



IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: JA84/2022

In the matter between:

**THE NATIONAL UNION OF METALWORKERS OF
SOUTH AFRICA**

First Appellant

IRVIN JIM N.O.

Second

Appellant

**CHAIRPERSON OF THE NUMSA SPECIAL CENTRAL
COMMITTEE N.O.**

Third Appellant

and

RUTH NTLOKOSE

Respondent

Heard: 29 August 2023

Judgment: 28 November 2023

Coram: Mlambo JA; Davis JA and Smith AJA

JUDGMENT

SMITH AJA

Introduction

- [1] This appeal concerns the validity of (a) the suspensions of the respondent and certain other members of the first appellant, the National Union of Metal Workers of SA (NUMSA) pending the finalisation of disciplinary proceedings (precautionary suspensions); (b) the decision taken by NUMSA's Central Committee to place its Mpumalanga Region under administration; and (c) the accreditation of delegates to NUMSA's National Congress, which was scheduled for 25 to 29 July 2022.
- [2] The respondent launched urgent proceedings in the Court *a quo* challenging the validity of those decisions on the ground that they were *ultra vires* the NUMSA constitution and seeking an order prohibiting NUMSA from proceeding with its scheduled National Congress. In addition, she also sought an order declaring her, the other suspended members, and delegates from the Mpumalanga Region, entitled to attend and participate in the National Congress. The matter was heard by Moshwana J, who upheld her application and, in his judgment delivered on 23 July 2022, declared the impugned decisions invalid and interdicted NUMSA from proceeding with its National Congress, "*until it complied with the terms of its constitution*".
- [3] The appellants appeal against that order with the leave of this Court. They contend that NUMSA's constitution, reasonably construed, empowers its Central Committee, National Executive Committee and Regional Committees, respectively, to place members or officials on precautionary suspension pending the finalisation of disciplinary proceedings. They assert, furthermore, that the NUMSA constitution also permits the Central Committee, in appropriate circumstances, to take over the administration of any of NUMSA's regions and to perform the accreditation of delegates to its National Congress. On their construction of the NUMSA constitution, it sanctioned the impugned decisions and they are thus valid and binding. They also maintain that Moshwana J failed to apply the conventional canons of interpretation pertinent to the construction of a trade union's constitution. According to them, the resultant flawed interpretation of the relevant constitutional provisions has far-reaching and incongruous consequences for NUMSA.

NUMSA's constitutional structures

- [4] The issues that fall for decision on appeal require an understanding of the powers and functions of NUMSA's various constitutional structures. It will therefore be instructive for me to explain, upfront, the respective constitutional hierarchies of those structures and how they relate to one another. And, to avoid confusion, I refer to the relevant structures by their full constitutional designations instead of acronyms.
- [5] The Central Committee is NUMSA's highest decision-making body between National Congresses, which are held every four years. That committee consists of six National Office Bearers, four Regional Office Bearers and one worker delegate from each of NUMSA's nine regions.
- [6] The National Executive Committee is a smaller structure that conducts NUMSA's business between meetings of the Central Committee. Its duties include the implementation of policies and decisions adopted by the Central Committee, and in terms of the constitution, it may suspend any NUMSA office bearer or official pending decision by the Central Committee.
- [7] Regional Congresses control regional affairs, subject to the direction of the Central Committee and the National Congress. Delegations to the Regional Congress consist of shop stewards elected by Local Shop Steward Councils and Regional Office Bearers. A Regional Congress has the power to suspend a Regional Executive Committee 'for neglect of duty and conduct contrary to or in conflict with' the constitution, decisions of the National Congress, Central Committee, or a Regional Congress.
- [8] Regional Executive Committees consist of office bearers of the Regional Congress, the Local Shop Steward Council, and members of the Regional Finance Committees. A Regional Executive Committee has the power, *inter alia*, to suspend any shop steward or Shop Steward Committee on 'sufficient cause shown' and to take over the management of their affairs until another shop steward or council has been elected.

