



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JS 750/14

Reportable/Not Reportable

In the matter between:

SASEGWU

Applicant

and

THE REGISTRAR OF THE LABOUR RELATIONS

Respondent

Heard: 27 January 2015

Delivered: 25 June 2015

Summary: Application to review and set aside the decision of the Registrar of Labour Relations refusing to register the applicant a trade union.

JUDGMENT

Molahlehi, J

Introduction

- [1] This is an application to review and set aside the decision made by the respondent, the Registrar of Labour Relations in terms of which the registration application of the applicant as a trade union was refused. The applicant also seeks a declaratory order to declare the Registrar's decision not to grant it a registration certificate null and void.
- [2] The order is sought in terms of section 158(1) (a) (iii) (iv)¹ and section 158(1) (j) of the Labour Relations Act 66 of 1995 ("LRA"). Section 158(1) (j) of the LRA.²

Background Facts

- [3] The applicant is the South African Security and General Workers Union (SASEGWU), a trade union that applied to have its name recorded as such in the register of trade unions by the Registrar in terms of the LRA.
- [4] The respondent is the Registrar of the Labour Relations designated as such by the Minister of Labour. In terms of s 95 of the LRA, in order to succeed in an application for registration a trade union has to show that:
- (a) It has adopted a name that meets the requirements of subsection (4);³
 - (b) It has adopted a constitution that meets the requirements of subsection (5) and (6);⁴

¹ In terms of s 158(1)(a) (iii) and (iv) of the LRA, the Labour Court has the power inter alia to make orders directing the performance of an act which when implemented will remedy any wrong done and given effect to the primary objects of the LRA. The Court may further in terms of the same section make declaratory orders.

² S 158(1) of the LRA gives the Court the power to deal with all matters necessary or incidental to performing its function in terms of the Act or any other law.

³ Section 95 (4) of the LRA reads as follows: Any trade union or employers' organisation that intends to register may not have a name or shortened form of the name that so closely resembles the name or shortened form of the name of another trade union or employers' organisation that it is likely to mislead or cause confusion.

⁴ Section 95 (5) and (6) of the LRA reads as follows:

"The constitution of any trade union or employers' organisation that intends to register must-

- (a) state that the trade union or employers' organisation is an association not for gain;
- (b) prescribe qualifications for, and admission to, membership;
- (c) establish the circumstances in which a member will no longer be entitled to the benefits of membership;
- (d) provide for the termination of membership;
- (e) provide for appeals against loss of the benefits of membership or against termination of membership, prescribe a procedure for those appeals and determine the body to which those appeals may be made;
- (f) provide for membership fees and the method for determining membership fees and other payments by members;

- (c) It has an address in the Republic; and
- (d) It is independent.

[5] The trade union applying for registration has to further show that it is not under the direct or indirect control of any employer or employers' organisation and it is also free of any interference or influence of any kind from any employer or employer's organisation.

[6] Section 95 (7) of the LRA provides that:

“The registrar must not register a trade union or an employers' organisation unless the registrar is satisfied that the applicant is a genuine trade union or a genuine employers' organisation”.

[7] Section 96 of the LRA requires that an application for registration of a trade union should be made on a prescribed form that has been properly completed, be accompanied by a copy of its constitution and any other

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- (g) prescribe rules for the convening and conducting of meetings of members and meetings of representatives of members, including the quorum required for, and the minutes to be kept of, those meetings;
 - (h) establish the manner in which decisions are to be made;
 - (i) establish the office of secretary and define its functions;
 - (j) provide for other office-bearers, officials and, in the case of a trade union, trade union representatives, and define their respective functions;
 - (k) prescribe a procedure for nominating or electing office-bearers and, in the case of a trade union, trade union representatives;
 - (l) prescribe a procedure for appointing, or nominating and electing, officials;
 - (m) establish the circumstances and manner in which office-bearers, officials and, in the case of a trade union, trade union representatives, may be removed from office;
 - (n) provide for appeals against removal from office of office-bearers, officials and, in the case of a trade union, trade union representatives, prescribe a procedure for those appeals and determine the body to which those appeals may be made;
 - (o) establish the circumstances and manner in which a ballot must be conducted;
 - (p) provide that the trade union or employers' organisation, before calling a strike or lock-out, must conduct a ballot of those of its members in respect of whom it intends to call the strike or lockout;
 - (q) provide that members of the trade union or employers' organisation may not be disciplined or have their membership terminated for failure or refusal to participate in a strike or lock-out if-
 - (i) no ballot was held about the strike or lock-out; or
 - (ii) a ballot was held but a majority of the members who voted did not vote in favour of the strike or lock-out;
 - (r) provide for banking and investing its money;
 - (s) establish the purposes for which its money may be used;
 - (t) provide for acquiring and controlling property;
 - (u) determine a date for the end of its financial year;
 - (v) prescribe a procedure for changing its constitution; and
 - (w) prescribe a procedure by which it may resolve to wind up.”
- S 95(6)

“The constitution of any trade union or employers' organisation which intends to register may not include any provision that discriminates directly or indirectly against any person on the grounds of race or sex.

information that may assist the Registrar to determine whether or not the trade union meets the requirements for registration.

- [8] In addition, the Registrar must require any other information that may assist him or her in considering the application. If satisfied that the application for registration as a trade union has satisfied all the above requirements including any additional information that had been requested, the Registrar is obliged to register such a trade union by entering its name into the register of trade union.
- [9] If not satisfied that the applicant's application meets the requirements for registration, the Registrar must notify the applicant's trade union of his reasons for not being satisfied with the application. In addition to informing the applicant of the reasons for not registering it, the Registrar has to give the applicant 30 days' notice within which to address the issues and concerns that may have been raised in the notice.
- [10] Failure by the applicant to remedy the defects specified in the notice will result in the Registrar having to refuse registration of such a trade union.

