



REPUBLIC OF SOUTH AFRICA

Not Reportable

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: J 702/15

In the matter between:

CHAUKE, KHAZAMULA NORMAN

Applicant

and

**FOOD AND ALLIED WORKERS
UNION**

First Respondent

NAZO, ATWELL

Second Respondent

MNGUNI, RAYMOND

Third Respondent

MASEMOLA, KATISHI

Fourth Respondent

PHAKEDI, MOLEKO

Fifth Respondent

OLIVER, MARK

Sixth Respondent

Heard: 26 August 2015

Delivered: 26 August 2015

Summary: (interdict- s158 (1) (e) (i) of the LRA- *ultra vires action*)

REASONS FOR THE ORDER

LAGRANGE J

Introduction

1. In this application, the following order was made:

- 1.1. The Rules relating to the forms and manner of service are hereby dispensed with and this matter is dealt with as one of urgency.
- 1.2. The unlawful resolution taken during the meeting of the first respondent's Gauteng provincial executive council on 2 and 3 August 2015, purportedly removing the applicant from his position as the first respondent's Gauteng chairperson and as delegate to the first respondent's national executive council is set aside.
- 1.3. The Applicant as a duly elected delegate be permitted to attend and participate in the meeting of the national executive council scheduled to take place on 27 and 28 August 2015 or any subsequent meeting called for the same purpose.
- 1.4. The respondents are interdicted from implementing the aforesaid unlawful resolution.
- 1.5. The first respondent is ordered to pay the costs of this application."

2. At the hearing of the matter, I undertook to provide brief written reasons which are set out below.

Urgency

3. The respondent was warned of a possible application on 20 August 2015 unless the Gauteng Provincial Executive Committee ('the PEC') decision of 2 and 3 August 2015 purportedly removing the applicant as Gauteng

provincial chairperson and delegate to the union's National Executive Committee (' the NEC') was revoked. The application itself was filed on 21 August 2015 and it is apparent from a letter from the respondent's General Secretary on the same day that the respondent was not prepared to accede to the demand and would not allow the applicant to attend the NEC meeting scheduled to start tomorrow. A further email from the respondent late that night indicated the respondent's intention to oppose the application. However, by the time proceedings commenced this morning and by the time they ended, no formal opposition had been noted and there was no appearance for the respondents.

4. The issues raised in the application, on the face of it, are not ones that the respondent would not have been in a position to respond to before this morning's hearing, as its own correspondence also indicates. I am satisfied that the matter is sufficiently urgent and that the respondent had sufficient opportunity to oppose the application if it wished to.

Merits

5. For the purposes of my decision, it was not necessary to consider every challenge raised by the applicant to the PEC decision, as a few of the grounds raised render that decision *ultra vires* the respondent's Constitution.
6. Firstly, the applicant was elected as provincial chairman and as a delegate to the NEC at a Provincial Congress held in August 2014 in terms of the powers given to such a body under clauses 15.5.2.5 and 15.5.2.6 respectively of the Constitution. Clause 16.6 of the Constitution deals with the powers of the Provincial Executive Committee and none of those provisions empowers the PEC to remove the applicant from the offices he was elected to by the Provincial Congress.
7. Secondly, the PEC meeting of 2 and 3 August 2015 was irregularly convened, contrary to the provisions of clause 16.2 of the Constitution which requires the chairperson to call meetings in consultation with other provincial office bearers, except in exceptional circumstances where a majority of PEC members request such a meeting in writing.

8. Thirdly, and assuming but without deciding in favour of the respondent that the ballot purportedly removing the applicant from his positions was properly held, the questions posed on the ballot form failed to provide PEC members with the option of voting against either or both of the motions tabled at the meeting, leaving possible dissenters only with the option of spoiling their ballot or not casting a vote. It is inconceivable that a vote in the form of a ballot could be validly conducted without the option of voting against a motion. It is not necessary to consider if it was also irregular to include both motions in the same ballot. Accordingly, the ballot was invalid.
9. Consequently, I am satisfied that the applicant has demonstrated a clear right to relief and there is also no reasonable alternative remedy available to him other than to invoke his rights in terms of section 158 (1)(e) (i) of the Labour Relations Act 66 of 1995.

Costs

10. The matter was unopposed and normally would not give rise to an adverse cost order against the respondents. However, in this instance notwithstanding a decision by my brother Gush J, in case number C 562/2015 handed down on 10 July 2015 in which he also found that the Western Cape PEC of the union did not have the power to countermand election of NEC delegates by a Provincial Congress, the respondent proceeded to attempt to do the same at the Gauteng PEC meeting at the beginning of this month, compelling the applicant to incur unnecessary legal expenses in setting aside a decision that the respondents ought to have realised it would suffer the same fate as in the case mentioned. Secondly, there was evidence of an email indicating that it was a strategy of the respondent to wear the applicant and others fighting to retain their elected positions by compelling them to litigate until they exhausted their funds. In these circumstances, there is good reason to make an adverse cost award despite the lack of formal opposition.



Lagrange J
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:

L Hollander

Instructed by:

Cowan Harper

RESPONDENTS:

No Appearance

LABOUR COURT