

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

Held in Johannesburg

Case no: DA8/06

In the matter between

Ninian & Lester (Pty)Ltd

Appellant

And

JT Crouse N.O

1st Respondent

**National Textile
Bargaining Council**

2nd Respondent

**The Amalgamated Bargaining
Council**

3rd to 8th Respondents

JUDGMENT

ZONDO JP

[1] This is an appeal from a judgment and order of the Labour Court handed down in an appeal in terms of sec 111 of the Labour Relations Act, 1995 (Act 66 of 1995) (“**the Act**”). Leave to appeal was granted by the Labour Court.

[2] The appellant is a registered company with limited liability that operates in the textile industry. The first respondent is the registrar

of labour relations designated as such by the Minister of Labour in terms of sec 108 of the Act to perform the functions of registrar of labour relations provided for in the Act. One of his functions is to register bargaining councils, trade unions and employers' organisations as provided for in the Act. The second respondent is a bargaining council that was the result of the amalgamation of those bargaining councils which are the third upto the eighth respondents herein when those bargaining councils were deregistered.

- [3] Sec 34 of the Act makes provision for the amalgamation of bargaining councils. Sec 34(1) provides that any bargaining council may resolve to amalgamate with one or more other bargaining councils. When two or more bargaining councils amalgamate, the resultant bargaining council is referred to in the Act as the amalgamated bargaining council and the bargaining councils which amalgamate are referred to as the amalgamating bargaining councils (sec 34(2)).
- [4] Sec 34(2) of the Act provides that the amalgamating councils may apply to the registrar of labour relations for the registration of the amalgamated bargaining council. In terms of sec 34(2) of the Act the registrar of labour relations must treat an application by amalgamating councils for the registration of an amalgamated bargaining council as an application for registration provided for in sec 29. In terms of sec 29(3):

“As soon as practicable after receiving the application [for registration], the registrar [of labour relations] must publish a notice containing the material particulars of

the application in the Government Gazette. The notice must inform the general public that they -

- (a) may object to the application on the grounds referred to in subsection (4); and**
- (b) have 30 days from the date of the notice to serve any objection on the registrar and a copy on the applicant.”**

[5] Sec 29(4) requires **“any person who objects to the application”** to satisfy the registrar that he has served a copy of his objection on the applicant. It also sets out the grounds upon which an objector is required to base his objection. There are three such grounds set out in sec 29(4)(a) to (c). They are that:

- “(a) the applicant has not complied with the provisions of this section;**
- (b) the sector and area in respect of which the application is made is not appropriate;**
- (c) the applicant is not sufficiently representative in the sector and area in respect of which the application is made.”**

In terms of sec 29(5) the registrar may require further information in support of the objection just as he may in terms of sec 29(2) require further information in support of an application for registration.

[6] After the applicant has received a copy of the objector’s objection, he has 14 days within which to respond to such objection if he wishes to do so. If he does respond, he must, in terms of sec 29(6),

satisfy the registrar that he has served a copy of his response on the objector.

- [7] Once the registrar has received the application, the objection, the response and any other information that he may have asked for and was furnished with, he is required by sec 29(7) to send all of that information to NEDLAC **“to consider”**. Sec 29(7) does not specify the purpose for which NEDLAC needs to **“consider”** the information sent to it. It is in sec 29(8) that the Act spells out NEDLAC’s role in this regard. Sec 29(8) provides thus:

“NEDLAC, within 90 days of receiving the documents from the registrar, must-

- (a) consider the appropriateness of the sector and area in respect of which the application is made;**
- (b) demarcate the appropriate sector and area in respect of which the bargaining council should be registered; and**
- (c) report to the registrar in writing.”**

- [8] Sec 29(9) deals with a situation where NEDLAC fails to agree on a demarcation of a sector and area for the bargaining council sought to be registered. Sec 29(9) reads:

“If NEDLAC fails to agree on a demarcation as required in subsection (8)(b), the Minister must demarcate the appropriate sector and area and advise the registrar.”

