

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, DURBAN

**Reportable
Case no: DA 9/2022**

In the matter between:

SOUTH AFRICAN CLOTHING AND TEXTILE WORKERS UNION

Appellant

and

BARGAINING COUNCIL FOR THE FURNITURE MANUFACTURING

INDUSTRY - KWAZULU-NATAL

First Respondent

THE FURNITURE KING

Second Respondent

HENWOOD BEDDING

Third Respondent

eSPEC

Fourth Respondent

KITCHEN CLASSICS

Fifth Respondent

GRANITE KITCHEN STUDIO

Sixth Respondent

SUTHERLAND HOME FURNITURE

Seventh Respondent

NATFURN

Eighth Respondent

COMFY LOUNGE

Ninth Respondent

SMITH & DOORS

Tenth Respondent

AFRIGRAN

Eleventh Respondent

GOMMA GOMMA

Twelfth Respondent

MJ BEDDING

Thirteenth Respondent

YOUR ADVANTAGE

Fourteenth Respondent

BAWAS FURNITURE

Fifteenth Respondent

SIMUNYE FURNITURE

Sixteenth Respondent

**HDS CUT AND EDGE/SOUTH COAST BOARD
AND TIMBER**

Seventeenth Respondent

Heard: 28 February 2023

Delivered: 02 May 2024

Coram: Waglay JP, Coppin JA et Savage AJA

JUDGMENT

COPPIN JA

[1] This is an appeal with the necessary leave against the judgment of the Labour Court (Hiralall AJ) in which that court granted an order (except the costs' aspect) to the following effect in an application brought by the first respondent against the appellant and a counter-application by the latter against the former:

(a) [The appellant] is not entitled to organize and recruit in the industry covered by the [first respondent];

b) The actions of [the appellant] in recruiting in the industry covered by the [first respondent] are found to be *ultra vires* its constitution and accordingly invalid, this to the extent that the extension of scope has not been registered with the [R]egistrar of [L]abour;

- c) The members so recruited by [the appellant] are accordingly not members of [the appellant];
- d) The operation of this order is not retrospective in relation to union levies already collected from such members;
- e) Further deduction of union levies in respect of such members is suspended pending the admission of [the appellant] to the [first respondent] bargaining council;
- f) Alternatively to (e) above, any further levies deducted in respect of such members is to be held in a separate account to be administered by the [first respondent] pending admission of [the appellant] to the bargaining council;
- g) The [first respondent] is to pay the costs of [the appellant] in respect of [the application and the counter-application].'

[2] The first respondent has delivered a written notice indicating that it will abide by this court's decision in respect of the appeal. None of the other respondents, which are principally affected employers in the furniture industry, participated in the hearing, either in this court or in the court *a quo*. In addition, the Registrar of Labour had not been cited as a party at all, that is in neither the application nor the counter-application. Thus, this court on appeal did not have the benefit of argument countering that of the appellant.

[3] The issue at the heart of the merits of this case is a legal, interpretational one, and in particular, whether the appellant is required to comply with section 101 of the Labour Relations Act¹ (LRA), which regulates the change of the constitution or name of registered trade unions and employers' organisations, when the appellant, on the

¹ Act 66 of 1995, as amended.

strength of a provision in its constitution, by resolution extended the scope of its membership to include employees in the furniture industry.

[4] The first respondent, refusing to admit the appellant as a party to that council (as contemplated in section 56 of the LRA) contended that the appellant was obliged to comply with section 101 before recruiting members in the furniture industry and the appellant, which had recruited members in that industry and had levies deducted by their employers, disagreed with that contention. This ultimately led to the first respondent seeking a declaratory order in the Labour Court, on an urgent basis, to that effect.

