



IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

In the matter between

Case: 18375/2021

LUCKY SIWANI

First Applicant

SINDISIWE MDALA

Second Applicant

BONGINKOSE LOSE

Third Applicant

SIMTHEMBILE MCITHI

Fourth Applicant

and

SOUTH AFRICAN TRANSPORT & ALLIED WORKERS UNION

First Respondent

SA TRANSPORT & ALLIED WORKERS UNION, WC

Second Respondent

PROVINCIAL EXECUTIVE COMMITTEE,

SA TRANSPORT & ALLIED WORKERS UNION, WC

Third Respondent

BONGANI MATANA

Fourth Respondent

JACK MAZIBUKO

Fifth Respondent

JUDGMENT DELIVERED ELECTRONICALLY ON 15 NOVEMBER 2022

GOLIATH DJP

[1] This matter was instituted by the applicants on an urgent basis to have their suspensions as office bearers of first respondent be declared unconstitutional, unlawful, invalid or null and void *ab initio*, and that they be reinstated on the same terms, duties and responsibilities that they had prior to

their suspensions. The matter was postponed for hearing on 29 October 2021. On this date the matter was postponed, and the issue of urgency was ameliorated by an undertaking made by respondents, which is encapsulated in an order by agreement dated 28 October 2021. Respondents gave an undertaking that no meeting would take place and any future intended meetings involving the applicants would be held over until finalisation of this matter. It is common cause that the issue of urgency had been overtaken by events and is now moot.

[2] First and second applicants are the Chairperson and Deputy Chairperson of the Provincial Executive Committee of the first respondent for the Western Cape. The third and fourth applicants are the Local Chairperson and Local Secretary of the Southern Cape Local Branch of the first respondent. First and second applicants are thus provincial office bearers of the first respondent, and the third and fourth applicants are local office bearers.

[3] First respondent is the South African Transport and Allied Workers Union ("SATAWU"), a registered trade union in terms of the Labour Relations Act. It is a voluntary association that was formed in 2000 and its aim is to advance and defend the interest of workers in all matters of mutual interest between themselves and their employers in order to improve the standard of living of union members, workers, and the working class in general. The structures of SATAWU are divided into provinces which coincide strictly with the provincial boundaries. In turn, provinces are made up of regions with a cluster of branches. SATAWU organises workers in the transport sector as well as security and cleaning companies. The sectors include railways, harbours,

parastatals, aviation, passenger transport (buses and taxis), freight (trucking), contract, cleaning, and security.

[4] Second respondent is the South African Transport and Allied Workers Union, Western Cape (SATAWU, WC), a regional structure of SATAWU responsible for the affairs in the Western Cape.

[5] Third respondent is the Provincial Executive Committee, South African Transport and Allied Workers Union (PEC), a constitutional structure of SATAWU, Western Cape. The management of SATAWU, Western Cape, vests in the PEC.

[6] Fourth and fifth respondents, are employees of the first respondent. Fourth respondent is the provincial secretary of first respondent. He is also a member of the Provincial Office Bearer Committee (POBC), and the only remaining member who is currently not on suspension.

[7] Fifth respondent is the General Secretary of the Western Cape branch of the first respondent. It is common cause that the fifth respondent suspended the first and second applicants for the reasons advanced in his letters to them dated the 9th of September 2021. It is also common cause that the fourth respondent suspended the third and fourth applicants for the reasons advanced in his letter to them dated the 8th of October 2021.

[8] Fourth respondent confirmed that the applicants are currently on temporary suspension from their positions in SATAWU. He set out the

circumstances that gave rise to the suspension of the applicants. On 3 September 2021, it came to fourth and fifth respondent's attention that the first and second applicants issued and signed off on a notice distributed to all provincial executive members, local office bearers, provincial sector office bearers, gender office bearers, education office bearers and all staff members, calling upon them to attend a meeting on 9 and 10 September 2021 at 10h00. The notice specifically referred to clause 23.4.1 of the SATAWU Constitution as a meeting of the Provincial Executive Committee (PEC).

