



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS 864/16

In the matter between:

ERNEST MOKWATLO & 23 OTHERS

First Applicant

NUM OBO 17 MEMBERS

Second Applicant

GIWUSA OBO RICHMAN SHEZI AND JOHN SIBAYA

Third Applicant

and

LA FARGE INDUSTRIES SOUTH AFRICA (PTY) LTD

Respondent

Heard: 27 September 2023

Order: 27 September 2023

Date of Reasons: 02 February 2024

REASON FOR ORDER

SAUNDERS, AJ

Introduction

[1] This matter has had a long and tumultuous history, spanning some seven years. A series of unprotected strikes at two of the operating sites of the

respondent culminated in dismissals of approximately 201 employees in 2016. The sites at which the unprotected strikes took place were the Kaalfontein site and the Lictenburg site. These employees referred disputes to the Labour Court under three different case numbers.

- [2] The first referral was made under case number JS864/2016 by Mr Ernest Mokwatlo and 23 others on 14 November 2016. The second referral was made by NUM obo 174 members on 15 December 2016 under case number JS934/2016 and the third referral was made by GIWUSA obo members Shezi and Sibaya under case number JS245/2017 on 5 April 2017.
- [3] On 16 August 2019 the respondent sought and was granted an order joining 17 employees from the second referral under case number JS934/2016 to the first referral under case number JS864/2016; and consolidating the first and third dispute to ensure that all the Kaalfontein dismissals would be adjudicated simultaneously.
- [4] This matter deals exclusively with case number JS864/16 and more specifically, the 17 individuals represented by NUM who were joined by virtue of the court order granted on 16 August 2019.
- [5] This matter turns on an order made on 2 September 2022 by this court. The terms of the order are as follows:

“Having read the papers and having considered the matter;

IT IS ORDERED THAT:

1. *The Respondent’s exception is upheld.*
2. *The Second Applicants are granted 15 days to deliver a statement of claim under case number JS864/16, with a condonation application for the late delivery thereof, failing which, the Second Applicant’s case is dismissed.*

- [6] It is common cause between the parties that the second applicant failed to deliver the Statement of Claim and condonation application within the requisite 15 days. The second applicant’s case was therefore automatically dismissed by operation of the order made on 2 September 2022.

[7] This court, which is not sitting as a court of appeal, has no power to revisit the order of another judge. The matter is not deemed dismissed. It is dismissed in terms of the order of this court.

[8] The second applicant sought a postponement at the hearing of the matter. Given that the matter has already been dismissed, some 12 months prior, a postponement would serve no purpose. A postponement in respect of a dismissed application would be an empty order.

[9] On the basis of the above, the court made the following order:

- 1 The application for postponement is dismissed.
- 2 In the absence of jurisdiction to consider the matter, the application to revive and reinstate brought by the second applicant is dismissed.
- 3 The second applicant is to bear the costs.

Sarah Saunders
Acting Judge of the Labour Court

Appearances:

For the second applicant: Mr. Molatelo Makhura from Cheadle Thompson & Haysom Attorneys

For the respondent: Mr. Pieter Moll from Solomon Holmes Attorneys