- [9] The shop stewards in a 'Local' constitute the Local Shop Steward Council, which is responsible for electing delegates to the Regional Congress every four years. In terms of clause (6)(1)(c) of the NUMSA constitution, "*each Local may elect one shop steward per 300 members as a delegate at the Congress*".

The facts

- [10] The facts pertinent to the adjudication of the disputes between the parties are common cause. They are briefly as follows.
- [11] On 14 July 2022, the respondent, in her capacity as NUMSA's Second Deputy President, was served with a notice suspending her, pending the outcome of a disciplinary hearing. That notice, composed by the second appellant, stated that NUMSA's Central Committee had decided, at a meeting held on 11 and 12 July 2022, to suspend her "*with immediate effect and that the necessary disciplinary process must be followed by the organization*". The reason for the suspension being that she had "*stood and contested the position of the Presidency of SAFTU against the NUMSA position to support the name of Mac Chavala...*" The notice further stated that, depending on the outcome of the further investigations into remaining issues, she could potentially also face a hearing into "*allegations emanating from these further issues*".
- [12] At the same meeting, the Central Committee also resolved to suspend other members "*who were part of disrupting the SAFTU 2nd National Congress*" and to bar them from attending the scheduled National Congress. The names of the affected members are listed in an annexure to the respondent's founding affidavit.
- [13] The National Executive Committee had also, on 6 April 2022, placed five of the listed members on precautionary suspension, purportedly in terms of clause 6(3)(c)(v) of the constitution. That clause provides that the latter may suspend any office bearer or official of the Union on sufficient cause until the matter is decided at the next meeting of the Central Committee. Their joint disciplinary hearing commenced before a part-time CCMA commissioner and had, at the time of deposing to the answering affidavit, not yet been finalised.

- [14] The others were placed on precautionary suspension by the Hlanganani, Sedibeng and Mpumalanga Regional Executive Committees, respectively, in terms of clause 5(3)(e)(v) of the constitution. The latter clause empowers those committees *"to suspend any shop steward on sufficient cause shown and take over management of their affairs"*. The Central Committee did not disturb that decision, and at the time of the launching of the application, disciplinary hearings had not yet been finalised.
- [15] The Central Committee also resolved to place the Mpumalanga Region under administration for a period of 12 months and to prohibit it from attending the National Congress. NUMSA asserted that the region had not been able to convene two consecutive Regional Congress and the Local and Regional leaders therefore did not represent the will of the region. The region is also riven by internal disputes and the leadership is 'hotly contested'. It is consequently in a chaotic state, to the detriment of its ordinary members. The Local Shop Steward Councils are also defunct and under administration. The Central Committee was thus constrained to intervene in the best interests of the union. Apart from challenging the assertion that the NUMSA constitution permitted the Central Committee to intervene in this manner, the respondent did not dispute these averments.
- [16] It is also common cause that the Central Committee failed to appoint an Accreditation Committee as it was enjoined to do in terms of the constitution, and instead decided to do the accreditation of delegates to the National Congress itself. NUMSA did not provide any reasons for this omission, save to assert that it could also perform that task itself, in the event that an Accreditation Committee has not been appointed.

Legal nature of a trade union constitution

- [17] Central to the determination of the issues that fall for decision on appeal are the questions of whether the NUMSA constitution, reasonably construed, permits the precautionary suspension of members or officials and vests in the Central Committee's discretion to exercise the powers of other subsidiary committees, regardless of whether the latter may be able to exercise those

powers themselves. The adjudication of these questions will largely depend on the construction of the relevant constitutional provisions and it therefore makes sense to contemplate, as a starting point, the legal nature of a trade union's constitution as well as the canons of interpretation applicable to its construction.