[9] Clause 23.4.1 of the Constitution states that:

"The PEC must meet three times in a year. The Provincial Secretary in consultation with the rest of the POB, must issue a notice for the PEC meeting, together with proposed agenda for that meeting at least 7 days prior to the meeting. The notice must be sent to the LSSC, and where possible, each of the members of the PEC."

[10] Fourth respondent is the Provincial Secretary and also a member of the PEC. According to fourth respondent the Constitution of SATAWU mandated him, in consultation with the rest of the Provincial Office Bearers ("POB"), to issue such a notice and call for such a meeting. It is not disputed that fourth respondent did not issue the said notice calling for the meeting, and was also not advised of said meeting, which according to the SATAWU Constitution, must be sent to each member of the PEC. Fourth respondent pointed out that the notice was defective because it did not provide for the requisite 7-day notice period afforded by the SATAWU Constitution to allow members to properly prepare for such meeting. Fourth respondent submitted

that these factors rendered the notice and any conduct arising from that notice unconstitutional and lawful.

[11] On 6 September 2021, the notice came to the attention of the General Secretary (fifth respondent) and fourth respondent. Fifth respondent subsequently sent a letter to first and second applicants cautioning them from convening the PEC meeting. In the letter fifth respondent acknowledged receipt of the first and second applicants' grievances, and attempted to provide guidance on how best to resolve the matter. Certain recommendations were made in the letter, and the applicants were informed that their "*notice and/or request to convene the PEC on 09-10 September 2021 is not accepted until a time all structural issues are resolved as per the SATAWU Constitution.*"

[12] On 8 September 2021, the first and second applicants responded and expressed the view that the said meeting was constitutionally compliant and insisted that they would be proceeding with the meeting. Respondents informed first and second applicants that their conduct contravened the Constitution of the SATAWU Constitution. In view of the recalcitrant stance adopted by the first and second applicant, fifth respondent addressed a letter to them on 9 September 2021, and informed them that they were placed on precautionary/temporary suspension. The suspension letter specifically records that:

"This request should in no way be construed that a decision has been made to take disciplinary action against you or to expel you,

but it is merely to safeguard SATAWU belongings until the finalisation of this matter.”

[13] According to respondents the decision to issue a precautionary suspension to first and second applicant was taken at a meeting that was quorate, where it was jointly decided to take this measure in terms of clauses 27.4.1.17 and 27.4.1.18 of the SATAWU Constitution. The main grounds of suspension were on the basis that they contravened the Constitution; failed to comply and/or abide lawful instructions; were sowing divisions in the Union; and brought the image of the organisation into disrepute. On the same date, and despite their precautionary suspensions, first and second applicants proceeded to convene the contentious meeting. It is common cause that fourth respondent attended and witnessed the controversial meeting.

[14] On 15 September 2021, (6 days after the precautionary suspension notices), the second applicant disputed his suspension letter with reference to the provisions of clause 42 of the Constitution. First applicant also disputed his suspension in writing. Fifth respondent responded as follows in a letter dated 30 September 2021:

- “1. *The Secretariat did not unilaterally decide to place you on suspension. On the contrary, the President was not only aware but authorised the latter decision to safeguard the managerial credibility of the organisation.*
2. *In your suspension letter, it was indicated that should you require further information, both President and General Secretary are to be contacted. The intention for this was to allow*

internal processes to unfold as opposed to approaching the Courts.

...

5. *In safeguarding the organisation from further reputational damage, you are to remain suspended until a time that your matter is heard, deliberated on and resolved in a formal structural meeting of the organisation."*

[15] Third and fourth applicants' suspensions arise from a different set of facts. On or about 6 October 2021, it came to the attention of fourth respondent that an improper letter was disseminated by the third and fourth applicants to all SATAWU's national office bearers. The letter was widely circulated amongst Union members. Respondents contended that the letter intended to undermine, subvert, and impair the Union's good name, reputation, and esteem amongst the SATAWU community, and discredited the President of SATAWU, General Secretary and the fourth respondent, amongst others.

