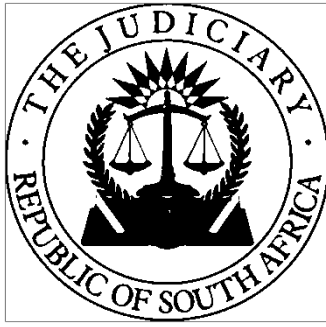




IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case number: JA33/2017

In the matter between:

TIMSON TSHILOLO

First appellant

NOMVULA HADI

Second appellant

THEBEITSILE MOKOTO

Third appellant

NKHETHENI MUTHAVHI

Fourth appellant

VUKILE MLUNGWANA

Fifth appellant

NONCEBA MBILINI

Sixth appellant

VUYANI SINGONZO

Seventh appellant

PAUL TLHABANG

Eighth appellant

MEISIE SEKALEDI

Ninth appellant

and

CITY OF JOHANNESBURG

First respondent

**SOUTH AFRICAN MUNICIPAL WORKERS
UNION**

Second respondent

PULE MOLALENYANE

Third respondent

JOHN DLAMINI

Fourth respondent

PORTIA LINDI

Fifth respondent

SIMON MATHE

Sixth respondent

MOSES MIYA

Seventh respondent

JUSTICE SERA

Eighth respondent

VUSI MASHILE

Ninth respondent

CALEB MOKOENA

Tenth respondent

PRISCILLA NTSUBA

Eleventh respondent

DUMA LEBAKENG

Twelfth respondent

SOMORA NDLOVU

Thirteenth respondent

STANLEY MOLOKO

Fourteenth respondent

KHAYALETHU NYATHI

Fifteenth respondent

RACHEL MATSEPE

Sixteenth respondent

BAFANA ZUNGU

Seventeenth respondent

THOMAS LEBEA

Eighteenth respondent

**SOUTH AFRICAN LOCAL GOVERNMENT
ASSOCIATION**

Nineteenth respondent

Date of hearing: 27 February 2018

Date of judgment: 31 May 2018

Coram: Waglay JP, Phatshoane ADJP and Savage AJA

JUDGMENT

SAVAGE AJA:

Introduction

[1] This appeal, with the leave of the Court *a quo*, is against the judgment and orders of the Labour Court (Snyman AJ) in which final relief was granted declaring that the 3rd to 7th respondents are the current legitimately elected and appointed national office-bearers (NOB's) of the first respondent, the South African Municipal Workers' Union (SAMWU); and the 14th to 18th respondents are the current legitimately elected and appointed Johannesburg regional office-bearers (ROB's) of SAMWU. Together these respondents are referred to as "the Molalenyane faction". The appeal is brought by the appellants as members of the opposing faction within SAMWU, referred to as "the Tshililo faction", against the judgment and orders of the Labour Court. Like the respondent members of the Molalenyane faction, the appellants were respondents before the Labour Court.

[2] The first respondent, the City of Johannesburg (the City), brought an application on an urgent basis in the Labour Court on 10 November 2016. The relief sought included a *rule nisi* -

- 2.1 declaring the 3rd to 11th respondents (the 2nd to 10th respondents in the Court *a quo*) and the 14th to 18th respondents (the 22nd to 26th respondents in the Court *a quo*) the legitimate office bearers of SAMWU (members of the Molalenyane faction);
alternatively, declaring the 1st to 9th appellants and the 12th and 13th respondents (the 11th to 21st respondents in the Court *a quo*) the legitimate office bearers of SAMWU (members of the Tshililo faction);

2.2 pending the final determination of the matter, that the City was not obliged to recognise any of the 2nd to 26th respondents as duly authorised officials of SAMWU for the purpose of labour relations; and that the City was not obliged to recognise any ostensible shop stewards of SAMWU for the purpose of the exercise of any organisational rights or other rights of shop stewards.

[3] The City sought this relief after the Gauteng branch of SAMWU split in 2016 into the Molalenyane and the Tshililo factions, both claiming to be the legitimate representatives of SAMWU. Since the City was not aware as to who the legitimately elected officials of the union were, it sought that the Labour Court determine the matter in terms of s 158(1)(e)(i), which provides that:

'S 158 (1) The Labour Court may ...

