

IN THE LABOUR COURT OF SOUTH AFRICA

reportable

HELD AT CAPE TOWN

Case no: C498/2011

In the matter between:

ROYALSERVE CLEANING (PROPRIETARY) LIMITED

Applicant

And

THE DEMOCRATIC UNION OF SECURITY WORKERS

First Respondent

THE PERSONS LISTED IN ANNEXURE A

**Second to Further
Respondents**

Date of hearing: 16 August 2011

Date of judgment: 19 August 2011

JUDGMENT

CONRADIE AJ:

1. On 14 July 2011 this Court issued a rule *nisi* calling upon the Respondents to show cause, if any, on 15 August 2011 why an order in the following terms should not be made final:

1.1. "Ordering the Respondents to comply with the picketing rules issued on 8 July 2011 by the CCMA;

1.2. Interdicting and restraining the First Respondent from calling upon, inciting or encouraging its members who are employed by the Applicant to participate in unlawfully gathering or demonstrating on the premises of the V & A Waterfront and the Applicant's premises at Cnr Howard Drive and Gardener Way, Pinelands, Cape Town, in breach of the picketing rules established by the CCMA;

1.3. Interdicting and restraining the Second to Further Respondents from participating in any unlawful gathering or demonstration on the premises of the V & A Waterfront and the Applicant's premises at Cnr Howard Drive and Gardener Way, Pinelands, Cape Town, in breach of the picketing rules established by the CCMA;

1.4. Interdicting and restraining the Second to Further Respondents from marching through the premises of the V & A Waterfront and the Applicant's premises at Cnr Howard Drive and Gardener Way, Pinelands, Cape Town;

1.5. Interdicting and restraining the Second to Further Respondents from unlawfully disrupting and disturbing the peace at the premises of the V & A Waterfront including the overturning of refuse bins and obstructing members of the public in the ordinary course of their visit or business to the V & A Waterfront; and the Applicant's premises at Cnr Howard Drive and Gardener

Way, Pinelands, Cape Town;

1.6. Interdicting and restraining the Second to Further Respondents from in any way interfering with and obstructing access to an egress from the V & A Waterfront and the Applicant's aforesaid premises;

1.7. Interdicting and restraining the Second and Further Respondents from intimidating, assaulting or threatening any employee of the Applicant;

1.8. Authorising the South African Police Service to take such action as it may lawfully be permitted to take in the event that any of the Second to Further Respondents refuse to comply with the instructions of the Sheriff or the obstruction of the Sheriff in the execution of his duties, save that this Order shall not preclude or limit the South African Police Service from exercising any power which it may have in terms of any law; and

2. That the provisions of paragraphs 1.1 to 1.7 hereinabove shall operate as an interim interdict pending the return day of this application.

3. That the costs of this Application shall stand over to the return day.

4. That pending the return date the parties agree to be bound by, implement and do all things necessary to resolve the dispute between them by way of the process

set out in the agreement annexed hereto marked "A".

5. On the return date the Applicants sought confirmation of the rule with costs. Ms. Harvey who appeared on behalf of the Respondents argued that final relief should not be granted as the requirements for a final order has not been met. In this regard she referred to the well-established requirements as set out in **Setlogelo vs. Setlogelo 1914 AD 221 at 227**. These include that the Applicant must show a clear right, an injury actually committed or reasonably apprehended, and the absence of another satisfactory remedy. Ms Harvey further argued that the facts upon which the Court must base its decision are those stated by the Respondents, together with those alleged by the Applicant and admitted by the Respondents.

6. On the issue of the facts stated on the affidavits by the respective parties, it is necessary to mention that Mr Bizo deposed to two affidavits on behalf of the Respondents. The first affidavit was filed on 14 July 2011 and the second, more detailed affidavit, was filed on 10 August 2011. In the second affidavit Mr Bizo alleges that when he deposed to the first affidavit he did not have sight of a supplementary affidavit filed by Mr Jacobs on behalf of the Applicant on 13 July 2011. I fail to understand how Mr Bizo can make this statement under oath when it is clear from his first affidavit that he in fact deals with the issues raised by Mr Hendricks in his supplementary affidavit. In particular he refers to a fire that was made outside the Applicant's premises in Pinelands. This information is only contained in Mr Jacob's supplementary affidavit and as such Mr Bizo must have

had sight of it.

