IN THE LABOUR COURT OF SOUTH AFRICA

CASE NO: D306/21

In the matter between:

NOKUZOLA ANGEL NGIDI **APPLICANT**

and

DURBAN AND COASTAL MENTAL HEALTH **1st RESPONDENT**

CHIEF EXECUTIVE OFFICER,
DURBAN AND COASTAL MENTAL HEALTH **2nd RESPONDENT**

CHAIRPERSON OF THE GOVERNING BOARD,
DURBAN AND COASTAL MENTAL HEALTH **3rd RESPONDENT**

Heard: **8 October 2021**

Delivered: **This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court's website and released to SAFLII. The date and time of the hand--down is deemed to be 14h00 on 19 September 2022.**

JUDGMENT

Hiralall AJ

Introduction

[1] The applicant seeks confirmation of an order granted by Naidoo AJ on 20 August 2021 in terms of which the respondents were to show cause why they should not be found guilty of contempt of the court order made on 1 June 2021 by Cele J. The application is opposed by the respondents.

Background

[2] It is necessary to deal in some detail with the background to the issue before this court:

[3] According to the applicant:

3.1 She commenced employment with the first respondent in October 2019 as a financial controller. She was appointed to the position of Chief Operations Officer by Mr VL Mthiyane, the Chief Executive Officer, with effect from March 2020. This was because of additional responsibilities allocated to her. Mr Mthiyane issued her with a formal letter of appointment but no contract of employment. She put up an unsigned version of the letter of appointment which she said Mr Mthiyane had emailed to her with an instruction to put it on the company letterhead for him to sign.

3.2 Prior to the appointment of a new governing board on 2 March 2021, she blew the whistle on a board member and revealed that a company owned by the said board member's father was doing business with the first respondent, and that this constituted a conflict of interest on her part as a board member since the contract benefited her indirectly through her father.

Since then, the new board which was appointed on 2 March 2021 was baying for her blood.

3.3 On 4 March 2021 the board took a resolution to remove the applicant as an authorized official signatory on the first respondent's account and replaced her with new signatories.

3.4 On 9 March 2021 following a heated management meeting the applicant requested leave of absence for a few days in order to clear her head. She was granted leave with effect from 10 March until 23 March 2021.

3.5 On 17 March 2021 whilst the applicant was on leave, the Chief Executive Officer proceeded to implement the resolution and authorized Standard Bank to deactivate her bank token thereby stripping her of access to the finances and bank account of the first respondent despite her being the finance manager. This was done without reference to her or prior consultation with her.

3.6 On 19 March 2021, the applicant referred an unfair labour practice dispute, alleging a unilateral change to the terms and conditions of employment, to the CCMA.

3.7 On her return to work on 23 March 2021, the Chief Executive Officer placed her on four weeks compulsory special leave stating that he needed to protect her from the board and that the board itself could use this time to reflect on its hardened attitude towards her.

3.8 The very next day, she was requested to return all equipment belonging to the first respondent and she objected to this on the basis that she was not on suspension but merely on compulsory special leave which was due to expire on 3 May 2021.

3.9 On 26th March 2021 and 31 March 2021 she received further letters extending the special leave and requesting return of the first respondent's property in her possession.

3.10 She was informed that this was on account of a long list of misconduct allegations against her which were being investigated by the first respondent.

3.11 On 8 April 2021 the first respondent took a decision to abolish the Chief Operations Officer position without prior consultation with the applicant, and on 16 April 2021 the applicant was issued with a section 189 notice of retrenchment which did not comply with the Labour Relations Act. Apart from the retrenchment being a foregone conclusion, the section 189 notice did not comply with the disclosure requirement in terms of section 189(3) with the result that no meaningful consensus seeking consultation was capable of taking place.

3.12 The dispute earlier referred by the applicant was scheduled for conciliation by the CCMA on 19 April 2021 but the first respondent refused to reinstate her as a signatory or reinstate her signing powers despite her being the manager in control of finances in the department. The refusal was based on the contention that the board did not want her back.