Sec 29(10) enjoins NEDLAC and the Minister to give effect to the primary objects of the Act when either of them demarcates the

appropriate sector and area. The primary objects of the Act are set out in sec 1(a) to (d) of the Act. It is not necessary to list them here except to point out that two of them are the promotion of orderly collective bargaining and the effective resolution of labour disputes.

[9] Once NEDLAC or NEDLAC and the Minister of Labour, as the case may be, has played their roles contemplated in sec 29(7) to (10) of the Act, they report to, or, advise, the registrar. In the case of NEDLAC it must report to the registrar in writing (see 29(7)(c)). That is reporting the outcome of its consideration of the appropriateness of the sector and area in respect of which the application is made (sec 29(8)(a)) and reporting on its demarcation of the appropriate sector and area in respect of which the bargaining council should be registered (sec 29(8)(b)). Obviously, where NEDLAC was unable to agree on the demarcation, it will report that it failed to reach agreement thereon. In such a case the task of making such a demarcation would then fall upon the shoulders of the Minister of Labour who, after doing it, is required to “**advise the registrar**” (sec 29(9)).

[10] Once NEDLAC or NEDLAC and the Minister of Labour, as the case may be, have played their respective roles provided for in sec 29(7) to (10), the application for registration reverts to the registrar for him to make a decision on the application for registration. At that stage the sector and area have already been demarcated either by NEDLAC or by the Minister. The registrar has no decision to make in that regard. He also has no power to decide the appropriateness or otherwise of the sector and area in respect of

which the application is made. That falls within NEDLAC's power to decide (sec 29(8)(a)).

- [11] What the registrar must do after the matter has reverted to him and the factors that he must take into account in making the decision whether to register or not to register a bargaining council are set out in sec 29(11) to (15). Sec 29(11) to (15) read thus:

“11. The registrar –

(a) must consider the application and any further information provided by the applicant.

(b) must determine whether....

- (i) the applicant has complied with the provisions of this section;**
- (ii) the constitution of the bargaining council complies with section 30;**
- (iii) adequate provision is made in the constitution of the bargaining council for the representation of small and medium enterprises;**
- (iv) the parties to the bargaining council are sufficiently representative of the sector and area determined by NEDLAC or the Minister; and**
- (v) there is no other council registered for the sector and area in respect of which the application is made; and**

(c) if satisfied that the applicant meets the requirements for registration, must register the

bargaining council by entering the applicant's name in the register of councils.

12. If the registrar is not satisfied that the applicant meets the requirements for registration, the registrar –
 - (a) must send the applicant a written notice of the decision and the reasons for that decision, and
 - (b) in that notice, must inform the applicant that it has 30 days from the date of the notice to meet those requirements.
13. If, within that 30 days period, the applicant meets those requirements, the registrar must register the application by entering its name in the register of councils.
14. If, after the 30 day period, the registrar concludes that the applicant has failed to meet the requirements for registration, the registrar must-
 - (a) refuse to register the applicant; and
 - (b) notify the applicant and any person that objected to the application of that decision in writing.
15. After registering the applicant, the registrar must
 - (a) issue a certificate of registration in the applicant's name that must specify the registered scope of the applicant; and
 - (b) send the registration certificate and a certified copy of the registered constitution to the applicant.”

[12] When the registrar makes a decision to register or not to register a bargaining council in terms of sec 29(13) or 29(14), as the case may be, someone may be aggrieved by such a decision. Sec 111 of

the Act confers upon such a person the right of appeal to the Labour Court. Sec 111 of the Act reads:

“111 Appeals from registrar’s decision

- (1) Within 30 days of the written notice of a decision of the registrar, any person who is aggrieved by the decision may demand in writing that the registrar provide written reasons for the decision.**
- (2) The registrar must give the applicant written reasons for the decision within 30 days of receiving a demand in terms of subsection (1).**
- (3) Any person who is aggrieved by a decision of the registrar may appeal to the Labour Court against that decision, within 60 days of –**
 - (a) the date of the registrar’s decision; or**
 - (b) if written reasons for the decision are demanded, the date of those reasons.**
- (4) The Labour Court, on good cause shown, may extend the period within which a person may note an appeal against a decision of the registrar.”**

