



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: J317/14

In the matter between:

**CBI ELECTRICAL: AFRICAN CABLES – A
DIVISION OF ATC (PTY) LTD**

Applicant

and

**NATIONAL UNION OF METAL WORKERS OF
SOUTH AFRICA**

First Respondent

**THE PERSONS WHOSE NAMES APPEAR
ON ANNEXURE “A” TO THE NOTICE OF
MOTION**

Second to Further Respondents

Decided in Chambers: 21 July 2015

JUDGMENT – REASONS FOR ORDER

TLHOTLHALEMAJE, AJ

- [1] The Applicant had approached the Court on an urgent basis to seek a rule *nisi* calling upon the Respondents to show cause on a return date why an order should not be granted declaring the strike action due to commence on 12

February 2014 to be an unprotected strike as contemplated in section 68 of the Labour Relations Act¹ (The LRA).

- [2] An order was issued on 11 February 2014 in terms of which the application was struck off the roll on account of lack of urgency, and the reasons for the order and determination of costs to follow. Ms. Ruth Edmonds had submitted that the Respondents were entitled to costs.
- [3] A dispute was referred by the First Respondent on behalf of the Second and further Respondents to the Metal Engineering Industries Bargaining Council (The MEIBC) during November 2013 where a number of demands were made. One of the demands was subsequently resolved leaving only disputes in relation to payment of a housing allowance; travel allowance and funeral allowance.
- [4] The matter was set down for conciliation at the MEIBC where a point *in limine* was apparently raised in terms of which the Applicant herein was of the view that the demands were included in the subject matter of a collective agreement (the agreement) between the Steel and Engineering Industries Federation of South Africa (SEIFSA) and a number of unions, including the First Respondent, thereby precluding strike action over the demands.
- [5] The conciliation proceedings were postponed and a certificate of non-resolution only issued during January 2014 giving the Second to Further Respondents permission to strike in pursuance of their demands. The Applicant requested the First Respondent to provide a written undertaking that its members would not participate in industrial action as it was of the opinion that such industrial action would be unprotected. Furthermore, the Applicant advised that it was of the view that the dispute relating to whether the demands fell within the ambit of the agreement should be arbitrated under the auspices of the MEIBC.
- [6] The First Respondent had declined to make any such undertaking. A strike notice was faxed to the Applicant on Sunday 9 February 2014, and came to

¹ Act 66 of 1995 as amended

the Applicant's attention the following day, which advised that a strike would commence at 06H00 on Wednesday 12 February 2014 in support of the demands that were the subject of the dispute referred to the MEIBC.

- [7] The urgent application was thereafter launched in an attempt to interdict the impending strike action. The urgent application was served on the First Respondent but due to limited time available, the Respondents were unable to draft and file an answering affidavit. Ms Ruth Edmonds of the Respondents' attorneys of record had however opposed the application from the bar.
- [8] Central to this application is whether the Applicants were entitled to embark on the strike action in the light of the Applicant's contention that the issues in dispute or that led to the demand were covered by the main collective agreement as concluded between SEIFSA and various unions including the First Respondent.
- [9] In the light of the matter having been struck off the roll on account of lack of urgency, and it being the prerogative of the Applicant to place the matter on the ordinary roll for the full merits of the application to be ventilated, no purpose will be served in giving full reasons for the order. The only issue that remains is whether the Respondents are entitled to costs in these circumstances.
- [10] In considering whether or not to grant costs, the Court is guided by the provisions of section 162 of the LRA, which states that:

"(1) The Labour Court may make an order for the payment of costs, according to the requirements of the law and fairness."

- [11] The aspect of *law* in section 162 (1) of the LRA denotes that costs should follow the results². In other words a successful party would be entitled to costs. The aspect of *fairness* on the other hand denotes that costs do not automatically follow the results³, and the Court should thus look at the general

² See *City of Cape Town v SAMWU* (2008) 7 BLLR 618 (LC).

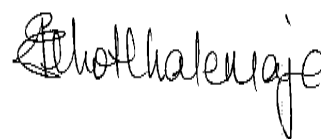
³ See *Apollo Tyres (Pty) Ltd (formally Dunlop Tyres Internal (Ladysmith (Pty) Ltd) v NUMSA & Others* 2009 JOL 24326 (LC)

purpose of awarding costs and exercise its discretion accordingly⁴. Furthermore, in considering costs, the Court must take into account the conduct of the parties during the dispute and in the conduct of the litigation, and determine whether there are special or exceptional circumstances justifying a costs order, such as *mala fides*, unreasonableness and frivolousness on the part of a party.⁵

- [12] Central to this dispute is whether the issues that the Respondents sought to embark on strike action over are covered by the Main Collective Agreement or not. In bringing this application, even though the Applicant had an option of referring a section 24 of the LRA dispute, I am not convinced that it acted *mala fide*, or unreasonably in approaching the Court on an urgent basis. As at 3 March 2014, the strike action had been suspended and the parties had agreed that the merits of the matter should be dealt with on an urgent basis under case number J336/14. Notwithstanding this dispute, it is further my view that the parties are in an on-going relationship *albeit* that relationship appears confrontational. Be that as it may, considerations of fairness dictate that each party must be burdened with its own costs in respect of the proceedings of 11 February 2014.

Order:

- i. No order as to costs is made in respect of the urgent application that was struck off the roll on 11 February 2014.



TLHOTLHALEMAJE, AJ

Acting Judge of the Labour Court of South Africa

⁴ *Chevron Engineering (Pty) Ltd v Nkambule & Others* 2004 (3) SA 495 (SCA) para [42]

⁵ *National Union of Mineworkers East Rand Gold & Uranium Ltd* 1992 (1) SA 700 (A) at 738F–739G

APPEARANCES:

For the Applicant: Mr H J Van Rensburg

For the Respondent: Ruth Edmonds Attorney

LABOUR COURT