



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

**JUDGMENT**

NOT REPORTABLE

CASE NO. J977/17

In the matter between:

**ISAAC TLHABADIRA**

Applicant

and

**THE VICE CHANCELLOR**

**LOURENS VAN STADEN**

First Respondent

**TSWANE UNIVERSITY OF TECHNOLOGY**

Second Respondent

Date heard : 19 May 2017

Date delivered: 19 May 2017

Date of reasons: 26 May 2017

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**REASONS FOR THE ORDER**

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BALOYI AJ

Introduction

- [1] On 19<sup>th</sup> May 2017 I made an order dismissing the Applicant's *ex parte* application. The Applicant sought an order in terms of section 143(3) of the Labour Relations Act that the Respondents be held in contempt of Court. The Respondents are accused of not abiding by orders made in the arbitration award that the Applicant's suspension was declared unfair labour practice. The lifting of the said suspension was accordingly ordered coupled with reinstatement. The contempt application became opposed as it was served on the Respondents. The First Respondent was specifically called upon to appear in Court on the date of set down of the *ex parte* application. It is worth mention that the application was filed through a law firm on behalf of the Applicant. On the date of hearing the Applicant unexpectedly appeared in person. The reason being that he had in fact terminated the mandate of his attorney just a day before the court date with a view of saving costs. He pronounced his readiness to proceed in person. The Respondents' Counsel did not have knowledge on whether the notice of withdrawal of the Applicant's attorney was served.

#### Factual Background

- [2] The dispute arose out of suspension of the Applicant which he took to the CCMA. After having obtained an award ordering his reinstatement dated 15<sup>th</sup> June 2016, the Applicant tendered his services on 20<sup>th</sup> June 2016 as ordered. The reinstatement was delayed as discussions and correspondence between the parties took course. The Second Respondent eventually complied with the order and caused the Applicant to report for duty on 12<sup>th</sup> October 2016. Everything went well until on 18<sup>th</sup> November 2016 when the Second Respondent through letter signed by the First Respondent informed the Applicant that he was with immediate temporarily removed from his duties, responsibilities and decision making authority attached to his position of Deputy Vice Chancellor: Institutional Support. According to the letter this arrangement was to prevail pending finalization of review application instituted by the Second Respondent and the disciplinary hearing action against the Applicant.

#### Arguments

- [3] The Applicant felt that the Respondent's conduct amounted to contempt of Court as certain parts of the reinstatement order have been violated. The Respondents argued that the application is defective for non-compliance with practice manual as the First Respondent was called to appear on the very date of set down of the *ex parte* application, that is prior to its granting. Despite the notice of irregular step served on the Applicant's attorneys to remedy the defect nothing was done by the Applicant and/or his attorneys. The Respondents moved for dismissal of the application with costs. The Applicant maintained that his papers were in order and there was never a need to amend them and strongly stood by them.

#### Discussion

- [4] The court may where papers of a litigant are not in order exercise its discretion by directing such party to amend or supplement accordingly and in so far as it may be necessary make an appropriate cost order. The Applicant for whatever reason sought a final order instantly which is not attainable in *ex parte* applications. The submissions by Respondent's Counsel that the application is defective and is ought to be dismissed on this basis alone is not sustainable in situations where a party asked for indulgence. The next crucial question is whether the order sought by Applicant competent if his papers were in order or duly amended. The Applicant conceded that the Respondent did comply fully with the order on 12<sup>th</sup> October 2016. The removal of his powers on 18<sup>th</sup> November 2016 as the cause of complaint suggested that the Respondents acted in contempt of the Order. It is common cause that the Court Order was made, the Respondents were made aware of it and it was eventually complied with.
- [5] The circumstances arising after such compliance cannot be read into the scheme of contempt of court. In *Abdullah v Kouga Municipality*<sup>1</sup> the intervening conduct of the employer by dismissing the employee prior to complying with an order lifting suspension only renders the order

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<sup>1</sup> 2012 ILJ (LC) at Paragraph 16

inoperative and cannot give rise to contempt. In this instant matter the restrictions of functions imposed on the Applicant are certainly different subject matter consistent with changes to the terms and conditions of his employment. Contempt cannot as such be found hence the application was dismissed.

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BALOYI AJ

Acting Judge of the Labour court of South Africa

Appearances:

For the Applicant: (appeared in person)

For the Third Respondent: Adv. Gerber

Instructed by Welman and Bloem Inc.