

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO: JR 722/03

In the matter between:

GIJIMANE SAMSON SIBEKO

Applicant

and

DEPARTMENT OF EDUCATION

First Respondent

MEC MR M.C. MOKITLANE

Second Respondent

JUDGMENT

BHOOLA AJ:

Introduction

[1] The applicant seeks an order placing the Second Respondent in contempt for failure to comply with an order of this court.

Background

[2] This matter has a long history which is set out briefly below.

[3] A dispute concerning the alleged unfair dismissal of the applicant was referred to arbitration under the auspices of the relevant bargaining council.

[4] An award was made by arbitrator Moloi in which she found the dismissal of the applicant to have been fair.

[5] The applicant successfully reviewed the award, and it was remitted back to the Bargaining Council by Revelas J.

[6] A second arbitration ensued and in March 2003 arbitrator Makua issued an award in favour of applicant. Arbitrator Makua found the dismissal of the applicant to have been procedurally and substantively unfair, and ordered his reinstatement. Although the respondent in both arbitrations was the Department of Education, subsequent pleadings filed by the applicant cite the MEC as second respondent, and pleadings of the respondent refer to only one respondent. I will refer in this judgment for ease of reference to the parties as they are cited in the application before me.

[7] The award of arbitrator Makua was subsequently certified and a writ issued in 2005 in respect of the sum of R54208, 00.

[8] The respondent brought an application for review of arbitrator Makua's award, which application was dismissed by Cele J in December 2007.

[9] An application for the rescission of the judgment of Revelas J was brought by the respondents (under case number 348/09). At the same time the applicant also brought an application placing the second respondent in contempt (under case number 722/03) of the second arbitration award. The contempt application was brought on 24 January 28 and both applications were heard together by Molahlehi J who granted the rescission application and dismissed the contempt application on 20 August 2008.

[10] The applicant applied for leave to appeal, which was refused. In his judgment refusing leave Molahlehi J finds Cele J's judgment to stand until it is either rescinded or set aside on appeal. He states furthermore that the applicant has the right to seek enforcement of that judgment but should, if he seeks enforcement through contempt proceedings, ensure that proper procedures are followed.

[11] It would appear that a review of the award of arbitrator Moloi, brought by the applicant, is still pending.

The current application

[11] In the matter before this court the applicant submits that the judgment of Molahlehi J is "a recent judgment and must be executed". Furthermore, the applicant submits that the result of Cele J's dismissal of the review application brought by the respondents is that the award of arbitrator Makua became enforceable in terms of section 143(4) of the LRA. He accordingly seeks to do so by way of this application.

[12] The respondents oppose the application on the grounds, *inter alia*, that it involves substantially the same issue and relief sought by the applicant in its papers filed in January 2008, which application was dismissed by Molahlehi J. The allegations in both applications are substantially the same. Accordingly respondent submits that the current application is *res judicata* in that, it is apparent that there has been a prior judgment in which the same parties were involved and substantially the same point was in issue.

[13] The respondents submit furthermore that the effect of the rescission of the judgment of Revelas J is that everything consequent to it has no legal effect. The essence of its submission is that the award of arbitrator Moloi was revived thereby and accordingly the second arbitration award is rendered a nullity.

Finding

[14] In my view, the respondents submission that award of arbitrator Moloi stands appears to be consistent with the finding of Molahlehi J. He states:

"The contempt order in the light of the conclusion reached concerning the rescission application is bound to fall away for this reason alone".

I agree. In the circumstances, it is clear that this matter has previously been disposed of by this court in that not only was the application for contempt dismissed, but leave to appeal was furthermore refused.

[15] In the premises I make the following order:

1. The application is dismissed.
2. The applicant is to pay the costs of the respondents on a party and party scale.

Bhoola AJ

Date of hearing: 02 .04.09

Date of judgment: 24.04.09