



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no. J107/2014

In the matter between:

BOKONI PLATINUM MINE (PTY) LIMITED

Applicant

and

GENERAL INDUSTRIES WORKERS

UNION OF SOUTH AFRICA

First Respondent

THOSE NAMES APPEARING ON

ANNEXURE "A" HERETO

Second to Further Respondents

Heard: 29 May 2015

Delivered: 2 June 2015

Summary: (Cost award-interim strike interdict - not warranted in the circumstances)

JUDGMENT ON COSTS

- [1] This is a matter in which strike action by the respondent union and its members was interdicted in terms of a rule issued on 29 January 2014. In the initial application for interim relief the applicant sought an order of costs against the respondents if it was opposed. As it happened, it was opposed, though unsuccessfully. When the rule was issued no specific cost order was made relating to the interim application itself. Paragraph 25.2.5 of the order stated :

“25.2.5 ordering that the costs of a final order be paid jointly and severally by the respondents in the event of it being confirmed.”

(Emphasis added)

- [2] The ruling was extended on numerous occasions until it finally came before me again on 29 May 2015. By that stage the underlying dispute had been dealt with and the rule was discharged by agreement. However, the parties were at odds on the question of a costs order. The applicant was not seeking costs for the various occasions when the rule was extended, but only sought the costs of the first application for interim relief and for the costs of arguing a cost award on the final day.
- [3] The respondents argued that since the rule was not confirmed it would not be in keeping with the Court's original order of costs mentioned above for the Court to make any order of costs in the matter. The applicant maintains that paragraphs 25.2.5 of the initial order did not preclude it from pursuing the costs of the initial application. The applicant also maintains that the circumstances which compelled to bring the initial application were such that the union and its members ought not to escape liability for costs.
- [4] On the first issue, I think it is apparent from paragraph 25.2.5 of the order issued on 29 January 2014 that the costs referred to in that paragraph concern the costs that would have been awarded if final relief was granted in favour of the applicant. The absence of any specific reference to costs of the initial application was because the costs of that application were not dealt with.

- [5] On the second issue, it is apparent that in the course of the run-up to the anticipated strike both parties adopted fairly intricate tactical manoeuvres to secure the most advantageous position in relation to the underlying dispute over organisational rights. As a result of that manoeuvring, the potentially protected status of the planned strike action was by no means obvious. This is amply demonstrated by the analysis of the contentions of the parties in my reasons for the original order. It may be true that the union believed by not issuing a strike notice it might obtain a further tactical advantage to fend off an interdict, but it is also true that the protected status of any anticipated strike was not a straightforward matter in any event. If the unprotected status of the anticipated action had been obvious and the merits of that issue not worth debating, then the union's noncommittal stance on the likelihood of a strike taking place would be a weightier consideration in the award of costs.
- [6] However, in light of the underlying dispute and its complexities, which certainly justified a debate about the merits of the legal status of the anticipated action, I do not think that the union's opposition was frivolous. Consequently, I do not think that in law and fairness of the respondents paying the costs of the initial application, but they should be entitled to the costs of arguing the award of costs.

Order

- [7] Each party must pay its own costs for the interim application heard on 29 January 2014.
- [8] The applicant must pay the respondent's costs for opposing an order of costs on 29 May 2015.



R LAGRANGE, J

Appearances:**For the Applicant:****A Snider****Instructed by:****Webber Wentzel Inc****For the Respondents:****M H Marcus****Instructed by:****David Cartwright Attorneys**

Labour Court