



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case no: J 3139/12

In the matter between:

CAROLINE JEANNY MPHAGE

1ST Applicant

DICK MAKENA

2ND Applicant

THEMBA XAKAZA

3RD Applicant

BERFORD RAMMUTLA

4TH Applicant

ABEL MOTHIBE

5TH Applicant

JACOBETH JACKIE SRITSANE

6TH Applicant

MDUDUZI MAHANO

7TH Applicant

ERIC MABUZA

8TH Applicant

ELIZABETH SIBULAYI

9TH Applicant

SYLVIA MANAMELA

10TH Applicant

SIPHO JOBE

11TH Applicant

MVELELI GUNTU

12TH Applicant

BUYSIL MAJOLA (SKOSANA)

13TH Applicant

And

SOUTH AFRICAN MUNICIPAL WORKERS UNION

Respondent

Heard: 07 December 2012

Date of Judgment: 11 December 2012

Summary: Urgent application- interdicting suspension of shopstewards by the union. Court lacks jurisdiction to entertain the matter- not “employment or labour relations matter as defined by Section 157 of the LRA.

JUDGMENT

Molahlehi J

Introduction

- [1] The applicants are all employees of the Ekurhuleni Metropolitan Municipality and also members of the respondent, a trade union registered in terms of the Labour Relations Act of 1995. Collectively the applicants are part of the local structures of the respondent, being the local shop steward council. They each serve in various positions in the shop steward council.
- [2] The applicants instituted the present application on an urgent basis in terms of which they seek to have their the suspension by the respondent on 23 November 2012 declared as being “invalid, unlawful and of no legal force and effect and setting the same aside, alternatively, uplifting the same with immediate effect.”
- [3] It would appear from the founding affidavit of the applicants that there had been conflict concerning various issues relating to the appointment of delegates of the provincial executive committee (PEC). The conflict concerned in particular the appointment of delegates who were to attend the PEC meeting. According to the applicants the respondent failed to comply with the provisions of its constitution. The other complaint concerned the failure by the regional office bearers to call regional shop stewards council meetings.
- [4] In seeking to address their concerns the applicant addressed letters to the various structures of the respondent, including the respondent itself. The applicant further says that because the respondent failed to attend to the grievances they requested to attend a meeting of the respondent which was convened for 20 November 2012. The reason for requesting to attend the

meeting was to place before the respondent their complaints and concerns that had been placed by the local structures and the shop stewards committee in Ekurhuleni region.

- [5] Although the PEC was not pleased with the approach adopted by the applicants it did allow them to attend the meeting. In the meeting the applicants made certain demands regarding who was to attend the meeting. The respondent rejected the proposals and instructed the applicants to leave the meeting.
- [6] On 27 November 2012 the respondent issued the applicants with letters of suspension pending the finalisation of an investigation. It was for this reason that the applicants instituted the present application.
- [7] In opposing the application the respondent contends that this court does not have jurisdiction to entertain the matter. It was argued on behalf of the respondent that the only way that the applicants could have brought the claim within the purview of the Labour court was if they had formulated their cause of action as arising from the infringement of Freedom of Association.
- [8] It was further argued on behalf of the respondent that the court does not have jurisdiction because the dispute arose in the context where the relationship is not based on employment relationship where if that was the case the question that would have arisen would have been whether the employer had infringed the rights of the employees.
- [9] The respondent further argued that the applicant's claim stands to fail because the applicants have not in the founding affidavit dealt with the issue of the alternatively relief.
- [10] At Paragraph 9.2 of the answering affidavit, the respondent suggests that the alternative remedy lies in the applicants raising the issue of the suspension before the CEC which is meeting on 5 December 2012. It is common cause that this was communicated to the applicant's attorneys of record.
- [11] The other point raised by the respondent is that the court should not consider the application because the applicants came to court with "dirty hands". The

respondent submitted in this respect that the applicants interrupted a properly constituted meeting of the PEC and therefore it cannot be expected that the respondent should stick to the letter of the constitution when the others did not.

Jurisdiction

[12] The relevant section in as far as the jurisdiction of the court is concerned is section 157 of the Labour Relations Act, which reads as follows:

- “(1) Subject to the Constitution and section 173, and except where *this Act* provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of *this Act* or in terms of any other law are to be determined by the Labour Court.
- (2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the *Republic of South Africa, 1996*, and arising from -
- (a) employment and from labour relations;
 - (b) any *dispute* over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and
 - (c) the application of any law for the administration of which the *Minister* is responsible.”

