



REPUBLIC OF SOUTH AFRICA

Not reportable

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

CASE NO: J46/15

In the matter between:

**SIBUSISO NGWENYA AND TWELVE
OTHERS**

**First and further
Applicants**

And

EDCON LTD

First Respondent

Heard: 27 January 2015

Delivered: 27 January 2015

Summary: (Urgent application – 189A(13)).

EX TEMPORE JUDGMENT

LAGRANGE, J

Urgency

- [1] Having heard extensive representations from the parties' representatives, I am satisfied that, irrespective of the substantive merits of the applicants' complaint, and the fact that the applicants gave 11 days notice of the

application, they ought at least to have put the respondent on terms to correct the perceived deficiencies in the consultation process before launching the application.

- [2] Accordingly I believe the application was brought prematurely and must fail for lack of urgency.

Costs

- [3] On the issue of costs, I am satisfied that the powers of attorney signed by the applicants were sufficiently broad to encompass this application. Further, I believe that the notice to consult in terms of section 189A of the Labour Relations Act, 66 of 1995 ('the LRA'), issued by the respondent to the applicants on 15 January 2015 created a reasonable impression that the applicants' retrenchment was a *fait accompli*, subject to a mere possibility of successfully applying for other positions with the respondent, without offering any guarantee of preferential treatment or identifying the existence of earmarked posts to accommodate them.
- [4] The fact that the respondent claims that an oral commitment was made that "numerous positions were available to them" when they were issued with the consultation notice, I do not believe sufficed to assuage their concerns, particularly if the employer did not feel such an important commitment was not important enough to record in writing. I also note that in the respondent's answering affidavit that the respondent goes even further to say that it "intends to place all employees affected by the closure in similar positions in stores in the greater Johannesburg area", but this too was not conveyed in the notice issued to the applicants.
- [5] In the circumstances I am not prepared to make an adverse cost award against the applicants and the parties should pay their own costs.

Order

- [6] The application is dismissed for lack of urgency with no order as to costs.



R LAGRANGE, J

Judge of the Labour Court of South Africa

APPEARANCES

For the Applicants: P H Kirstein
Instructed by: Keith Whittaker Attorneys

For the First Respondent: H Nieuwoudt
Instructed by: Norton Rose Fulbright.

LABOUR COURT