

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

Not reportable

Case No: J2745/18

In the matter between:

MOLAPISI, TSHEPO BROWN

First Applicant

NGWAKO, OBAKENG

Second Applicant

MOTSETAU, JEREMIAH

Third Applicant

KEOGATILE, PAPISO

Fourth Applicant

and

BOPHIRIMA, FM

First respondent

MORONTSI, JACOB FUNNY

Second respondent

ITUMELENG, KITSO

Third Respondent

MODISE, MOTLOKOI

Fourth Respondent

PITSO, PERCY

Fifth Respondent

Heard: 25 October 2019

Delivered: 13 November 2019

JUDGMENT

Introduction and Background

- [1] This judgment and the orders which follow all flow from a settlement agreement dated **14 August 2017**, which was made an arbitration award in **20 February 2018**. After the First Respondent failed to re-employ the individual applicants in terms of the settlement agreement, they launched a contempt application to enforce that part of the agreement.
- [2] The first order was issued on **23 November 2018**, calling upon the First and Second respondents to show cause why they should not be found guilty of contempt of court for not giving effect to the arbitration award [the main contempt application], attached hereto as **Annexure “A”**. The matter was set down for a hearing on **8 February 2019**, at which the Second Respondent appeared. At that hearing, the Court was given the impression by the Second Respondent that the First Respondent was willing to try and settle the matter. Accordingly, following that hearing an order was issued on the same day requiring, *inter alia*, that the Respondents should file affidavits explaining why they should not be held in contempt by **19 February 2019**, and communicate with the applicants by **20 February 2019** of the board of the First Respondent’s response on a possible settlement of the matter [attached hereto as **Annexure “B”**]. At that stage the applicants were unrepresented.
- [3] The matter came before the honourable Acting Justice Nieuwoudt on **26 April 2019**, who issued an order on **2 May 2019** [attached hereto as **Annexure “C”**]. The court found on that occasion that the First and Second Respondents had failed to comply with the previous orders of the Court mentioned above. Subsequently, written reasons were provided for the order.

- [4] The Court found that the First and Second Respondents were guilty of contempt of Court, for not complying with the previous orders of the Court and imposed fines of R 5,000 and R1,000 on each of them respectively. Further, a suspended fine of R 50,000-00 was imposed on the First Respondent, payment of which was dependent on whether or not it complied with the settlement agreement, including the payment of remuneration due to the Applicants. The order also made provision for the incarceration of the Second Respondent for a period of ten days in the event he did not pay his fine of R1,000 within fourteen days of the Court order.
- [5] The Applicants were also granted leave to file a joinder application in respect of the Third to Fifth Respondents in the main contempt application, in the event that the First Respondent did not comply with the court's order to implement the agreement.
- [6] The Third to Fifth Respondents have not opposed the joinder application which the applicants launched on **7 August 2019**. On the face of the founding affidavit in the joinder application, the Third to Fifth respondents are the individuals controlling and directing the activities of the First Respondent. The failure of the First Respondent to comply with this Court's orders, is effectively a failure on their part as the officers of the First Respondent to give effect thereto and I am satisfied that the requirements for joinder are met.
- [7] On **23 May 2019**, an amount of R 6,000 was received by the Court from the First and Second Respondents, which I will assume in their favour was paid in satisfaction of the fines of R 1,000 and R 5,000. Proof of payment attached hereto at **Annexure "D"**.
- [8] However, the Respondents did not comply with the main order of **Nieuwoudt AJ**, which was to comply with the award by reinstating the Applicants. Consequently, the First Respondent ought to have paid the suspended fine of R 50,000 which was payable within 28 calendar days of non-compliance with the order of reinstatement and payment of back-pay. The purpose of that fine was clearly to goad the Respondents to comply with the primary order the First Respondent

has still failed to give effect to, namely to reinstate the Applicants with back-pay. That fine accordingly is now due and payable, and the failure of the Respondents to make payment of the fine, compounds their contempt of this Court's orders.

[9] In the absence of payment of the penalty for not complying with the order of reinstatement, the First Respondent is *prima facie* in contempt of court on yet another ground. Accordingly, the Third, Fourth and Fifth Respondents must also show cause why they should not be held in further contempt of **Nieuwoudt AJ's** order, both for not reinstating the Applicants with back-pay and for not paying the R 50,000 timeously after failing to comply with reinstatement order.

Joinder of third, fourth and fifth respondents in contempt application

[10] **Mr. Kitso Itumeleng, Mr. Motoloki Modise and Mr. Percy Pitso**, as members of the board of the First Respondent, are joined as the Third, Fourth and Fifth Respondents respectively in the contempt application.

Order

[1] The Third, Fourth and Fifth Respondents are to appear on **6 December 2019** at **10H00** in the **Labour Court of South Africa** sitting in **Johannesburg**, to show cause why they should not be found guilty of contempt of Court for their failure, refusal and or neglect to comply with the settlement agreement which was made an arbitration award under case number **NWVB20-17** on **19 February 2018** and with paragraph [3] of this court's order of **2 May 2019 (Annexure "C")**; The Third, Fourth and Fifth Respondents may explain their conduct by way of affidavit which must be filed 10 days before the appearance date recorded above although this will not excuse them from being present in court. The Applicants may respond to the affidavit five days later.

[2] In the absence of providing an explanation to the satisfaction of the Court and, or alternatively, for failing to appear in Court despite being properly served, the Third, Fourth and Fifth Respondents shall be guilty of contempt of Court.

- [3] If any of the Third, Fourth and Fifth Respondents are found guilty of contempt of Court, they may be incarcerated for such period as the Court deems appropriate, or they may be fined an amount the Court deems appropriate or another alternative penalty may be imposed;
- [4] In the absence of complying with paragraph [3] of this Court's order of **2 May 2019**, the First, Third, Fourth and Fifth Respondents must also show cause, why the Court should not order the Registrar to issue a writ of execution to the Sheriff to attach and take into execution the movable assets of the First Respondent to satisfy payment of the fine of R 50,000 imposed in the aforesaid paragraph of the order.
- [5] Service of this order must be effected personally upon the Third, Fourth and Fifth Respondents as a matter of urgency.
- [6] The First Respondent must pay the Applicants' costs of appearance and representation at the hearing on **25 October 2019**.

Robert Lagrange

Judge of the Labour Court of South Africa

REPRESENTATION

For the applicants: D Morgan of David W Morgan Inc.

For the respondents: No appearances