[5] The application was in two parts, A and B. In terms of the former, the first respondent sought urgently, in the interim, to suspend the deduction by the second to the seventeenth respondent of union levies in favour of the appellant, and essentially to administer those levies that had already been deducted by the said respondents in favour of the appellant. In terms of Part B, the first respondent sought, essentially, as a first main alternative, an order declaring, firstly, that the appellant was not entitled to organise and recruit members in the industry covered by it; secondly, that the appellant's actions of recruitment in that industry are *ultra vires* its constitution, and accordingly, invalid; thirdly, that the members so recruited by the applicant are therefore not its members. It also sought an order that the appellant return the levies collected from those members and some sub-alternative relief, more or less to the same effect.

[6] The application sought, however also, rather oddly, under the heading "Alternative 2", a declaratory order, to the opposite effect, in the following terms: "[t]hat the [appellant] is entitled to organize, and recruit in the industry covered by the [first respondent] and that such action is accordingly not *ultra vires* its constitution..."

[7] In its counter-application, which was also brought on an urgent basis, the appellant asked the Labour Court to issue a declaratory order in terms of Alternative 2 of Part B of the first respondent's application, as well as costs.

[8] By the time the applications were first heard by the Labour Court, the urgency relied on had dissipated and the parties addressed that court in respect of final, as opposed to interim, relief. The court *a quo* (curiously), and presumably with the parties' concurrence, considered the relief claimed in both Part A and B, and its order, which is being appealed against, contains elements of both.

Material Provisions

[9] Section 101 of the LRA is framed as follows:

'101 Changing constitution or name of registered trade unions or employers' organisations –

- (1) A registered trade union or a registered employers' organisation may resolve to change or replace its constitution.
- (2) The registered trade union or the registered employers' organisation must send the registrar a copy of the resolution and a certificate signed by its secretary stating that the resolution complies with its constitution.
- (3) The registrar must –
 - (a) register the changed or new constitution if it meets the requirements for registration; and
 - (b) send the registered trade union or registered employers' organisation a copy of the resolution endorsed by the registrar, certifying that the change or replacement has been registered.
- (4) The changed or new constitution takes effect from the date of the registrar's certification.'

[10] Clause 3 of the appellant's existing registered constitution deals with its scope. Sub-clause 3.1 reads as follows:

'The union shall be open to all workers employed in the following industries and trades:

- 3.1.1. Garment Industry;
- 3.1.2. Textile Industry;
- 3.1.3. Wool/Mohair Processing Industry;

- 3.1.4. Wool/mohair, Hides and Skins Trade;
- 3.1.5. Leather and Footwear Industry;
- 3.1.6. Tanning, Woolpulling and Fellmongering Industry;
- 3.1.7 Knitting Industry;
- 3.1.8. Canvas and Ropeworking Industry;
- 3.1.9. Retail, Commercial and Distributive Trade;
- 3.1.10. Laundry, Dyeing and Dry-cleaning Industry;
- 3.1.11. Farming and Agricultural Industry and includes workers engaged in operations incidental to or consequential on such operations or manufacture and the workers engaged in the sale, delivery, distribution, retailing, storage and/or administration of such goods;
- 3.1.12. Other.'

[11] In clause 3.2, each of the aforesaid categories listed are defined and it is specifically stated that the definitions shall not limit the ordinary meaning of the designations. Of relevance for the purpose of this matter is the definition of “*other*” as listed in clause 3.1.12. It is defined as “*any other activity, industry, or interest group as defined by the National Executive Committee or the National Office Bearers from time to time*”.

[12] Clause 26 of the said constitution deals with amendments. It reads as follows:

‘26.1 The National Congress may repeal, amend or add to the provisions of this Constitution by any quorate meeting of Congress provided due notice of such resolution is given to all in terms of clause 16.3.1 of the Constitution.

26.2 The National Executive Committee may subject to decisions of the National Congress under clause 26.1 further repeal, amend or add to the provisions of this Constitution by resolution of any quorate meeting of the National Executive Committee carried by two thirds (2/3) majority provided that at least fourteen (14) days’ notice of any proposed alteration shall have first been given by notice addressed to each Branch and Provincial Secretary. If during this period not less than two (2) Branches request that a ballot of all members be held on the proposed alteration such ballot shall be taken.

