



THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JA06/24

In the matter between:

**CITY OF EKURHULENI METROPOLITAN
MUNICIPALITY**

First Appellant

DR IMOGEN MASHAZI

Second Appellant

and

SAMWU obo GWEJANE & OTHERS

First Respondent

SOLIDARITY obo MEMBERS

Second Respondent

Heard: 6 March 2025

Delivered: 20 March 2025

Coram: Savage AJP, Sutherland, et Davis AJJA

JUDGMENT

DAVIS, AJAIntroduction

[1] This is an appeal against an order of the Court *a quo* of 25 August 2023 which provides as follows:

- ‘1. The second respondent, Dr Imogen Mashazi is guilty of contempt of court.
2. The second respondent, Dr Imogen Mashazi is sentenced to twelve months’ imprisonment, wholly suspended for a period of 2 years, on condition that the respondents comply with paragraph 2 of the order granted on 9 February 2021 under case number J646/20 within 14 days of this order.
3. The first respondent is directed to pay the applicants’ costs of this application on the attorney and client scale.’

Background

[2] On 9 April 2018, an arbitration award was issued in favour of the respondents in terms of which the first appellant was ordered to place the members of the first respondent into various grades and notches on the new salary scale with effect from 1 April 2017. The first appellant was ordered to complete the process by 30 June 2018. However, on 19 June 2018, the first appellant launched a review application against the arbitration award. For reasons that are not strictly necessary for the disposition of this appeal, save for an aspect thereof canvassed later in this judgement, the review was not prosecuted by the first appellant.

[3] Accordingly, on 21 August 2018, the award was certified by the Commission for Conciliation, Mediation and Arbitration. The first appellant failed to comply with this order as a result of which the respondents launched a contempt of court application before the Labour Court against the first appellant in order to enforce the award.

[4] The contempt of court application, which was set down on the roll for 3 May 2019, was postponed *sine die* pending the outcome of the review application against the arbitration award which was delivered on 19 June 2018. To the extent that the review application is at all relevant, it should be noted that it was supposed to be instituted on or before 4 June 2018. It was instituted approximately 12 days out of time without any condonation application for the late filing thereof. In addition, the first appellant failed to file the record of the arbitration proceedings. At no material time did it request an extension or apply to the Judge President of the Labour Court for an extension to so file as is set out in the Practice Manual¹. Hence, at the time of the filing of the contempt application, the first appellant had not delivered its condonation application for the late filing of the review application or an application to reinstate the now deemed withdrawn review application.

[5] When the contempt application was eventually heard, Mabaso AJ, although confirming the first appellant's review application had lapsed and hence finding that there was no review application properly before the Court, found both the first and second appellants not to be guilty of contempt of court, notwithstanding the direction to the second respondent as the accounting officer of the first appellant to ensure that the arbitration award be complied with within 15 days of the order.

[6] Again, there was a failure by the appellants to comply with this order of Mabaso AJ, which resulted in the further application being heard by the court *a quo* which issued the order that is now the subject of this appeal.

[7] In her judgement, Lallie J noted:

'The real dispute for determination is whether the respondents' non-compliance with the judgment of 9 February 2021 constituted a contempt of court. The respondents did not file answering affidavits, their case was argued on the

¹ See para 11.2.3 of the Practice Manual of the Labour Court of South Africa, now since repealed, effective 17 July 2024.

applicants' papers. The respondents' defence was that their non-compliance with the orders was *bona fide* and not wilful and *mala fide*.'

[8] In justification of the order so granted, Lallie J held as follows:

'The applicants have proved beyond reasonable doubt that the respondents' non-compliance with the order is wilful and *mala fide*. The second respondent as the accounting officer of the first is, in the circumstances, guilty of contempt of court. The respondents' conduct cannot be countenanced. No municipality or municipal manager may elect not to comply with a court order. I could find no reason for refusing the *mandamus* compelling the second respondent to take the necessary action to ensure compliance with the order of 9 February 2021 as the purpose of this application is the enforcement of the judgment.'

The appeal

[9] When the matter was heard before this Court, it was informed that there had been compliance with the arbitration award and that accordingly, paragraph 2 of the order issued by Lallie J was effectively moot. Accordingly, the entire appeal proceeded exclusively against paragraph 1 of the order, namely that the second respondent was guilty of contempt of court.

Second appellant's submissions

[10] Central to the case of the second appellant was that no personal service of the judgment of Mabaso AJ had been served on her. Furthermore, there had been no personal service of the application of contempt of court upon the second appellant. Counsel for the appellants also submitted that the second appellant had not even been cited in her personal capacity and no case whatsoever had been made in the founding affidavit that she, in her personal capacity or official capacity, had aided and abetted the non-compliance of the order of Mabaso AJ.

[11] In this connection, counsel referred to the judgment of *Pheko and Others v Ekurhuleni Metropolitan Municipality*² (*Pheko*) at para [39]:

'The key issue is whether, in the circumstances of this case, the Municipality has shown good cause why it should not be held in contempt of this court's orders. There can be no doubt that the Municipality has not complied with this court's directions and orders. However, the service of the order upon the Municipality, an essential element to a finding of contempt, is wanting.'