- [18] Ms Engelbrecht, who appeared together with Mr Meyerowitz for NUMSA, submitted that its constitution, being a contract between it and the individual members, must be construed in terms of the same principles applicable to the construction of contracts. She argued that the Court must therefore construe the relevant clauses by having regard to their text, context, purpose and, in terms of the principles enunciated by the Constitutional Court in *University of Johannesburg v Auckland Park Theological Seminary and Another*¹ (*University of Johannesburg*) in addition to extra-textual evidence regarding the conduct of the parties. The extra-textual evidence which in Ms Engelbrecht's submission should be considered is NUMSA's assertions that both the Central Committee (since 1992) and the National Executive Council (since 2016) have regularly placed members on precautionary suspension. The former has also regularly placed regions under administration since 2010. She argued that those structures consequently have implied powers to place members on precautionary suspension in appropriate circumstances.
- [19] Mr Nhlapo, on behalf of the respondent, contended for a more literal construction, namely that words must be given their ordinary grammatical meaning unless it will result in an absurdity. He submitted that for the Court to read the contended implied term into the constitution would effectively amount to an impermissible amendment thereof. For this submission, he relied on a comment by Moshoana J to the effect that, "[a] member of a trade union joins a trade union and does not conclude a contract with a trade union. Thus, it cannot be said that a member is a party to a contract as it were. In my view, it is difficult to employ the language of "implied terms" in a constitution as if it is a commercial contract".² Mr Nhlapo submitted, furthermore, that the main purpose of a trade union's constitution is to give effect to the right to freedom

¹ [2021] ZACC 13; 2021 (6) SA 1 (CC).

² Paragraph 5 of the judgment on the application for leave to appeal.

of association. The construction contended for by the appellants will undermine this objective since it will not advance the interests of the members or the democratic functioning of the union, or so he argued.

[20] The Constitutional Court has authoritatively settled the polemic regarding the legal nature of a trade union's constitution in *National Union of Metalworkers of SA v Lufil Packaging (Isithebe) and Others*.³

[21] NUMSA had in that case also asserted that its constitution is a contract between it and its members. The Court agreed with that assertion, and at paragraph [53], said the following:

'NUMSA has adopted a constitution which is clear in its terms. It is a voluntary association with rules and annexures that collectively forms the agreement entered into with its members. The constitution must be interpreted in accordance with the ordinary rules of construction applying to contracts in general. The classic interpretative principle is that effect must be given to the ordinary language of the document, objectively ascertained within its context. It must follow therefore that in the course of interpretation, preference should be given to a sensible meaning rather than "one that leads to insensible or un-businesslike results or undermines the apparent purpose of the document".'

[22] The relevant clauses must therefore be interpreted in accordance with the principles set out in *Natal Pension Joint Municipal Pension Fund v Endumeni Municipality*⁴ and *University of Johannesburg*. In the latter case, the Constitutional Court held that Courts interpreting a contract must have regard to its factual matrix, its purpose, the circumstances leading up to its conclusion, and the knowledge of those who negotiated its terms.

Validity of the respondent's suspension

[23] Although the respondent asserted a breach of her and the other affected members' constitutional rights to fair labour practices and freedom of

³ [2020] ZACC 7; 2020 (6) BCLR 725 (CC).

⁴ [2012] ZASCA 13; 2012 (4) SA 593 (SCA).

association, the main thrust of her case in the Court *a quo* was that all the impugned decisions were *ultra vires* the NUMSA constitution.

