

When the costs of litigation catch up with delinquent state actors

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Employment Alert

In July last year the Labour Court handed down a very important judgment against the SABC, in which it reinstated a number of dismissed employees following what we, in time, have come to learn has been political interference at the public broadcaster, from the highest levels.

Trade Union Solidarity, did exceptionally well in pursuing the matter in the Labour Court.

The matter returned back to court today for a determination of why Seboleto Ditlhakanane, the SABC's General Manager: Radio News & Current Affairs, and Mololo Tebele, Acting Group Executive: News and Current Affairs, should not personally be held liable for the union's costs of the court proceedings.

The judgment of Justice La Grange in the Johannesburg Labour Court in relation to costs being awarded against the SABC officials involved in the unlawful conduct giving rise to the dismissal of the applicants was unusual.

I applauded the approach taken by Justice La Grange in the issue of the cost order on a Talk Radio 702 interview I had at the time with Xolani Gwala. It is a form of order to be celebrated in times where the public purse is being used in South Africa by state officials without any consideration, either in defense or pursuit of unnecessary litigation. Essentially, reckless conduct by state officials gives rise to litigation, which is then often defended at the expense of the taxpayer with no regard to the actual merits of the legal action.

Our courts have started to take a firm line in holding officials, who behave in a high-handed/reckless manner, personally liable for legal costs incurred in the litigation process. This it is hoped should have a sobering effect on truant public office bearers at the end of the day.

The *Daily Maverick* reports that Hlaudi Motsoeneng failed to appear in court. He has since been dismissed by the SABC and is now pursuing his own battle in the CCMA.

Motsoeneng was not required to make representations to court in the costs saga - that it unless Ditlhakanane and Tebele are going to now allege that it was Motsoeneng who was the driver

behind the decision taken to effect the unlawful dismissals. The dismissals were effected in a very heavy-handed, reckless and cavalier fashion. Personal cost orders are in my view warranted.

We will have to be patient to see what unfolds at the much anticipated hearing that has now been postponed to 6 September 2017.

This is a first of its kind in the Labour Court and a welcomed approach from the bench.

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