[13] In this case, as I have already said above, the third to the eighth respondents resolved to amalgamate to form one bargaining

council as they are permitted to do by sec 34(1) of the Act. They amalgamated and formed the second respondent. An application was then made to the first respondent to register the second respondent as a bargaining council in terms of sec 34(2) read with sec 29 of the Act. After receiving the application, the first respondent published a notice in the Government Gazette in terms of sec 29(3) giving the material particulars of the application and informing the general public as he was required to by sec 29(3) that they **“(a) may object to the application on the grounds referred to in subsection (4); and (b) have 30 days from the date of the notice to serve any objection on the registrar and a copy on the applicant.”**

- [14] Pursuant to the notice published by the first respondent in terms of sec 29(3), the appellant lodged with the registrar an objection to the application for registration and served a copy thereof on the applicant. The objection was on various grounds which I do not propose setting out herein. It is common cause that the appellant falls outside the second respondent’s scope of registration and, therefore, of operation as well. Indeed, the appellant, as already stated above, operates its business in the textile industry and not in the industry in which the second respondent will operate. In fact, the appellant also did not fall within the respective scopes of registration of the third to the eighth respondents before they were deregistered. They were deregistered upon the registration of the second respondent. It is also common cause that the appellant had no *locus standi*, as that term is understood at common law, in the application for the registration of the second respondent. Its only basis for its claim that it was entitled to be involved in this

litigation is based on its mere status as a member of the general public who filed an objection as contemplated by sec 29(3) of the Act and on the basis of no other interest.

- [15] In due course the first respondent decided to register the second respondent and deregistered the third to the eighth respondents. The appellant was unhappy about this decision and purported to note an appeal to the Labour Court in terms of sec 111 of the Act. The third up to the eighth respondents opposed the appeal. In support of their opposition they inter alia raised the point that the right of appeal provided for in sec 111 of the Act was not available to the appellant. The basis for this point was that sec 111(3) only conferred that right to “any person who is aggrieved by a decision of the registrar” and that the appellant was not such a person. The Labour Court upheld this point and dismissed the appellant’s appeal. The appellant then applied to the Labour Court for leave to appeal. Leave to appeal was granted, hence this appeal.

The judgment of the Labour Court

- [16] I have already said above that the Labour Court dismissed the appellant’s appeal on the grounds that the appellant was not “**person who is aggrieved**” by the first respondent’s decision as required by sec 111 of the Act. The basis of the Labour Court’s decision is the decision of the Appellate Division in **Francis George Hill Family Trust v South African Reserve Bank and Another 1992(3) SA 91(A)**, in particular the passage at 98 H thereof. I shall refer to this case shortly.

The appeal

- [17] Before us the second and further respondents persisted in their contention that the appellant fell outside the phrase “**person who is aggrieved by a decision of the registrar...**” appearing in sec 111(3) of the Act and, therefore, had no right to appeal to the Labour Court against the first respondent’s decision to register the second respondent. The appellant persisted in its contention that it fell within that category and that it did have such a right.
- [18] In support of its contention the appellant made a number of points. The appellant argued that there was no logic in the proposition that it was not an aggrieved person as contemplated by sec 111(3) when in fact it, as a member of the general public, had been invited in terms of sec 29(3) to object to the second respondent’s registration. Counsel for the appellant submitted that it would be strange if the legislature would confer on the appellant the right to object but once it had objected and its objection had not been dealt with properly, it would not be able to appeal to the Labour Court as provided for in sec 111 when another objector could appeal under the section. He also submitted in his heads of argument that it would amount to unfair discrimination if the interpretation that was adopted with regard to who an aggrieved person is under sec 111(3) was one in terms of which an objector who in effect has a legal and substantial interest in the matter as that term is normally understood will have a right to appeal if his objection has not been upheld but an objector who has no such interest but is a member of the general public who responded to a Government Notice in terms of sec 29(3) of the Act by lodging in objection had no such right of appeal and might have no remedy. It was submitted on behalf of

the appellant that to the extension that it may be argued that the appellant had the right to review, this would be inadequate and there was no justification in law for such a submission that it had only a right of review but no right of appeal in terms of sec 111 of the Act.