3.13 On 2 May 2021 she wrote an email to the Chief Executive Officer enquiring whether or not she was expected to return to work on 3 May 2021. On the morning of 3 May 2021, he responded by email that she was expected to report for duty the same day not later than 12h00 noon. The applicant responded that this was too short a notice to be at work the same day and instead requested that she be allowed to take her annual leave days and only return to work on 10 May 2021.

3.14 On the same day, the Chief Executive Officer responded with a notice of suspension with immediate effect emanating from allegations of misconduct which included insubordination to the Chief Executive Officer and the board.

3.15 According to the applicant the period of suspension was to expire on 3 June 2021.

3.16 However, she believed that by the end of May the suspension might be expanded for a further month or two. She believed her suspension to be procedurally unfair since she was initially placed on special leave and the suspension with immediate effect allowed her no opportunity to make representations against suspension.

[4] According to the respondents:

4.1 Having obtained legal advice, they were not opposed to relief being granted in terms of prayer B of the applicant's notice of motion. This related to all of the respondents' actions in pursuance of a retrenchment. The respondents were also in agreement that final relief concerning the alleged unfair labour practice disputes lay with the arbitration process of the CCMA.

4.2 With regard to the relief sought in Part A of the applicant's notice of motion, according to the respondents, at the time that the applicant was placed on special leave, various allegations of corruption and financial mismanagement were being levelled against her.

4.3 A formal letter was sent to the applicant on 26 March 2021 in which she was informed of the reasons why she was placed on special leave such being allegations of gross insubordination, dereliction of duty, corruption and financial mismanagement. The letter further stated that during her special

leave the first respondent would investigate to establish whether or not there were grounds to charge her for misconduct. She was further requested to return the first respondent's property in her possession including the cellphone, laptop and office keys.

4.4 On 3 May 2021 she was placed on suspension following allegations of financial misconduct and her refusal to surrender the first respondent's property which constituted insubordination.

4.5 The applicant's explanation for her refusal, that is that she had been advised by the Hawks, the DOH and the CCMA that these items had crucial evidence and recordings, was nonsensical since there was no basis on which they could entrust such evidence with the applicant who was an employee facing allegations of financial misconduct.

4.6 The respondent was well within its rights to place the applicant on precautionary suspension. She had been paid her full salary and benefits during her absence from the workplace including during her suspension, and any prejudice flowing from the suspension was significantly contained and minimized. The purpose of the suspension was to protect the integrity of the investigation into the allegations of misconduct faced by the applicant.

4.7 On 4 May 2021, the applicant was contacted by Camissa Capital (Pty) Ltd, the entity enlisted by the first respondent to conduct an independent forensic audit. She was requested to reply, clarify and comment on certain allegations that were being levelled at her pertaining to how she was employed, how she adjusted her own salary and how she made payments to certain service providers in violation of the Tax Administration Act. The applicant simply ignored the invitation.

4.8 According to the respondents, there was accordingly no reason why the court should permit the applicant to circumvent the provisions of the Labour Relations Act which provides that disputes concerning alleged unfair labour practices must be referred to the CCMA or a bargaining council for conciliation and arbitration in accordance with the mandatory provisions of section 191(1) of the Labour Relations Act. There were simply no extraordinary or compellingly urgent circumstances that warranted the court to adjudicate on an issue which was already before the CCMA.

4.9 According to the respondent there was no merit in the applicant's contention that her employment terms and conditions were unilaterally changed by virtue of her removal as a signatory to the bank accounts of the first respondent. Nothing in the purported letter of appointment suggested that it was a term and condition of her employment that she remained a signatory to the first respondent bank account or be vested with signatory powers.

4.10 The respondents questioned how the applicant got appointed to the position of Chief Operations Officer, having regard to her qualifications or lack thereof. Her contention that she was qualified for such a position was vehemently denied.

4.11 Given the allegations that she was facing and her failure to shed clarity or comment on the allegations despite being afforded such opportunity it was not feasible to reinstate the applicant in a position wherein she would have access to the first respondent's finances. In the event that she was reinstated, such reinstatement should not include access to the first respondent’s funds until the applicant had been cleared of wrongdoing by a disciplinary inquiry or a court of law.

