



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) [2013] NALCMD 2 (23 January 2013)

Coram: PARKER AJ

Heard: 22 January 2013

Delivered: 23 January 2013

Flynote: Contempt of court – Civil contempt – Sentence – Purpose of sentence not merely punitive but to coerce obedience of court order.

Summary: Contempt of court – Civil contempt – Sentence – Purpose of sentence not merely punitive but to coerce offender to act in accordance with order of court – Court has duty to ensure respect for orders of court and promote proper administration of justice – Sentence should fulfill these duties – Court finding that the 2 November 2012 order whose disobedience resulted in the contempt proceeding has now been obeyed – Court taking this and personal circumstances of the respondents and seriousness of the contempt into account – Court suspending sentence wholly.

ORDER

Mr Evilastus Kaaronda, Mr Mahongora Kavihuha; I sentence each one of you to a fine of N\$4 000,00 or nine months' imprisonment, wholly suspended on condition that you desist with immediate effect from 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. Mr Dankie Katjjuanjo, Ms Elfrieda Mwangbo, Mr Josef Katjingisiua; I sentence each one of you to a fine of N\$4 000,00 or nine months' imprisonment, wholly suspended on condition that you comply with immediate effect with the order of the Labour Court granted on 2 November 2012.

JUDGMENT

PARKER AJ:

[1] The facts giving rise to the present civil contempt proceedings have been fully set out in the judgment delivered on 9 November 2012 ('the 9 November 2012 judgment') in which the respondents were found guilty of contempt of court; and so I shall not rehearse those facts here.

[2] Mr Rukoro, counsel for the respondents, and Mr Namandje, counsel for the applicants, made submissions in which they referred the court to authorities. I have consulted those authorities and drawn appropriate counsel from the principles they enunciate. I shall not garnish this judgment on sentencing with copious excerpts of passages from those authorities.

[3] In considering an appropriate sentence, I have taken into account the following factors: the nature of the offence, the circumstances of the commission of the offence and the personal circumstances of the respondents (*see Immanuel Reynecke v The State* Case No CA 63/1996 (Unreported), and, above all, the following critical considerations. This case concerns civil contempt – as opposed to criminal contempt. And civil contempt procedure is a means of enforcing performance of a judgment; that is to say, it is to coerce the offender to do or refrain from doing something in accordance with an order obtained against him or her, and not be merely punitive. The other critical consideration which is connected to this critical consideration is that, as I understand it, the 2 November 2012 order has now been obeyed. Furthermore – and this is important – in arriving at an appropriate sentence I should be guided by sentences imposed by this court in similar cases, of course, due regard being had to factual differences. (*S v Simon* 2007 (2) NR 500 at 518C-D.) In this regard, in *Simon* at 519C-F, the court, relying on authorities, reiterated the beneficial effects of suspended sentence:

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‘In the ordinary way it (suspended sentence) has two beneficial effects. It prevents the offender from going to gaol . . . The second effect of a suspended sentence, to my mind, is a matter of very great importance. The man has the sentence hanging over him. If he behaves himself he will not have to serve it. On the other hand, if he does not behave himself, he will have to serve it. That there is a very deterrent effect cannot be doubted.’

[4] Standing in favour of the respondents is the contrition they have shown as appears in their individual affidavits. On the question of contrition, Mr Namandje’s submission is that their apparent show of remorse is not sincere, and that the respondents have just put up a show that they are well-behaved citizens, particularly because their individual affidavits are formulated in similar terms and also because of their behaviour which led to the launching of the contempt proceeding. That may be so; but I think the court should always try to see the positive side of a person’s conduct and be prepared to give him or her the benefit of the doubt in a positive light.

If those respondents say on oath – and I emphasize ‘*on oath*’ – that they are sorry for their conduct and that they will refrain from doing any of those things for which they have been found guilty, their statements should be received in a positive light, as I do. I do not think they are disingenuous: there is no evidence placed before the court to show that they are disingenuous.

[5] I have taken into account the aforementioned factors and critical considerations, including their individual personal circumstances, but not forgetting that their contumacious conduct is a serious matter as it goes to the root of proper administration of justice and the dignity of the court, as Mr Namandje submitted. The seriousness of their conduct is deepened by the fact that a strike that was not in conformity with the Labour Act No. 11 of 2011 had been ‘engineered’ (to use Mr Namandje’s word) and when the Labour Act ordered the respondents to refrain from their illegal conduct, they had disobeyed the court order and had followed their defiance of the order with reckless statements referred to in the 9 November 2012 judgment.

[6] After taking into account the aforementioned critical considerations and the factors, it is also my view that the sentence I impose should aim at deterring the respondents and others who are thinking of taking up a career in disobeying court orders and inciting others to disobey court orders and breach the law. The sentence should also emphasize the duty of the court to ensure respect for, and obedience of, its orders and also the duty to promote proper administration of justice. In all this, one must not lose sight of the fact that this is an application proceeding, and the applicant has sought certain relief in the notice of motion. Of course, this court can grant further and/or alternative relief, but such relief should not in my opinion be exceedingly divergent from the specified relief sought by an applicant himself or herself unless there is a good reason to do so. As respects sentence; the applicant seeks a specified relief. I do not have any good reason to deviate from the relief sought by the applicant concerning the nature and type of sentence it has prayed for.

[7] For all these reasoning and conclusions, I am of the firm view that the sentences set out, hereunder, meet the circumstances and the justice of the case.

[8] Mr Evilastus Kaaronda, Mr Mahongora Kavihuha; I sentence each one of you to a fine of N\$4 000,00 or nine months’ imprisonment, wholly suspended on

condition that you desist with immediate effect from 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. Mr Dankie Katjjuanjo, Ms Elfrieda Mwangbo, Mr Josef Katjingisiua; I sentence each one of you to a fine of N\$4 000,00 or nine months' imprisonment, wholly suspended on condition that you comply with immediate effect with the order of the Labour Court granted on 2 November 2012.

C Parker
Acting Judge

APPEARANCES

APPLICANTS:

S Namandje

Instructed by Government Attorney,
WindhoekFIRST, SECOND, THIRD, FOURTH,
FIFTH, SIXTH RESPONDENT:

S Rukoro

Instructed by Kaumbi-Shikale Inc.,
Windhoek