[13] In his submission on behalf of the applicants Mr Scholtz, contended that this court has jurisdiction to entertain the applicants' claim on the basis of section 157 of the Labour Relations Act read with section 1, 3, 4 and 8 of the LRA¹. He

¹ Section 1 reads as follows: 'the purpose of this Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act, which are -(a) to give effect to and regulate the fundamental rights conferred by section 27 of the Constitution; (b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation; (c) to provide a framework within which employees and their trade unions, employers and employers' organisations can -(i) collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest; and (ii) formulate industrial policy; and

(d) to promote -(i) orderly collective bargaining; (ii) collective bargaining at sectoral level; (iii) employee participation in decision-making in the workplace; and (iv) the effective resolution of labour disputes.' Section 3 reads as follows: 'any person applying this Act must interpret its provisions -(a) to give effect to its primary objects; (b) in compliance with the Constitution; and (c) in compliance with the public international law obligations of the Republic.' Section 4 reads as follows:

also relied on the decisions in *Chirwa v Transnet Ltd and others*² *Botha v Gensec Asset Management (Pty) Ltd and NEHAWU v University of Cape Town and others*³

- [14] In my view the issue that has arisen between the parties, does concern employment or labour relation matter. The applicants are not employees of the union, but had voluntarily associated themselves with the union, for the purposes of advancing and protecting the interests of their members who are employees.
- [15] The cases which the applicant relied on in support of their contention that this court has jurisdiction are distinguishable from the facts of this case. The courts in those cases were dealing with the issues related to employment and labour relations. In the NEHAWU matter for instance the court was dealing with the validity of the resolution taken by the university council concerning the retrenchment of employees – an issue which there can be no doubt relates to both employment and labour relations.
- [16] Similarly in *Chirwa* the Constitutional Court was dealing with a dismissal dispute which by its very nature is related to "employment and labour relations" as envisaged in section 157 of the Labour Relations Act.
- [17] The main issue in that case was whether the Labour Court has exclusive jurisdiction to deal with or labour related matters. In the present matter the

'(1) every employee has the right -(a) to participate in forming a trade union or federation of trade unions; and (b) to join a trade union, subject to its constitution. (2) Every member of a trade union has the right, subject to the constitution of that trade union -(a) to participate in its lawful activities; (b) to participate in the election of any of its office-bearers, officials or trade union representatives; and (c) to stand for election and be eligible for appointment as an office-bearer or official and, if elected or appointed, to hold office; and (d) to stand for election and be eligible for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in terms of this Act or any collective agreement. (3) Every member of a trade union that is a member of a federation of trade unions has the right, subject to the constitution of that federation - (a) to participate in its lawful activities; (b) to participate in the election of any of its office-bearers or officials; and (c) to stand for election and be eligible for appointment as an office-bearer or official and, if elected or appointed, to hold office.' Section 8 reads as follows: 'every trade union and every employers' organisation has the right -(a) subject to the provisions of Chapter VI - (i) to determine its own constitution and rules; and (ii) to hold elections for its office-bearers, officials and representatives; (b) to plan and organise its administration and lawful activities; (c) to participate in forming a federation of trade unions or a federation of employers' organisations; (d) to join a federation of trade unions or a federation of employers' organisations, subject to its constitution, and to participate in its lawful activities; and (e) to affiliate with, and participate in the affairs of, any international workers' organisation or international employers' organisation or the International Labour Organisation, and contribute to, or receive financial assistance from, those organisations.'

² 2008 2 BLLR 97 (CC)

³ 2007 BLLR 819 (LC).

applicants are not employees of the respondent and there is no evidence before this court that the fact that the applicants are suspended as shop stewards, by the respondent is likely to lead to their suspension as employees of Ekurhuleni.

[18] In my view, on the facts and the circumstances of this case assuming jurisdiction will amount to interfering in the domestic affairs of a trade union. This would in a sense undermine the fundamental principle of the autonomy of the government of trade unions. The fundamental aspects of the autonomy of trade union government is that the internal decisions are taken on the basis of the democratic principle of majority rule.

[19] Trade unions are voluntary association, where members freely associate and elect those to occupy the position in the leadership. If members are unhappy about the leadership they have a right to remove them through the ballot box. In a sense that is an alternative remedy available to the applicant in the present instance. The other basis upon which the applicants claim stand to fail is that instead of using the democratic provisions of the union's constitution, they decided to undermine that and interrupted the meeting of the respondent.

[20] The applicants are now seeking a relief on the averment that in suspending them the respondent acted unlawfully in that it failed to comply with the provisions of the constitution. It is for the above reasons that I believe that the applicants' application stand to be dismissed. As concerning the costs I am of the view that the application was misconceived and unnecessary, the applicants could have withdrawn the application when they received information that the CEC was to consider the matter at its meeting on 05 December 2012.

[21] In the circumstances, I see no reason why costs should not follow the results
Order

[22] In light of the above the following order is made:

1. The applicants' application is dismissed.
 2. The applicants are to pay the costs of the respondent.
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Molahlehi J

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Scholtz Attorneys

For the Respondent: Cheadle Thompson Haysom Inc

LABOUR COURT