



LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: LC 166/2012

In the matter between:

THE MINISTER OF EDUCATION

FIRST APPLICANT

THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA

SECOND APPLICANT

and

**THE INTERIM KHOMAS TEACHERS STRATEGIC
COMMITTEE AND ALL PERSONS FORMING PART OF
THE COLLECTIVE BODY OF THE FIRST RESPONDENT**

FIRST RESPONDENT

EVILASTUS KAARONDA

SECOND RESPONDENT

MAHONGORA KAVIHUHA

THIRD RESPONDENT

DANKIE KATJIUANJO

FOURTH RESPONDENT

ELFRIEDA MWAGBO

FIFTH RESPONDENT

JOSEF KATJINGISIUA

SIXTH RESPONDENT

Neutral citation: *The Minister of Education v The Interim Khomas Teachers Strategic Committee and All Persons forming part of the Collective Body of the First Respondent* (LC 166/2012) [2012] NALCMD 59 (9 November 2012)

Coram: PARKER AJ

Heard: 9 November 2012

Delivered: 9 November 2012

Flynote: Interdict – Final – Relief sought against disobedience and continued disobedience of a court order and against instigation aimed at breaching employment contract.

Flynote: Declaratory order – Relief sought to protect rights under contract of employment.

Flynote: Contempt of court – Persons who are parties to the proceeding instigating and encouraging the employees of second applicant to disobey court order – Applicants instituting contempt of court proceedings against those persons.

Summary: Interdict – Final – Applicants seeking redress where an order of the court is being, disobeyed and employees of second applicant are being instigated to breach their contracts of employment – Final interdict granted in the interest of the proper administration of justice and in order to protect contractual rights.

Summary: Declaratory order – Court satisfied that persons to the proceeding instigating and encouraging second applicant's employees to breach their contracts of employment – Applicants entitled to have their right under the contracts of employment protected by declaratory order.

Summary: Contempt of court – Court finding applicants have established, prima facie, persons who are parties to the proceedings encouraged and instigated employees to disobey Labour Order granted on 2 November 2012 – Court granting rule nisi and respondents to show cause on return date why if found guilty they should not be committed for contempt of court and appropriate sentence imposed.

ORDER

- (a) The applicant's non-compliance with the forms and service provided for in the rules of court is condoned, and that this matter be heard on urgent basis.
- (b) The second respondent is interdicted and restrained from unlawfully instigating the second applicant's employees to stay away from work without their

complying with procedures prescribed by the Labour Act 11 of 2007, and further from interfering with the contractual relationship between the second applicant and its employees in the Public Service.

- (c) A rule nisi do hereby issue calling on the second, third, fourth, fifth and six respondents to show cause, if any, on Tuesday, 13 November 2012 at 11h00 why:
- (i) the fourth, fifth and sixth respondents should not be committed for contempt of court and sentenced to imprisonment for a period as this court considers appropriate, or alternatively to the payment of a fine, and suspending the sentence wholly on condition that the respondents comply with immediate effect the order of the Labour Court granted on 2 November 2012, after evidence in mitigation has been heard.
 - (ii) the second and third respondents should not be committed for contempt of court and sentenced to imprisonment for a period the court considers appropriate, or alternatively to the payment of a fine, and suspending the sentence wholly on condition that the respondents desist from doing any act or cause to be done any act that is calculated or meant to have or is likely to have the effect of instigating or encouraging the disobedience of the order of the Labour Court granted on 2 November 2012, after evidence in mitigation has been heard.
 - (iii) the first, second, third, fourth, fifth and sixth respondents should not pay the costs of the application on a scale as between attorney (legal practitioner) and client.
- (d) The first, second, third, fourth, fifth and sixth respondents file their opposing affidavits to the application not later than 15h00 on 12 November 2012, and the applicant file replying affidavit (if any) to the opposing affidavits not later than 09h00 on 13 November 2012.
- (e) The order in para (c) shall operate as an interim interdict with immediate effect pending the finalization of the matter on the return date of the rule nisi.