4.12 Furthermore, the respondents contended, there was no duty to consult with the applicant prior to the organization's restructuring. The resolution to

restructure the organization was adopted on 16 April 2021. The applicant was absent when the resolution was passed due to the circumstances surrounding the allegations which she faced.

[5] The above were briefly the facts before the court on 1 June 2021 when the following order was issued:

'IT IS ORDERED THAT:

1. The second respondent is hereby directed and ordered to reinstate the applicant to her position of Chief Operations Officer until such time that the first respondent has complied with a fair dismissal or retrenchment procedure set out in s189/ 189A.

2. The first and second respondents is (sic) directed forthwith to restore the applicant's terms and conditions of employment (including her signing powers and access to the company accounts) which applied to her Chief Operations Officer's position prior to the unilateral change effected on 5 March 2021.

3. A rule nisi do issue calling upon the Respondents to show cause, if any, before this court on 6 August 2021 at 10h00 or so soon thereafter as the matter may be heard, why, an order should not be made that (sic) the following effect:-

   3.1 Confirming that the final relief concerning the unfair labour practice disputes referred by the Applicant and pending before the CCMA lies with the arbitration process of the CCMA.

   3.2 Declaring that the notice of retrenchment issued by First Respondent on 14 May 2021 ("the notice of retrenchment") does not substantially comply with the mandatory disclosure requirements of s189(3) of the Act, is invalid and therefore is set aside.

3.3 Declaring that the First Respondent has failed to comply with its duty to properly consult with the Applicant in relation to her retrenchment or dismissal contemplated in the notice of retrenchment issued on 14 May 2021, as required by s189(1)(d) of the Act.

3.4 Directing and compelling the First Respondent to comply with its duty to properly consult with the Applicant in terms of s189(1)(d) of the Act, including its (sic) to consult the applicant based on a fair and reasonable consultation process or procedure in terms of s189/ 189A of the Act.

4. Each party to pay its own costs.'

[6] On 27 July 2021, the applicant launched an application for contempt of court for the respondent's alleged failure to comply with the order of court dated 1 June 2021.

[7] The applicant asserted that due to the urgency of the matter, instead of following the time periods prescribed in the Rules and the Practice Manual, she set her own timetable for the hearing of the matter whilst still giving the respondents a reasonable opportunity to state their case so that the urgent court would be seized with a case that was ripe and properly presented. The respondents were given notice of the application and the matter was heard on 20 August 2021. However, a *rule nisi* was issued calling on the respondents to show cause on 8 October 2021 why they should not be found guilty of contempt of the court order dated 1 June 2021.

[8] The respondents filed a preliminary answering affidavit on 19 August 2021 whilst reserving their rights to file a further affidavit in the exercise of their rights to show cause on a return date to be allocated why the order should not be made final. Indeed, after the applicant filed a replying affidavit on 16 September 2021, the respondents filed a further answering affidavit on 23 September 2021.

[9] According to the applicant's founding affidavit, as at 26 July 2021 her suspension was not lifted and she was not reinstated to her position of Chief Operations Officer, nor were her signing powers reinstated. The respondents appointed another person to the position of Chief Financial Officer and this person was allocated the main duties which the applicant was previously performing. According to the applicant, she was waiting for communication from the respondents informing her of her reinstatement but instead on 3 June 2021she received a notice of a disciplinary enquiry to be held on 17 June 2021. She was unable to attend the disciplinary enquiry as she was ill due to victimization which she had suffered. She was unable to attend the disciplinary enquiry which was rescheduled for 7 July 2021 as the respondents did not furnish her with documents which she had requested for preparation for the disciplinary enquiry. She was also unable to attend the enquiry because she was still ill. Furthermore, she had been removed from the payroll and was not being paid timeously.

[10] According to the respondents' preliminary answering affidavit, certain portions of the order of court dated 1 June 2021 were complied with. The applicant's suspension was lifted and she was reinstated to her position of Chief Operations Officer albeit by letter dated 4 August 2021. She was also paid her full salary for the duration of her suspension and had been compensated for her missed debit orders as a result of the delays in her salary payments. The only issue on which the court was required to pronounce was whether the respondent had a valid explanation for not reinstating the applicant's signing powers and access to the first respondent's bank accounts. In this regard, the respondents reserved their rights to explain their conduct by filing a further affidavit but called on the applicant to explain the circumstances under which she was employed by the first respondent, and to present her contract of employment, her tertiary qualifications and registration with audit and accounting professions regulatory bodies, as the respondents had despite diligent search been unable to locate them.

