

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

Appeal No.: A263/2013

In the appeal of:

THE SOUTH AFRICAN MUNICIPAL WORKERS UNION

Appellant

and

SIPHO GROOTBOOM
GODFREY MOLEHENG
SINDELANI THOMAS
G D THIBELETSA
B G SIKOTI
D Y MDLELENI
M J MALIEA
M SWARTS
M J MASHIBINI
V E BOCIBA
S K PHORI
S S SIBOKA
T J KHOHO
M E MASHIBINI
L T MAKUTSU
T KGOHLOKOANE

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent
7th Respondent
8th Respondent
9th Respondent
10th Respondent
11th Respondent
12th Respondent
13th Respondent
14th Respondent
15th Respondent
16th Respondent

CORAM: VAN DER MERWE J, DAFFUE J *et* MOENG AJ

JUDGMENT: VAN DER MERWE, J

HEARD ON: 3 NOVEMBER 2014

DELIVERED ON: 11 DECEMBER 2014

[1] On 23 May 2013, on the application of the appellant, Fischer AJ issued a rule nisi operating as interim interdict with immediate

effect, calling upon the respondents to show cause why the following order should not be made final:

- “3.1 The first, second and third respondents are interdicted and restrained from further, whether directly or indirectly, instructing, coaxing, cajoling or in any other manner persuading any of the other respondents before court or any other person, to assault, threaten, harass, molest or in any way intimidate the applicant’s provincial and regional employees;
- 3.2 The fourth to sixteenth respondents are interdicted and restrained from directly or indirectly, assaulting, harassing, threatening, molesting or in any other way cause any form of harm to the applicant’s provincial or regional employees;
- 3.3 The first to sixteenth respondents are ordered to immediately hand over to the sheriff of this court, the keys kept by them of the applicant’s provincial and regional offices in Bloemfontein, situated at Cricket Street, and to allow access to these offices to the applicant and its employees;
- 3.4 The first to third respondents are interdicted and restrained from further holding any meetings in the name of the applicant, to congregate in any manner or fashion under the name of the applicant and to either individually or collectively, attend to or visit the provincial or regional offices of the applicant;
- 3.5 The first to sixteenth respondents be ordered to pay the costs of the application jointly and severally, payment by the one, the other to be absolved, on a scale as between attorney and own client.”

[2] On the extended return date thereof, De Wet AJ discharged the rule nisi with costs. The appeal is against this order. In the absence of De Wet AJ leave to appeal to this court was granted by Molemela J.

- [3] The appellant formally withdrew the application against the sixth and seventh respondents when it filed its replying affidavits. Before us the appellant rightly did not persist in the appeal in respect of the eighth, ninth and thirteenth respondents. A reference below to the respondents should therefore be understood as excluding the sixth, seventh, eighth, ninth and thirteenth respondents. Read with the rule nisi, the appeal therefore concerns two groups of respondents. These are the first, second and third respondents on the one hand and the fourth, fifth, tenth, eleventh, twelfth, fourteenth, fifteenth and sixteenth respondents (the worker respondents) on the other.
- [4] The appellant is a duly established trade union. It is recognised as such by the Mangaung metropolitan municipality (the municipality). The appellant has a regional office at City Hall, Bloemfontein and a provincial office in Cricket Street, Bloemfontein. The respondents are all employed by the municipality in its water and sanitation department. The first to third respondents were part-time shop stewards of the appellant in this department.
- [5] After the municipality became a metropolitan municipality, its staff establishment had to be restructured. The appellant negotiated with the municipality in this regard. By 16 May 2013 the respondents and other employees of the appellant employed by the municipality, had for some time been dissatisfied with the process of restructuring. In a petition directed to the appellant, these workers inter alia called for the removal of the full-time shop stewards of the appellant at the municipality. These are employees of the appellant.

- [6] On 16 May 2013 the appellant in turn decided to suspend the first to third respondents as its part-time shop stewards. Letters of suspension were served on them on Friday 17 May 2013.
- [7] On Monday 20 May 2013 a group of approximately 175 employees of the water and sanitation department of the municipality gathered and moved to the appellant's regional office and thereafter to the appellant's provincial office. On 21 May 2013 a group of about 500 employees of the municipality gathered and again moved first to the regional office of the appellant and then to its provincial office.
- [8] The evidence of the appellant was that on 20 and 21 May 2013 the groups of employees harassed, threatened and assaulted its employees at its regional and provincial offices. De Wet AJ rejected the respondents' denial hereof as clearly untenable and farfetched and this finding was rightly not challenged on appeal. The harassment, threats and assaults of the appellant's employees were clearly intended to disrupt the affairs of the appellant. The appellant's evidence was also that on 20 May 2013 the group of workers locked the appellant's regional office and took the key away and that on 21 May 2013 it did the same in respect of the provincial office. As a result the appellant was unable to obtain access to any of these offices. The respondents actually admit that the fourteenth respondent and another person locked the regional office after, according to the respondents, the appellant's staff left the office unattended for no apparent reason. The respondents did not explain what happened to this key so that it follows that it must have been taken away by the employees. In the light thereof that

