



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case No.: J 802/09

In the matter between:

**INDUSTRIAL AND COMMERCIAL WORKERS
UNION OF SOUTH AFRICA**

Applicant

and

**REGISTRAR: LABOUR RELATIONS
DEPARTMENT OF LABOUR**

Respondent

Date of hearing: 14 December 2011

Date of Judgment: 14 January 2014

JUDGMENT

MOTHIBI AJ

1 A brief history of this matter is as follows:

1.1 In 2007 the Applicant applied for registration in terms of the LRA as a trade union. The Respondent refused the application in January 2008 and provided the Applicant with reasons for the refusal in March 2008 (the first application).

- 1.2 On 4 August 2008 a further application (the second application) was submitted by the Applicant. Registration was again refused and the refusal was communicated to the Applicant on or about 9 January 2009.
- 1.3 On 3 February 2011 by order of my brother Justice Lagrange a ruling was made referring the Applicant's application for registration back to the Respondent in order to allow the Respondent to comply with the provisions of sections 96(3), 96(4) and 96(5) of the LRA (the court order).
- 1.4 The aforementioned court order was granted by this court as a result of a settlement reached between the parties.
- 1.5 The essence of the order was that the Respondent was to give the Applicant notice in terms of sections 96(4) and 96(5) of the LRA.
- 2 This application is brought pursuant to the court order
- 3 Pursuant to that order, and on or about 28 October 2011, the Respondent in complying with the court order and having regard to the provisions of sections 96(3), 96(4) and 96(5) of the LRA advised the Applicant that it did not meet the requirements to be registered as a union and accordingly declined to register the Applicant as a trade union.
- 4 The Applicant has not sought to exercise its rights in terms of the LRA to appeal against the Respondent's latter refusal to register it as a trade union but has rather sought to bring this application to compel the Respondent to comply with the court order.
- 5 The application is not competent because the Respondent, as is apparent from its letter of 28 October 2011 has exercised its discretion as required in terms of

section 96 of the LRA and complied with the court order of 3 February 2011. Of course, if the Respondent had not complied with the court order it would have been open for the Applicant to approach this court seeking a contempt order against the Respondent. No such application has been brought.

- 6 There is accordingly no merit whatsoever in this application seeking to compel the Respondent to comply with sections 96(3), 96(4) and 96(5) of the LRA in circumstances where it has, on the facts, done so. The Respondent has exercised its discretion not to register the Applicant as a trade union. What the Applicant is unhappy with is the fact that it has again been refused registration in terms of the LRA.
- 7 The route chosen by the Applicant to challenge this latter refusal in the form of this application is not competent in law nor fact.
- 8 In the circumstances the Applicant's application for an order as sought in its notice of motion dated 5 September 2011 is dismissed with costs.

MOTHIBI AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES

Applicant: Adv. Molobedi instructed by Ntimane Attorneys

Respondent: Adv. M.S. Baloyi instructed by Maponya Attorneys