[19] To emphasise that the legislature did not intend to restrict the category of people falling within the term “**person who is aggrieved by a decision of the registrar ...**” to those persons who at common law would have *locus standi* in an application for registration as was contended for by the respondents, Counsel for the appellant drew our attention to the fact that the Act does not even require an objector in sec 29(3) to disclose its interest in the application for registration. The argument was that, if the legislature intended such a restriction, it would have required each objector to disclose its interest when submitting its objection.

[20] On behalf of the second and further respondents it was submitted that the meaning to be given to the phrase “**person who is aggrieved by a decision of the registrar...**” in sec 111(3) of the Act is that it is a person who has a legal grievance or a person who at common law would be said to have *locus standi* in the matter. It was submitted that the appellant fell outside of that category and, accordingly, had no right of appeal in terms of sec 111(3) of the Act. In support of this contention the respondent:

- (a) referred to a number of cases including the Francis George case referred to earlier in which the courts have defined an aggrieved person effectively as a person who has *locus standi* in the matter and urged

that the same meaning be given to the aforesaid phrase in sec 111(3) of the Act;

- (b) submitted that to give the concept of an aggrieved person a meaning other than that of a person who has locus standi at common law in the matter would amount to interpreting legislation in a manner that alters common law – something that courts do not do lightly.
- (c) submitted that courts exist to adjudicate concrete disputes and, since the appellant did not have locus standi as it is known at common law in this matter, if it was held to have a right to appeal to the Labour Court in this matter, that would be an interpretation that would enable someone to engage the attention of the Court in regard to a matter in respect of which there is no concrete dispute involving such a person and the court should not lightly adopt an interpretation that would have such a consequence.

It seems apposite to begin a consideration of the submissions with a discussion of the decision in **Francis George Hill Family Trust v South African Reserve Bank and others 1992(3) SA 91 (A)**, a case on which the Court a quo also relied and to which we were referred by Counsel for the second and further respondents.

[21] In **Francis George Hill Family Trust v South African Reserve Bank and others 1992 (3) SA 91(A)** the appellant and the Hahn Family Trust (“**the HFT**”) owned all the issued shares in Phoenix

Chemicals (Pty) Ltd, the second respondent. Sec 9 of the Currency and Exchanges Act 9 of 1933 empowered the State President to make regulations in regard to any matter relating to currency, banking or exchanges. Such regulations could provide inter alia for the attachment by the Treasury of money suspected of having been involved in any act or omission suspected of constituting a contravention of the regulations irrespective of in whose possession such money was. Regulation 22E of those regulations provided that the Minister of Finance could delegate the power to attach money as aforesaid to any person. The Minister had delegated such power and assigned duties connected therewith to any Deputy Governor of the Reserve Bank. A Deputy Governor of the Reserve Bank had issued a notice of attachment attaching 50% of the monies deposited by Phoenix Chemicals (Pty) Ltd in various accounts with the Trust Bank of Southern Africa Ltd.

[22] Regulation 22D, referred to above, provided that “... **any person who feels himself aggrieved by the attachment of money ...**” under various paragraphs of regs 22 A or 22 C (which included those paragraphs in terms of whereof the Reserve Bank had attached the monies of Phoenix), “... **may bring an application in a competent Court for the review of any such attachment ... and any such Court may set aside such attachment ... on the grounds set out in the provisions of Para (d)(i) or (iii) of s 9(2) of the Act.**”

[23] The appellant brought an application on motion in the Transvaal Provincial Division of the High Court against the Reserve Bank, Phoenix Chemicals (Pty) Ltd and the HFT. The orders the

appellant sought were: (1) leave to proceed in the application “**by derivative action**” on behalf of Phoenix, and (2) an order reviewing and setting aside the notice of attachment and costs. Neither Phoenix nor HFT opposed the application. However, the Reserve Bank opposed the application.

[24] In the Court of first instance the question had arisen whether the appellant was a “**person who feels himself aggrieved by the attachment of money ...**” as contemplated in reg 22D. This question was raised against the background that ordinarily, if a company is wronged, it is the company, and not its shareholder, which has a right to bring legal proceedings concerning that matter. McCreath J, who heard the matter in the Court of first instance, dismissed the application. He found it unnecessary to decide the question whether or not the appellant was entitled to approach the court by way of a derivative action. McCreath J assumed in favour of the appellant that it was entitled to bring the application.

