



REPUBLIC OF SOUTH AFRICA

THE LABOUR APPEAL COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: CA 05/2014

In the matter between:

THE NATIONAL COMMISSIONER OF THE

SOUTH AFRICAN POLICE

First Appellant

THE PROVINCIAL COMMISSIONER OF

THE SOUTH AFRICAN POLICE:

WESTERN CAPE

Second Appellant

and

IVAN MYERS

Respondent

Heard: 03 March 2015

Delivered: 10 April 2015

Summary: Compliance with court order – employer ordered to reinstate employee- employer contending employee could not be reinstated as position no longer in existence because of restructuring – employer failing to raise objection to the order be granted – employer obliged to reinstate employee – appeal dismissed with costs

Coram: Davis, Ndlovu and Sutherland JJA

JUDGMENT

DAVIS JA

Introduction

- [1] Respondent was dismissed from the South African Police Service on 14 December 2007. At the time of his dismissal, he occupied the post of Superintendent and was Commander of the Maitland Dog Unit. On 29 November 2012, the Supreme Court of Appeal found that the respondent's dismissal was substantively unfair and ordered appellants to reinstate the respondent to the position he held before his dismissal, retrospectively to the date of dismissal.
- [2] Between the date of the respondent's dismissal and the date of the order of the Supreme Court of Appeal, it appears that a restructuring took place in the South African Police Service. As a consequence, the Maitland Dog Unit, at which the respondent was stationed prior to his dismissal, was abolished. A single unit serving a much larger geographical area which attracted greater responsibilities was subsequently established. In contrast to the Maitland post, his post was upgraded from a level 10 to level 12 post. As a result of this restructuring and the order of the Supreme Court of Appeal, appellants wrote to respondent on 19 December 2012 and offered him an alternative post at level 10. Respondent adopted the view that appellants had refused to comply with the order of the Supreme Court of Appeal. He demanded reinstatement as a Commander of a Dog Unit. He then approached the court *a quo* seeking, *inter alia*, an order holding appellants in contempt of the order of the Supreme Court of Appeal.
- [3] Steenkamp J held that appellants' non-compliance with the order of the Supreme Court of Appeal was not wilful. Therefore it could not be said that appellants had been in contempt of court. In this connection, he followed the requirements for a

contempt of court order as set out in the judgment of Cameron JA (as he then was) in *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA). Steenkamp J then went on to make a finding which he considered to be in the interests of justice. He ordered appellants to comply with the order of the Supreme Court of Appeal and to reinstate the respondent into the position of Commander of the Cape Town Dog Unit at Maitland with retrospective effect to the date of dismissal.

Appellant's case

- [4] Appellants appeared first to take the view that respondent's post had been abolished prior to the order of the Supreme Court of Appeal. Accordingly, there was no such post into which the respondent could be reinstated. However, it appears that there now existed a newly established post at the Cape Town Dog Unit which had been established pursuant to the restructuring. It was common cause that this post is currently filled. In these circumstances, it was contended by appellants that there was no available dog unit post into which respondent could be posted. Thus appellants submitted that they had substantially complied with the order of the Supreme Court of Appeal by appointing respondent to the Ravensmead Visible Policing Commander which was a position held by a Superintendent at level 10.

Evaluation

- [5] In *Equity Aviation Services (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration*¹ Nkabinde J said the following with regard to the meaning of "reinstatement":

'The ordinary meaning of the word "reinstate" is to put the employee back into the same job or position he or she occupied before the dismissal on the same terms and conditions.'

¹ 2009 (1) SA 390 (CC) at para 36.

- [6] Reinstatement remains the primary statutory remedy in unfair dismissal disputes. Its purpose is to place an employee into the position he or she would have held but for an unfair dismissal. Its purpose therefore is to restore the status *quo ante*. Significantly, s193 (i) of the Labour Relations Act 66 of 1995 (“the Act”) provides that, if the Labour Court or an arbitrator... finds that the dismissal is unfair, the court or the arbitrator may:
- (a) order the employer to reinstate the employee from any date not earlier than the date of dismissal;
 - (b) order the employer to re-employ the employee either in the work in which the employee was employed before the dismissal or in any other reasonably suitable work on any terms and from any date not earlier than the date of dismissal; or
 - (c) order the employer to pay compensation to the employee.
- [7] When the Supreme Court of Appeal made its decision to reinstate respondent, it would have been mindful of the possible remedies set out in s193 (i) of the Act as would the parties. For this reason, it was at the hearing before the Supreme Court of Appeal, which took place in 2012, that is many years after the restructuring process had taken place, that appellants, if they had so wished, should have argued that reinstatement was an inappropriate order because the relevant post had been abolished. There is nothing on the papers neither in the judgment of the Supreme Court of Appeal to indicate whether such arguments were raised before the Supreme Court of Appeal. Suffice to say that the order of the Supreme Court of Appeal was clear: appellants were to reinstate the respondent to his former position. There was no qualification made to the order nor can one be implied.
- [8] When the appellants restructured the organisation of the South African Police Service and abolished the Maitland Dog Unit and replaced it with the Cape Town Dog Unit they must have known that, were the respondent to have been

successful in his litigation, appellants would have been required to place him in his former position or one of a similar nature. That someone was appointed to be the Commander of the Cape Town Dog Unit illustrates, firstly, that there was such a post and, secondly, that it was appellants who risked the possibility that successful litigation by the respondent would place them in a difficult position regarding reinstatement.

[9] Be that as it may, the order of the Supreme Court of Appeal is clear. The opportunity to have raised objections to the granting of that order passed when the order was granted. No further appeal was prosecuted in the Constitutional Court.

[10] In the circumstances, the appellants are obliged to reinstate respondent. It is a legal duty which flows from a clear and unequivocal order of the Supreme Court of Appeal.

[11] For these reasons, therefore the appeal is dismissed with costs.

DAVIS JA

Ndlovu and Sutherland JJA concurred

APPEARANCES:

FOR THE APPELLANTS: Adv DeVilliers Jansen

Instructed by the State Attorneys

FOR THE RESPONDENT:

Adv Barry Nortjie

Instructed by Heidi Van Der Meulen Attorneys