



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

CASE NO: J1121/17

In the matter between:

JAN LESIBA MAHLOKO

Applicant

and

BHEKANI ABANTU SERVICES (PTY) LTD

Respondent

Heard: 30 August 2019

Judgment delivered: 2 September 2019

JUDGMENT

VAN NIEKERK J

- [1] This is an application to hold the respondents in contempt of court on account of their failure to comply with an order issued by this court. The order, granted on 24 May 2018, makes a settlement agreement concluded between the parties an order of court.
- [2] The principles applicable to civil contempt are well-established. The purpose of contempt proceedings is to compel compliance with orders of court and to vindicate the court's dignity and authority consequent on the disregard of its orders. The principles relevant to contempt were set out by Cameron J in *Fakie NO v CCI Systems (Pty) Ltd* 2006 (4) SA 326 (SCA). It is a crime unlawfully and intentionally to disobey a court order, the essence of which lies in violating the dignity, repute or authority of the court. The order in question must be one *ad factum praestandum*, the order must have been served on the respondent or the respondent must have been advised of the order in circumstances where there are no reasonable grounds for disbelieving the information, and respondent must have failed to comply with the order. The failure to comply must be both *mala fide* and wilful (see *Fakie NO (supra)*, *Uncedo Taxi Service Association v Maninjwa & others* [1998] BCLR 683 (E)). As the Court stated in *Fakie*:

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

10. These requirements – that the refusal to obey should be both wilful and mala fide, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt – accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offences committed and not by mere disregard of a court order, but by the deliberate and intentional violation of the court's dignity, repute or authority that this evinces. Honest belief that non-compliance is justified war proper is incompatible with that intent.

[3] In *Consolidated Fish (Pty) Ltd v Zive & Others* 1968 (2) SA 520 (CPD), the court made the point as follows:

The court will not order the attachment of the respondent for contempt in not complying with the judgement of the court if it appears that the non-compliance is not due to wilful disobedience but rather to a misunderstanding of the true meaning of the judgement.... This seems to be merely another way of stating the rule that, if a respondent can establish bona fide is in relation to his disobedience of the court order, he will not be held to have been in contempt of that order.

[4] The relevant portion of the settlement agreement reads as follows:

6. The parties hereby agree that the applicant shall be afforded by the respondent to one extra day in his schedule with effect from 20 December 2016.

[5] In the present instance, the respondents averred that they have complied with the order of court. The deponent to the answering affidavit, Mr. Douman, states that in the respondents' interpretation of that provision, and given particularly that the applicant's monthly paid, the respondent was required to give the applicant one extra shift per month. The respondent annexes monthly timesheets to the answering affidavit in support of compliance with the agreement and specifically states that to date, the applicant has never worked fewer than the 10 shifts agreed upon between the parties in terms of the agreement. The applicant disputes this interpretation and appears to contend that he is entitled to one extra day in his schedule in every week.

[6] In the absence of a replying affidavit, I must necessarily accept that there is a genuine dispute about the interpretation of the agreement and that the first respondent has complied with what it genuinely believes to be its obligations under the agreement. In those circumstances, and in accordance with the principles outlined above, the respondents cannot be held in contempt of court.

I make the following order:

1. The respondents are not guilty of contempt of court.

André van Niekerk
Judge

REPRESENTATION

For the applicant: In person

For the respondent: Company employee