- [24] She contended that her suspension was unlawful because the NUMSA constitution does not empower the Central Committee to place members on precautionary suspension. For this contention, she relied on clause 8 of the constitution, which provides that a national office bearer accused of misconduct may be disciplined by the National Executive Committee. According to her, that clause provides only for the disciplinary procedures to be followed by the latter body and does not sanction precautionary suspension.
- [25] The appellants, on the other hand, asserted that it is an established custom and practice for NUMSA structures and committees to place members on precautionary suspension where circumstances demand such a drastic measure and good cause had been established. NUMSA has in fact been placing members on precautionary suspension on that basis since its formation, or so they contended.
- [26] They argued, furthermore, that the NUMSA constitution, properly interpreted, in any event, provides for members or officials to be placed on precautionary suspension in appropriate circumstances. Although they conceded that clause 8 provides only for punitive suspension, they asserted that clause 6(3)(c)(v) permits the National Executive Committee to suspend any office bearer or official on sufficient cause until the matter is decided at the next meeting of the Central Committee. That provision, they contended, can only refer to precautionary suspension. The Central Committee is a higher structure than the National Executive Committee and is vested with the constitutional power to “*do all things which in the opinion of the Central Committee promote the interests of the Union and agree with the objects and policies of the Union and its Constitution*”.⁵ There is therefore no reason why the Central Committee cannot initiate the process of placing a member on precautionary suspension instead of merely confirming such a decision of the National Executive Committee.

⁵ Clause 6(2)(d)(xvi).

- [27] In declaring the respondent's suspension *ultra vires* the powers of the Central Committee, Moshwana J found that the NUMSA constitution explicitly and unambiguously vests the power to suspend officials in the National Executive Committee. He rejected the argument that the Central Committee has implied power to place members or officials on precautionary suspension, reasoning that such an implied power would conflict with the express provisions of the NUMSA constitution. He consequently found that the respondent's suspension "*offends the principle of legality and is invalid*".
- [28] Before us, the appellants repeated the argument that clause 6(3)(c)(v) empowers the National Executive Committee to place any official or office bearer on precautionary suspension pending the decision of the Central Committee, and they contended that Regional Executive Committees have similar powers in terms of clause 5(3)(e)(v) "*to suspend any shop steward on sufficient cause shown and take over management of their affairs*".
- [29] According to the appellants, the term 'suspension' mentioned in those clauses is fundamentally and manifestly different from the suspensions envisaged in clauses 2(4), 8(2) and 8(3). The latter clauses provide for suspension as a form of punishment after the conclusion of disciplinary proceedings. The suspensions mentioned in the former clauses, however, clearly envisage suspension, on good cause shown, pending the finalisation of disciplinary proceedings; in other words, precautionary suspension.
- [30] They contended, furthermore, that even though the NUMSA constitution does not expressly permit the Central Committee to place a member on precautionary suspension, on a reasonable construction of the relevant clauses, that power must be inferred because it has the power to: review any decision of any other constitutional structure; confirm a precautionary suspension initiated by the National Executive Committee; and to perform all acts which would in its opinion promote NUMSA's best interests. The Court *a quo*'s assumption that the Central Committee can only function as an appeal body in respect of decisions taken by the National Executive Committee can, as a matter of logic, only apply to punitive suspensions, or so they contended.

- [31] Mr Nhlapo took issue with that contended construction. He argued that, on a reasonable interpretation of the relevant clauses, the Central Committee does not have the power to place a member on precautionary suspension. The powers to suspend as a punitive measure are explicitly given to the National or Regional Executive Committees, in terms of clauses 8 and 5, respectively. The NUMSA constitution does not provide for any form of precautionary suspension, and reading such an implied term into the constitution will require various consequential amendments to other clauses in order for the constitution to make sense. The fact that the NUMSA constitution does not explicitly vest in the Central Committee powers to suspend members is, on his submission, no oversight, but a deliberate constitutional scheme designed to ensure that it will be able to perform its functions as an appeal body optimally. The implied term contended for by the appellants thus fundamentally conflicts with the explicit provisions of the constitution, or so he argued.
- [32] To my mind, the assertion that the NUMSA constitution does not provide for precautionary suspension is manifestly wrong. Construed in accordance with the abovementioned canons of interpretation, clause 6(3)(c)(v) unambiguously vests in the National Executive Committee power to suspend any office bearer or official for 'sufficient cause' until the matter is decided at the next meeting of the Central Committee. Other than clause 8, which clearly provides for suspension as a punitive measure after the affected official or member had been found guilty of misconduct, the former clause provides for suspension pending a decision of the Central Committee; hence for 'precautionary suspension'. Likewise, clause 5(3)(e)(v) provides that a Regional Executive Committee may suspend shop stewards or a Shop Steward Committee "*on sufficient cause shown and take over the management of their affairs until another shop steward or committee is elected*".
- [33] The reference to 'good' or 'sufficient cause' in those clauses is a further factor that compels the inference that they provide for precautionary suspension. Our Courts have consistently interpreted the latter terms to mean "*adequate or substantial reasons for a decision or act*". In the context of the

