



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

NOT REPORTABLE

Case no: C834/2015

Not Reportable

In the matter between:

SOLIDARITY

1st Applicant

PJ DAVIDS

2nd Applicant

CF FEBRUARY

3rd Applicant

AJ JONKERS

4th Applicant

LJ FORTUIN

5th Applicant

GM BAARTMAN

6th Applicant

DS MERKEUR

7th Applicant

TS ABRAHAMS

8th Applicant

DR JORDAAN

9th Applicant

JJ KOTZE

10th Applicant

DMA WEHR

11th Applicant

and

DEPARTMENT OF CORRECTIONAL SERVICES

1st Respondent

THE MINISTER OF CORRECTIONAL SERVICES

2nd Respondent

THE NATIONAL COMMISSIONER OF THE DEPARTMENT OF
CORRECTIONAL SERVICES

3rd Respondent

THE MINISTER OF LABOUR

4th Respondent

Heard: 6 November 2016

Delivered: 3 February 2017

JUDGMENT

RABKIN-NAICKER J

- [1] This matter came before me on the return day of an ex parte contempt application on the 6 November 2015. I did not prepare a judgment on the applicant in the normal time period as the main dispute between the parties was to be heard at the Constitutional Court during the next week. The Constitutional Court finally handed down its judgment in the main matter on the 15 July 2016.
- [2] In the wake of the Constitutional Court judgment under case number CC78/15 which was handed down on the 15th July 2016, and on 12th August 2016, I asked the parties if there were any aspects of the contempt application they still wished

to be adjudicated by this court. I requested an indication to be given by no later than the first week of the 4th term of the Labour Court being 9-16 October 2016.

[3] The Court was unaware that submissions had been received on behalf of the applicants and on 22 November 2016 I dismissed the application on the basis that the matter was moot. The applicants then brought to my attention that they had sent in submissions by email and I rescinded my judgment in terms of section 165 of the LRA on the 1 December 2016. The applicants were of the view that I should give judgment on the merits of the contempt application. I now do so.

[4] The contempt application was brought on the basis that the Third Respondent (the National Commissioner) was in contempt of a court order dated 18 October 2013. That order was appealed to the LAC which handed down judgment on the 19 February 2015, upholding the Labour Court's judgment. In the interim on 6 February 2014, Steenkamp J had handed down an order which inter alia read as follows:

"[37.1] Pending the finalisation of the appeal and cross-appeal under case number CA 23/13 the respondent is ordered to implement and enforce the order granted by this court (per Rabkin-Naicker J) on 18 October 2013."

[5] The order of Steenkamp J, premised on Rule 49(11)¹, ceased to be of force and effect once the appeal was finalised by the LAC on 19 February 2016. The applicants appealed the LAC judgment to the Constitutional Court.

[6] The contempt application was brought on the following premise:

"15. The applicants are pursuing an appeal to the Constitutional Court, but because that appeal is limited in the same way as the one to the LAC before, the obligation on DCS to take regional demographics into account in the setting of employment equity targets stands. The respondents have

¹ Sub Section 11 of Rule 49 was repealed with effect from 22 May 2015 see GN 317 of 17 April 2015.

not sought to cross appeal, so that the obligation is not affected by the appeal to the Constitutional Court. ...”

[7] The above reasoning is flawed given that the execution of a judgment is automatically suspended upon the noting of an appeal, with the result that, pending the appeal, the judgment cannot be carried out and no effect can be given thereto, except with the leave of the Court which granted the judgment². (my emphasis)

[8] In all the premises, in particular given the leave granted by Steenkamp J had long lapsed by the time this application was brought, I regard it as ill-conceived. I see no reason why costs should not follow the result. I make the following order:

Order

1. The application is dismissed with costs.

H. Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicants: MJ Engelbrecht instructed by Serfotein Vijoen ad Swart

Respondents: MTK Moerane S.C. with Lecose instructed by the State Attorney

² SOUTH CAPE CORPORATION (PTY) LTD v ENGINEERING MANAGEMENT SERVICES (PTY) LTD 1977 (3) SA 534 (A) at p.545

LABOUR COURT