Clear Right

7. I am of the view that the Applicant has established a clear right in that it is entitled to expect the Respondents to behave in an orderly and lawful manner in pursuance of their strike. Specifically, they are entitled to expect the Respondents to abide by picketing rules, whether agreed to between the parties, or determined by the CCMA.
8. Part of the Applicant's complaint is that the Respondents engaged in picketing in areas at the V & A Waterfront where they were not entitled to picket in terms of the picketing rules.
9. I find it hard to accept the Respondents' explanation that they were not aware of the picketing rules when the strike commenced on 12 July 2011, as these rules were sent to the General Secretary of the First Respondent on 8 July 2011. The issue of picketing at the V & A Waterfront was a controversial one and in fact is what led to the CCMA being called upon to determine picketing rules.
10. It is incumbent on any trade union whose members are going to engage in picketing as part of their strike to ensure that the picketing is in compliance with whatever agreement is in place, or in terms of any determination made by the CCMA. I also find it alarming that the First Respondent's General Secretary who

received the picketing rules did not provide these rules timeously to the officials of the union who were involved in co-ordinating and marshalling the strike. This is grossly negligent behaviour on the part of the General Secretary given that strike action can have serious consequences for striking employees, their employer and the public in general.

11. It also appears from the papers that there was an inspection *in loco* at the V & A Waterfront. In addition to this the Applicant issued a communiqué confirming that employees would not be allowed to picket on the premises of the V & A Waterfront and that any such picket would be unlawful and that the Applicant reserved the right to take disciplinary action against those employees who unlawfully gathered or demonstrated at the V & A Waterfront. According to the Applicant this was communicated to the employees and the union members at approximately 10:30 on 8 July 2011 and 14:30 on 9 July 2011 and placed on all notice boards in the changing rooms and dining area at the V & A Waterfront.

An Injury Actually Committed or Reasonably Apprehended

12. The Respondents also argued that the Applicant has not shown any injury that was actually committed. On the version put up by the Applicants it is clear that they have met this requirement in that striking employees were gathered at the V & A Waterfront in areas which were off limits in terms of the picketing rules. It has also been established by the Applicant that the commercial relationship with its client, the V & A Waterfront, could be affected by the unlawful conduct of the

Respondents given the tough stance which the V & A Waterfront clearly took in respect of the strike action on its premises.

13. I do not accept Ms Harvey's argument that the Applicant was over hasty in launching this application or did so at the behest of its client. The Applicant was perfectly within its rights to seek to protect its interest at the earliest possible indication that conduct in breach of the picketing rules was being committed. As soon as an employer is faced with the prospect of unlawful conduct taking place in furtherance of industrial action, it is entitled to approach this Court for relief provided that it meets all of the requirements for such relief.

Alternative Remedy

14. I also do not consider the provision in the picketing rules to the effect that "*The Convenor, Shop Stewards and Company Managers must meet as soon as possible to endeavour to resolve any alleged breach of these rules by either party*", as an alternative remedy which precludes this court from granting relief. This is not a reasonable alternative in circumstances where a party to the agreement has already acted in flagrant violation of the rules in question. This is particularly the case where any unlawful conduct needs to be addressed without any further delay.

15. In the circumstances I am of the view that the rule *nisi* must be confirmed. As far as the issue of costs are concerned, even though the Respondents did not oppose the granting of the interim order, other than the issue of costs in respect of that order, they did oppose the confirmation of the rule *nisi*. Although there

was some debate about the existence of a relationship between the parties I am of the view that even if there is an on-going relationship, I can see no reason why the Applicant should not be entitled to its costs in this matter. If the relationship between the parties is indeed important to the First Respondent, then it should be expected that they would do everything possible to ensure that picketing rules are communicated and any picketing is in terms of those rules. The fact that Mr Bizo was not honest in his second affidavit is also a consideration in awarding costs against the Respondent's.

16. In the circumstances I make the following Order:

16.1. The rule *nisi* issued on 14 July 2011 is hereby confirmed;

16.2. The Respondents are ordered to pay the costs.

CONRADIE AJ

Appearances:

For the applicant: R Van Voore

Instructed by: Bowman Gilfillan Inc.

For the respondent: S Harvey

Instructed by: Marieke Van Rooyen Attorneys

LABOUR COURT