26.3 Notwithstanding anything to the contrary contained in clauses 26.1 or 26.2 in the event of the union being registered under the Act no amendment or addition or repeal shall have any force or effect until such amendment, addition or repeal has been certified in terms of section 101(3)(b) of the Act.’

[13] On 1 October 2019, the National Office Bearers of the first respondent, by formal resolution (purported to) extend its scope of operations to include “*the furniture industry*”. The resolution which purports to be signed by the president, the first president, the second president and the treasurer of the appellant reads as follows:

‘Resolution on the Demarcation of:

The Furniture Industry

The SACTWU National Office Bearers having considered the membership applications of employees in the furniture industry hereby resolves that the industry is covered by the scope of the appellant union, in terms of Section C 3.1.12 of our constitution.

The furniture industry [is] accordingly demarcated as an “other” interest group in terms of subclause 3.2.12 of SACTWU’s constitution as amended.

Date: 1 October 2019

[Signatures as stated]’

The judgment of the court *a quo*

[14] Having referred, *inter alia*, to passages from the academic writings of Woolman and the Constitutional Court’s judgment in *National Union of Metal Workers of SA v Lufil Packaging (Isithebe) (A division of Bidvest Paperplus (Pty) Ltd) and others*² (*Lufil*), the judge *a quo* held essentially the following: that the purpose for the registration of a trade union’s constitution, including any amendments or additions thereto, was to make it available to interested parties and the public at large; the word “other” in the appellant’s constitution merely created a convenient

² *National Union of Metal Workers of SA v Lufil Packaging (Isithebe) (A division of Bidvest Paperplus (Pty) Ltd) and others* [2020] ZACC 7; (2020) 41 ILJ 1846 (CC) (*Lufil*).

mechanism for the extension of the appellant's scope, but it did not serve to exempt the appellant from complying with section 101 of the LRA, which entailed registering the amendment or extension with the Registrar of Labour and certification by that official; the appellant was labouring under a misconception that this addition of a specific category to its scope did not require registration; by not complying with the requirement of the purpose of registration, namely publication, and therefore universal access, was undermined or defeated; since the addition was not registered or certified, it lacked efficacy, because the change only takes effect from the date of the Registrar's certification; insofar as the appellant has not complied with the requirements of registration and certification by the Registrar "*it has acted ultra vires its constitution*" (i.e. it has exceeded the powers it has in terms of its constitution); and that the appellant is not entitled in those circumstances to organise and recruit members in the furniture industry which is covered by the first respondent.

[15] What the court *a quo* effectively did was to, firstly, interpret the constitution of the appellant, in particular clause 3 which deals with its scope of membership and pointedly, with the designation of "other" as defined in clause 3.2.12, and, secondly, to effectively determine that the resolution by the National Office Bearers constituted a "change" or "amendment" as is contemplated in section 101 of the LRA.

[16] Relying on *dicta* in the Constitutional Court's judgment in *Lufil*, the court *a quo* concluded that, while in terms of clause 3.2.12, the National Executive Committee and National Office Bearers of the appellant could from time to time define "*any other activity, industry or interest group*" by which the appellant's scope was extended, this something in the exercise of a power that the appellant would have any. It could, in any event, extend its scope to any other activity, industry or interest group, even in the absence of a clause such as clause 3.2.12.

[17] But significantly and effectively, what the court *a quo* held was that this "definition" contemplated in clause 3.2.12 constituted a change or amendment as is envisaged in section 101 of the LRA, which required registration with the Registrar of Labour Relations because it required publication, which could only be achieved through such registration and that the rationale for such publication was explained in *Lufil*.