(e) determine a dispute between a registered trade union or registered employers' organisation and any one of the members or applicants for membership thereof, about any alleged non-compliance with ...

(i) the constitution of that trade union; ...'.

[4] Having regard to s 158(1)(e)(i) the Labour Court found that it had exclusive jurisdiction *"to entertain the application"*. However, as to the City's *locus standi*, it was stated:

'[7] When this matter came before me, the applicant, as well as the Molalenyane and Tshililo factions, were each individually represented by counsel. I engaged with all the parties to find a legitimate basis as to how to consider and then decide this matter. I conveyed to the parties that I did have concerns about the locus standi of the applicant to bring this application, but understood why the applicant did so. The parties all agreed that there existed a situation that needed to be resolved, in the interest of all concerned.

[8] Considering that all the facts and issues were fully ventilated in several hundred pages of affidavits and annexures before me, I then suggested to the

parties that both the Molalenyane and Tshililo factions each argue their respective cases as to why the members of each of these factions should be considered to be the legitimately elected and appointed current office-bearers of SAMWU. I however made it clear to all the parties that I would only ascribe to such an approach if all the parties agreed to it, and I stood the matter down to allow the parties an opportunity to consider their positions in this regard. When the proceedings reconvened, all the parties indicated that they were satisfied with the proposal I had made and they all agreed that I decide the matter on this basis...’.

- [5] The Labour Court relied on the decision of this Court in *MacDonald’s Transport Upington (Pty) Ltd v Association of Mineworkers & Construction Union & others*,¹ in which it was emphasised that the relationship between a union and its members is a private matter and that “(t)o interfere with the private contractual relationship of other persons, a stranger would have to demonstrate some sort of delictual harm”. In that matter it was stated that “a constitution is no more than a contract between an institution and its members” and that only fellow members and not a third party could raise a complaint relating to the constitution. For this reason, the Labour Court found that the City did not have the “licence to in effect interfere in internal union affairs” and “has simply not shown the kind of circumstances so as to establish *locus standi*, as enunciated in *MacDonald’s Transport*”.²
- [6] Reliance was also placed on *SA Airways SOC Ltd & another v National Transport Movement & others*,³ in which the employer was found not to have a right to have its preferred choice recognised as leadership of the union, given that in terms of s 95(1)(d), read with s 95(2)(b), a trade union is to be independent and free from influence from any employer. Snyman AJ agreed with this reasoning and found that the City lacked *locus standi* to bring the application, since it was not entitled to rely on s 158(1)(e) to interfere in union affairs.

¹ (2016) 37 ILJ 2593 (LAC) at para 42.

² At para 21 and 22 of the judgment of the Labour Court.

³ (2016) 37 ILJ 2128 (LC).

- [7] My own view is that there was no attempt by the City to interfere with the affairs of the union but that it sought certainty as to who it should deal with in the day to day business with the union. Nevertheless, with the agreement of all parties to the Labour Court's proposal that "*the Molalenyane and Tshililo factions each argue their respective cases as to why the members of each of these factions should be considered to be the legitimately elected and appointed current office-bearers of SAMWU*", the Court proceeded to hear the application.

Background

- [8] In 2015 SAMWU elected national, provincial and regional office-bearers. Members of the Molalenyane faction were elected as national office bearers (NOB's) of SAMWU. The second respondent was elected as president, the third respondent as first deputy president, the fourth respondent as national treasurer, the fifth respondent as general secretary, and the sixth respondent as deputy general secretary. The second, third and fourth respondents were elected at the national congress held in August 2015, and the fifth and sixth respondents at a CEC meeting on 9 December 2015, pursuant to clause 11.1.5 of the constitution. In Gauteng, at a provincial congress held in May 2015, the seventh respondent was elected as deputy chairperson, the eighth respondent as provincial treasurer, and the ninth respondent as provincial secretary. These elections were not placed in issue in the Labour Court, nor was the legitimacy and validity of the election of KwaZulu-Natal (KZN) POB's at that provincial congress held in May 2015.