[25] In the Appellate Division Counsel for the appellant adopted as his main argument the contention that the appellant as the 50% shareholder of Phoenix Chemicals (Pty)Ltd was a “**person who feels himself aggrieved**” by the attachment within the meaning of that phrase in reg 22D. Accordingly, the Appellate Division had to consider whether the appellant fell within the ambit of that phrase as used in reg 22D. Hoexter JA, with whom Nicholas and Harms AJJA agreed, concluded that the appellant was not a “**person who feels himself aggrieved**” by the attachment of Phoenix’ monies in the various bank accounts. That was the majority judgment.

[26] In coming to the conclusion that the appellant was not an aggrieved person in terms of the regulations, Hoexter JA referred to a long line of cases in which courts had considered the phrase “**aggrieved person.**” He considered all the cases to which he referred at 98B-102I of the report. I do not propose to quote those pages but wish to point out that there can be no doubt from a reading of what Hoexter JA had to say in those pages that he gave the issue thorough and careful consideration. I think that it would not be inaccurate to say that the Appellate Division held that the cases tended to the view that an aggrieved person is not someone who is simply disappointed at a certain decision but is a person who has a legal grievance. At 102C Hoexter JA, writing for the majority, said:-

“Leaving aside the significance of statutory context in particular cases the tenor of decided cases in South Africa points, I think, to the general conclusion that the words ‘person aggrieved’ signify someone whose legal rights have been infringed – a person harbouring a legal grievance. The current of judicial interpretation would appear to run in the same direction in the decisions of English courts – see the remarks of Donovan J in *Eating Corporation v Jones* (supra at 392).”

[27] In the second sentence after the above passage Hoexter JA referred to **“... the South African decisions which require a legal grievance before the objector can qualify as a ‘person aggrieved.’** Hoexter JA said at 102 F-G that **“(t)he critical question in the present case is whether the attachment by the**

Reserve Bank of the assets of Phoenix represents an invasion of the legal rights of the [appellant]”.

[28] Kumleben JA gave a minority judgment in the Francis George Hill Family Trust matter. Hefer JA concurred in that judgment. Kumleben JA disagreed with the majority that the reference to “**a person who feels himself aggrieved by the attachment of money**” in reg 22D was restricted to a person who has a legal grievance or a person whose legal rights have been infringed. He took the view that that was a restricted meaning of the phrase but that the correct meaning of the phrase would include a person whose interest fell short of a legal interest. In that case Kumleben JA said at 106D-E that in a case such as the Francis George case a shareholder would have every reason to feel aggrieved in the legal sense. Kumleben JA held that he would have upheld the appellant’s appeal. Kumleben JA said at 104J – 105A that, although examples of cases had been given in which the phrase “**aggrieved person**” or “**person aggrieved**” had been given the meaning that Hoexter JA gave to the phrase in the majority judgment, cases in which a wider meaning had been given to the phrase were ready to hand. He referred to certain cases at 105A – I. I am not persuaded that he was right. I find the majority judgment much more persuasive.

[29] It would seem to me that, if one were to “**import**” into the present matter the question which the Appellate Division formulated in the Francis George case at 102 F-G to decide whether or not the appellant in that case was an aggrieved person, which I have quoted in par 27 above, one would have to say in the present matter: the critical question is whether the registration of the

second respondent by the first respondent represented an invasion of the legal rights of the appellant. Of course, the answer would be: No! That being the case, the conclusion would be that the appellant falls outside the phrase “**person who is aggrieved by a decision of the registrar**” in sec 111(3) of the Act. That would be if one adopts the same meaning of “**aggrieved person**” in regard to sec 111(3) as was adopted by the Appellate Division in the Francis George matter. The question that arises is whether or not that is the meaning of an “**aggrieved person**” that should be adopted with reference to sec 111(3). For the reasons that follow I think it is.