[18] While the facts in *Lufil* are not on all fours with those of the present matter, the court a *quo*'s reliance on the relevant *dicta* in that matter was justified. In *Lufil*, the issue was whether a trade union could ignore its own constitution and demand organisational rights from an employer with respect to members not expressly forming part of the scope of its constitution in which eligibility for membership is defined. NUMSA's constitution provided that its scope was the metal industry and that all workers who are and were working in the metal and related industries are eligible for membership of NUMSA. Notwithstanding, it recruited members in the paper and packaging industry. In response to a contention that it was acting outside of the scope of its constitution, NUMSA contended, *inter alia*, that its members in the paper and packaging industry had a contractual relationship with it and that that was enough and, of significance, that its constitution did not preclude it from recruiting members in another industry because its constitution does not contain any express reference to any obligation regarding eligibility being limited to the scope of the union.

[19] The Constitutional Court held in *Lufil* that NUMSA had chosen to define its scope of membership and eligibility for membership in its constitution and it was bound thereby. Its constitution, *inter alia*, provided that it could amend its scope of membership without limitation, provided it followed prescribed amendment procedures. The Constitutional Court rejected NUMSA's argument that its constitution did not limit its scope to employees in the metal and related industries; and described that argument as lacking logical and legal persuasion. It held further that NUMSA's refusal to amend its constitution to include the paper and packaging industry was "cavalier" and unsustainable and that NUMSA was in fact obliged to do so, and that until it had done so it was not eligible to demand organisational rights at the employer.³

[20] In arriving at those conclusions, the Constitutional Court dealt with, *inter alia*, the rationale for the registration of constitutions of trade unions and the amendment

³ See *Lufil* at para 52.

to such constitutions. The NUMSA constitution provided for at least two ways of amending, adding or repealing it – one was through its National Congress, if two-thirds of members agreed, and the other was, significantly, by complying with a provision in its constitution, which in describing the character of that union, provided that the central committee (consisting of national office bearers and others) may amend the scope of the trade unions membership from time to time. The constitutional court held that such amendment could have been done simply.

[21] What *Lufil* did not deal with is whether the amendment (dealt with there) required registration in terms of section 101 of the LRA. It was not necessary for the Constitutional Court to deal with that issue. However, in this matter, the issue is different from that in *Lufil*. The essential questions here are whether the actual definition of a specific industry activity or interest group by the National Executive Committee or the National Office Bearers, from time to time, constitutes an amendment of the appellant's extant, registered, constitution, i.e. extending the trade union scope membership, and whether that definition (i.e. by way of resolution) required registration in terms of section 101 of the LRA.

[22] Notwithstanding the factual differences, the rationale for the registration of constitutions, and amendments to such constitutions, as expounded in *Lufil*, is vital in the interpretation of both the appellant's constitution and section 101 of the LRA.

[23] The principles governing the interpretation of documents, such as the constitution of a trade union, are trite. They are the same principles that apply to the interpretation of contracts generally. Essentially, effect must be given to the ordinary language of the document, objectively looked at within its context, and preference must be given to a sensible meaning rather than a meaning "*that leads to insensible and un-businessmanlike results or undermines the appellant purpose of that document*".⁴

⁴ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at para 18. Confirmed, inter alia, in *Lufil supra* at para 53.

[24] A trade union and its members are bound by its constitution. And although the law rightly does not require a trade union to limit the scope of its membership to a specific activity, industry or interest group, a trade union itself may choose to do so in its constitution. In other words, it may in its constitution impose limitations upon the extent of its scope of membership.

[25] The appellant's argument seemingly suggests that by adding this "other" category and by defining it as it was, namely that by specifying any other "activity, industry or interest group" from time to time, the National Executive Committee (or National Office Bearers) would not be changing or amending its constitution, or even be the extending the scope of its membership. But this argument is not supported by a proper interpretation of its constitution, including the relevant clauses, objectively and within the proper context.