- [9] In early 2016, disputes arose between factions of the union in KZN. These disputes spread to other provinces, including Gauteng, and led to various applications to Court. Following the KZN provincial congress in May 2015, no provincial executive committee (PEC) meeting was called. The issue was escalated to the provincial chairperson, Mr Siminenkosi Ndlovu, then to the fifteenth respondent and thereafter to the NOB's. An investigation ensued and the NOB's resolved to disband the KZN province structure. This resolution was subject to approval by the KZN PEC. On 27 January 2016, a KZN PEC meeting was held, attended by the NOBs. The PEC resolved to approve the

decision taken by the NOB's to disband the KZN provincial structure and to call a special provincial congress to elect new leadership for KZN. This course of action was supported by the KZN regions.

- [10] The provincial chairperson, Mr Ndlovu, was not satisfied with this decision and, through attorneys, on 27 January 2016 wrote to SAMWU, purportedly on behalf of all the KZN POBs, that the decision to disband the PEC was not recognised and that they reserved their rights to continue to perform all their functions as POB's. On 1 February 2016 SAMWU responded, through their attorneys, that the POB's did not have the power to interfere with a decision taken by the PEC. In spite of this, the KZN POB's continued to act as POB's. Mr Ndlovu advised the union in writing *inter alia* that the KZN POBs would make the province ungovernable for SAMWU. The KZN POBs, including Mr Ndlovu, were expelled from SAMWU with immediate effect. Following their suspension, on 18 February 2016, they sought urgent relief in the South Gauteng High Court challenging both the decision to disband the KZN provincial structure and their suspensions. The application was postponed *sine die* with costs given the lack of urgency. The sixteenth respondent, Mr Nkhetheni Muthavhi, the chairperson of the Gauteng region of SAMWU, who supported the KZN POB's, was also expelled from SAMWU.
- [11] On 3 March 2016 the expelled KZN POB's, with Mr Muthavhi, brought an urgent application in the Labour Court in Durban. They sought an order that a special provincial congress to be convened in KZN to elect new leadership for KZN was unconstitutional and unlawful, with an order setting the congress already held aside and setting aside their expulsion. Whitcher J found that their expulsions were justified given their conduct and dismissed the other relief sought.
- [12] On 11 March 2016, the special KZN provincial congress was held. Shortly after the conclusion of the congress, the Sheriff of the High Court served an interim order on delegates, granted on 10 March 2016 by the High Court in Durban at the instance of the KZN POB's, interdicting the special provincial congress on the basis that it was unlawful. The return date of the order, initially 17 March 2016, was in due course extended to 9 May 2016.

- [13] The KZN POB's and Mr Muthavhi arranged their own central executive committee (CEC) meeting on 14 March 2016 at which a number of resolutions were taken, relating *inter alia* to the election of NOB's; that the expelled members of the Tshililo faction be reinstated; and that members of the Molalenyane faction be expelled from SAMWU. Written notice of the expulsion of members of the Tshililo faction was given on 17 March 2016, because of this irregular and unlawful CEC meeting held on 14 March 2016, and on the basis that they had disrupted the affairs of SAMWU and prejudiced the union.
- [14] On 30 March 2016, members of the Tshililo faction brought an urgent application in the Labour Court against members of the Molalenyane faction and COSATU seeking an order that members of the Molalenyane faction cease acting as NOB's, that SAMWU be compelled to call a special CEC to elect new leadership, and that in the interim COSATU act as administrator of SAMWU. When the application came before the Court on 26 April 2016, it was postponed *sine die* and a settlement agreement entered into between the parties was made an order of Court. In terms of this agreement, the 5th respondent, as general secretary, had to convene a special CEC by no later than 19 May 2016. Furthermore, issues for discussion at this special CEC were to be submitted to the general secretary by close of business on 3 May 2016. The dispute as to the composition of the delegates to attend the CEC meeting was referred to the CCMA for facilitation before 4 May 2016. No agreement was reached at the CCMA and, since the composition of delegates remained unresolved, no CEC meeting was held.
- [15] The matter was not re-enrolled in the Labour Court. On 9 May 2016, the High Court in Durban discharged the interim order granted on 10 March 2016, with costs. On 19 May 2016, the two factions each convened its own special CEC meeting with the claim that this accorded with the order of 26 April 2016. In each of the CEC meetings held, NOB's were elected. Each faction rejected the election results and the appointment of NOB's by the other faction. The CEC meeting of each faction resolved that the expulsion of members of its faction was lifted, while the expulsion of the members of the other faction was

