


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 45699/2021

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>02/12/2024</u>	
DATE	SIGNATURE

In the matter between:

MARAPE, SHEBU YVONNE

Applicant

And

MINISTER OF DEFENCE AND MILITARY VETERANS

First Respondent

SECRETARY OF DEFENCE

Second Respondent

CHIEF OF THE SANDF

Third Respondent

MNISI, E.Z. (ADJUTANT GENERAL)

Fourth Respondent

JUDGMENT

MBONGWE J

INTRODUCTION

- [1] This application was brought on urgency in terms of Rule 6(12) following the Applicant's receipt of communication dated 23 October 2024 from the Fourth Respondent advising her of her transfer to another section of the defence force. The Applicant contended that by seeking to transfer her, the Fourth Respondent was acting in contempt of an order of Mali J dated 21 September 2021 interdicting the transfer of the Applicant before a grievance she had laid on 28 May 2021 concerning her very transfer has been finalised.
- [2] While the interdictory relief granted on 21 September 2021 applied to the four respondents cited in the application, including the Fourth Respondent, the contempt order is sought in the current application against the Fourth Respondent only.
- [3] It is apparent that the Fourth Respondent's bulky answering affidavit was not only filed out of time, but also consists of a rehash of the case that was before and adjudicated upon by Mali J on 21 September 2021. No condonation of its late filing has been sought. The applicant, while pointing out the unnecessary repeat of the case before Mali J in the Fourth Respondent's answering affidavit, appears not to take a direct stance on the court's acceptance of the belatedly filed answering affidavit, if the same courtesy will be extended in respect of the consequential Applicant's replying affidavit.
- [4] Turning to the issue before me, the question is whether the Fourth Respondent's decision to seek to transfer the applicant as afore-stated is a manifestation of his

contempt of the order of Mali J warranting that he be declared to be in contempt and sanctioned.

- [5] It is apparent, in my view, that Mali J had concluded on 21 September 2021 that there had been no finality or determination of the grievance (Grievance 7400) that the applicant had submitted to the Grievance Committee of the SANDF on 28 May 2021. It is common cause that on the same date, the Applicant had submitted another grievance (Grievance 7399). To put the facts in perspective, both grievances were in relation to the transfer of the Applicant by the Fourth Respondent, whose duties included offering career guidance to members of the SANDF or of a particular section of the SANDF and their enhancement. The transfer of members in general fell within the ambit of the authority of the Fourth Respondent.
- [6] It is common cause and appears more pronounced in the affidavits of the Fourth Respondent that, by the time the impugned transfer of the Applicant was communicated to her, there already existed an acrimonious relationship between the two officials. On receipt of the Fourth Respondent's written notification of her transfer, the Applicant had responded and sought to get more details such as the post she was being transferred to, region she was to report, the salary she was to earn, inter alia. The wording of her enquiry left little doubt that it was an expression of conditions on which she would accept her transfer.
- [7] It was as a result of pressure being put on her, that she submitted a grievance to the Grievance Committee (Grievance 7400) in which she stated that she enquired from the Fourth Respondent about where she was "*To be staffed and*

placed in a post. Know under which Directorate I will be reporting to and to which post."

- [8] It behoves this court to comment on the contents of Grievance 7400 and Grievance 7399 – both were filed on the same day as pointed out earlier. Noting that there was an acrimony in the relationship between the Applicant and the Fourth Respondent, the Applicant sought assurance that, by her transfer, she was not being treated unfairly and not being victimised and wanted to know the post she would be transferred to (GRIEVANCE 7399) and, (GRIEVANCE 7400), that her *"movement and clearing at DLSD be put on hold until it is established which post I am staffed or appointed to."*
- [9] It is to be noted that while there is an overlap in the two grievances, they are not entirely the same. By stating an adversarial finding on Grievance 7399 and closing Grievance 7400 as being a duplication of Grievance 7399, the Grievance Committee had misdirected itself particularly in concluding that the Applicant's matter was closed. It is unfortunate that counsel for the applicant holds a similar view as the Grievance Committee and went to length arguing that there has not been an infraction of Mali J's order 5 by the Fourth Respondent.
- [10] The Applicant's averment that the review of the decision of the Grievance Committee in respect of Grievance 7399 is pending before this court has not been gain-said. Seemingly oblivious to the Fourth Respondent was that the Applicant had escalated the egregious basis of the closure of her Grievance 7400 and that the Grievances Board, which deals with 'appeals' from the Grievance Committee, had considered the Applicant's grievance and re-opened Grievance 7400 on 15 December 2021 ostensibly on the basis that this grievance and

Grievance 7399 are not the same. The Grievance Board is yet to communicate its decision on Grievance 7400 to the Applicant.

THE LAW

[11] For a finding to be made that a party has acted in contempt of a court order, the applicant has to prove the existence of the order concerned; that the order was served on the Respondent and that the Respondent, despite the knowledge of the order, has wilfully acted against it.

ANALYSIS AND CONCLUSION

[12] It is common cause that the Fourth Respondent was legally represented in court when the Mali J's order was made on 21 September 2021 and that, therefore, he was aware of the prohibition against the transfer of the Applicant prior to the finalisation and communication of the outcome in her Grievance 7400 by the Grievance Board. The Applicant's assertion that she has received no communication of the outcome of her Grievance 7400 from the Grievance Board has not been contradicted by the Fourth Respondent. I have already pointed out the incorrect decision of the Grievance Committee which was conveyed to the Fourth Respondent and which informed the misplaced understanding by the Fourth Respondent that the Applicant's grievances were finalised and that transferring her was no infraction of the orders of Mali J. The Fourth Respondent cannot, consequently, be found to have wilfully acted in contempt of the order of Mali J dated 21 September 2021 and the application to hold him in contempt of that order stands to fail.


COSTS

[13] In awarding costs in favour of the Applicant, I have considered the fact that it is a body engaged by the First Respondent that has failed to either perform its task in relation to the Applicant's grievance, make a determination and communicate same to the Applicant and the Fourth Respondent. The Applicant would not have had to bring this application had Grievance 7400 been finalised and communicated to her and the Fourth Respondent.

ORDER

[14] Stemming from the conclusion in this judgment, I made the orders that:

1. The Applicant's application is dismissed.
2. The First Respondent is ordered to pay the costs on the opposed scale C.


MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 29 October 2024
Date of delivery: 02 December 2024

THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINES ON 02 DECEMBER 2024.

Appearances:

For the Applicant: Adv H Legoabe

Instructed by: KP Seabi & Associates Inc

For the Respondents: Adv KK Maputla

Instructed by: State Attorney, Pretoria