[26] It is clear from a plain reading of clause 3 that the appellant chose to define its scope and to limit it to specifically defined activities, industries and interest groups. Significantly, it then also chose to include an additional "other" category. But this category on a plain reading of its definition in clause 3.2.12, is limited to such activity, industry or interest as the National Executive Committee or National Office Bearers may define from time to time. By its very definition, it does not include all activities, industries or interests and is limited only to those activities, industries and interests that those bodies may decide to include from time to time. Thus, the appellant's scope, even in respect of this "other" category, is limited.

[27] The designation "other" is otherwise amorphous and clause 3.2.12 is effectively nothing other than a clause which authorises the bodies envisaged there to add to or not to add specific activities, industries or interest groups to the appellant's scope, as and when they consider it necessary and resolve accordingly. As mentioned above, a trade union is in any event not prohibited from extending its scope of membership.

[28] The essential question that arose for decision in this matter is thus whether this definition from time to time, which has the effect of adding (and by default not adding) to the scope of the appellant, is a "change" or "amendment" to its scope as

expressed in its extant constitution. It most certainly is, because the definition by any of those bodies of an activity, industry or interest group, as and when it happens, most certainly adds something to the appellant's scope that was not there before. In this instance, there is no mention of the furniture industry at all in the extant, registered constitution of the appellant. The designation "other" does not include the furniture industry and it would only be included once the bodies envisaged in clause 3.2.12 define it as an activity, industry or interest group which falls within the scope of the appellant.

[29] An outsider and the public only have access to the extant, registered constitution of the appellant and have no knowledge of the resolution adopted by the National Office Bearers and would not know, unless they specifically enquired from the trade union, whether the scope of its membership does in fact include the furniture industry. The appellant is otherwise privy to that information.

[30] The rationale for the registration of the constitution of a trade union, including changes and amendments thereto, is dealt with by the Constitutional Court in *Lufil*. The function of the Registrar of Labour Relations in relation to the registration of such constitutions (including amendments and changes thereto) is to ensure that the applicable statutory requirements are complied with (including those specified in sections 95(5) and (6) of the LRA) and then to register them.

[31] Section 95(5)(b) provides that the constitution of a trade union must "*prescribe qualifications for, and admission to, membership*" and section 95(6), *inter alia*, provides that the constitution of a trade union may not include any provision that discriminates directly or indirectly against any person on the grounds of race or sex.

[32] The rationale for the registration of the Constitution of the trade union is exactly the same as for the registration of a change or amendment to the extant registered constitution and as envisaged in section 101 of the LRA.

[33] In *Lufil*, the Constitutional Court held that upon registration of the constitution of a trade union, that document becomes a public document and is available for inspection by outsiders.⁵ Registration also promotes public access to the constitution,⁶ and further, *inter alia*, the registration of the constitution gives effect to the legitimate government policy of orderly collective bargaining at a sectoral level.⁷ The very same reasons underlie the registration of changes and amendments to the constitutions of trade unions.

[34] It is also so that even though every worker has the constitutional right to, *inter alia*, “join a trade union”⁸ and that every trade union has the right, *inter alia*, to “determine its own administration, programs and activities”, and to “organise”⁹ those rights are not unlimited and may be limited in terms of section 36(1) of the Constitution of the Republic of South Africa.

[35] Thus, in terms of section 4(1)(b) of the LRA, an employee’s right to join a trade union is made subject to the trade union’s constitution (i.e. as registered) and the LRA seeks to regulate a trade union’s rights. The LRA spells out in the clearest terms what ought essentially to be contained in the trade union’s constitution and requires such constitution and any change or amendment thereto to be subjected to the scrutiny of the registrar and to be registered.

[36] An interpretation, namely, that the action of the bodies envisaged in clause 3.2.12 of the appellant’s constitution, and in terms of which they are effectively adding to the scope of the appellant’s membership, is not a change to its extant constitution that requires registration as envisaged in section 1 of one of the LRA, is clearly not sensible. It loses sight of the position of the public and outsiders and the core constitutional values of transparency and openness.