[16] Whilst investigating the veracity and authenticity of the said letter, the Provincial Secretary issued a precautionary suspension letter to the third and fourth applicants. The letters specifically note the reasons for the suspension. Third and fourth applicants were advised that they were at liberty to communicate with the Provincial Secretary should they require further information regarding their suspensions.

[17] It is common cause that first and second applicants were suspended on 9 September 2021. Third and fourth applicants were suspended on 8 October 2021. Respondents submitted that the applicants were aware that their suspension were not final, but precautionary, pending referral to the relevant

formal structures such as the disciplinary committee as envisaged in clause 42 of the Constitution of SATAWU.

[18] Applicants submitted that the letters sent by Mr Matana (fourth respondent) to third and fourth applicants, were in violation of the Constitution for the following reasons:

- 18.1 Firstly, the notice to suspend does not give the applicants the right to respond;
- 18.2 Second, fourth respondent had no legal standing to issue the suspension notices as the POBC was not properly constituted since the other members, including first and second applicant, have been suspended; and
- 18.3 Third, the Provincial Secretary and the POBC are not empowered by the Constitution to suspend the third and fourth applicants as their office is excluded from being disciplined by the POBC or fourth respondent.

[19] Applicants argued that in terms of clauses 22.1 of the Constitution, the management of the Union vests with the POBC, subject to the directions of the PC (Provincial Congress), PEC, NC (National Congress), NPC (National Policy Conference), and the NOBC (National Office Bearers Committee). The POBC, of which Mr Matana (fourth respondent) is a member, is or should be composed of the Provincial Chairperson (first applicant), Provincial Deputy Chairperson (second applicant), Provincial Treasurer, and the Provincial Secretary (Mr Matana) in terms of clause 22.3.1. Furthermore, clause 22.5.2 provides that the quorum of the POBC is 3 out of 4 members of the Committee.

Consequently, even if fourth respondent had the power to suspend, he would not be able to do so as the POBC did not have three (3) active members to enable it to make a decision, and as such, its decisions would be unlawful.

[20] Applicants argued further that the Constitution does not make provision for fourth respondent or the Committee, to which he belongs, to suspend the third and fourth applicants. Furthermore, the disciplinary code does not provide for powers to suspend on a precautionary basis, and suspension only exists as a sanction in terms of clauses 42.3.4.3 and 42.3.4.5.

[21] Applicants contended that neither fourth nor fifth respondent had the requisite authority to suspend them based on the factual circumstances of the case. Applicants expressed the view that given that they did not have the necessary authority, and given that neither the PEC nor the CEC had convened to consider the charges, the charges in and of themselves are flawed. Applicants noted that **Magashule v Ramaphosa and Others** [2021] 3 All SA 887 (GJ) on which the respondents relied to justify the suspensions, is distinguishable from this matter for the obvious reason that the ANC constitution contains a provision allowing for precautionary suspension, whereas the SATAWU Constitution does not.

[22] Applicants relied on **Lucky Zondo and 12 Others v South African Transport and Allied Workers Union ('SATAWU')**, unreported judgment case no: J1256/15, and **South African Transport and Allied Workers Union (SATAWU) v Zondo and Others** (J715/15 [2015] ZALCJHB126), and argued that both matters confirmed the underlying principles that:

- 22.1 the relationship between the parties is determined by the SATAWU Constitution;

22.2 the SATAWU Constitution does not make any provision for precautionary suspension of officials pending actual or envisaged disciplinary proceedings; and

22.3 the suspensions were, and are *in casu*, unlawful and liable to be set aside as precautionary suspension is not permitted in terms of the Constitution and only permitted as a disciplinary sanction once the prescribed disciplinary processes have been complied with. It is therefore not permitted for the general secretary or other individual functionary to arbitrarily impose suspensions on union officials and any such conduct is ultra vires the Constitution.

[23] Fourth respondent pointed out that he had performed his functions and acted within the powers conferred upon him as envisaged in section 22.4 of the Constitution. He stated that it falls within his mandate to act against any person who contravenes the Constitution. Fourth respondent contended that as the only standing POBC member, he was vested with the responsibility to manage the Western Cape Division between PEC meetings, in accordance with Clause 22.1 of the Constitution which provides that:

"Between meetings of the PEC, management of the union will vest in the POBC [Provincial Office Bearers Committee] subject to the direction and decisions of the PC and the PEC."