abovementioned clauses, it connotes a lower standard of proof than that required in disciplinary proceedings. And even if, as Mr Nhlapo submitted, the phrase “*until another shop steward or committee is elected*” must be read as connoting permanent suspension, the maxim *qui potest plus, potest minus* (the greater includes the lesser) is apposite in these circumstances. It simply does not make any sense to interpret the constitution as according the Regional Executive Committee extensive powers to suspend a shop steward permanently, on good cause shown, but not as an interlocutory measure, which is manifestly the less severe measure.

[34] There can be little doubt that the construction contended for by the respondent will have anomalous consequences for NUMSA and will serve to undermine the purpose of its constitution. It will, for instance, mean that it is powerless to suspend a member or official who has been charged with serious misconduct and whose continued presence at its offices, or involvement in organisational structures, may undermine the smooth functioning of the organisation, or bring it into disrepute. To my mind, the power to suspend a member or official on ‘good cause shown’, pending the finalisation of disciplinary proceedings, must therefore be implicit in the disciplinary authority vested in the respective structures. Such a construction makes ‘business sense’ and will serve to avoid the anomalous consequences mentioned above.

[35] The respondent’s suspension is, however, on a different footing altogether. She was not suspended by the National Executive Committee — which on my construction of clause 6 has the sole power to suspend national office bearers — but by the Central Committee, which claims authority to do so on the basis of implied powers. It is significant that other than in the case of its decision to place the Mpumalanga region under administration, the Central Committee has not bothered to provide any justification for its decision to exercise the power to suspend the respondent. It has relied only on its asserted implied authority and claims that it has, over the years, placed members on precautionary suspension. The appellants’ contention, that this evidence of past conduct justifies the inference that the Central Committee has implied

powers to assume the responsibilities of any other constitutional subsidiary structure at its discretion, cannot be upheld.

- [36] Such an implied term can only be imputed into a contract if the Court is satisfied that “*upon a consideration in a reasonable and business-like manner of the terms of the contract and the admissible evidence of surrounding circumstances, an implication necessarily arises that the parties intended to contract on the basis of the suggested term*”. Put differently, a term can only be implied if it can be confidently said that the contracting parties, with reference to the specific event, would have promptly and unequivocally asserted the existence of the contended term.⁶
- [37] I am of the view that the implied term contended for by appellants, namely that the Central Committee has discretion to exercise the powers of any of NUMSA’s other constitutional structures at its whim, cannot co-exist with the express provisions of the constitution and can accordingly not be read into it.
- [38] The Central Committee is effectively the highest appeal body for all decisions of the National and Regional Executive Committees. It is also the highest constitutional structure during the interregnum between National Congresses and has extensive powers to review decisions of a Regional Congress. However, the constitution is explicit in its injunction that it must manage the affairs of the union according to the constitution and the rules and policies adopted by the National Congress. The Central Committee is thus also bound to act within the four corners of the constitution. In suspending the respondent, the Central Committee has, apparently at its whim, decided to arrogate to itself the powers specifically allocated to another constitutional structure. It did so under the guise of the constitutional provision allowing it to “*do all lawful things which in its opinion promotes the interests of the Union*”. That clause can, however, not be construed to mean that the Central Committee has free rein to arrogate to itself powers of other constitutional

⁶ *Alfred McAlpine & Son (Pty) Ltd v Transvaal Provincial Administration* 1974 (3) SA 506 (A) at 531H-533B; see also: *City of Cape Town (CMC Administration) v Bourbon-Leftley and Another NNO* [2005] ZASCA 75; 2006 (3) SA 488 (SCA) at paras 19 - 20.

structures, even though those structures are in a position to exercise those powers themselves.

