unclear as to which forms, specifically, the appellant must assist the respondent, Mr Moses in completing.

- [21] The respondent opposed the appeal and contended that the appellant had failed to assist him in completing the forms required by the agreement, including referring him to a neurosurgeon.

Legal principles

- [22] It is trite that in contempt proceedings, the applicant bears the onus of establishing, beyond a reasonable doubt, the existence of a valid court order, service or notice of it, and non-compliance. To succeed in an application for contempt of court, the appellant must prove beyond a reasonable doubt that the conduct of the contemnor amounts to contempt of court.³ The test to apply in determining whether a contemnor committed contempt of court was set out in *Fakie NO v CCII Systems (Pty) Ltd* (Fakie),⁴ as follows:

"The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and mala fide'. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him- or herself entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith)."

- [23] It is further trite that once the above elements have been proven, the evidentiary burden to prove absence of wilfulness and *mala fides* shifts to the contemnor. In this regard, the contemnor must present evidence that

³ See: *Matjhabeng Local Municipality v Eskom Holdings Ltd* [2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC).

⁴ *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at para 9 ('Fakie').

establishes reasonable doubt to avoid the inference that the non-compliance was wilful and *mala fide*. Thus, mere non-compliance with a court order does not constitute contempt.⁵ The requirements of *mala fides* and wilfulness as an essential element in proving the existence of contempt were reaffirmed in *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture v Zuma*,⁶ and *Samancor Chrome Ltd v Metal and Engineering Industries Bargaining Council*.⁷

Discussion

- [24] In the present matter, the three essential requirements to sustain a finding of contempt of court have been satisfied, except for the elements of wilfulness and *mala fides*. While the applicant has demonstrated the existence of a valid court order, the respondent's knowledge of it, and non-compliance with its terms, the evidence does not establish beyond a reasonable doubt that such non-compliance was deliberate or actuated by bad faith. Accordingly, the issue the Labour Court had to determine was whether the breach of the order was deliberate or actuated by bad faith. Due to the lack of clarity and specificity in the order, the Labour Court inferred wilfulness and *mala fides* by interpreting the order in light of the circumstances underlying the agreement.
- [25] The rules for interpreting an order of court, like any other document, are set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality*,⁸ the Supreme Court of Appeal as follows:

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, contract or other instrument, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence.”

⁵ See: *Fakie* (ibid).

⁶ 2021 (5) SA 327 (CC).

⁷ (2011) 32 ILJ 1057 (LAC). See also *Matjhabeng Local Municipality v Eskom Holdings Limited and Others*; *Mkhonto and Others v Compensation Solutions (Pty) Limited* (CCT 217/15; CCT 99/16) [2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC) (26 September 2017).

⁸ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at para 18.

[26] However, the Supreme Court of Appeal in that case also cautioned against applying the rules of interpretation with the temptation to substitute what the judge regards as reasonable, sensible, or businesslike for the words actually used in any document. In this respect, the Supreme Court of Appeal had the following to say:

“The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The ‘inevitable point of departure is the language of the provision itself’, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.”⁹

[27] The Supreme Court of Appeal reiterated the above cautionary rule in *Capitec Bank Holdings Ltd and another v Coral Lagoon Investments 194 (Pty) Ltd and others*,¹⁰ as follows:

“*Endumeni* is not a charter for judicial constructs premised upon what a contract should be taken to mean from a vantage point that is not located in the text of what the parties in fact agreed. Nor does *Endumeni* licence judicial interpretation that imports meanings into a contract so as to make it a better contract, or one that is ethically preferable.”

[28] In applying the contextual and purposive principles of interpretation, the Labour Court in the present matter took into account the terms of the settlement agreement that had been made an order of the court. It is apparent from its approach that it treated the agreement as reflecting what it would have preferred the parties to have agreed to, rather than the actual wording of the agreement.

⁹ Natal Joint Municipal Pension Fund (ibid) at para 18.

¹⁰ [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA) at para 26. See also *Wheelwright v CP De Leeuw Johannesburg (Pty) Ltd* [2023] ZALAC 6; (2023) 44 ILJ 767 (LAC); [2023] 5 BLLR 393 (LAC).

- [29] In my view, the Labour Court's reliance on the interpretation of the underlying agreement to infer intent and *mala fide* is a misdirection. As the authorities referred to earlier indicate, to succeed in contempt proceedings, it must be shown, amongst other things, that there is a clear and unequivocal court order. This means that a contempt application cannot succeed where compliance with the order depends on a disputed interpretation of the order. The requirement for enforcement of an order by way of contempt proceedings is stringent, requiring proof of disobedience beyond a reasonable doubt.
- [30] In this matter, the respondent's case does not expressly indicate that he was medically boarded, which would ordinarily impose an obligation on the appellant to complete the UI-19 form. The appellant disputed this allegation and maintained that the employment contract was terminated on the grounds of the respondent's incapacity. It is essential, in this regard, to note that both the founding affidavit and the terms of the agreement are silent as to the status of the unfair dismissal dispute.
- [31] Furthermore, the appellant contended that they were unaware of the forms that the respondent, Mr Moses claims to have presented to them for completion, and that those forms were within their capability to complete. There is also a lack of clarity as to whether the forms in question were to be completed by a medical doctor or by the appellant.
- [32] The other reason why the respondent ought not to have succeeded in his application for contempt of court is that, given the sparsity and the generic nature of his founding affidavit, there was no basis to conclude that the appellants were in *mala fide* contempt of court. In *Pheko and Others v Ekurhuleni Metropolitan Municipality*,¹¹ the Constitutional Court held that:

"Contempt of court is understood as the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official capacity. This includes acts of contumacy in both senses; wilful disobedience and resistance to lawful court orders. Wilful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence.

¹¹ [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC) at para 28.

The object of contempt proceedings is to impose a penalty that will vindicate the court's honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order."

[33] In this matter, there is no evidence that the appellant was wilful and *mala fide* in failing to comply with the court order. The record shows that the appellant did not refuse to assist the respondent in completing the UIF forms. On the contrary, the appellant indicated its willingness to assist, subject to the respondent furnishing a medical report confirming his ill-health. This requirement was neither unreasonable nor inconsistent with the appellant's obligations.

[34] The Labour Court further misdirected itself by granting the respondent the relief based on a flawed interpretation of the settlement agreement, which he had not sought in his papers. In any case, the order and the agreement are silent as to the nature of the relief that could be sought in the event of a breach of its terms.

Cost order

[35] In light of the above, it goes without saying that the cost order was erroneously made, as there was no basis for finding the appellant guilty of breaching the order. Insofar as the costs of the present proceedings are concerned, I do not believe that it would be in the interest of both fairness and the law to make an order as to costs.

[36] In the circumstances, the following order is made:

Order

1. The appeal against the Labour Court's contempt order of 19 September 2024 is upheld..
2. The order of the Labour Court is substituted with the following order.
 - 2.1 *'The application for contempt of the order made in terms of section 143 of the LRA is dismissed with no order as to costs.'*

3. There is no order as to costs.

E. Molahlehi

Judge President of the

Labour Appeal Court

Djaje AJA and Kganyago AJA concur

APPEARANCES:

For the Appellants:

A.J. Posthuma of Snyman Attorneys.

For the Respondent:

N. Mkabayi of Nobahle Mkabayi Attorneys.