- [30] In my view the starting point in considering the contending submissions made by the parties on the meaning of the aforesaid phrase in sec 111(3) of the Act is the principle that courts of law exist to deal with concrete disputes and not pronounce on abstract issues and advise on differing contentions. Counsel for the second and further respondents made a submission to this effect. In support thereof he referred to *Geldenhuys and Neethling v Beethin* 1918 AD 426 at 441 where the Appellate Division said:

“...Courts of law exist for the settlement of concrete controversies and actual infringements of rights, not to pronounce upon abstract questions, or to advise differing contentions, however important”

He submitted that that is the rationale for *locus standi*. In my view a statute must, as far as possible, be interpreted in a way that does not mean that courts must decide abstract or academic issues or give legal advice. An Act should not lightly be interpreted so as to allow persons who have no *locus standi* to bring to Court actions and applications for the courts to make decisions on abstract or

academic issues. As far as possible a statute must be construed in a manner that allows persons who have genuine, real and concrete disputes to bring their disputes to the Courts for the courts to pronounce on such disputes. This has to be so because courts play a vital role in the maintenance of stability in society which they do by adjudicating and resolving disputes which exist among members of society, on the one hand and, on the other, those in authority including various spheres of government. If, therefore, the Courts' time to adjudicate and resolve such concrete and real disputes is going to be taken up by the Courts considering and making all kinds of pronouncements desired by various members of society on abstract or academic questions, this will have an adverse impact on those members of society who have real and concrete disputes and who want their disputes resolved. Those real and concrete disputes will be subjected to long delays before they receive the attention of the courts because the courts will be busy with abstract and academic issues or will be busy effectively giving legal advice through judgments to persons who have no concrete disputes to be adjudicated.

- [31] Before a court would adopt an interpretation of a statute that would have the effect of burdening courts with cases that do not relate to concrete disputes, the legislation would have to reveal such intention on the part of the legislature in very clear terms. The concern about an interpretation that would have such a result would even be greater where such interpretation is suggested in relation to a provision in the Labour Relations Act, 1995 and in respect of the Labour Court or indeed, this Court. I say this because sec 3 of that Act inter alia requires that provisions of the Act

interpreted so as to give effect to its primary objects and one of its be primary objects is the promotion of the effective resolution of labour disputes. The effective resolution of disputes entails an expeditious resolution of disputes. The Labour Court's ability to play its role in providing an effective resolution of disputes in line with the relevant primary object of the Act would be seriously undermined if it began to entertain matters brought to it by persons and organisations who have no *locus standi* in the matters they brought to that Court. The same would apply to this Court with regard to subsequent appeals on those matters. I do not think that the legislature has made it clear in sec 111 that it intends that the Labour Court should be burdened with appeals by persons who have no *locus standi* as that term is understood at common law or no legal and substantial interest or when such persons' rights are not affected in any adverse way by the relevant decisions of the registrar.

- [32] As Counsel for the second and further respondents submitted, where a phrase has been given a certain meaning by the Courts and Parliament uses such a phrase in a later Act, Parliament is presumed to have intended such phrase to bear the meaning that has previously been given to the phrase by the Courts. In this case, as the decision of the Appellate Division in the Francis George case reveals, the reference to an aggrieved person or a person who is aggrieved had been interpreted judicially in a number of cases before the passing of the Labour Relations Act, 1995. Accordingly, Parliament must be taken to have intended the meaning that the Courts had previously given to the phrase to apply to the same phrase in sec 111(3). That is that a “... **person who is aggrieved**

by a decision of the registrar” in sec 111(3) is a person who has a legal grievance or whose legal rights may be adversely affected by the decision against which they seek to appeal.

[33] I am inclined to agree with Counsel for the second and further respondents that the explanation as to why Parliament saw fit to give members of the general public the right to object in sec 29(3) but not the right to appeal to the Labour Court in terms of sec 111(3) when their objections are dismissed is that the legislature probably wanted to ensure that the general public could have a say on which entities get registered and in respect of what sectors and areas. In other words it was some kind of participatory democracy extended to the general public without the legislature wanting to put objectors who are members of the general public on the same level as those objectors who have *locus standi* in the matter as that term is understood at common law.