The grounds of review

- [11] The applicant contends that the Registrar acted irrationally and/or unreasonably in refusing to register it. It is further contended that the refusal on the part of the Registrar to register the applicant is extremely prejudicial as the applicant cannot represent its members in the Commission for Conciliation, Mediation and Arbitration ("CCMA") as well as the collective bargaining processes.

The Registrar's decision

- [12] After the submission of the application for registration as a trade union the Registrar addressed a letter to the applicant dated 04 April 2014 wherein the applicant was advised that its application was being considered in terms of section 95 and 96 of the LRA and the guidelines published by the Minister of Labour in terms of the law. The letter further states that:

1. “In considering a new application for registration, the Registrar must take into account other factors such as the formation of the applicant, activities of the applicant and membership of the applicant.
2. In order to enable this office to determine whether the applicant complies with the Act and is a genuine trade union, the following information should be submitted for consideration within 30 days of the date of this letter.
 - 2.1 Proof of paid-up membership for the last three months as well as the names and contact details and addresses of the companies where the employees who are members of the trade union are employed with.
 - 2.2 The names and work addresses of the office bearers and officials of the trade union and copies of their ID documents.
 - 2.3 Contracts of employment signed with the officials of the trade union.
 - 2.4 Signed attendance register of the members who have attended the inaugural meeting.”

[13] After indicating the above requirements the letter then informed the applicant that it was notified that its application did not comply with the requirements of s 96(4) of the LRA and that it was given 30 days to comply.

[14] The applicant responded to the above letter in an undated letter (annexure SAS5) where it states the following:

“We acknowledge receipt of your email dated 04th April 15 2014 (sic).

Please attached find annexures:

- A. Contract/s of employment of officials
- B. Attendance register
- C. Paid up membership for three months
- D. Id copies of national office bearers and workplace addresses.”

Evaluations/Analysis

- [15] It is apparent that the Registrar was of the view that the applicant did not comply with the requirements of registration. It was for that reason that the applicant's application for registration was refused.
- [16] The reasons for refusing registration it appears from annexure "SAS2" of the applicant's founding affidavit. The reason is that the meeting founding the applicant took a resolution to appoint an interim leadership which as no basis in the union's own constitution. This effectively means that no leadership was elected for the applicant since the constitution does not provide for interim leadership.
- [17] The other problem is that the constitution was not adopted by the members of the applicant.⁵ It emerged during the site visit and verification process conducted by the officials of the department of labour on the applicant's office, that the constitution was circulated to members in various provinces for discussion. According to the applicant the constitution was thereafter adopted by members of the applicant who are in the Gauteng Province only, yet the applicant has membership throughout the country.
- [18] It seems to me that the Registrar cannot be faulted for failing to apply his mind to register the applicant when regard is has to the following: There was no election conducted of the office bearer by the general membership of the applicant. There was also no adoption of the constitution, and, as it will appear later in this judgment there was no adoption of the name, which to any reasonable decision maker exercising his or her powers properly in terms of the of the provisions of the LRA would have arrive at the same conclusion as the one reached by the Commission in the present matter. The action taken by the Registrar in refusing to register the applicant in my view does not in any manner affect the object of the LRA.
- [19] The applicant failed to provide its three months bank statement despite the request by the Registrar to do so. The bank statement was required to verify and establish if there were members paying the membership fees to the union. It was necessary to satisfy the Registrar that the applicant was able to

⁵ See annexure SAS 10 to the founding affidavit.

operate as a trade union and more importantly operate as an association not for gain. In my view the Registrar correctly rejected the letter from the bank as unsatisfactory as what it did was to show that the applicant has opened a bank account and nothing more

- [20] Another important point that supports the decision of the Registrar not to register the applicant is that despite the allegation that members pay subscription and that receipts had been issued consequent thereto, the applicant failed to produce the same when requested to do so by the Registrar. It has not been disputed that all the 56 application forms which the applicant provided to support its application, had attached thereto pieces of papers reflecting an amount of R40.00. According to the Registrar if indeed the money was paid and received by the applicant there would be a record of the sum of at least R6, 720.00 representing the total amount paid as reflected in the pieces of papers multiplied by three (3) months. Invariably if the applicant was managing its affairs as would be expected that amount would have been deposited into the applicant's bank account and there would be records to that effect.
- [21] I have already indicated somewhere else in this judgment that the other issue which the Registrar had with the applicant's application is the adoption of a name. There is no evidence of the applicant ever adopting a name. What appears from the applicant's papers is that there were three names which were recommended.
- [22] The other point which the Registrar took into account in arriving at the decision not to register the applicant has to do with the attendance register of the meeting which had been convened by the applicant. Although the record reveals that 570 members attended the meeting, the verification conducted by the officers of the Registrar revealed to the contrary that only 22 members attended on 17 November 2013.
- [23] In light of the above discussion, I find that the applicant has failed to make out a case for an order directing the Registrar to act otherwise than he did in refusing to register the applicant. Put in another way there is no wrong done by the Registrar which undermine the primary object of the LRA. I am of the

view that the applicant's application stands is to be dismissed for the reasons set out above.

[24] I am of the view that there is no reason why costs should not follow the result.

Order

[25] In the premises the applicant's application is dismissed with costs.

Molahlehi, J

Judge of the Labour Court Johannesburg

Appearances:

For the Applicant: Union Official, S Kabelane

For the Respondent: Adv. M Gwala

Instructed by: The State Attorney