

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 286/19

In the matter between:

COSMO GAS & WELDING EQUIPMENT (PTY) LTD

Applicant

and

JACQUES UYS

1ST Respondent

LEGASY PRODUCTS (PTY) LTD

T/A LEGACY INDUSTRIAL SUPPLIES

2ND Respondent

Heard: 14 February 2020

Delivered: 20 February 2020

Summary: Return day – Contempt – requirements not met. Held: (1) the order of 19 June 2019 is discharged and the contempt application is dismissed with no order as to costs.

JUDGMENT

MOSHOANA, J

Introduction

[1] Today is the return day for the order made by Whitcher J on 19 June 2019 in terms of which, the first respondent was to show cause why he should not be held in contempt of the order made on 1 March 2019 by Van Niekerk J. The application is duly opposed by the first respondent.

Background facts

- [2] On 1 March 2019, an order was issued interdicting and restraining the first respondent from divulging information to and/or giving advice to any of the applicant's customers or clients, or any person who, at the date of termination of the first respondent's employment; is or was a customer/client of the applicant with the sole purpose of enticing such customers/clients to terminate their association with the applicant.
- [3] Further, he was interdicted from knowingly soliciting customers or be in unlawful competition with the applicant in relation to any of its customers or clients. In addition, he was interdicted from competing with the business of the applicant for a period of 12 months. Further to that, he was interdicted from disclosing any of the applicant's confidential information. Also, the first respondent was not to interfere or attempt to solicit sole services from any industrial suppliers in any manner where the applicant's business is concerned in an attempt to structure a possible unlawful competition.
- [4] The order set out above was made following a settlement of a contractual dispute between the parties. The applicant alleged that on 14 June 2019, the first respondent contacted the applicant's clients and attempted to solicit the said clients through quotes for services and products which the applicant also provides. Five quotes were produced which were made to BCS Holding Company (Pty) Ltd. On all the quotes, the first respondent is named as the sales representative of the second respondent. One Audrey Pretorius informed the applicant's accounts manager of this attempt to solicit business from the applicant's client. As a result, the applicant approached this Court and obtained an order on 1 March 2019. After the order was obtained, it was discovered that the first respondent issued further quotes to Cullinan Diamond Mine (Pty) Ltd; Bosal SA and Pegasus Products.
- [5] In response to the allegations, the first respondent, firstly attempts to distance himself from the order on the basis that he had not instructed his erstwhile attorney to negotiate a settlement. Secondly, he does not

dispute having made the quotes in question but seeks to justify his actions one way or another. Further to that he raised technical defenses to the applicant's case.

Evaluation

- [6] Ordinarily, where a party ignores the terms of a court order, such a party is guilty of contempt. Therefore, the question that then follows is: Is the first respondent guilty of contempt? This is the question I am turning to now. The requisites of a contempt order are (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 willful and *mala fide*.
- [7] It was held in *Pheko v Ekurhuleni Municipality (No 2)*¹ that while the courts do not countenance disobedience of judicial authority, it needs to be stressed that contempt of Court does not consist of mere disobedience of a court order, but of the contumacious disrespect of judicial authority. All what is required is evidence that the contemnor is obstinately disobedient or rebellious. It ought to be shown that on the balance of probabilities the non-compliance was born out of willfulness and *mala fide*.
- [8] As to the standard of proof, the applicant before me is seeking an imposition of a fine or incarceration and as such, it must prove beyond reasonable doubt that the first respondent is guilty of contempt.²
- [9] With regard to the service or bringing of the order to the attention of the first respondent, the applicant alleges that because the first respondent was legally represented it ought to follow that he enjoyed knowledge of the Court order and its contents. The first respondent's version is that the attorney was not mandated and did not act on his instruction. There is no replying affidavit. Thus, these allegations by the first respondent must be

¹ 2015 (5) SA 600 (CC).

² See *Matjhabeng Local Municipality v Eskom Holdings Ltd and others* 2017 (11) BCLR 1408 (CC) at para 67.

admitted on the application of the *Plascon-Evans* rule. Besides, the applicant did not allege or prove that the Court order was personally served on the first respondent. This poses a serious difficulty on the applicant's case. It is not sufficient, to simply allege that because the first respondent was legally represented on the day of the agreed order he thus gained knowledge of the order. Nowhere in the papers does the applicant allege that the first respondent was present during the settlement negotiations which culminated into an agreed order. Let alone being present when the order was made and read out by this Court.

[10] On the WhatsApp communications revealed between the first respondent and the legal representative, it is apparent that the first respondent was not in court and did not understand what was proposed by the legal representative. Other than reference to emailing the unsigned agreement, which could not be understood³, there is no evidence that the Court order was made available to the first respondent and most importantly explained to him. In the absence of evidence of personal service of the order, it becomes difficult to assess whether the non-compliance was *mala fide* and willful.

[11] For all the reasons set out above, I am unable to confirm the order of Whitcher J.

[12] In the results, the following order is made:

Order

1 The contempt application is dismissed with no order as to costs.

GN Moshwana

Judge of the Labour Court of South Africa.

³ 2019/03/01, 2:57 pm – Barend Uys: *Ja maar ek verstaan nie regtig wat beriek is nie.* [from the WhatsApp discussions]

Appearances:

For the Applicant: Advocate C. Goosen.

Instructed by: Serfontein Viljoen and Swart Attorneys, Pretoria.

For the First Respondent: Mr H Bouwer of Cavanagh and Richards Incorporated, Johannesburg.