[39] While it is arguable that the Central Committee would be entitled to exercise any constitutional function of a subsidiary structure in circumstances where that structure is for some reason unable to exercise the power itself, on a reasonable construction of the relevant constitutional provisions, it is manifestly not allowed to do so at its whim.

[40] The appellants have therefore failed to establish that the NUMSA constitution vests in the Central Committee either explicit or implied powers to place members or officials on precautionary suspension in instances where the relevant National or Regional Executive Committees are able to exercise those powers themselves.

The suspensions of the other members

[41] While NUMSA has, in its answering affidavit, challenged the respondent's *locus standi* to seek relief on behalf of the other suspended members, it has abandoned the point on appeal. It is accordingly not necessary for us to deal with the submissions advanced in the parties' heads of argument regarding that issue.

[42] Regarding the purported precautionary suspension of the other office bearers, the respondent contended in the Court *a quo* that Chapter 5 of the NUMSA constitution, which deals with Regional Structures, and in particular clause 5(3)(e)(v), which provides that a Regional Executive Committee may suspend any shop steward or Shop Steward Committee on 'sufficient cause shown', provides for suspension as a punitive measure, and not for precautionary suspension.

[43] Moshoana J held that in terms of Chapter 8 of the constitution, "*a person must be charged, and the charge must be determined, and if an opinion is formed that the charge has been satisfactorily proven only then may a member be suspended*". The learned Judge reasoned that the NUMSA constitution consequently only sanctions suspension as a form of punishment and not as

a precautionary measure pending the conclusion of disciplinary proceedings. The relevant NUMSA structures therefore did not have the power to place the other members on precautionary suspension.

- [44] My finding that the NUMSA constitution empowers both the National Executive Committee and Regional Executive Committees to place members or officials on precautionary suspension, is also dispositive of the respondent's challenge to the validity of the other suspended members' precautionary suspensions. Those members had in fact been suspended by the constitutional structures vested with the requisite powers to suspend them pending finalisation of disciplinary hearings, namely the National Executive Committee and the respective Regional Executive Committees. I am accordingly of the view that the respondent has failed to establish that those suspensions were irregular and invalid.

The decision to place the Mpumalanga Region under administration

- [45] The respondent challenged the Central Committee's decision to place the Mpumalanga Region under administration for a period of 12 months and barring it from attending the National Congress on the basis that it was *ultra vires* the powers of the Central Committee. She contended that that power vests in the Regional Congress in terms of clause 5(2)(a)(vii) of the constitution, which provides that the Central Committee may take over the management of a region only after the Regional Congress has suspended its Regional Executive Committee. She submitted that it is common cause that this did not happen, and the Central Committee's actions were thus premature.

- [46] She also contended that the decision to bar the Mpumalanga Region from attending the National Congress without any disciplinary procedures having been instituted and without exempting the 'Locals', which consist of the elected shop stewards in a workplace, violated the NUMSA constitution.

- [47] NUMSA asserted that the Central Committee placed the Mpumalanga Region under administration pursuant to the powers vested in that committee in terms of Chapters 4 and 6 of the constitution. For this contention it relied on

constitutional clauses which provide that the Central Committee: (a) may overrule any decision of any local shop steward council;⁷ (b) may review any decision of a Regional Committee, and to confirm, amend or reverse such a decision;⁸ (c) may establish or close down regions and to define their areas of jurisdiction;⁹ and (d) it is empowered to take over the management of the affairs any region where a Regional Executive Committee has been suspended, until such time as another committee has been constitutionally elected.¹⁰