[34] It is true that the meaning I have given to the phrase “**...person who is aggrieved by a decision of the registrar”** results in those objectors who have a legal and substantial interest in the registration of a bargaining council having a right of appeal to the Labour Court when the registrar rejects their objections and registers the bargaining council and those objectors who do not have such interest but are simply members of the general public having no such right of appeal despite the fact that they, too, are objectors in terms of sec 29(3). As I have said above the two classes of objectors are treated differently because they are different. They cannot be treated in the same way. The one category has no rights which are affected in any adverse manner by

the decision of the registrar whereas the other category of objectors has legal rights which are or may be affected adversely by the registrar's decision. For the one category of objectors there is really nothing at stake but for the other category there may be a lot at stake. Accordingly, the one category has a right of appeal and the other has no such right.

- [35] Does this mean that the appellant, despite being an objector in terms of sec 29(3), has no remedy against the decision of the registrar rejecting its objection? Yes, in my view that is what it means and there is nothing strange about that because the decision of the registrar to register the second respondent which the appellant wants to challenge in the Labour Court – be it in an appeal or on review – is a decision that does not adversely affect its rights or interests. The appellant is seeking to engage the courts in an academic exercise. And the meaning I have adopted in relation to sec 111(3) is one that shields the courts from those like the appellant who seek to engage the courts in academic exercises. As Counsel for the respondents submitted on the strength of *Ex parte Sidebotham* (1880) 14 ChD458 (CA) at 465 and the *Francis George* case, *supra*, at 99A-B, the right to appeal is not based upon disappointment of a benefit which a party may have received if some other decision had been made. Indeed, as it was said in ***Oudekraal Estates (Pty)Ltd v City of Cape Town and others* 2004 (6) SA 222 (SCA)** at 245 H-246A, even if there is illegality, such illegality will be set aside “**if the right remedy is sought by the right person in the right proceedings**” (my underlining).

[36] Finally I note that in terms of sec 29, if the registrar is satisfied that the applicant meets the requirements for registration, he is required by sec 29(11)(c) to register the applicant without further interaction with the objector about its objection. Of course, on my construction of sec 111, there will be a right to be heard *de novo* in the sec 111 appeal for those objectors who have a legal and substantial interest in the matter of the registration of the bargaining council but there will be no hearing for those who have no such interest. Accordingly, there is no obligation provided for on the part of the registrar to discuss the matter with an objector whose objection he is rejecting by virtue of the fact that he is registering the applicant. However, I also note that, when the registrar decides not to register the bargaining council, in other words, if he upholds the objector's objection in terms of sec 29(14)(a), the objector gets notified. It is rather strange that, when his objection is rejected, the objector has no right to be notified thereof but when his objection is upheld, he is given a right to be notified thereof. In my view this can only be explained on the basis that the legislature realised that, if the objector was notified that his objection had been rejected, this could lead to further interaction from him which was sought to be avoided whereas, if he was notified that his objection was upheld, he would be happy and would not be expected to take any further steps. In my view this is an indication that the legislature intended to limit the role of an objector who is not also an aggrieved person as contemplated in sec 111 of the Act to simply bringing to the attention of the registrar whatever objection there could be to the applicant's registration and only allow an objector to go beyond lodging an objection e.g. noting an appeal in terms of sec 111 of the Act if he meets other requirements, namely, if he has *locus*

standi as understood at common law or, put differently, if he has a legal and substantial interest in the registration or non-registration of, for example, the bargaining council.

[37] In the light of the above I am of the view that the appeal falls to be dismissed. The requirements of law and fairness dictate that the appellant should pay the second and further respondents' costs including the costs occasioned by the employment of two Counsel.

[38] In the premises the order the appeal is dismissed with costs including the costs consequent upon the employment of two Counsels.

Zondo JP

I agree.

Patel JA

I agree.

Waglay JA

Appearances

For the appellant	: Mr K J Kemp SC (With him, Ms C. Nel)
Instructed by	: Deneys Reitz Incorporated, Durban
For the respondents	: Mr A.M. Stewart SC (With him, Ms J.F. Nicholson)
Instructed by	: Cheadle Thompson & Haysom
Date of Judgment	: 23 December 2008