

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 2501/15

In the matter between:

ANDREW SELLO MAANASO

First Applicant

THOKOZANI EMMANUEL ZULU

Second Applicant

and

TECHNIFLEX CC

First Respondent

BEATRICE DOROTHY TONKIN

Second Respondent

Heard: 29 January 2019

Delivered: 19 March 2019

Summary: Application for contempt of court.

JUDGMENT

RAPHULU, AJ

Introduction

[1] This is an application to hold the Respondents in contempt of a Commission for Conciliation, Mediation and Arbitration (CCMA) award of 7

September 2015 which was made an order of this Court on 8 September 2015. In terms of the order, the Respondents were ordered to reinstate the Applicants, and to pay the First Applicant compensation in the amount of R15 600, and to pay the Second Applicant compensation in the amount of R14 400.00.

Background

[2] It is common cause that the due compensation was paid to the Applicants. However, this was only done following the Applicants having to approach the Sheriff of the High Court after obtaining a warrant of execution. The Respondents concede that the compensation payment was delayed, but contend that full payment has now been made to the Applicants.

[3] As to the re-instatement portion of the award, the Applicants allege that they tendered their services at the First Respondent on 25 September 2015, but that they were turned away by Patrick, the security guard employed by Thomson Security, the company which provides security services to the First Respondent, and/or they were turned away Mr Michael Walker of the First Respondent. The Respondents allege that the Applicants never tendered their services at all, and that accordingly, the Respondents could not comply with the reinstatement portion of the order.

[4] There is some contention around the following:

4.1 Whether the Applicants allege to have tendered their services on 25 September 2015 or 25 October 2015;

4.2 Whether the Applicants allege to have walked to the First Respondent's premises together or if they met there;

4.3 Whether it was Patrick or Mr Walker that allegedly turned the Applicants away.

[5] In my view, none of the above are material, as it is a common cause fact that the Applicants were not reinstated, and thus that the reinstatement portion of the order was not complied with.

[6] The Respondents argue that this being an ex parte application, it is only in respect of the First Applicant, and not the Second Applicant. This is not correct. The nature of an ex parte application is that is in an application with only an applicant party, and no respondent party. It is not limited to one applicant party.

[7] In order to get relief in this application, the Applicants must prove the following:

7.1 the existence of a court order

7.2 service or notice of the court order

7.3 non-compliance with the terms of the order

7.4 wilfulness and mala fides beyond reasonable doubt

[8] It is common cause that there is an existing court order, and that same was served on the Respondents. It is also common cause that there has been non-compliance with the reinstatement portion of the court order. What is in dispute is whether, beyond reasonable doubt, such non-compliance is due to the wilfulness and mala fides of the Respondents.

[9] The Respondents have to date, not taken a single step to try and comply with the court order which directs them to reinstate the Applicants. Seeing as they hold an order of this Court directing them to reinstate the Applicants, they had a legal responsibility to take steps to do so. Even though the Respondents do allege¹ that once the First Respondent became aware of the award, it implemented measures to ensure that it complied with the arbitration award, absolutely no measures to reinstate the Applicants has been demonstrated to this Court. As late as from the time that the Applicants launched these contempt proceedings, there could have been no doubt in the minds of the Respondents that the Applicants were unhappy with not having been reinstated, and that they were tendering their services to the First Respondent.

[10] The Respondents took no steps to reinstate the Applicants, but instead used their time and resources to contest these contempt proceedings. As at the date of the contempt proceedings, the Respondents are still not trying to reinstate the Applicants. The conduct of the Respondents shows beyond reasonable doubt that they have no intention of reinstating the Applicants, as at 25 September 2015, or any other date.

[11] Orders of this Court are to be respected and complied with, failing which consequences follow for parties who choose to disregard same.

Order:

1. The Respondents are held to be in willful contempt of the court order dated 8 September 2015.
2. The Respondents are to reinstate the Applicants within 15 days of the date of this order.

¹ At para 12 of the Opposing Affidavit.

3. The Respondents are to pay a fine in the amount of R50 000 (Fifty Thousand Rand), being R25 000.00 (Twenty-Five Thousand Rand) payable to each of the Applicants. This fine is to be paid within 15 days of this order.
4. No order is made as to costs.

Raphulu L
Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Self-Represented

For the Respondents: S Lancaster of Lancaster Kungoane Attorneys