

**IN THE LABOUR APPEAL COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)**

Case No.: JA 48/08

**SOUTH AFRICAN TRANSPORT AND
ALLIED WORKERS UNION**

Appellant

And

ADT SECURITY (PTY) LTD

Respondent

JUDGMENT

DAVIS JA:

Introduction

[1] This is an appeal against the judgment of Cele AJ of 13 June 2008 in terms of which he granted an urgent application brought by the first respondent. As a result, a gathering, march or picket called by appellant to be held on first respondent's premises on 17 June 2008 was declared to be unlawful. In addition, appellant and its members were interdicted from gathering, marching or picketing on the premises between 09h00 and 15h00 or between any other time on 17 June 2008. No costs order was made.

[2]

The dispute between the parties turned on whether members of appellant, who were employed by first respondent and were off duty, could exercise their rights to march, gather or picket outside of the premises of first respondent for the purposes of handing over a petition to senior management. In particular the cases turned on whether this conduct was regulated by the Regulation of Gatherings Act 205 of 1993 (RAGA) and hence disputes concerning such a picket or gathering fell within the jurisdiction of the High Court as opposed to the Labour Court. Appellant contended that as it has complied with RAGA, this dispute was not an issue over which the Labour Court had jurisdiction.

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Mootness

[3] Mr Cassim, who appeared together with Mr Boda on behalf of first respondent, submitted that the dispute raised by this appeal was moot. The interdict had been granted by the court on 13 June 2008 and restricted picketing on a specific day, 17 June 2008, on matters which affected the employer-employee relationship. Although the appeal raises issues over matters regulated by RAGA and the interrelationship between strike action in terms of the LRA and picketing in terms of RAGA, no live issue exists which requires the court to deal with what is now an academic dispute.

[4]

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The principles relating to mootness have been well established in **National Coalition for Gay and Lesbian Equality and others v Minister of Home Affairs and others** 2000 (1) BCLR 39 (CC) in which the Constitutional Court said:

“A case is moot and therefore not justiciable, if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law. “ At page 54 footnote 18.

[5] In **Independent Electoral Commission v Langeberg Municipality** 2001

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BCLR 883 (CC) the Constitutional Court held that, where there was no live controversy between the parties, and, in the absence of any suggestion that any order might have an impact on the parties, the disputes between the parties were moot especially since future cases inevitably presented different factual matrices and hence no purpose would be served in resolving the dispute. See also **Radio Pretoria v Chairman of the Independent Communication Authority of South Africa and another** 2005 (3) BCLR 231 (CC).

[6] The question therefore is whether there is any practical purpose served by adjudicating upon an appeal against an order of the court *a quo* which related to

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specific events which had occurred in June 2008, almost three years ago.

[7] Aware of this problem Mr Daniels, on behalf of the appellant, deposed to an affidavit claiming that the grievances underlying the dispute were still alive. However, Mr Bruinders, who appeared on behalf of the appellant, was forced to concede that there was nothing in the record nor in any evidence before this court which supported a conclusion that a dispute, two and a half years after it had given rise to an interdict, was still, in any way, a live controversy between the parties. The very demands set out in appellant's letter of 6 June 2008 are illustrative:

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- “1. Duty Roster system to be the same as the one used by Reaction Officers and head Office workers 7-4 and 7-3 system.*
- 2. Recognition of Service and service awards to be awarded to all staff members who qualified for it as it has been a norm over the years.*
- 3. We demand that the following Managers Mr J Seyfferdt, Paul Rossouw, JJ Barnard must mend their attitude towards black employees or resign.*
- 4. Sundays and public holidays to be paid double even if the employee is on duty as per roster.*

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5. *Transportation from home to work places to be allowed to employer who works nightshifts and transport allowances.*
6. *Standardised salary to be amended as a matter or effect to employees who are doing the same job.*
7. *Nightshift allowance to be negotiated and implemented as a matter of urgency.*
8. *All nightshift employees to be backdated from the date of employment up until today (also to be negotiated).*
9. *Appeal process needs to be amended as a matter of urgency.*
10. *Failure to comply with the deduction of stop order forms delivered*

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with a result into a dispute.

11. *Every employee that exceeds nine hours to be paid overtime on each hour worked.*
12. *Pay query to be paid within 24 hours with interest and need to be attended immediately by the Company.*
13. *Bicycle rider to be paid of the salary of the Reaction Officer, riding and driving the reaction car is the same, Personnel using clocking machines, dogs, fire-arm must be paid allowances or the highest grade from job description."*

[8]

These are demands which are specific to the period in which they were made. This court has no knowledge, in terms of the evidence presented to it, that any of these disputes are still alive or, on the contrary, have been settled. On the basis of the dictum of the Constitutional Court in the **Langeberg** case, a further dispute turning on the relationship between RGA and the Labour Relations Act may present a different factual matrix which, in itself (and I offer no comment thereon) may give rise to a different set of arguments.

[9] Suffice to say, Mr Bruinders was unable to provide evidential support for a submission that the order of Cele AJ had any practical effect on the present

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conduct or activities of appellant. As Mr Cassim correctly submitted, in the event that appellant seeks to picket in future, a court will have to determine the case on the particular set of facts presented to it. What this appeal, in effect, represents is an appeal for legal advice from this court, an invitation that should be declined on the grounds of the doctrine of mootness.

[10] For this reason therefore, the appeal is dismissed, including the costs of two counsel.

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DAVIS JA

I Agree

WAGLAY DJP

I Agree

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MOLEMELA AJA

APPEARANCES:

For the appellant: Adv. T. Bruinders SC

Instructed by: R. Daniels of Cheadle Thompson & Haysom

For the respondent: Adv. N A Cassim SC with Adv. F A Boda

Instructed by: I Mahomed/S Wilkins of Routledge Modise Inc.

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Date of hearing: 7 March 2011

Date of Judgment: 26 May 2011