confirmed. Each faction claimed leadership of SAMWU in dealing with third parties, such as municipalities, although the Molalenyane faction remained in control of SAMWU's finances. This caused the Tshililo faction to write to various municipalities on 6 June 2016, indicating that the membership contributions of SAMWU members should not be paid into the current SAMWU accounts, but into an alternative account. By this point the factional dispute had involved other SAMWU provinces.

Relevant provisions of SAMWU constitution

- [16] In terms of clause 9.1 of the SAMWU constitution, the CEC is to be comprised of the NOBs elected by national congress, all POBs elected by provincial congresses, one representative for every 5 000 members in a province, and any other union official designated by the NOB's for this purpose. CEC meetings are governed by clause 9 of the SAMWU constitution. Clause 9.2 provides that a CEC meeting is to be convened on at least one month's notice, with the notice to set out what is to be discussed. Special CEC meetings on shorter notice may be convened if the NEC, by majority vote, or the NOB's unanimously, approve this or the majority of the CEC representatives request as much. For a special CEC meeting to be convened, at least 48 hours' notice is required. A quorum for a CEC meeting is at least a majority of the representatives, provided that at least 66.6% of the provinces are represented.
- [17] When a CEC meeting is requested by the majority of the representatives, there is also a process to be followed. The provincial secretary is required to notify the general secretary in writing that a resolution has been taken at a PEC meeting that a particular issue must be dealt with at a CEC. If the NOB's unanimously agree, the general secretary is required to issue a notice of the special CEC meeting to be held.
- [18] The provincial structure mirrors the national SAMWU structure and is regulated by clause 7 of the constitution. The PEC is comprised of the POB's elected by the provincial congress and representatives from all the branches in the province. A PEC meeting may be called on at least 14 days' notice, with

the notice to detail what is to be discussed. Special PEC meetings may be convened on shorter notice. A quorum for a PEC meeting shall be at least a majority of the delegates, provided that at least 50% of the branches are represented.

Judgment of the Labour Court

- [19] The Labour Court found that the “derailment” of SAMWU began in 2016, with its origin in the KZN region, when the complaint about the KZN POB’s was raised and escalated to the national structure. The KZN PEC was found to have been properly convened to deal with this complaint on 26 January 2016, but that *“the trouble started...when this PEC resolved to disband the existing KZN leadership”*.
- [20] The Court found that there *“can be no doubt about the legitimacy and validity of nor any sustainable challenge to”* the KZN special provincial congress of 11 March 2016 and the resolutions adopted there given that the *“dissident members, including several members of the Tshililo faction”* were ultimately unsuccessful in the Durban High Court with their challenge to the legitimacy and validity of this special provincial congress. It took the view that since the interim order obtained from the Durban High Court was discharged on 9 May 2016, the interim relief obtained could not legitimise or validate this CEC meeting convened on 14 March 2016 by the Tshililo faction. The CEC meetings held of 14 March 2016 were found to be null and void in that it did not comply with clauses 9.1 and 9.2 of the SAMWU constitution, since no proper notice had been given of the meeting, there was no quorum, the NOB’s were not present, not all the POB’s attended the meeting and the meeting was not chaired by the existing president of SAMWU. The result was that any resolutions adopted were also null and void and the members of the Tshililo faction were not legitimately elected officials of SAMWU. It was also found that the decision to expel members of the Molalenyane faction was invalid.
- [21] Since the settlement agreement, made an order of the Labour Court on 26 April 2016 envisaged that should there be no agreement on the composition

of delegates, there could be no special CEC meeting if disagreement continued. Instead of both factions taking matters into their own hands on 19 May 2016, the application should properly have been re-enrolled. The meetings convened on 19 May 2016 were found to be irregular and incompetent since the prerequisites for a valid CEC meeting were lacking and the resolutions made were null and void. As a result, the Labour Court went back to the 2015 elective meetings and found that the Molalenyane faction had been properly elected and appointed into their applicable NOB positions in 2015.

