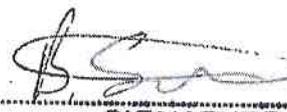


NOT APPLICABLE

(1) REPORTABLE: YES/NO.
 (2) OF INTEREST TO OTHER JUDGES: YES/NO.
 (3) REVISED.

12/03/19 
 DATE SIGNATURE



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG
JUDGMENT

CASE NO: J 2409/18

Not reportable

In the matter between:

**SOUTH AFRICAN ROAD PASSENGER
 BARGAINING COUNCIL
 PM VENTER**
 and

**First Applicant
 Second Applicant**

**TSELISO RAMALITSE
 ZAMILE EPHRAIM BOOI**

**First Respondent
 Second Respondent**

Heard: 1 March 2019

Judgment delivered: 5 March 2019

Edited: 12 March 2019

JUDGMENT

VAN NIEKERK J

- [1] The respondents have been found to be in contempt of the first applicant (the second applicant now deceased). The matter has been referred to this court for confirmation of that finding, and for an appropriate sanction to be imposed, and costs.
- [2] At the hearing of the application, it was common cause that relief was sought only as against the first respondent, and that a fine of R2000, suspended for a period of two years on condition that the first respondent was not found guilty of contempt of the first applicant, was an appropriate sanction. Having regard to the facts and in particular, the nature of the misconduct (the first applicant was found to have lied to the arbitrator), I agree that the finding of contempt should be confirmed and that the agreed penalty is appropriate.
- [3] The applicant seeks the costs of these proceedings. A costs order is opposed, primarily on the basis that the first respondent is indigent, and that the agreed sanction is sufficiently salutary to prevent any recurrence of the contempt. The applicant submits that the first respondent showed no remorse in his answering affidavit, and until the day of the hearing, persisted with his false denials instead of expressing remorse and contrition. Further, the first respondent's conduct is wholly unacceptable, undermines the capacity of the applicant to function smoothly and requires a strong message to be sent to the public that similar conduct will attract a firm sanction.
- [4] Section 162 of the LRA empowers this court to make orders for costs. In doing so, the court exercise a discretion, having regard to the requirements of the law and fairness. The court is ordinarily hesitant to make costs orders in proceedings initiated by aggrieved employees who seek to advance their interests in good faith. As far back as 1991, what was then the Appellate Division of the Supreme Court (See *National Union of Mineworkers v East Rand Gold and Uranium Company Ltd*

1992 (1) SA 700 (AD)) confirmed that considerations of fairness may require the ordinary rule that costs follow the result to yield – this is particularly so where there is a genuine dispute between the parties and an on-going relationship and where '*especially where that dispute has been a bona fide one*'. The court observed that an order for costs may damage the relationship between the parties and thereby detrimentally affect labour peace and the conciliation process. In this regard, the conduct of the parties is 'obviously relevant'. All in all, the court is required to exercise a discretion with 'proper regard to all of the facts and circumstances of each case'. This formula has survived the test of time – in *Zungu v Premier of the Province KwaZulu –Natal* (2018) 39 ILJ 523 (CC), the Constitutional Court affirmed that in the exercise of the discretion conferred on it, this court must necessarily take into account the interests of fairness, and in doing so, must have due regard to the conduct of the parties. (See also *Allan Long v South African Breweries (Pty) Ltd and others* CCT 61/18, 19 February 2019.)

- [5] The answering affidavit suggest that the first respondent continued to deny the obvious – that he had lied to the second applicant. There is no expression of remorse. The offence of lying to an arbitrator tasked with conducting a statutory proceeding is one that ultimately undermines the integrity of the process, and ought to be regarded seriously. While the sanction for the first respondent's admitted contempt to some extent addresses that concern, the applicant has been obliged to prosecute an opposed application to secure the relief it seeks. There was never any basis for opposition to the order sought, and the applicant is entitled to have at least a portion of its costs awarded as against the first respondent. Had the first respondent adopted a different approach to these proceedings, there would have been a different consequence. I intend to award the applicant the costs that it incurred post the filing of the answering affidavit.

I make the following order:

1. The ruling issued by the second applicant that the first respondent be found in contempt of the first applicant is confirmed.

2. The first respondent is ordered to pay a fine of R 2000.00, payment of which is suspended for a period of two years from the date of this judgment on condition that the first respondent is not found guilty during that period of the offence of contempt of the first applicant.
3. The first respondent is to pay the costs of this application, limited to the costs incurred by the applicant after the date on which the answering affidavit was filed.



André van Niekerk

Judge

REPRESENTATION

For the applicant: Adv. C Orr, instructed by Chris Baker Attorneys

For the respondent: Adv. S Collet, instructed by Kramer Wehlman & Joubert