



**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

**JUDGMENT**

Not Reportable

Not of interest to other judges

**Case no: J37/15**

In the matter between

**Mokoena, Mphamo**

**Applicant**

and

Quebekela Projects CC

**First Respondent**

**Massimo Valente**

**Second Respondent**

**Heard: 15 May 2015**

**Delivered: 15 May 2015**

**Summary: Contempt of Court – the test – application to rescind the Court order that is not being complied with –not contempt**

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***EX TEMPORE JUDGMENT***

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COETZEE AJ

- [1] In this matter an application is before this court to consider whether the Second Respondent, Mr Massimo Valente of Quebecela Projects CC, is in contempt of court.
- [2] This court issued a ruling on 17 April 2015 with a return date 15 May 2015, calling upon Mr Valente to explain why he should not be held in contempt of court.
- [3] The costs of the application and the proceedings on 17 April were reserved.
- [4] The First Respondent, Quebecela Projects CC, and the Second Respondent, Mr Valente, filed papers opposing the contempt proceedings, stating that there are and were at the time pending legal processes firstly to rescind the court order that is the subject matter of this particular application, and secondly also a review application to review and set aside the arbitration award that gave rise to the subsequent court order and the alleged non-compliance with the award.
- [5] In order to find Mr Valente guilty of contempt of court, and to commit him to jail, I need to do be persuaded that on the criminal test, that of beyond any reasonable doubt, he is guilty of contempt. It is not the civil test that will apply in this case<sup>1</sup>.
- [6] Even on the civil test I cannot find that Mr Valente had the intention to disregard a court order.

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<sup>1</sup> Nthabiseng Pheko and Babsfontein Informal Settlement and Ekurhuleni Metropolitan Municipality and Socio-Economic Rights Institute of South Africa (unreported) Case CCT 19/11

- [7] The First Respondent launched a review application on 7 January 2015 to review and set aside the arbitration award. The Applicant is aware of the application.
- [8] The Respondents launched an application to rescind the order and the Applicant was aware of the application.
- [9] The Applicant nevertheless pursued an application to declare the Second Respondent in contempt of Court.
- [10] There are two processes in place to challenge the order, and that distinguishes this case from the authority that I have been referred to by the Applicant namely North-West Star (Pty) Limited (under judicial management) v Serobatse & another<sup>2</sup>.
- [11] In the North West Star-case the person who was held in contempt disregarded a court order simply because he or she felt that the court order was not a valid one. There was no process in place to show that there was a challenge to the court order.
- [12] As far as the costs of the 17th are concerned I am inclined not to grant a cost order but in respect of the proceedings of today I am inclined to make a costs order.
- [13] It was unnecessary to come to court in the face of the answering affidavit filed by the Respondents. That should have alerted the Applicant to the fact that there was a very slim if no possibility of finding Mr Valente guilty of contempt of court, and that there was no prospects of success in doing so.
- [14] I make the following order:

The rule is discharged and the applicant is to pay the costs of the proceedings of 15 May 2015.

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<sup>2</sup> (2005) 26 ILJ 56 (LAC)

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Coetzee AJ

**Acting Judge of the Labour Court**

Appearances:

For the applicant[s]: Ngwadla

Instructed by: of Ngwadla Attorneys

For the Respondent[s]: Joe Campanella

Instructed by: L Cirone Attorney at Law

LABOUR COURT