⁵ See *Lufil* at paras 34,64 and 65.

⁶ See *Lufil* at para 64.

⁷ See *Lufil* at para 31.

⁸ Constitution of the Republic of South Africa, 1996 (Constitution) at section 23(2)(a).

⁹ Constitution at section 23(4)(a) and (b).

[37] Accordingly, the court *a quo* has correctly concluded that the appellant was required to register the resolution of the National Office Bearers with the Registrar of Labour Relations before it became effective. In clause 26.3 of its extant constitution, the appellant envisages that any amendment or addition to that document shall only have force and effect once certified in terms of section 101(3)(b) of the LRA. Thus, in attempting to accord effectiveness to a resolution by which the appellant effectively added to its extant constitution without such registration or certification, would indeed not only be not in compliance with its own constitution but also in breach of section 101 of the LRA. There is also otherwise nothing untoward in the order which the court *a quo* made.

[38] For those reasons, I would dismiss the appeal. The appellant did not seek any costs order on appeal and it is therefore not necessary to make an order in that regard.

[39] In the result, I would propose the following order be made:

Order

1. The appeal is dismissed.
2. There is no order as to costs.

P Coppin
SAVAGE AJA

[40] I have had the opportunity to consider the judgment of my colleague with which I am respectfully unable to agree.

[41] Section 4(1)(b) of the Labour Relations Act¹⁰ (LRA) provides that every employee has the right to join a trade union “subject to its constitution”. The

¹⁰ Act 66 of 1995, as amended.

appellant union's constitution has been registered by the Registrar of Labour Relations (registrar) under section 93(3)(b) of the LRA. Clause C of the union's registered constitution, headed "Scope", provides at clause C 3.1 that:

'The union shall be open to all workers employed in the following industries and trades:

- 3.1.1. Garment Industry;
- 3.1.2. Textile Industry;
- 3.1.3. Wool/Mohair Processing Industry;
- 3.1.4. Wool/Mohair, Hides and Skins Trade;
- 3.1.5. Leather and Footwear Industry;
- 3.1.6. Tanning, Woolpulling and Fellmongering Industry;
- 3.1.7. Knitting Industry;
- 3.1.8. Canvas and Ropeworking Industry;
- 3.1.9. Retail, Commercial and Distributive Trade;
- 3.1.10. Laundry, Dyeing & Dry-Cleaning Industry;
- 3.1.11. Farming & Agricultural Industry and includes workers engaged in operations incidental to or consequential on such operations or manufacture and the workers engaged in the sale, delivery, distribution, retailing, storage and /or administration of such goods;
- 3.1.12. Other.'

[42] Clause C 3.2.12 states that "Other":

'...means any other activity, industry, or interest group as defined by the National Executive Committee or the National Office Bearers from time to time.'

[43] On 1 October 2019, the National Officer Bearers passed a "*Resolution on the Demarcation of...The Furniture Industry*", under clause C 3.1.12 of the union's constitution. This resolution recorded that it had been resolved that the furniture industry was demarcated as an "other" interest group in terms of subclause C 3.2.12 and that the industry was therefore covered by the scope of the union.

[44] Section 95(1) provides that any trade union may apply to the registrar for registration provided that it has adopted a name that meets the requirements of

subsection 4,¹¹ it has adopted a constitution that meets the requirements of subsections (5)¹² and (6),¹³ it has an address in South Africa and it is independent.

¹¹ Section 95(4) provides that a union or employers' organisation may not have a name or shortened form of the name that so closely resembles the name or shortened form of the name of another trade union or employers' organisation that it is likely to mislead or cause confusion.

