



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case No: 6148/2018

In the matter between:

MAFUBE LOCAL MUNICIPALITY
and

APPLICANT

FANIE JAMES MAZIBUKO

1st RESPONDENT

BENNIE VOORMAN MOHLAKOANE

2nd RESPONDENT

MORENA JAN TSOTSETSI

3rd RESPONDENT

JEMINA PHINDI NHLAPO

4th RESPONDENT

MMATSWERE SANA CYNTHIA TSOTSETI

5th RESPONDENT

FANIE JACOB NHLAPO

6th RESPONDENT

RAYMOND KHUMALO

7th RESPONDENT

ISHMAEL MTHOLO

8th RESPONDENT

SOUTH AFRICAN MUNICIPAL WORKERS UNION
(MAFUBE LOCAL MUNICIPALITY

9th RESPONDENT

JUDGMENT

CORAM: NAIDOO J

HEARD ON: 16 May 2019

DELIVERED ON: 30 May 2019

INTRODUCTION

[1] The applicant approached this court on an urgent basis on 7 December 2018 and obtained an interim order, in terms of which a rule *nisi* was issued, returnable on 14 February 2019, calling on the respondents, to show cause why the following orders should not be made final:

- 1.1 The unprotected strike action by the respondents is declared illegal.
- 1.2 The respondents are interdicted from:
 - 1.2.1 Intimidating the applicant's employees who are not taking part
in the unprotected strike from reporting for work and performing their duties;
 - 1.2.2 Instigating, encouraging or causing any other person to be involved or take part in the said unprotected strike, or cause disturbance to applicant's operation;
 - 1.2.3 Making use of any other person, entity or association to engage in the said unprotected strike;
 - 1.2.4 Threatening and insulting the applicant's management staff.

- 1.3 The Respondents and other members of the 9th respondent who support the said unprotected strike are ordered to report to their duties at the applicant and render their services in respect thereof – (my underlining);
- 1.4 The respondents are ordered to return all the keys of the applicant (including the offices and facility keys)
- [2] The orders mentioned in 1.1 to 1.4 above were to serve as an interim interdict with immediate effect. The order also made provision for the manner of service of the application and court order. Adv PS Mphuloane appeared for the applicant in this court and Adv S Grobler appeared for the respondents.

BACKGROUND

- [3] The applicant alleges that the respondents, who are employees of the applicant, embarked on a violent, unprotected strike, where they intimidated other employees who were not participating in the strike, and took possession of office and other keys, forced employees out and locked their offices. It appears that the reason for the strike was that the respondents, who were not permanently employed, wanted the applicant to offer them permanent positions. The respondents deny the applicant's version and allege that a dispute arose between them and the applicant, over non-payment of certain third party contributions, such as pensions, medical aid, Workmen's Compensation and income tax, to name a few. They approached the management of the applicant, ostensibly to discuss these issues, but it seems that the interaction degenerated into an acrimonious confrontation.

ISSUES

- [6] The court is called upon to determine the following issues:
- 6.1 The one crisp issue raised by the respondents is that of jurisdiction. They assert that this matter lay exclusively within the jurisdiction of the Labour Court, therefore ousting this court's jurisdiction.
- 6.2 In its Replying Affidavit, the appellant asserts that the Answering Affidavit of the respondents was filed late, has not been accompanied by a substantive application for condonation, and should therefore be disregarded.

THE LAW

- [7] Mr Grobler referred to several cases in his Heads of Argument in support of his contention that this court is not vested with jurisdiction to hear this matter. A convenient starting point would be to set out the relevant provisions of the Labour Relations Act 66 of 1995 (the LRA), which Mr Grobler also referred to in asserting that the LRA supports his contentions. The respondents' contention, in essence, is that the applicant throughout its papers, and specifically in the relief it seeks in the Notice of Motion refers to an "unprotected strike", and as such, the conduct it seeks to interdict is conduct in furtherance of such a strike. Therefore section 68(1)(a)(i) clothes the Labour Court with exclusive jurisdiction to hear this matter.

[8] Section 68(1)(a)(i) provides as follows:

‘(1) In the case of any *strike* or *lock-out*, or any conduct in contemplation or in furtherance of a *strike* or *lock-out*, that does not comply with the provisions of this Chapter, the Labour Court has exclusive jurisdiction-

(a) to grant an interdict or order to restrain –

(i) any person from participating in a *strike* or any conduct in contemplation or in furtherance of a *strike*; “

Section 157(1) and (2) further clarify the jurisdiction of the Labour Court and when the High Court has concurrent jurisdiction with the Labour Court:

“Jurisdiction of Labour Court

(1) Subject to the Constitution and section 173, and except where *this Act* provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of *this Act* or in terms of any other law are to be determined by the Labour Court.