[11] In her replying affidavit, the applicant confirmed that she had resumed her duties as the Chief Operations Officer, but she stated that her signing powers and access to the first respondent's accounts were not reinstated and that this demonstrated a wilful and mala fide intent to make her employment intolerable. Furthermore, she was attacked by members of staff in her office and it had come to her attention through a member of staff that the said member of staff was instructed by others to lace her beverages with poison but the respondents had taken no disciplinary measures against them despite the matter being reported to them.

[12] According to the applicant, the respondents' investigation of the circumstances of her employment and her qualifications was an abuse of court processes aimed at delaying her reinstatement since they were already in possession of her employment history and qualifications. She was in fact promoted to the position of Chief Operations Officer by the second respondent.

[13] In their further answering affidavit, the respondents, admit that the applicant's signing powers and access to bank accounts that she had prior to her suspension have not been reinstated, and they state that they have an acceptable and reasonable explanation for their conduct:

13.1 According to the respondents the board never approved the applicant's appointment as COO as well as the assigning of signing powers and access to first respondent's bank accounts. However, the board accepted that that is the role that the applicant was playing at the first respondent and that she was therefore entitled to retain the position of Chief Operations Officer. Further, however there was no entitlement to signing powers and access to bank accounts that arose therefrom as it was never a term of the applicant's employment that she must as a matter of legal right arising out of her employment have access to the first respondent's bank accounts. A work practice may have developed wherein the position of chief operations officer was assigned signing powers and access to the bank accounts. However,

such work practice did not translate to a term and condition of employment for the position of chief operations officer.

13.2 The first respondent relies heavily on public funding provided to it by the Department of Health. This places upon the board of the first respondent a responsibility to prudently manage the finances of the organization. As a corollary thereto the board has fiduciary duties to ensure that suitably qualified persons are responsible for handling the finances of the first respondent.

13.3 In the respondent's preliminary answering affidavit the applicant was invited to disclose her tertiary qualifications as well as her contract of employment when she was appointed as chief operations officer. The invitation was extended to enable the court to take into consideration such factors in determining whether the explanation advanced by the respondents is valid and reasonable. The applicant spurned the invitation.

13.4 Such an approach does not assist the applicant in showing this court that she possesses the requisite qualifications to ensure prudent management of the first respondent's finances.

13.5 The first respondent is struggling financially and this is as a result of poor financial management and oversight. Furthermore, the applicant's performance when she had signing powers and access to bank accounts was unsatisfactory and fell short of acceptable standards. It was for that reason that a decision was taken to reassign these financial powers to a new independent position of chief financial officer. This would allow the board to exercise proper financial oversight and ensure prudent financial management.

13.6 The removal of the applicant's signing powers and access to first respondent's bank accounts was not a measure so drastic that the applicant was prejudiced in carrying out her duties. By her own admission the applicant remained in the role of Chief Operations Officer. The only difference was that financial operations responsibilities had been removed from the position of the Chief Operations Officer and assigned to the position of Chief Financial Officer.

13.7 Insofar as the respondents did not comply with the court order of 1 June 2021, it was submitted that such non-compliance was neither willful nor mala fide given the reasons advanced by the respondents.

Contempt of Court

[14] In *Fakie NO v CCII Systems (Pty) Ltd*[1], the court stated as follows of the civil contempt procedure:

'[42] To sum up:

(a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.

(b) The respondent in such proceedings is not an 'accused person', but is entitled to analogous protections as are appropriate to motion proceedings.

(c) In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.

[1] 2006 (4) SA 326 (SCA) para 42

(d) But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.

(e) A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.'

[15] The requirements for civil contempt of court have been stated by the Constitutional Court[2] as follows:

(a) the existence of the order;
(b) the order must be duly served on, or brought to the notice of the contemnor;
(c) there must be non-compliance with the order; and
(d) the non-compliance must be wilful and *mala fide*.

