THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J646/24

In the matter between:

NUMSA OBO LUCY SILINDA **Applicant**

and

THULANI KGOMO **First Respondent**

NOMATIKI FILLING STATION (PTY) LTD **Second Respondent**

Heard: **In Chambers**

Delivered: **7 November 2024**

This judgment was handed down electronically by circulation to the parties or their legal representatives by email. The date for hand-down is deemed to be 7 November 2024.

JUDGMENT:
APPLICATION FOR LEAVE TO APPEAL

MAKHURA, J

LABOUR COURT

[1] On 19 September 2024, this Court granted an order in terms of which it found the first respondent guilty of contempt of court order. The first respondent was fined R500 000.00 wholly suspended on condition that he ensured compliance with the court order within 10 days. The Court found further that the first respondent was in contempt of this Court's order dated 25 July 2024 which ordered him to personally appear in Court on 20 August 2024. For this latter guilty finding, the court ordered the first respondent to file an affidavit explaining why he should not be incarcerated for such period as the Court deems appropriate or be fined an amount the Court deems appropriate.

[2] On 27 September 2024, the first and second respondents filed an application for leave to appeal. Applications for leave to appeal are regulated in terms of Rule 67 of the Rules Regulating the Conduct of the Proceedings of the Labour Court. Rule 67(5) provides:

> 'Within 10 days of the filing of the application for leave to appeal, the party seeking leave may file submissions in support of the application, and any party opposing the application for leave to appeal may file its opposing submissions within 5 days thereafter.'

[3] Having filed the application for leave to appeal on 27 September 2024, the 10 days within which the respondents were expected to file their written submissions expired on 11 October 2024. As at the date of writing and finalising this judgment, four weeks outside the 10 days referred to above, the respondents have still not filed their written submissions. In the interest of expeditious resolutions of labour disputes and finality, I have decided to determine the application for leave to appeal on the material before me.

[4] The respondents sought leave to appeal against the entire judgment and order, and have advanced four grounds in this regard.

[5] The first and second grounds are directed at the service of the court order. The respondents contend that the applicant failed to satisfy the requirement of proof of service and contend that this Court misapplied the legal principles. They however

LABOUR COURT

do not raise any issue against the finding that the first respondent was aware of the court order or award.

[6] Third, the respondents take issue with the fine of R500 000.00. They contend that this fine induces a sense of shock and that the Court failed to exercise its discretion judicially. Fourth, the respondents contend that the Court erred in finding that the first respondent was ordered to be physically present in Court on 20 August 2024. They argue that the first respondent had an option in terms of the court order dated 25 July 2024 to explain his conduct by way of an affidavit and he had elected to exercise this option. The provision of the court order dated 25 July 2024 reads:

> 'The 1st Respondent should explain its conduct by way of an affidavit on the date of the hearing or before that date (although this will not excuse the 1st respondent from being present in court).'

[7] I have considered the grounds upon which the respondents seek to leave to appeal and reflected on the main judgment and the test for leave to appeal[1].

[8] The ground relating to proof of service does not take the matter any further. The first respondent admitted knowledge of the award, as I have found in the main judgment. This finding is not being challenged. There is no basis to support that a fine of R500 000.00 for disrespecting a court order induces a sense of shock. Recalcitrant and disobedient litigants, particularly those who are legal practitioners such as the first respondent and who claim to understand the laws, should even be held to a higher standard in matters of this nature where they are found to be in contempt of court orders.

[9] I have referred to the court order of 25 July 2024 above and it clearly required the physical presence of the first respondent in Court, with or without the affidavit. The contention that physical presence was optional is absurd. The first respondent understood this very well hence his request to be excused from Court in the main application. This is evident from the content of his affidavit:

[1] Section 17(1)(a) of the Superior Court Act 10 of 2013.

LABOUR COURT

> 'I may at this point bring it to the attention of this Honourable Court that I am also a Legal Practitioner, of over 20 years' experience and I am aware of the consequence of not or failing to abide by an Order of Court, I would not then deliberately expose myself to such consequences.
>
> I note that the Court ordered that I appear in person in Court on the 20th of August 2024, I plead with the Honourable Court as to allow and indulge me not to appear [as] I have a prior business engagement which needs me personally to be present, I will make sure that my representative is in Court on the day.' [Own emphasis]

[10] All the grounds of appeal have been comprehensively dealt with in the main judgment. The application for leave to appeal is in my view doomed. The appeal would have no reasonable prospects of success and there are no other compelling reasons for this matter to be heard by the appeal court. The application stands to be dismissed. The effect of this dismissal is that the findings against the first respondent stand – that is, that he is fined R500 000.00 unless he ensures compliance with the court order within 10 days, and that he must file an affidavit, within 10 days explaining why this Court should not incarcerate him for such period as it deems appropriate or impose a fine in an amount the Court deems appropriate.

[11] In the premises, the following order is made:

Order

1. The application for leave to appeal is dismissed.

_____

M. Makhura

Judge of the Labour Court of South Africa

LABOUR COURT