(2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from-

(a) employment and from labour relations;”

[9] As I indicated, I was referred to a number of decisions in which it was held that the Labour Court has exclusive jurisdiction to deal with all matters it is empowered to deal with in terms of the LRA, including any strike as referred to in section 68(1) [**Sappi Fine Papers (Pty) Ltd (Adamas Mill) v Paper Printing Wood and Allied Workers Union and Another (1998) 19 ILJ 246 (SE); Transport and General Workers Union and Others v Kempton City Syndicate & Another (2001) 22 ILJ 104 (W)**].

In the matter of **Mondi Paper v Paper Printing Wood and Allied Workers Union & Others 1997 (18) ILJ 84 (D)**, the employer complained that in the course of strike action embarked upon by its employees, they interfered with and sabotaged its operation and intimidated non-striking workers. The employer approached the High Court and obtained a rule *nisi* interdicting certain conduct of the employees. The court held that the notion that the High Court had limited jurisdiction to interdict intimidation while other incidents and actions which amounted to improper picketing should be referred to the Labour Court offended against the court's duty to avoid proliferation and a multiplicity of costly court actions. The court held that it had no jurisdiction to have granted the initial rule and discharged it.

- [10] A copy of the judgment in **Central University of Technology v The National Education, Health and Allied Workers Union Case number 892/2006, an unreported judgment handed down on 25 May 2006** (CUT), and emanating from this Division, was attached to Mr Grobler's Heads of Argument. In that matter, there were certain threatened actions in the event of what were essentially labour disputes not being resolved. The employer obtained a rule *nisi* in the High Court, interdicting certain actions by its employees. After analysing the evidence presented by the employer and applying the provisions of the LRA, the court, as per Van der Merwe J (as he then was), held that the High Court did not have jurisdiction to grant the rule *nisi* and discharged it.

EVALUATION

- [11] In the present matter, unlike in the CUT matter, the applicant in no uncertain terms referred to an unprotected strike, and in fact sought relief to prevent further unlawful conduct in the furtherance of that strike. It is not necessary for this court to analyse the meaning of “strike action” in the context of the actions of the respondents, or to determine whether such actions constitute strike action. The applicant declares that it is unprotected strike action, and bases its case thereon. To my mind, this matter falls squarely within the province of the LRA, which is also clothed with exclusive jurisdiction to grant interdicts restraining unlawful conduct in the furtherance of an unprotected strike. The remarks of the court in *Mondi* and *CUT*, in this respect, are directly applicable and relevant to the present matter. I accordingly align myself therewith.
- [12] The applicant persisted with its insistence that it moved its application in the correct forum. It did not deal at all with the provisions of the LRA, particularly section 68(1), even when prompted by the court to do so during argument in court. The applicant advocated the very notion of proliferation and multiplicity of actions that was rejected and vilified in *Mondi*. Mr Mphuloane asserted that the applicant was obliged to approach this court on an urgent basis as a result of the unprotected strike and unlawful actions of the respondents. He argued that while this court does not have jurisdiction in respect of the strike, the unlawful actions of the respondents clothed this court with the jurisdiction to hear the matter and to have granted the rule *nisi* in December 2018.

- [13] In my view, the disputes between the parties and the actions of the respondents are matters regulated by and provided for in the LRA, which confers exclusive jurisdiction upon the Labour Court to deal with such matters. The High Court has concurrent jurisdiction with the Labour Court only in the event of an alleged or threatened violation of a fundamental and constitutionally entrenched right. This was certainly not pleaded and was not the case of the applicant. In the light of the provisions of the LRA, which I have outlined above and the dicta in the various cases I have mentioned, the submissions of the applicant that this court has the jurisdiction to hear this matter are misplaced and unsustainable. This court did not have jurisdiction to hear this matter and to grant the rule *nisi* it did on 7 December 2018.
- [14] With regard to the late filing of the respondents' Answering Affidavit, it is common cause that there were communications between the legal representatives of the parties regarding this. The applicant's legal representative indicated that the respondents may file their Answering Affidavit late, and the latter accepted that it may be done so without the need for a substantive application for condonation. Mr Mphuloane alleged that the applicant's attorney did agree to the late filing of the affidavit but said that "there are Rules". Nothing further or specific was said in this regard, nor was it reduced to writing that the applicant expected a substantive application for condonation to be filed. Mr Grobler denied that the understanding between the parties was that a substantive application for condonation should be brought, and I am inclined to accept that this

is the more probable outcome of the interactions between the parties. In any event, nothing much turns on the late filing of the Answering Affidavit, except a possible advantage that the applicant is belatedly seeking in order to oust the valid defence put up by the respondents. The court exercises the discretion it has and grants condonation for the late filing of the Answering Affidavit, to the extent necessary.

ORDER

[15] In the circumstances, I make the following order:

The rule *nisi* dated 7 December 2018 is dismissed with costs

S. NAIDOO, J

On behalf of Applicant:

Instructed by:

Adv. P Mphuloane

Ntsoane Attorneys

Pretoria

c/o Pieter Skein Attorneys

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(Ref: Pieter Skein)

On behalf of Respondents:

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