the respondents themselves say that when the group of employees attended the provincial office they were angry and frustrated and insisted that the provincial offices also be locked, the evidence of the appellant in this regard can safely be accepted. It is clear to me that on each occasion these groups of employees had a common goal to disrupt the affairs of the appellant by intimidation of its employees and closure of its offices.

- [9] The rule nisi called for a consideration of whether the first to third respondents caused the groups of workers to gather and to act as aforesaid. The court a quo failed to do so. The person that served the letters of suspension on the first to third respondents declared under oath that at the time they inter alia said 'that they shall make sure that the applicant closes its doors in Bloemfontein'. This evidence was met with a bare denial. I am convinced that in these circumstances the bare denial did not result in a real, genuine or bona fide dispute of fact. (See **Wightman t/a JW Construction v Headfour (Pty) Ltd & Another** 2008 (3) SA 371 (SCA) para 13.) As I have said, what the first to third respondents said on the Friday, is exactly what happened on the following Monday and Tuesday. In the circumstances the probabilities are overwhelming that the events of 20 and 21 May 2013 were instigated by the first to third respondents, irrespective of whether they were then present or not.

- [10] It is common cause that the worker respondents were part of the aforesaid groups of workers on 20 and 21 May 2013. The court a quo nevertheless refused to grant relief to the appellant, mainly on the ground that unless it proved that a respondent personally

committed an act of harassment, threatening or assault, the appellant had to prove a common purpose on the principles applicable to criminal law. This approach is erroneous and too narrow. Criminal law principles are not applicable. The trite requirements for a final interdict must be applied. The worker respondents were part and parcel of and clearly made common cause with the groups of workers that invaded the clear rights of the appellant to undisturbed possession of its offices and to carrying on of its business.

[11] The first to third respondents and the worker respondents committed or participated in actual injury and invasion of rights in respect of the appellant. As this is falsely denied by them, it does not lie in the mouths of the respondents to say that further invasion of rights was not reasonably apprehended. I am satisfied that the appellant at least reasonably apprehended further injury and invasion of its rights. This is inter alia evidenced by the fact that the number of the group of the workers grew considerably from 20 May 2013 to 21 May 2013, that the keys of the offices were not returned and that according to the respondents their grievances remained unresolved.

[12] It follows that the rule nisi should have been confirmed in respect of the respondents. I do not think that a special costs order is justified.

[13] The following order is made:

1. The appeal is upheld.

2. The appellant is ordered to pay the costs of appeal of the eighth, ninth and thirteenth respondents. The first, second, third, fourth, fifth, tenth, eleventh, twelfth, fourteenth, fifteenth and sixteenth respondents are jointly and severally ordered to pay the costs of appeal of the appellant.
3. The order of the court a quo is set aside and replaced with the following:

“1. The rule nisi is discharged in respect of the sixth, seventh, eighth, ninth and thirteenth respondents, with costs.

2. Paragraphs 3.1 and 3.4 of the rule nisi are confirmed in respect of the first, second and third respondents.

3. Paragraph 3.2 of the rule nisi is confirmed in respect of the fourth, fifth, tenth, eleventh, twelfth, fourteenth, fifteenth and sixteenth respondents.

4. Paragraph 3.3 of the rule nisi is confirmed in respect of the first, second, third, fourth, fifth, tenth, eleventh, twelfth, fourteenth, fifteenth and sixteenth respondents.

5. The first, second, third, fourth, fifth, tenth, eleventh, twelfth, fourteenth, fifteenth and sixteenth respondents are jointly and severally ordered to pay the costs of the application.”

I concur

J P DAFFUE, J

I concur

L B J MOENG, AJ

On behalf of the appellant: Adv S Grobler
Instructed by:
Kramer Weihmann & Joubert
BLOEMFONTEIN

On behalf of the respondents: Adv S J Reinders
Instructed by:
Jacobs Attorneys
BLOEMFONTEIN

/mvheerden