- [48] It argued, furthermore, that the region's suspension was necessary and justified in the context of the abovementioned circumstances. The Central Committee's decision to take over the administration of that region was therefore a necessary intervention in the best interests of the organisation. In addition, the decision was also endorsed by the region's leadership who attended the meeting.
- [49] Moshoana J, however, rejected the argument that the contended power is implicit in the Central Committee's constitutional role and found that it had no powers other than those explicitly stated in the constitution.
- [50] Ms Engelbrecht SC, submitted that on a proper construction, clause 6(2)(d)(iv), which empowers the Central Committee to "*take over the management of the affairs of any region where a Regional Executive Committee has been suspended*", also empowers the former to take over the affairs of a region; in other words, to place it under administration. The Court *a quo*'s finding that it can only do so if a Regional Congress has suspended the Regional Executive Committee is not consonant with the overall scheme and purpose of the NUMSA constitution. Such a construction means that the Central Committee can only intervene to regularise the affairs of a region after a Regional Congress has been able to quorate and suspend its Executive Committee. Ms Engelbrecht contended that it was inconceivable that the Central Committee is not allowed to take over the administration of a region

⁷ Clause 4(2)(vii)(b)(iv).

⁸ Clause 6(2)(d)(ii).

⁹ Clause 6(2)(d)(iii).

¹⁰ Clause 6(2)(d)(iv).

which has failed to muster a quorum to convene two consecutive Regional Congresses, and has since become dysfunctional,

- [51] Mr Nhlapo argued that the Central Committee has no powers under the constitution, either explicitly or impliedly, to place regions under administration before a Regional Congress has suspended its Regional Executive Committee. The constitutional dilemma that could ensue in the event of a region being unable to muster a quorum to convene a Regional Congress may well require NUMSA to consider amendments to its constitution, but it would not be proper for the Court to read into the constitution an implied term that will effectively amend its explicit provisions.
- [52] I am of the view that the appellants have provided compelling reasons for the Central Committee's decision to suspend the Mpumalanga Regional Committee and to take over its administration. Although clause 6(2)(d)(iv) of the constitution clearly empowers the Central Committee to take over the management of a region's affairs only after a Regional Executive Committee has been suspended by the Regional Congress, it is conceivable that circumstances may arise that require the Central Committee to intervene in NUMSA's best interests, despite the absence of that jurisdictional fact, in particular where the absence of such action could cause considerable jeopardy to the union.
- [53] In this case, the appellants explained that the region has, for a period of two years, not been able to muster a sufficient quorum to convene two consecutive Regional Congresses. For all practical purposes, the region has thus become dysfunctional. To my mind, a reasonable construction of clause 6 of the constitution must imply that in circumstances such as these, the Central Committee would have the power to take over the administration of a region despite the fact that its Executive Committee had not been suspended by the Regional Congress. These circumstances are, in my view, those envisaged in terms of clause 6(2)(d)(xvi) of the constitution, which requires the Central Committee "*to do all lawful things to promote the interests of the*

Union".¹¹ The construction contended for by the respondent will mean that NUMSA would effectively be emasculated and without any constitutional remedy to address a crisis that may threaten to destabilise the entire organisation. I therefore respectfully disagree with the Court *a quo*'s finding regarding this issue.

Accreditation of delegates to the National Conference

[54] The respondent challenged the validity of the accreditation process on the basis that the Central Committee's failure to appoint a Credentials Committee violated the NUMSA constitution. The latter was enjoined to appoint the Accreditation Committee in terms of clause 6(1)(c)(iii) of the constitution and its decision to exercise that power itself, was thus unconstitutional and invalid. Clause 6(1)(c)(iv) provides that only delegates accredited by the Credentials Committee shall be entitled to vote at a National Congress. The delegates to the National Congress had therefore not been properly accredited and all resolutions adopted at the Congress would consequently be tainted with invalidity, or so she asserted.

[55] The respondent, on the other hand, contended that because the Accreditation Committee is not a separate constitutional structure but merely a sub-committee of the Central Committee, the latter has residual powers to approve credentials. The Central Committee duly performed that function during its special meeting on 5 May 2022.

