



COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JS 696/22

HANGA

Applicant

and

**DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

Respondent

Heard: 14 March 2023

Delivered: 16 March 2023

Summary: Default judgment. Where a case has not been made, a Court faced with an application for default judgment is entitled to refuse to issue a judgment. Harassment does not mean a situation where an employer issues work instructions. A person's moral sense of right and wrong does not extend to a person's view and attitude towards work instructions. No case for unfair discrimination made. Held: (1) Application for default judgment is refused.

JUDGMENT

MOSHOANA, J

Introduction

- [1] As a matter of law, where a party makes a case for a legal relief, such a party is entitled to a judgment of a Court. A judgment of a Court is nothing but an affirmation that a party is entitled to a legal relief. Axiomatically, a party who fails to make a case for a legal relief is not entitled to a judgment, even if such party comes to a Court unopposed. Granting of a default judgment is not an affirmation that the absent party is devoid of a legal defence. It is a judgment granted in accordance with the rules of a Court for failure to effectively comply with the rules.
- [2] Before me served an application, in terms of which, the applicant, Mr. Simon Tumelo Maphanga (Maphanga) seeks a judgment to be entered against the respondent, the Department of Justice and Constitutional Development (Justice).

Background and evidence

- [3] On or about 4 October 2022, Maphanga served and filed a statement of case issued in terms of the rules of this Court. That notwithstanding, for some unknown reasons Justice failed to serve and file a statement of response. Such failure prompted Maphanga to seek a judgment against Justice by default.

- [4] On 14 March 2023, the application served before this Court. Owing to the absence of Justice, this Court only had the testimony of Maphanga. Given the view this Court takes at the end; it is unnecessary to recount in full the testimony of Maphanga. Briefly in 2019, the superior of Maphanga issued him with a work instruction. Maphanga considered the instruction to be unlawful and refused to carry it out. Maphanga was thereafter 'threatened' with disciplinary action. Believing that his moral sense of what is right or wrong is being attacked by harassment actions, he lodged an internal grievance. The grievance was not resolved to his satisfaction. Resultantly, he launched proceedings in this Court and such proceedings are still pending.
- [5] The "harassment" continued unabated. In March 2022, the superior accused him of insubordination; insolence; and issued him with some unique and improper instructions to provide a weekly plan and reports.

Evaluation

- [6] The purpose of the Employment Equity Act (EEA)¹ is to eliminate unfair discrimination. In terms of section 6 (3) of the EEA, harassment of an employee is a form of unfair discrimination. In law harassment refers to a person acting in a manner that causes the complainant to fear harm. Harm refers to any mental, psychological, physical or economic harm. Based on this definition, it cannot be said that if a superior issues a work instruction, such superior is acting in such a manner that will cause the junior to fear harm. It follows that based on his own testimony Maphanga was not harassed. All what his superior did, as he should in a work environment, was to issue an instruction. The fact that Maphanga ebulliently held a view that the instruction was unlawful does not morph the instruction into a harassment.
- [7] In his view Maphanga was discriminated on the ground of conscience. Conscience is a person's moral sense of wrong or right. This in the Court's view does not extend to an employee's attitude towards work instructions. There is nothing pejorative when a superior issues an instruction, which is work related and accompany that with a statement that failure to carry it amounts to insolence and or insubordination. Conscience should not be confused with abomination. Regard being had to the testimony of Maphanga, there seem to be a relationship quandary between him and his supervisor, to a point of acrimony and abomination. The fact that Maphanga palpably holds a view that he is right in effectively throwing down the gauntlet on his superior does not translate into a discrimination on the ground of his conscience.

¹ Act 55 of 1998 as amended.

[8] Accordingly, this Court is not satisfied that the testimony of Maphanga establishes and unfair discrimination which would have called for any rebuttal by Justice. Employees agree to accept the employer's authority. It does not follow that where an employee ebulliently rebuffs his employer's authority, such an employee must seek protection from the EEA. In fact, an employer is entitled to dismiss an employee who challenges its authority or displays impudence.

[9] Accordingly, this Court is not satisfied that Maphanga has made a case for unfair discrimination. His quest for default judgment against Justice falls to be refused and dismissed.

[10] In the results the following order is made:

Order

1. The application for default judgment is refused.

G. N. Moshoana
Judge of the Labour Court of South Africa

Appearances:

Applicant: In Person.