[24] Respondents argued that the applicants misunderstood the essence and legal basis of their suspension, and that they have not been finally or punitively suspended. Furthermore, they have merely been put on a temporary/holding/precautionary suspension pending investigations and

referral to a “*formal structural meeting of the organisation*” i.e. a disciplinary hearing. With reference to **Magashule v Ramaphosa and Others** [2021] 3 All SA 887(GJ), respondents contended that a precautionary suspension is certainly not uncommon, nor is it unlawful.

[25] With reference to **Long v South African Breweries (Pty) Ltd and Others 2019 6 BCLR 609 (CC)** respondents noted that the Constitutional Court confirmed the nature of a precautionary suspensions, and stated that “...*where the suspension is precautionary and not punitive, there is no requirement to afford the employee an opportunity to make representations.*” The Court held that the fairness of a suspension must be assessed by determining first, whether there is a fair reason for suspension and secondly, whether it prejudices the employee. Furthermore, that suspension for purposes of an investigation is competent, even if there was no opportunity for pre-suspension representations, and any prejudice will be ameliorated if the suspension is on full pay.

[26] Respondents pointed out that in **Magashule v Ramaphosa and Others** (supra), the Court recognised that the principles relating to suspensions as set out in **Long** (supra) are also applicable to voluntary associations. Respondents emphasized that precautionary suspensions are clearly distinct from disciplinary action, and it would be absurd to suggest, as the applicants implicitly do, that members of an association could carry on with misdemeanors, sow division, and bring the organisation into disrepute, without any holding mechanisms to deal with transgressions.

[27] Respondents therefore argued that the suspensions in this matter are precautionary and not punitive, and that there is no requirement to afford a

member an opportunity to make representations prior to suspension. Respondents emphasised that in any event, the suspension notices did provide the applicants with an opportunity to communicate with the Provincial Secretary regarding the suspension notices, but they elected not to do so.

[28] Respondents contended that Clause 42 of the Constitution is not applicable in this matter, and the applicants incorrectly assumed that they have been finally suspended, despite being advised the opposite. Respondents stated that clauses 27.4.1.17 and 27.4.1.18 of the Constitution specifically authorized the NOBC:

“28.1 To perform any other function that the NOBC is empowered or required to perform in terms of this Constitution; and

28.2 To do all lawful things that promote the interest of the union, its aims and objectives.”

[29] Respondents contended that the ambit of these clauses is wide and is structured to ensure that the interest of the Union is at all times promoted. First and second applicants conducted themselves outside of the framework of the SATAWU Constitution. Respondents submitted that the suspensions in this matter were merely put into operation by way of good administration and to maintain the proper and efficient functioning of the Union. The decision to place the first and second applicants on a precautionary suspension was lawfully taken by a quorate meeting of the NOBC and the rationale for the decision further cannot be faulted. Respondents therefore submitted that they do have legal standing to issue the precautionary suspension letters, the applicants were given a right to respond, and the Constitution of SATAWU provides for

disciplinary measures such as precautionary suspensions when the broad disciplinary powers are considered. Respondents therefore contended that the applicants are not entitled to the relief they seek.

[30] The main issue for determination in this matter is whether the said suspensions were constitutionally permissible and thus whether same was lawful. It is evident that a central feature of the dispute between the parties revolve around the interpretation of the provisions of Clause 42 of the SATAWU Constitution which provides as follows:

“42. Discipline of members, office-bearers, elected officials and shop stewards

“42.1. Any member, shop steward, office bearer or elected official may be disciplined by the union, in terms of this paragraph, for:

- 42.1.1. acting in a manner contrary to this Constitution;
- 42.1.2. acting contrary to the interests of the union and its members, or any federation of unions to which the union belongs;
- 42.1.3. failing to attend 2 consecutive meetings of the CEC or 3 consecutive meetings of any other constitutional bodies which the person is required to attend;
- 42.1.4. failing to be in good standing with the union; or
- 42.1.5. committing any other act of misconduct.”