¹² Section 95(5) requires that the constitution of any trade union or employers' organisation that intends to register must –

- (a) state that the trade union or employers' organisation is an association not for gain;
 - (b) prescribe qualifications for, and admission to, membership;
 - (c) establish the circumstances in which a member will no longer be entitled to the benefits of membership;
 - (d) provide for the termination of membership;
 - (e) provide for appeals against loss of the benefits of membership or against termination of membership, prescribe a procedure for those appeals and determine the body to which those appeals may be made;
 - (f) provide for membership fees and the method for determining membership fees and other payments by members;
 - (g) prescribe rules for the convening and conducting of meetings of members and meetings of representatives of members, including the quorum required for, and the minutes to be kept of, those meetings;
 - (h) establish the manner in which decisions are to be made;
 - (i) establish the office of secretary and define its functions;
 - (j) provide for other office-bearers, officials and, in the case of a trade union, trade union representatives, and define their respective functions;
 - (k) prescribe a procedure for nominating or electing office-bearers and, in the case of a trade union, trade union representatives;
 - (l) prescribe a procedure for appointing, or nominating and electing, officials;
 - (m) establish the circumstances and manner in which office-bearers, officials and, in the case of a trade union, trade union representatives, may be removed from office;
 - (n) provide for appeals against removal from office of office-bearers, officials and, in the case of a trade union, trade union representatives, prescribe a procedure for those appeals and determine the body to which those appeals may be made;
 - (o) establish the circumstances and manner in which a ballot must be conducted;
 - (p) provide that the trade union or employers' organisation before calling a strike or lock-out, must conduct a ballot of those of its members in respect of whom it intends to call the strike or lock-out;
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[45] Section 95(5) requires that the constitution of any trade union or employers' organisation that intends to register must *inter alia* "*prescribe qualifications for, and admission to, membership*". Section 96(3) provides that the registrar must consider an application for registration made by a trade union or employers' organisation and, in terms of section 96(3)(b) that the registrar –

'(b) if satisfied that the applicant meets the requirements for registration, must register the applicant by entering the applicant's name in the register of trade unions or the register of employers' organisations.'

[46] For the union's constitution to have been registered, the registrar would have had to have been satisfied that the requirements for registration had been met. This included that the constitution provided the "*qualifications for, and admission to, membership*". The registered constitution not only set out in C 3.1.1 to C 3.1.11 specified industries which fell within the union's scope of operation, but included, in clause C 3.1.12, that other industries may fall into the union's scope where, in terms of clause C 3.2.12, either the National Executive Committee or the National Office Bearers from time to time defined "*any other activity, industry, or interest group*" as falling within the scope of the union. In providing as much, the registrar was clearly

(q) provide that members of the trade union or employers' organisation may not be disciplined or have their membership terminated for failure or refusal to participate in a strike or lock-out if –

(i) no ballot was held about the strike or lock-out; or
(ii) a ballot was held but a majority of the members who voted did not vote in favour of the strike or lock-out;

(r) provide for banking and investing its money;

(s) establish the purposes for which its money may be used;

(t) provide for acquiring and controlling property;

(u) determine a date for the end of its financial year;

(v) prescribe a procedure for changing its constitution; and

(w) prescribe a procedure by which it may resolve to wind up.'

¹³ Section 95(6) requires that the constitution of any trade union or employers' organisation may not include any provision that discriminates directly or indirectly against any person on the grounds of race or sex.

satisfied that the constitution provided the “qualifications for, and admission to, membership”.

[47] The resolution taken by the National Office Bearers under clause C 3.2.12 of the appellant’s constitution did not amount to a change to or replacement of the appellant’s constitution as contemplated in section 101(1).¹⁴ This is so since the National Office Bearers acted in accordance with the terms of the union’s registered constitution in that clause C 3.2.12 expressly provided that either the National Executive Committee or the National Office Bearers from time to time were entitled to define “*any other activity, industry, or interest group*” as falling within the scope of the union. In resolving that the furniture industry fell within the union’s scope, the National Office Bearers did not change the union’s constitution but acted, as they were permitted, in accordance with the express terms of clause C 3.2.12.