[56] Moshoana J found that the Central Committee's failure to appoint an Accreditation Committee and the arrogation of this power to itself were unconstitutional. The effect of these unconstitutional aberrations was that the delegates had not been properly accredited and "*the planned congress is more likely to proceed along unconstitutional lines*". He consequently interdicted NUMSA from proceeding with the scheduled National Congress.

¹¹ Clause 6(2)(d)(xvi).

- [57] Regarding the Central Committee's entitlement to assume the functions of a Credentials Committee, Ms Engelbrecht submitted that since the latter is not a constitutional structure, but merely a sub-committee, there was nothing that stopped the Central Committee from doing the accreditation itself.
- [58] Mr Nhlapo, on the other hand, submitted that the constitution unambiguously enjoins the Central Committee to appoint an Accreditation Committee and only delegates accredited by the latter are entitled to vote at a National Congress. These unequivocal provisions do not allow for a construction that bestows upon the Central Committee a discretion whether or not to appoint the committee or to decide unilaterally to do the accreditation itself, or so he argued.
- [59] As mentioned, the Central Committee is bound to act within the four corners of the constitution and is not allowed, at its whim, to arrogate to itself powers specifically assigned to another constitutional structure. In my view, the Central Committee's failure to appoint an Accreditation Committee and its arrogation of those powers to itself, also fall to be declared irregular and invalid for the same reason. Other than the bald averment that the Central Committee has residual powers to do the accreditation of delegates to a National Congress itself, the appellants have not made any attempt to explain why the performance of that function was not left to the constitutionally nominated structure. Clause 6(c)(iv) is unambiguous in its decree that "*only delegates accredited by the Credentials Committee shall be entitled to vote at a National Congress*". The fact that the delegates to the National Congress would not have been properly accredited in terms of the constitution was therefore sufficient justification for the Court *a quo*'s decision to interdict the holding of the scheduled National Congress until such time as NUMSA has complied with its constitution.

Summary of findings

- [60] In summary then, I make the following findings:

- 60.1 The respondent's suspension by the Central Committee was not affected in accordance with the NUMSA constitution and is therefore invalid and of no force or effect.
- 60.2 The suspensions of the other members, listed in Annexure RN2 to the respondent's founding affidavit, were properly done in accordance with the NUMSA constitution and therefore valid and binding.
- 60.3 The Central Committee acted properly and in terms of its constitutional mandate when it assumed control of the affairs of NUMSA's Mpumalanga Region.
- 60.4 The Central Committee has, in purporting to exercise the powers of an Accreditation Committee, acted *ultra vires* the powers vested in it by the NUMSA constitution.

The issue of costs

[61] Insofar as the issue of costs is concerned, I am of the view that the costs order made by the Court *a quo* should not be interfered with. On appeal, both parties were partially successful. The appellants have established that they acted properly in suspending the other members and taking over the Mpumalanga Region's administration. The respondent, on the other hand, successfully opposed the appeal against the finding regarding her own suspension and the order interdicting the National Congress. Counsel have correctly conceded that it is only fair that the parties should bear their own costs in respect of the appeal as well.

[62] In the result, the appeal succeeds to the following extent:

Order

1. Paragraph 2 of the court *a quo*'s order is set aside and replaced by the following order:

'2. It is declared that:

- (i) The suspension of Ruth Ntlokose is unconstitutional, invalid, and unenforceable.
- (ii) The accreditation of delegates to NUMSA's General Congress scheduled for 25 to 29 July 2022 was *ultra vires* the powers of the Central Committee and thus unconstitutional and invalid.
- (iii) There is no order as to costs.'

2. The parties shall bear their own costs in respect of the appeal.

SMITH AJA

Mlambo AJA and Davis AJA concur.

APPEARANCES:

For Appellants:

Adv M Engelbrecht SC and Adv M. Meyerowitz

Instructed by:

Serfontein Viljoen & Swart

For the Respondent:

Adv SB Nhlapo

Instructed by:

Kropman Attorneys