JUDGMENT

PARKER AJ:

[1] This application is brought on urgent basis by notice of motion, and the applicant seeks relief in terms of the notice of motion. Mr Namandje appears for the applicants and Mr Rukoro for the first, third, fourth, fifth and sixth respondents. Mr Rukoro submitted that he would not oppose the granting of the relief sought (as it relates to his clients). I am satisfied on the papers that the second respondent was duly served with papers; but the second respondent does not appear in court in person or by counsel. I do not therefore find any good reason why the train of justice should wait for the second respondent to board at his whim, pleasure and convenience. The application is, therefore, heard in the second respondent's unexplained absence.

[2] The second respondent did file on 8 November 2012 what he calls an affidavit. I take no respectable look at it for the simple reason that the second respondent does not appear in person or by counsel to move his rejection of the application upon reliance of his affidavit.

[3] On the issue of urgency, I have no doubt that on the papers it is sufficiently clear that the matter be heard on urgent basis. The unchallenged facts are that an order granted by the Labour Court on 2 November 2012 has been, and is being, disobeyed and that persons who are parties to this proceeding are instigating the applicant's employees to break their contract of employment and to disobey that court order; and the applicant seeks redress.

[4] In virtue of those unchallenged facts, too, I think I am entitled to exercise my discretion and grant the relief sought, including the interim interdict and the declaratory order on the basis of the imperative to ensure the proper administration of justice and the practicalization of the rule of law in the country for the protection of rights of persons; in the instant case, rights under contracts of employment. This is apart from Mr Rukoro's submission that on behalf of his clients he would not oppose the grant of the relief sought.

[5] In the result I make the following order:

- (a) The applicant's non-compliance with the forms and service provided for in the rules of court is condoned, and that this matter be heard on urgent basis.
- (b) The second respondent is interdicted and restrained from unlawfully instigating the second applicant's employees to stay away from work without their complying with procedures prescribed by the Labour Act 11 of 2007, and further from interfering with the contractual relationship between the second applicant and its employees in the Public Service.
- (c) A rule nisi do hereby issue calling on the second, third, fourth, fifth and six respondents to show cause, if any, on Tuesday, 13 November 2012 at 11h00 why:
 - (i) the fourth, fifth and sixth respondents should not be committed for contempt of court and sentenced to imprisonment for a period as this court considers appropriate, or alternatively to the payment of a fine, and suspending the sentence wholly on condition that the respondents comply with immediate effect the order of the Labour Court granted on 2 November 2012, after evidence in mitigation has been heard.
 - (ii) the second and third respondents should not be committed for contempt of court and sentenced to imprisonment for a period the court considers appropriate, or alternatively to the payment of a fine, and suspending the sentence wholly on condition that the respondents desist from doing any act or cause to be done any act that is calculated or meant to have or is likely to have the effect of instigating or encouraging the disobedience of the order of the Labour Court granted on 2 November 2012, after evidence in mitigation has been heard.

- (iii) the first, second, third, fourth, fifth and sixth respondents should not pay the costs of the application on a scale as between attorney (legal practitioner) and client.

- (d) The first, second, third, fourth, fifth and sixth respondents file their opposing affidavits to the application not later than 15h00 on 12 November 2012, and the applicant file replying affidavit (if any) to the opposing affidavits not later than 09h00 on 13 November 2012.

- (e) The order in para (c) shall operate as an interim interdict with immediate effect pending the finalization of the matter on the return date of the rule nisi.

C Parker
Acting Judge

APPEARANCES

APPLICANTS: S Namandje
Instructed by Government Attorney, Windhoek

SECOND RESPONDENT: No appearance
Tjitemisa & Associates, Windhoek

FIRST, THIRD, FOURTH, S Rukoro
FIFTH, SIXTH RESPONDENT: Instructed by Kaumbi-Shikale Inc., Windhoek