IN THE LABOUR COURT OF SOUTH AFRICA

HELD IN JOHANNESBURG

CASE NO: J2692/07

In the matter between:

J M S WESSELS   APPLICANT

AND

J F DE JAGER t/a DE JAGER BOERDERY   RESPONDENT

JUDGMENT: VARIATION ORDER

Molahlehi J

Introduction

[1]   In this matter this Court had on 9th June 2009, issued an order committing the respondent to prison for a period of 30 (thirty) days because he had failed to comply with the order requiring him to issue the IRP5 form in terms of the Income Tax Act, 58 of 1962 to the applicant.

[2]   Subsequent to that order this Court issued a directive that the applicant should make submissions as to why the order should not be varied in line with the assumption that the duty to deliver IRP5's related to Income Tax Returns in terms of the Income Tax Act and the matter should not for this reason rather be referred to the South African Revenue Services for its consideration and possible prosecution.

[3]   In his written submission Mr Louw for the applicant correctly submits that Income Tax Act contains only two provisions in terms of which certain actions and/or failures to comply constitute an offence carrying certain penalties. The essence of his submission is that even if those provisions of the Income Tax carry a criminal sanction, they are for the purpose of the relief that the applicant was seeking irrelevant. They are irrelevant in that in the present instance the applicant is seeking the enforcement of a Court order which the respondent has refused or failed to comply with. I fully agree with this sub mission.

[4]   However, what has now transpired in considering the submission made by Mr Louw, is that I discovered that I made an error in issuing the order before giving the respondent an opportunity to show cause why he should not be committed to prison for failing to comply with order issued by Basson J, which amongst others required him to issue the IRP5 to the applicant. Affording a person the right to be heard before being committed to prison is fundamental and that is the reason why I believe I made an obvious error in issuing the earlier order.

[5]   I am therefore of the view that the order was granted in error and accordingly varies the order to read as follows:

> "It IS ORDERED THAT:
>
> 1.   *The rule nisi is issued calling upon the respondents to show cause why on 21st August 2009, the return day a final order should not be granted on the following terms:*
>
> (a)   *The respondent be held in contempt of this Court;*

(b)   The respondent be detained and be brought before the Court to show cause why he should not be committed to detention in prison for a period of 15 (fifteen) conservative days from date of this order;

(c)   At the expiry thereof he should be brought before the Court again to show cause why a further period of committal should not be imposed;

(d)   In the event of the respondent complying with the order of the court or tendering to comply therewith, he may at his instance be brought before the court at an earlier date than the expiry of the said period of 15 (fifteen) days.

2.   *The costs of this application is to be paid by the respondent.*

3.   *The application is to be re-enrolled for hearing on 21ˢᵗ August 2009.*

4.   *The applicant is to ensure that this order is served personally on the respondent."*

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Molahlehi J

Date of Judgment :   6ᵗʰ August 2009

Appearances

For the Applicant :   Mr Eric Louw of Eric Louw Attorneys

For the Respondent: N/A