[48] Section 101(3) requires that where a trade union or employers’ organisation seeks registration of a changed or new constitution:

‘(3) The registrar must—

- (a) register the changed or new constitution if it meets the requirements for registration; and
- (b) send the registered trade union or registered employers’ organisation a copy of the resolution endorsed by the registrar, certifying that the change or replacement has been registered.’

[49] The resolution demarcating the furniture industry as falling within the scope of the industries in which the union functioned was a resolution made in terms of the constitution, as registered, and did not result in an amendment to the constitution. While it had the effect of altering the scope of the sectors in which the union functioned, the constitution did not provide for a closed list of sectors. It expressly contemplated that by resolution other industries could be included within the union’s scope. This did not amount to an amendment of the constitution. The constitution, in

¹⁴ Section 101(1) states that: ‘A registered trade union or a registered employers’ organisation may resolve to change or replace its constitution.’

the form it had previously been registered, remained in force and there was therefore no obligation on the registrar to register any change to the union's constitution.

[50] Once adopted, a union's constitution is legally binding on its members, governs the relationship between them and on registration becomes public and available for inspection by outsiders.¹⁵ The constitution of a union, as a voluntary association, forms the agreement entered into with its members and must be interpreted in accordance with the ordinary rules of construction applying to contracts in general.¹⁶ Our courts have recognised that the eligibility requirement to join a trade union is defined by a union's constitution.¹⁷ In *Lufil*, unlike in the current matter, the National Union of Metalworkers of South Africa (NUMSA) had chosen to limit the scope of its membership to categories of industries defined in an annexure attached to its constitution.¹⁸ In the current matter, the union's decision to expand its scope to the furniture industry was one taken in terms of and pursuant to an express term of its constitution which permitted this to be done by resolution. Given that the exercise of such a power was expressly provided for in clause 3.2.12 of the union's constitution, the Labour Court erred in finding that the resolution taken constituted a change envisaged in section 101 of the LRA, which required registration with the registrar in order to ensure publication.

[51] Undue limitations are not to be placed on an employee's right to join a trade union "*subject to its constitution*" or on a trade union's right to determine its own "*administration, programmes and activities*" and organise.¹⁹ Had there been a change to the union's constitution, section 96(3)(b) requires that the registrar "*if satisfied that the applicant meets the requirements for registration, must register the applicant by entering the applicant's name in the register of trade unions or the*

¹⁵ National Union of Metal Workers of South Africa v Lufil Packaging (Isithebe) and others supra fn 2 at para 37.

¹⁶ Id at para 53 with reference to *Wilken v Brebner* 1935 AD 175 at 187 and *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) at para 18.

¹⁷ Id at para 69.

¹⁸ Id at para 41.

¹⁹ Section 23(4) of the Constitution.

register of employers' organisations". Given that there was no change to the terms of the union's constitution, the Act requires no action to be taken by the registrar. Further, where a union by resolution has expanded its scope in accordance with the terms of its registered constitution, the Act does not require such expanded scope to be either registered or published by the registrar. The inclusion of any such requirement in the Act is a matter reserved for the legislature and there exists no basis on which to find that any such requirement should be read into the law as it currently stands.

[52] For these reasons, the appeal must succeed and the order of the Labour Court set aside. Since the matter was unopposed, there is no reason why a costs order should be made.

[53] The following order is therefore made:

Order

1. The appeal succeeds with no order as to costs.
2. The order of the Labour Court is set aside and substituted as follows:
"1. The application is dismissed with no order as to costs".

SAVAGE AJA

Waglay JP concurs in the judgment of Savage AJA.

APPEARANCES:

FOR THE APPELLANT:

Instructed by

M Pillemer SC and P Schumann

Purdon & Munsamy Attorneys

FOR THE RESPONDENTS:

No appearance for any of the Respondents