



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

Not Reportable

J 423/15

In the matter between:

JOHN APOLLIS

ARTHUR MPUHI

NOMSA KHUMBULA

First Applicant

Second Applicant

Third Applicant

And

**GENERAL INDUSTRIES WORKERS UNION
 OF SOUTH AFRICA**

Respondent

Date heard: 3 March 2015

Delivered: 13 March 2015

JUDGMENT

RABKIN-NAICKER J

- [1] This application was brought on an urgent basis on less than 48 hours' notice. At the hearing of the matter the court was informed that the first applicant was no longer party to the application. As a full set of papers was before court I

heard the matter as an application for final relief. The prayers sought to be made an order of court are the following:

1. Directing that the rules of this Honourable court insofar as service and filing as well as time limits are concerned be dispensed with and permitting that this matter be heard as one of urgency in accordance with the provisions of Rule 8 of the Rules of this Honourable Court.
2. Declaring that the actions of the National Office Bearer Committee (NOBC) of the respondent in initiating disciplinary action against the applicant's and thereafter dismissing the first applicant and removing the second and third applicant from holding office as branch office bearers of the wits branch of the respondent and banning them from holding a leadership position for a period of 10 years with in the respondent, directly violates the provisions of the Constitution of the respondent;
3. Declaring that the disciplinary action taken against the applicants as aforesaid is null and void;
4. Declaring that the first to third applicants and not the NOBC are in terms of the Constitution of the respondent properly authorised to act as signatories of the wits branch bank account;
5. Directing the respondent to restore the status quo ante.

[2] The matter is brought in terms of section 158 (1) (e) of the LRA which provides that this court may:

- “(e) determine a dispute between a registered trade union or registered employers' organisation and any one of the members or applicants for membership thereof, about any alleged non-compliance with-
 - (i) the constitution of that trade union or employers' organisation (as the case may be); or
 - (ii) section 26 (5) (b);”

[3] The LAC has held that the above section: “clearly envisages a conflict between, for example, a registered trade union and its members about any

aspect of non-compliance with the union's constitution.”¹ The essence of this application is that the disciplinary process against the applicants was not undertaken in terms of the union’s constitution.

[4] The applicants, branch office bearers (BOBS) of the Wits branch of the union were charged with gross misconduct and bringing the union into disrepute on 25 September 2014 in respect of the following charges:

(a) You committed gross misconduct when you unlawfully refused to pay the salaries of the head office staff, when it was your duty to do so, from the 25th September 2014 until 10th of October 2014 after the Labour Court gave instruction for them to be paid.

(b) You defied a reasonable and a legitimate direct order from the NOBC instructing you to pay the head office staff salaries for September 2014. In so doing you thereby put the name of the union into disrepute in that:-

The union was negative exposed to the Department of Labour which is our registrar and the Labour Court which is our adjudicator when the staff members took their matters to these institutions for relief against unlawful conduct.

(c) Obstructing the work of the NOBC in carrying out its mandate from the NEC when they wrote letters to the national companies to have their subscription paid to the Head Office Account.

(d) You unconstitutionally took the NEC and its office bearers to the Labour court interdicting them for implementing the NEC resolution which you were part of when you have no powers to do so.

(e) Unconstitutionally appointing attorneys as reported in your report to the NEC of September 2014 when you have no powers to do so.

(f) Misusing the union funds by paying attorneys.

¹ National Entitled Workers Union v Sithole & others (2004) 25 ILJ 2201 (LAC) at paragraph 10.

- [5] The founding papers aver that the wits branch is the largest and wealthiest branch of the three branches of the union and commands by far the biggest income via subscriptions. The salaries of the national office which includes the general secretary who is part of the NOBC is paid by the wits branch. A glimpse is given into the nature of the conflict between members of the union when it is averred that: "We have never received proof from the national office that the other branches are also paying their share of their income to the national office" The applicants contend that over the last six months the NOBC attempted to appropriate the funds of the branch for itself by approaching companies that fall under the wits branch and who are in terms of the constitution required to pay subscriptions to that branch and prevailed on them to pay the subscriptions into the national office account.
- [7] The applicants' case in as far as this matter is concerned can be summarized as follows:
- 7.1 The decision to take disciplinary action against the applicants by the NEC of the union was not competent in terms of the union's constitution;
 - 7.2 A meeting of the NEC may only pass a motion after it is proposed after it has been voted on by the meeting and decided by a show of hands. In this case it was moved by one branch and seconded by another and not put to the vote by a show of hands;
 - 7.3 The constitution confers the power to discipline shop stewards and to engage and dismiss branch employees of the union first and foremost upon the Branch Executive Committee (BEC);
 - 7.4 Oversight and review functions over the BOBs are first and foremost conferred on the BEC;
 - 7.5 The constitution provides that office bearers can only be removed from office after they have had an opportunity to state their case personally at a BEC meeting.

Urgency

- [8] This application was brought on less than 48 hours' notice. The reason for this is set out in paragraph 65 of the founding papers:

"It is submitted that the facts set out above establish the need for extreme urgency and that for the Honourable Court to expect proper notice to be given to the other party will defeat the very purpose of bringing this application as any delay afforded the Respondent will only provide them with the opportunity to defeat the processes of this Honourable Court and the Legitimate rights of the Second to Further Applicant."

- [9] The lack of particularity with regards to an explanation for the abridged period is evident. It appears that what has propelled the applicants into action was that on 27 February 2015, on receipt of the outcome of the disciplinary process the applicants were informed that the branch's bank had changed the signatories to the wits branch account – these new signatories were members of the NOBC. The second applicant then avers as follows:

"In doing this the bank acted arbitrarily and contra to the respondents constitution whereby the wits branch is in control of its financial matters and not the NOBC. I then together with the other applicants approached the bank to challenge this unilaterally change. (sic) The management of the bank then informed us that they would not change the new signatories unless we told them to freeze the account. We were then left with no choice but to freeze the account."

- [10] In their replying papers the applicants state that:

"The matter is clearly urgent as the bank has frozen the account and will not release the funds until the Honourable Court either determines that NOBC structure of the Respondent has no authority to act as signatories to the wits branch account or determines that the decision to remove and dismiss the First to Third Applicants is null and void and that they should be restored to the positions they held status quo ante.

The fact that the account is frozen and the wits branch is rendered dysfunctional is good reason in itself to bring this matter with 48 hrs."(sic)

[11] A clearer example of self-created urgency would be difficult to find. In addition, further submissions on urgency in the founding papers contradict the averments recorded above i.e. that it was the applicants themselves who instructed the bank to freeze the account. It is submitted in the affidavit that because the account is frozen the branch is incapable of functioning and attending to the needs of its members and employees. It is further stated in the founding affidavit that:

“Although the NOBC immediately took steps to appropriate the account which then led to the bank to freezing the wits branch account, they have not put in place any financial mechanism and systems to ensure that the branch can continue to function normally and does not come to a grinding halt.” (sic)

[12] In view of the above, I cannot accept that this application was urgent but was rather brought strategically after the applicants themselves caused the bank account to be frozen rendering the branch unable to meet its obligations. In the event I am not going to deal with the merits of the matter.

[13] I therefore order as follows:

Order:

1. The application is struck off the roll.

H. Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicants: David Cartwright Attorney

Respondent: Bayi Attorneys

LABOUR COURT