[22] The Labour Court found further that the expulsion of the members of the Tshililo faction by 17 March 2016 stood until set aside; and that those individuals whose expulsion had been confirmed by the Labour Court stood. The result was that the members of the Tshililo faction were not to be eligible to hold office in SAMWU. The 14th respondent before the Court *a quo*, who challenged his March 2016 dismissal at the CCMA, settled the dispute on the basis that he was not reinstated or re-employed and received payment of a monetary amount. Consequently, the Court found that as he is longer an employee of SAMWU he did not qualify to hold the office he occupied in SAMWU.

[23] The Court also found that the 2nd – 6th respondents, as legitimately elected NOB's, could in the normal course have convened a valid special CEC meeting, such as that convened on 19 May 2016. The parties had agreed to a process which was made an order of court on 26 April 2016. Given that the Molalenyane faction CEC meeting of 19 May 2016 was null and void, the election of the 9th respondent *a quo*, Mr Caleb Mokoena, as provincial secretary, it was found, could not stand as he had been expelled since 18 December 2015 and his expulsion could only be lifted at the properly constituted CEC meeting. Accordingly, the decision taken on 19 May 2016 to lift his expulsion was null and void. Similarly, until the appeal of the 9th respondent against his expulsion is dealt with by a properly constituted CEC meeting, the Labour Court found that he remained expelled and ineligible to hold office. The 22nd – 26th respondents *a quo* were found to have been

elected as regional office-bearers of the Johannesburg region in Gauteng at a Regional Executive Committee (REC) meeting held on 3 September 2016. Since the validity of that meeting was not challenged, the Court found that they had been properly elected into the positions held.

- [24] Expressing the hope that its judgment would bring some certainty to the affairs of SAMWU and its relationship with various municipalities, the Labour Court determined the matter in favour of the Molalenyane faction, save for the issue related to the election of the 9th respondent, Mr Mokoena. The second respondent (president), the third respondent (first deputy president), the fourth respondent (national treasurer), the fifth respondent (general secretary) and the sixth respondent (deputy general secretary) were found to be the current legitimately elected and appointed national office-bearers of SAMWU. The 22nd – 26th respondents *a quo* were found to be the legitimately elected regional office-bearers of the SAMWU in the Johannesburg region. The Labour Court stated that, as contemplated by the court order of 26 April 2016, a proper special CEC meeting was still to be held and urged that the leadership of SAMWU would use this opportunity to normalise its affairs to what would be expected of a responsible trade union acting in the interest of its membership.

Submissions on appeal

- [25] The appellants' appeal against the judgment of the Labour Court on the basis that it erred in finding that the special CEC meeting held on 14 March 2016 was not valid or legitimate, when the provinces had requested, in January 2016, that the meeting be held in compliance with clause 9 of the SAMWU constitution. Furthermore, the provinces had attended the meeting. Consequently, it is contended, that the election of the members of the Tshililo faction as interim leaders was valid and lawful and, it was submitted, the Labour Court erred in finding that members of the Tshililo faction had been expelled when such purported expulsion did not comply with clause 16.5 of the SAMWU constitution. Issue was also taken with the Court's failure to consider the case of each appellant purportedly suspended so as to determine whether a proper case had been made out; and with the finding

that members of the Molalenyane faction had been properly elected. Although the meeting of 3 September 2016 was not in issue, the Court erred in pronouncing on its legitimacy, when it was a consequence of the CEC meeting of 19 May 2016 which had been found to be null and void, and when the REC was constrained by the powers in clause 6 of the SAMWU constitution and had no power to elect ROB's. Since Mr Moses Miya was elected at the CEC meeting of 19 May 2016, the Court erred in failing to find that his election was invalid and unlawful as the Court had found in respect of the election of Mr Caleb Mokoena.