[12] Para [40] in *Pheko* needs to be read to give context to the dictum cited by counsel at para [39]. It reads:

'The Municipality submitted that it did not receive the directions and order of this court due to its attorney's change of fax number and email address, and that it was an oversight not to furnish this court with a notice of the change of address. This much was confirmed by the attorney, who allegedly became aware of the directions and order only on 14 June 2014, once he was contacted by the deputy registrar of this court. The Municipality submitted that there was no wilful default on its part and that the applicants suffered no prejudice. The registrar had transmitted the directions and order to an email address and fax number that had been changed during the period preceding transmission. But the Municipality neither specified the dates on which the addresses were changed nor explained why it was necessary for the attorney to change his email address and not provide any forwarding service addresses. The Municipality simply said that it only became aware of the order of 12 March 2014 and the set-down direction in *casu* on 14 June 2014.'

[13] To this, the Court said the following at para [43]:

'One has to accept readily that the Municipality's explanation may not be adequate. However, the undisputed evidence, confirmed under oath by its attorney, in particular that the order was not served and the Municipality was not made aware of it, negates a finding that proper service is established. This court

² [2015] ZACC 10; 2015 (5) SA 600 (CC) at para 39.

cannot, in the circumstances, draw an inference of wilfulness and *mala fides*. As a result, one cannot safely conclude that the Municipality is in contempt of the order. It follows that the Municipality has shown good cause why it should not be held in contempt.’

[14] The approach adopted by the Constitutional Court in *Pheko* needs, however, to be read together with the further judgment of the Court in *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others*³ (*Matjhabeng*). At para [76] thereof, Nkabinde ADCJ on behalf of the Court said:

‘In order to give rise to contempt, an official's non-compliance with a court order must be ‘wilful and *mala fide*’. In general terms, this means that the official in question, personally, must deliberately defy the court order. Hence, where a public official is cited for contempt in his personal capacity, the official himself or herself, rather than the institutional structures for which he or she is responsible, must have wilfully or maliciously failed to comply. As the Supreme Court of Appeal has held:

“there is no basis in our law for orders for contempt of court to be made against officials of public bodies nominated or deployed for that purpose, who were not themselves personally responsible for the wilful default in complying with a court order that lies at the heart of contempt proceedings.”

[15] In *Matjhabang*⁴, the Court found that there had been various attempts made by the municipal manager and other senior personnel of the municipality to settle the dispute with Eskom and accordingly, no case of wilfulness or *mala fides* are on the part of the municipal manager had been established.

[16] The *dicta* of the Constitutional Court are however inapplicable to the facts of the present case. Throughout the proceedings which dealt with the contempt applications in the present case, both appellants were represented by a set of attorneys and by

³ [2017] ZACC 35; 2018 (1) SA 1 (CC).

⁴ *Ibid* at para 78.

counsel. The second appellant opposed the contempt of court proceedings and participated in all the proceedings leading up to the final arguments albeit without presenting any evidence. Her entire case is not that she had no knowledge of the contempt proceedings but only that there was no personal service on her. Indeed, on 14 October 2022, the parties agreed on the order which, *inter alia*, provided that the second appellant shall appear in court on 17 February 2023.

[17] Furthermore, the order of Mabaso J of 9 February 2021 provided that the second appellant, as the Municipality's accounting officer, is directed to ensure that the terms of the arbitration award are complied with within 15 days of this order. Manifestly on all of this evidence, it is clear that the second appellant was aware of the arbitration award and the non-compliance by the first appellant of which she was the accounting officer.

[18] The central feature of a contempt order is to protect the authority of the courts of this country. When a party wilfully disobeys an order of court and acts *mala fide* by not taking serious steps to comply therewith, the order holding such a party in contempt is manifestly justified. In this case, the accounting officer of a local authority, knowing full well that the Municipality of which she was the accounting officer was required to comply with the arbitration award. She chose to do exactly the opposite and failed to ensure that there was compliance therewith. Her entire defence is based on a tenuous argument that service was not effected on her in her personal capacity, notwithstanding that, as the accounting officer of the first appellant, she knew full well about the arbitration award and the judgment of Mabaso AJ instructing compliance therewith. In summary, no defence was offered that gainsaid the conclusion that she had wilfully and in bad faith failed to comply with a court order directing her to comply with the terms of the arbitration award.

[19] In the circumstances, the second appellant was correctly held to be in contempt of court and the appeal against paragraph 1 of the order of the court *a quo* must be dismissed.

Costs

[20] In the present case, costs must follow the result with one qualification. The conduct of the second appellant, the accounting officer of the first appellant, was unacceptable in her failure to ensure compliance with a court order. Consequently, she should be ordered to pay part of the costs of this appeal.

[21] In the result, the following order is made:

Order

1. The appeal against paragraph 1 of the order of the Labour Court of 25 August 2023 is dismissed together with costs, in which the first appellant is ordered to pay 90% of the costs and the second appellant 10% thereof.

DAVIS AJA

Savage AJP and Sutherland AJA concur.

APPEARANCES:

For the First and Second Appellant:
Instructed by K M Mmuoe Attorneys

Adv X Mofokeng

For The Respondent:
Instructed by Madlela Gwebu Mashamba Attorneys

Adv D Groenewald