Evaluation

[16] There is no dispute as to the existence of the order of court granted on 1 June 2021 by Cele J, and that the respondents are aware of it.

[17] There is also no dispute that there has been partial compliance with the said order.

[18] The respondent therefor bears the evidential burden in relation to the question whether the non-compliance on the remainder of the order is wilful and *mala fide*.

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[2] *Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited (Matjhabeng);* 2017 (11) BCLR 1408 (CC).

[19] The only issue on which the parties remain in dispute is the respondents' failure or refusal to reinstate the applicant's signing powers and access to the first respondent's bank accounts, and the question is whether such failure or refusal is wilful and *mala fide.*

[20] These being motion proceedings, the *Plascon Evans*[3] rule is applicable. This brings me to the affidavits filed of record. Only three affidavits are allowed in motion proceedings. In this case, there are four affidavits: a founding affidavit, a preliminary answering affidavit, a replying affidavit and a further answering affidavit. This, according to the respondents, is attributed to the fact that the applicant brought the application on notice as opposed to the process stipulated in the Practice Manual of the Labour Court, the respondents therefor reserving their rights to file an answering affidavit when the court issued an order calling on the respondents to show cause why they should not be found guilty of contempt of court for failing to comply with an order of court.

[21] Clause 13 of the Practice Manual of the Labour Court provides that an application for a contempt order must be made *ex parte*. The notice of motion must seek an order that the respondent appear in the Labour Court on an allocated date and time to show cause why he/ she should not be found guilty of contempt of court for failing to comply with the order of court. The respondent may explain its conduct by way of affidavit on the date of hearing or before that date (although this will not excuse him/her from being present in court).

[22] The applicant stated in the founding affidavit that due to the urgency of the matter, instead of following the procedure set out in the Practice Manual, she decided to

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[3] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H-635C; See also *Wightman t/a JW Construction v Headfour (Pty) Ltd & another,* 2008 (3) SA 371 (SCA) paras 11-13, where the court stated as follows:
'[12] Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must, in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers . . .'

speed up the process by bringing the application on notice to the respondent so that it would be ripe for hearing presumably on the first hearing date.

[23] The respondents, however, - clearly taking advantage of the fact that the notice of motion indicated that the application was *ex parte*, that it sought the issue of a *rule nisi* calling on the respondent to show cause on a date *to be allocated*, and that it provided for an answering affidavit to be filed on the date of the hearing, or before that date, - filed a preliminary answering affidavit on 19 August 2021 whilst reserving their rights to file a further affidavit in the exercise of their rights to show cause on the return date still to be allocated.

[24] The question arises as to whether the respondents were entitled to file a further affidavit. Ordinarily a respondent would not be allowed to file a further answering affidavit. However, in the present case the applicant decided to create her own procedure but failed to match the notice of motion with her intention. The court hearing the matter on 20 August 2021 issued a *rule nisi* consistent with the notice of motion. The respondents were therefor entitled to file an answering affidavit as required in terms of the *rule nisi*.

[25] The result is that there is no replying affidavit to the further answering affidavit.

[26] On an application of the *Plascon Evans*[4] rule, that is considering the facts which are common cause and the respondents' version, the applicant's application for a contempt order should be dismissed. The reasons put forth by the respondents for not reinstating the applicant's signing powers and access to the first respondent's bank accounts are as *inter alia* follows:

26.1 that beyond the fact that they have concerns as to how the applicant was appointed to the position of Chief Operations Officer, - which fact they seem to have made peace with by conceding that since the applicant was

[4] Supra

appointed and performed the functions, she was entitled to remain in the position,- that the respondents have reservations about the applicant's tertiary qualifications and registration with audit and accounting professions regulatory bodies;

26.2 that the applicant has, despite requests for such information, (given the lack of information around the manner in which she was appointed to the position of Chief Operations Officer and her qualifications), refused to comply with the respondents' requests;

26.3 that no entitlement to signing powers and access to bank accounts attached to the position of Chief Operations Officer;

26.4 that it was a never a term of the applicant's employment that she must as a matter of legal right arising out of her employment have access to the first respondent's bank accounts;

26.5 that although a work practice may have evolved, this did not translate to a term and condition of employment for the position of Chief Operations Officer;

26.6 that having regard to the fact that the first respondent relies heavily on public funding provided to it by the Department of Health, it has a fiduciary duty to ensure that suitably qualified persons are responsible for handling the finances of the first respondent; and

26.7 that the removal of the applicant's signing powers and access to first respondent's bank accounts is not a measure so drastic that the applicant is prejudiced in carrying out her duties since the applicant remains in the role of Chief Operations Officer.

