

**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG****JUDGMENT**

CASE NO: J496/13

In the matter between

**SAMWU obo JABU MKHWANAZI**

Applicant

and

**EKURHULENI METROPOLITAN MUNICIPALITY**

Respondent

Date heard: 20 March 2013

Date of ex tempore judgment: 20 March 2013

Date Edited: 25 March 2013

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**EX- TEMPORE J U D G M E N T**

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**VAN NIEKERK J**

[1] It is an urgent application heard yesterday, which has as its roots an allegation concerning a change to terms and conditions of employment, and more particularly changes to working times at the respondent's library operations. It is not clear to me from the papers precisely what right it is to which the applicants rely to frame the relief they seek, which in effect is final relief.

[2] The test applicable to final interdicts, of course, requires the applicants to establish the clear right to which they lay claim. The papers before me reveal an amalgam that comprises elements of a contractual claim, more specifically, a claim that the respondent is not entitled to make

deductions from the wages of the individual applicants, the breach of a collective agreement concluded during February 2013, and rights against unfair labour practices.

- [3] However, the first hurdle which the applicants are obliged to overcome is that of urgency. In this regard, the change to working hours in the respondent's library operations was first announced in October 2012 by way of a memorandum addressed to the affected employees. The memorandum itself has its origins in a resolution adopted by the respondent's Council in January 2009.
- [4] On the applicants' version, what transpired after the issuing of the memorandum on 1 October last year was a process of what it terms bilateral engagement, more specifically after the respondent threatened to deduct from the individual applicants' salary amounts in respect of alleged short time worked by them consequent on their tender to work in accordance with the existing working hours.
- [5] Meetings took place on 14 and 19 January 2013. On the applicants' version, those meetings resulted in an agreement which is described in paragraph 5.13 of Founding Affidavit to the following effect:
- "5.13.1: That the short time of employees in libraries for the month of January 2013 shall not be affected.
- 5.13.2: That the management instruction to implement the roster system shall not be withdrawn.
- 5.13.3: That a task team shall be composed by the stakeholders to investigate the commencement and cessation times of libraries in the Ekurhuleni Metropolitan Municipality."
- [6] This agreement is hardly a model of clarity. But what transpired apparently after the conclusion of that agreement, is that on 22 February 2013 deductions were effected from the salaries of the

individual applicants consequent on their failure to work the new working hours. After correspondence between the parties and an ultimatum addressed to the respondent by the legal representatives of the applicant, the present application was filed on 14 March 2013. I should emphasise that the agreement for which the applicant contends (an agreement to withdraw the new working times) is denied by the respondent, specifically at least to the extent that the respondent denies the existence of any agreement to suspend the implementation of the new working hours.

[7] In regard to the obligation on the applicant to establish that the application is indeed urgent, the following facts it seems to me are not in dispute. First, the applicants have known since October last year of the respondent's intention to introduce new working hours. The applicant has known since February, last month, that it had been granted respite in respect of short time only for the month of January 2013. Further, that the respondent's management's instruction to implement the new working hours would not be withdrawn. Against the factual backdrop, the applicant has brought this application some six weeks later, and in my view any urgency that exists is entirely self-created.

[8] To the extent that the individual applicants rely on an inability consequent on the respondent's actions to pay school fees, groceries, rates, water and lights and the like, in my view, these claims are exaggerated. It is not as if the applicants are not being paid; what is an issue here is the deduction for what the respondent contends to be short time worked. To place the issue in context, I might refer to one of the payslips that is annexed to the Founding Affidavit, which reflects that from a gross salary of R14 557, a deduction of R524 has been made. Now, this is hardly, in the scheme of things, an amount that can serve to justify or to substantiate the allegations of hardship that the individual applicants have made.

- [9] In any event, on the applicants' own construction of the agreement that they say was concluded in mid-February, the moratorium to which they lay claim is valid only for the month of January 2013. It is not as if any breach of the agreement that they allege extends beyond that. So for those reasons, therefore, I am not satisfied that the application is urgent, and it stands to be struck from the roll on that basis. In relation to costs, this Court has a broad discretion in terms of section 162 of the Act to make orders for costs according to the requirements of the law and fairness. The Appellate Division of the Supreme Court, as it was then, in the matter of *National Union of Mineworkers and Others v Ergo*, in respect of a similar provision contained in the 1956 Labour Relations Act, required Courts to have regard to any collective bargaining relationship between parties, and the extent to which an order for costs might compromise that relationship.
- [10] In the present instance, I accept that there is a genuine dispute about the implementation of new working hours and that the applicant and its members are dissatisfied with the respondent's proposals or demands that working hours ought to be changed. There are alternative remedies and causes of actions available to the applicants to exercise their collective rights. In any event, there is the question of a task team that appears to have been established that must necessarily address this issue and attempt by any appropriate means to bridge the gap between the parties and their expectations.
- [11] In these circumstances, it would seem to me that an order for costs might prejudice the prospects of this matter ultimately being resolved to the mutual satisfaction of the parties. And for that reason I intend to make no order as to costs.

For those reasons then, I make the following order:

- 1 The application is struck from the roll for lack of urgency.
- 2 There is no order as to costs.

André van Niekerk  
Judge of the Labour Court