[26] In argument on appeal it was contended for the appellants that the Labour Court had disregarded the settlement agreement made an order of Court and that it was not open to the Labour Court to revert to the status *quo* of 2015 when the terms of that order were not fulfilled. It was submitted that the SAMWU constitution did not permit the Labour Court to declare the CEC meeting of 14 March 2016 null and void when clause 9 of the SAMWU constitution had been complied with. Furthermore, the Durban High Court order had pertained only to the meeting of the provincial congress and not to the CEC meeting which was constitutionally compliant. In addition, the expulsion of the appellants through the letter of 17 March 2016 was null and void and contrary to the provisions of the SAMWU constitution, since clause 16 regulates the manner in which executive committee members and NOB's may be disciplined. Finally, it was contended that the election of the Johannesburg ROB's at the meeting of 3 September 2016 was not properly before the Court, although the Court erroneously concluded that there was no reason to doubt the legitimacy of such elective process. The appellants consequently contend for an order upholding the appeal and remitting the matter back to the Labour Court to resolve the outstanding matter of credentials.

[27] Although in heads of argument filed, it was contended for SAMWU that it had not been joined as a party to the appeal, at the hearing of the matter it was accepted that SAMWU had been cited as such in the Labour Court and that it remained a respondent in this appeal. SAMWU also contended that the

appellants had raised new matter on appeal relating to the validity of resolutions taken consequent to a CEC meeting and the consequences of the settlement agreement made an order of the Labour Court on 26 April 2016. Since the order of 26 April 2016 was annexed to SAMWU's answering affidavit, it was argued that the appellants had failed to make out a case based on that order. Relying on *Minister of Land Affairs and Agriculture v D & F Wevell Trust*⁴ it was argued that it was not proper for SAMWU to base its argument on an annexure or to advance its argument on this issue for the first time on appeal. It was contended that, since a CEC meeting was convened in accordance with clause 9.2 of SAMWU's constitution from 4 – 7 April 2017, after the judgment of the Labour Court on 8 March 2017, at which the NOB's, Mr Pula Molalenyane, Mr John Dlamini, Ms Portia Lindi, Mr Simon Mathe and Mr Moses Miya, were elected and a range of other resolutions taken, the appeal is moot.

Discussion

- [28] *Locus standi in iudicio* is an access mechanism controlled by the court itself, concerned with whether the litigant is regarded by the court as having a sufficiently close interest in the litigation. The Labour Court found that the City lacked *locus standi* to seek the relief it did in this matter, given both the terms of s 158(1)(e)(i) and s 95 of the LRA. This finding is not an issue before this Court on appeal. Rather, it is the consequences of the finding which require consideration in this appeal.
- [29] It is trite that it is for the parties to identify the dispute and for the court to determine that dispute between the parties. Given the nature of civil litigation in our adversarial system, it is for the parties, either in the pleadings or affidavits, which serve the function of both pleadings and evidence, to set out and define the nature of their dispute and it is for the court to adjudicate upon those issues.⁵ Although the City was found to lack *locus standi* to bring the application, the Labour Court noted that “*the parties all agreed that there*

⁴ 2008 (2) SA 184 (SCA) at para 43.

⁵ *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) paras 15 and 19; *CUSA v Tao Ying Metal industries* [2008] ZACC 15; 2009 (2) SA 204 (CC) at para 68.

existed a situation that needed to be resolved, in the interest of all concerned". The judge then suggested that "both the Molalenyane and Tshililo factions each argue their respective cases as to why the members of each of these factions should be considered to be the legitimately elected and appointed current office-bearers of SAMWU" given that "all the facts and issues were fully ventilated in several hundred pages of affidavits and annexures". The matter stood down to allow the parties to consider this and when "the proceedings reconvened, all the parties indicated that they were satisfied with the proposal I had made and they all agreed that I decide the matter on this basis".