[27] Although the applicant persists with her application for an order of contempt, she has not answered the above averments of the respondents which are reasonable.

[28] The court in Fakie[5] deals with disputes of fact in contempt proceedings as follows:

> '[55] That conflicting affidavits are not a suitable means for determining disputes of fact has been doctrine in this court for more than 80 years. Yet motion proceedings are quicker and cheaper than trial proceedings, and in the interests of justice courts have been at pains not to permit unvirtuous respondents to shelter behind patently implausible affidavit versions or bald denials. More than sixty years ago, this court determined that a judge should not allow a respondent to raise 'fictitious' disputes of fact to delay the hearing of the matter or to deny the applicant its order. There had to be 'a bona fide dispute of fact on a material matter'. This means that an uncreditworthy denial, or a palpably implausible version, can be rejected out of hand, without recourse to oral evidence. In *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*, this court extended the ambit of uncreditworthy denials. They now encompassed not merely those that fail to raise a real, genuine or bona fide dispute of fact, but also allegations or denials that are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers.
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> [56] Practice in this regard has become considerably more robust, and rightly so. If it were otherwise, most of the busy motion courts in the country might cease functioning. But the limits remain, and however robust a court may be inclined to be, a respondent's version can be rejected in motion proceedings only if it is 'fictitious' or so far-fetched and clearly untenable that it can confidently be said, on the papers alone, that it is demonstrably and clearly unworthy of credence.' (footnotes omitted)

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[5] supra

[29] The ultimate question is whether the respondents' version can be rejected on the affidavits as 'fictitious or as demonstrably uncreditworthy'. In my view, it cannot be so rejected.

[30] The respondent correctly consented to an order in relation to the steps which it had taken in pursuance of a retrenchment. The court per Cele J granted an order reinstating the applicant to her position of Chief Operations Officer until such time that the first respondent complied with a fair dismissal procedure.

[31] As matters stand, the applicant has been reinstated to the position of Chief Operations Officer with no further mention of retrenchment, suspension or the disciplinary proceedings that were pending as at 3 and 17 June 2021. According to the respondents, although they had reservations as to how the applicant was appointed to the post, they now accepted that that was the role which she played and that she was entitled to retain the position.

[32] Their focus now is that a person with the necessary tertiary qualifications and registration with audit and accounting professions regulatory bodies should manage the finances of the organization.

[33] Again in *Fakie*[6] at paragraph 9-10, the court states as follows:

'[9] The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and *mala fide'*. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him- or herself entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).

[6] Supra

[10] These requirements – that the refusal to obey should be both wilful and *mala fide*, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt – accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court's dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent.'

[34] Although it is clear that the respondents' failure or refusal to comply with the court order of 1 June 2021 is intentional, I am not convinced that the non-compliance constitutes a 'contumacious disrespect of judicial authority[7] or it is *mala fide*.

[35] The final relief sought by the applicant is in any event the subject of an unfair labour practice dispute referred to the CCMA.

[36] The applicant has failed to make out a case for the relief which she seeks.

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

Order:

1. The application is dismissed.

2. Each party is to pay its own costs.

[7] *Pheko v Ekurhuleni Municipality (No 2),* 2015 (5) SA 600 (CC) paragraph 28 and 42

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Narini Hiralall

Acting Judge of the Labour Court of South Africa

APPEARANCES

For the Applicant:	Adv. Kazi
Instructed by:	C.M. Shezi Attorneys
For the Respondent:	Ms. W. Cele
Instructed by:	Wendy Cele and Associates