[31] Clause 42.3 provides as follows:

“42.3. Establishment and Powers of the Disciplinary Committees

42.3.1. The CEC (Central Executive Committee) and PEC's (Provincial Executive Committee) must establish Disciplinary Committees.

42.3.2. The relevant PEC Disciplinary Committee disciplines members, shop stewards, elected officials, LOBC, Sector Office Bearers and staff members.

42.3.3. The CEC Disciplinary Committee disciplines provincial and national elected officials, office bearers and CEC members.

42.3.4. If the Disciplinary Committee believes that the charge has been satisfactorily proven it may:

42.3.4.1. remove the person concerned from his or her office in the union;

42.3.4.2. expel the person concerned from the union or dismiss such person from his or her employment in the union, as the case may be;

42.3.4.3. suspend him or her for a definite period from his or her position, or employment, in the union;

42.3.4.4. suspend him or her from membership, position in the union or his or her employment in the union;

42.3.4.5. impose a fine or suspend him or her from membership, position in the union or his or her employment in the union pending payment of the fine; or

42.3.4.6. impose any other fair and appropriate penalty.

42.3.4.7. in disciplining members, shop stewards, elected officials or office-bearers the relevant

Disciplinary Committee must follow the disciplinary procedure set out in paragraph 42.4 below.”

[32] Clause 25.7.2 provides that the General Secretary is responsible for the proper administration of the union and the general co-ordination of its activities, including the institution of disciplinary hearings for any staff member. The General Secretary is also responsible for the supervision of provincial secretaries. Fifth respondent is the General Secretary for the Western Cape branch of first respondent. Fifth respondent relies on powers conferred on National Office Bearers under the guise of the general duties of those office bearers to perform its constitutional functions and “*to do all lawful things that promotes the interests of the union, its aims and objectives and policies*”. In my view these provisions may not be interpreted to substitute the clear and unambiguous provisions in the Constitution relating to disciplinary procedures and the exercise of disciplinary powers.

[33] I am of the view that due to the fact that first and second applicants are provincial office bearers, and thus elected officials, only the Central Executive Committee (CEC) holds authority to institute disciplinary steps against them, as envisaged in clause 42.3.3 of the Constitution. I am therefore in agreement with the applicants that Mr Mazibuko (fifth respondent), was not empowered to suspend first and second applicant.

[34] The Provincial Office Bearers Committee (POBC) comprises of the Provincial Chairperson, Provincial Deputy Chairperson, Provincial Treasurer and Provincial Secretary. The quorum for meetings of the POBC is 3 out of 4

members of the Committee. Any decisions made by the POBC in the absence of a quorum are in violation Constitution of SATAWU. Fourth respondent is the Provincial Secretary, and a member of the POBC. The first and second applicants are the Chairperson and Deputy Chairperson of the PEC in the Western Cape. With regard to the disciplinary powers and functions of the POBC section 22 of the Constitution *inter alia* provides as follows:

“22. Powers and functions of the POBC

- 22.4.1.10. to institute disciplinary action against any staff member other than elected officials, LOB and Sector Office Bearers, in accordance with the policies and procedures of the union;
- 22.4.1.11. to perform any other function that the POB is empowered or required to perform in terms of this Constitution; and
- 22.4.1.12. to do all lawful things that promotes the interests of the union, its aims and objectives and policies.”

[35] Fourth respondent, in his capacity as Provincial Secretary of first respondent and a member of the POBC relied on the provisions of Clause 22 to assert his powers to suspend the fourth and fifth applicants who were local office bearers. He argued that it falls within his mandate to act against any person who contravenes the Constitution. However, Clause 22.4.1.10 clearly does not empower the POBC to institute disciplinary action against local office bearers.