- [30] The Labour Court is in a unique position in being not simply a court of law but also one of equity. The reality which existed at the time that the matter came before the Labour Court, and which still exists, is that there was turmoil within SAMWU. This turmoil has been to the detriment of thousands of SAMWU members. It is compounded by the fact that the union holds assets worth almost a billion rand in value, which could be squandered or spent on curators or liquidators if the leadership of the union fails to resolve its personal conflicts.
- [31] The Labour Court properly, in the interests of the members of SAMWU, and on the basis of equity, obtained the agreement of the parties to consider which faction is properly in charge of the union. With both factions having agreed that the Court should do so, the matter was thereafter determined on the basis of the law. It is material that neither faction objected to this approach, even at the appeal stage. The Labour Court therefore determined the matter in the manner it did, having regard to the fact that the parties had agreed to this and since it is both a court of law and equity. While I accept that this is probably an exception and that similar situations are unlikely to arise, each matter must be determined on its own facts.
- [32] The Molalenyane faction, in the answering affidavit of Mr Simon Mathe, approached the matter *inter alia* on the basis that a settlement had been reached which had been made an order of Court and that such agreement should be complied with. It also claimed that the matter could not be

determined due to the existence of factual disputes between the parties; and the failure to join certain parties. The Tshililo faction, in the answering affidavit of Mr Timson Tshililo, opposed the application on the basis that members of its faction were the legitimate office bearers of SAMWU, having been elected at a constitutionally convened meetings, whereas the CEC meeting convened by the Molalenyane faction had been “a *bogus CEC*” convened by a faction which had “*hijacked the union*”.

- [33] The Labour Court correctly found that the “derailment” of SAMWU began in 2016, with its origin in the KZN region. A KZN special provincial congress was held on 11 March 2016, and, although, an interim order had been obtained by the Tshililo faction in the Durban High Court to prevent the congress from proceeding, by the time the order had been served, the congress had concluded. By 9 May 2016 the interim order was discharged. The Labour Court accepted the legitimacy and validity of the 9 May 2016 meeting and the resolutions adopted at the meeting, but found that the subsequent CEC meeting held on 14 March 2016 was null and void in that it did not comply with clauses 9.1 and 9.2 of the SAMWU constitution.
- [34] These events were followed by the Labour Court application brought by the Tshililo faction in which an order was sought *inter alia* that members of the Molalenyane faction cease acting as NOB’s; and that SAMWU be compelled to call a special CEC to elect new leadership. The ensuing settlement agreement, made an order of the Labour Court on 26 April 2016, sought to bring order to the fractured situation. It provided that the factions would, through facilitation at the CCMA, seek to agree to the composition of delegates to attend a CEC meeting to be scheduled in due course. When no agreement was reached regarding delegates, both factions convened their own CEC meetings. Neither faction approached the Labour Court to re-enrol the application which had been postponed *sine die*. In conducting themselves in this manner, the Labour Court correctly found that neither of the CEC meetings had been lawfully convened and that the resolutions taken at both meetings were therefore null and void. As a result the Court, correctly in my view, returned to the 2015 elective meetings and found that it was the

decisions taken at these meetings which were valid and remained in force. The members of the Molalenyane faction were therefore determined to have been properly elected into the NOB positions they held in 2015. The Court found that the expulsion of the members of the Tshililo faction by 17 March 2016 stood until set aside; and that those individuals whose expulsion had been confirmed by the Labour Court stood.

[35] In its analysis and decision on the issues, the Labour Court cannot be faulted. Although it was contended that a number of factual disputes had arisen between the parties, I am not persuaded that this is so. The judgment and orders of the Labour Court had regard to those undisputed facts placed before the Court, as is apparent from the contents of the affidavits filed and the Court's reasoning.

[36] In the result, the appeal cannot succeed and the final relief granted by the Labour Court must stand. Given the nature of the dispute between the parties, and having regard to considerations of law and fairness, it is appropriate that no order as to costs be made.

Order

[37] For these reasons, the following order is made:

1. The appeal is dismissed.

SAVAGE AJA

Waglay JP and Phatshoane ADJP agree.

Representatives:

For the appellants: Mr T Ngcukaitobi and Ms Y Ntloko

Instructed by: Kgoroadira Mudau Inc. Attorneys.

For first respondent: Mr M van As

Instructed by: Moodie & Robertson Attorneys

For second and further

respondents: Mr R Venter

Instructed by: Maenetja Attorneys

LABOUR APPEAL COURT