IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT BRAAMFONTEIN

Of interest only

CASE NO.: J1812/10

In the matter between:

GAUTENG DEPARTMENT OF EDUCATION Applicant

and

SOUTH AFRICAN DEMOCRATIC TEACHERS' UNION Respondent

REASONS AND VARIATION OF COSTS ORDER

BHOOLA J:

Introduction

[1] In an urgent application ("the contempt application") heard by way of teleconference at approximately 20:30 on 20 September 2010 I granted an order as follows :

1. *The Respondent, its office-bearers and members are in contempt of the order of the above Honourable Court granted by her Ladyship, the Honourable Ms Justice Basson on 19 September 2010;*
2. *Directing the sheriff of the above Honourable Court to serve a copy of the order on the Respondent on 21 September 2010 on or before 1pm;*
3. *Directing members of the South African Police Services to arrest and hold in prison all office-bearers of the Respondent's Gauteng Region branch for a period of 15 days;*

4. *Directing members of the South African Police Services to arrest and hold in prison members of the Respondent who are found to be in contempt of the court order as mentioned in prayer 1 above for a period of 15 days; and*
5. *Costs on a de bonis propriis scale against the Respondent.*

[2] The respondent on 23 September 2010 brought an application for leave to appeal and on 5 October 2010 requested reasons for the order. Upon receipt of the file it came to my attention that my order erroneously referred to costs *de bonis propriis* when I had intended to grant costs on the punitive scale sought by the applicant in its notice of motion. This is an obvious error given that the respondent was not represented and the application was not opposed. The matter was heard by way of teleconference. Accordingly para 5 of the order is varied in terms of section 165(b) of the Labour Relations Act 66 of 1995 ("the Act"), to the extent of the error to read as follows "Costs on an attorney and own client scale against the respondent". These then are my reasons for the order.

[3] The contempt application followed a *rule nisi* granted by Basson J in the following terms after ruling that the matter was urgent:

> *"2. A rule nisi is granted returnable on 30 September 2010 at 10:00 or soon thereafter, which shall operate as against the Respondent in the interim in the following terms :*
>
> *2.1 Interdicting the Respondent, its office bearers and members from holding a gathering and/or march on 20 September 2010 or on any other subsequent date thereafter without first serving the Applicant with a reasonable notice of not less than 7 (seven) days as per the provisions of chapter G of the Employment of Educators Act of 1998, failing which the Respondent and its office bearers and members shall be held in contempt of court.*
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> *2.2 Interdicting the Respondent, its office-bearers and members from disrupting the preliminary exams currently being held at schools falling under the Johannesburg cluster and the entire Gauteng province.*

2.3 The applicant is directed to serve a copy of this order on the Respondent by no later than 8pm on 19 September 2010 by means of telefax and to file an affidavit of service confirming that such service has taken place.

2.4 Costs in the event of opposition".

[4] No opposition to the application was forthcoming despite proof that notice of the application had been sent by way of a telefaxed letter marked for the attention of Mr Tseliso Ledimo of the respondent at 14:03 that day. Two stickers marked URGENT were annexed to the notice. Service of the complete application followed by telefax at 17:08. The notice informed the respondent that the applicant would seek a contempt order as well as a punitive costs order.

[5] In his affidavit of service the applicant's attorney of record confirmed that he had faxed the court order to the respondent at 6:33pm on Sunday 19 September 2010.

[6] In his founding affidavit in support of the contempt application Moses Bherekewane Nkonyane, Chief Director : Districts alleged that notwithstanding the order of Basson J the respondent, its office-bearers and members had proceeded to hold the prohibited gathering. It was apparent from the papers filed in support of the urgent application brought before Basson J that the gathering of the respondent's membership and official would occur in the context of violence and threats of "war" by the respondent, and a call on its members to refuse to engage with the applicant to restore the disruption to schools but instead to go "back to the streets indefinitely and perpetually".

[7] It therefore appeared *ex facie* the application without reasonable doubt that the respondent was in wilful contempt of the court order as it was presumed to have received the notice and application telefaxed to its offices. Moreover, the order was one *ad factum praestandum* and therefore enforceable by way of contempt

proceedings : See *Feuilherade & others v Mthimkhulu; Enforce Security Group (Pty) Ltd & others v Mthimkhulu* [2003] 3 BLLR 213 (LAC).

[8] It is trite that the requirements for proving contempt are that an order has been granted against the respondent; that the respondent is aware of the order; and that there are reasonable grounds for believing that it was in wilful disobedience of the order : see for instance *Bruckner v Department of Health & others* [2003] 12 BLLR 1229 (LC) and *Ntombela v Herridge Hire & Haul CC & another* [1999] 3 BLLR 253 (LC). Contempt demonstrates the utmost disregard for the rule of law, which should be preserved at all costs. The respondent is and must be held accountable for the conduct of its office-bearers and members. In addition, as a mark of disapproval for the conduct of the respondent's deliberate flouting of an order of this court I considered it to be in the interests of law and fairness that it should pay the costs of the application on a punitive scale.

[9] Moreover, in condoning the applicant's non-compliance with Rule 8 of the rules of this Court and hearing the matter on an urgent basis after normal court hours I had regard to the allegations made in the founding affidavit of Mr Nkonyane that the potential for continued violence and intimidation as well as disruption of schooling was still prevalent. In the circumstances I was satisfied that it was appropriate to grant the relief sought.

[10] In addition, on 30 September 2010 (the return day of the *rule* granted by Basson J) the respondent sought an opportunity to file its answering papers to the application. In these circumstances I considered it appropriate to extend the *rule* to give the respondent an opportunity to file its papers since it was in the interests of justice that the matter should be properly ventilated. I therefore granted the respondent an indulgence and extended the rule to 21 October 2010 to enable it to file its papers. However I considered it to be in the interests of fairness and justice that the respondent should be ordered to pay the costs occasioned by the postponement. No explanation was forthcoming for its failure to file answering

papers prior to 30 September. Moreover, it appears to have still not availed itself of the opportunity to do so.

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Bhoola J
Judge of the Labour Court

Date of hearing : 20 September; 30 September 2010
Date of reasons : 16 November 2010
Appearance:
For the Applicant : Adv M Zondo instructed by Ajay Makka attorneys
For the Respondent: no appearance