[36] The Constitution provides that the Provincial Executive Committee (PEC) and the Central Executive Committee (CEC) must establish disciplinary

Committees which will have the requisite authority to discipline elected officials, depending on the level of the position held by the relevant official. There is a clear hierarchy in place in respect of which disciplinary committee is empowered to deal with the discipline of members of the Union. Clause 42 unequivocally provides that provincial and national elected officials and office bearers, as well as CEC members fall within the ambit of the CEC Disciplinary Committee. The remaining categories of members which include staff members, shop stewards, elected officials (excluding provincial and national elected officials), LOBC, Sector Office Bearers and staff members are subject to the PEC Disciplinary Committee. It therefore appears that local office bearers such as third and fourth applicants are subject to the authority of the PEC Disciplinary Committee.

[37] Clause 23.2 provides for the composition of the PEC as follows:

“23.2 Composition of the PEC

- 23.2.1. The PEC is composed of:
 - 23.2.1.1. the POB (Provincial Office Bearers);
 - 23.2.1.2. Chairpersons and Secretaries of the Provincial Sector Councils;
 - 23.2.1.3. The LOB (Local Office Bearers); and
 - 23.2.1.4. Two office bearers of the Provincial Gender and Provincial Education Committee;
 - 23.2.1.5. All staff of the province and any other officials or staff that the PEC may require may attend the PEC

in their *ex officio* capacity i.e. they will have speaking but no voting rights.”

[38] In terms of Clause 22 the POBC may institute disciplinary action against certain categories of members in accordance with the policies and procedures set out in Clause 42. Fourth respondent, Mr Matana, is a member of the POBC and by implication a member of the PEC as envisaged in Clause 23.2.1.1. Fourth respondent may accordingly be involved in disciplinary matters, firstly to institute disciplinary action against any staff member other than elected officials, local office bearers and sector office bearers; and secondly, as a duly appointed member of the PEC Disciplinary Committee as envisaged in Clause 42.3.2. A member of the POBC does not automatically become a member of the PEC Disciplinary Committee since the Constitution clearly states that the “*CEC and PEC must establish Disciplinary Committees.*”

[39] I cannot discern from the provisions of the Constitution on what basis fourth respondent have any authority to discipline and suspend third and fourth applicants who are local office bearers. In my view applicants correctly argued that in terms of Clause 22.4.1.10 the POBC does not have the necessary authority to institute disciplinary action against elected officials, and local office bearers. Furthermore, first and second applicants were already suspended on 8 October 2021 when fourth respondent purported to suspend third and fourth applicants. Consequently, the suspension of first and second applicants rendered the POBC inquorate, and no valid decisions could be taken under the circumstances prevailing at the time.

[40] The SATAWU Constitution clearly vests disciplinary powers within the sole domain of the CEC and PEC. It is common cause that neither of these

structures were involved in the processes which ultimately led to the suspension of the applicants. Significantly, the Constitution empowers the Disciplinary Committee to impose suspension as a sanction once a charge had been satisfactorily proven after a disciplinary hearing.

[41] I am accordingly satisfied that the SATAWU Constitutional framework does not empower fourth and fifth respondent to exercise any disciplinary powers of suspension over the applicants, and the purported precautionary suspensions fall to be set aside.

[42] With regard to costs, the applicants stated that they have made extensive efforts and representations to persuade respondents to withdraw their suspensions, to no avail. I am accordingly satisfied that there is no reason why the costs should not follow the result.

[43] In the result the following order is made:

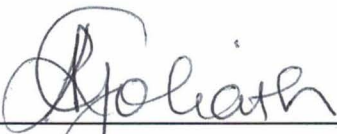
43.1 The suspension of the first and second applicants on 9 September 2021 is declared to be unlawful, invalid and null and void *ab initio*.

43.2 The suspension of the third and fourth applicants on 8 October 2021 is declared to be unlawful, invalid and null and void *ab initio*.

43.3 It is directed that first and second applicants be reinstated on the same terms, duties and responsibilities that they had before their suspension on 9 September 2021.

43.4 It is directed that the third and fourth applicants be reinstated on the same terms, duties and responsibilities that they had before their suspension on 8 October 2021.

43.5 Respondents are ordered to pay the applicants' costs, the one paying, the other to be absolved.



DEPUTY JUDGE PRESIDENT GOLIATH