



REPUBLIC OF SOUTH AFRICA

Not reportable

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: J 815/2015

In the matter between:

REGISTRAR OF LABOUR RELATIONS

APPLICANT

and

CHEMICAL, ENERGY, PAPER, PRINTING, WOOD

AND ALLIED WORKERS UNION

FIRST RESPONDENT

SAMUEL CHIEF SEATLHOLO

SECOND RESPONDENT

THULASIZWE SIBANDE

THIRD RESPONDENT

SCOTCH MPONENG DIBETSO

FOURTH RESPONDENT

JOHANNES DUBE

FIFTH RESPONDENT

LAWRENCE NZELE

SIXTH RESPONDENT

SAMUEL XABA

SEVENTH RESPONDENT

Application argued: 7 October 2015

Judgment delivered: 9 October 2015

JUDGMENT

VAN NIEKERK J

[1] On 24 April 2015, the applicant filed an application in which he sought, on an urgent basis, to have the first respondent (the union) placed under administration in terms of s 103A of the Labour Relations Act, 66 of 1995. The basis on which the order is sought is that intra-union conflict and strife among the union's office-bearers had resulted in the union becoming paralysed and incapable of complying with its statutory obligations and those established by the union's constitution. The deponent to the founding affidavit, Mr JT Crouse, who at that time occupied the post of Registrar of Labour Relations, averred that the union had failed properly to administer its finances and had failed to submit audited financial statements as required by the provisions of the Labour Relations Act (LRA). In particular, Mr Crouse averred that the union had failed to comply with clauses 41, 44 and 72 of its constitution in that it had failed to convene the required monthly meetings of the national office bearers committee, annual meetings of the national executive committee and bi-monthly meetings of the financial committee. Further, he averred that the union had failed to comply with its statutory obligations in terms of sections 25(5), 98 and 100 of the LRA. He further recorded that in relation to levies collected from its own membership as well as those collected in terms of agency-fee agreements, the union had failed since 2010 to keep records of its books of income, expenditure, assets and

liabilities; that it had failed to be there audited statements for the years 2010, 2011, 2012 and 2013; that it had failed to arrange an audit of its books and records of accounts and financial statements for the years 2010 to 2013; that it had failed to make the financial statements and auditors report available for inspection as required by s 98(2)(b) of the LRA; that it had failed to submit these documents to a meeting of members of the union as required by the union's constitution and that it had failed to prepare and submit its annual financial statements to the registrar within the required statutory period. Indeed, the affidavit contains a litany of breaches of the LRA and of the union's constitution, and paints a picture in terms of which the union's general-secretary has continued to collect levies from both members and non-members and proceeded to engage in expenditure of these funds without any formal accountability. These and other failures by the union to respond to the many and various attempts by Mr Crouse to ensure compliance and what appeared to him to be a manifest failure by the union to have regard to the statutory checks and balances established to ensure transparency and accountability in the union's dealings, caused him to seek to have the union placed under administration.

- [2] The present application was set down for hearing on 7 and 8 October 2015. During the preceding fortnight, two significant events occurred. First, on 29 September 2015, an application to amend the notice of motion was filed by the applicant. The post of Registrar of Labour Relations at that point was temporarily occupied by Mr. M Ntleki, after a decision by the Minister of Labour on 23 July 2015 to revoke the designation of Mr. Crouse as Registrar. As appears from the judgment by this court referred to below, that decision has its roots directly in matters that relate to the present application. In essence, the proposed amendment seeks an order in terms of which the first respondent is required to comply with certain obligations within a defined period, failing which the applicant be granted leave to seek an order placing the first respondent under administration.

- [3] The second significant event occurred on 5 October 2015 when Myburgh AJ delivered a judgment in terms of which the minister's decision to revoke Mr. Crouse's designation as Registrar of Labour Relations was reviewed and set aside, and in terms of which she was ordered immediately to reinstate him in that post. Myburgh AJ found that in making the decision to revoke Mr. Crouse's designation, the minister ignored materially relevant facts and thus came to a conclusion that was unreasonable, irrational and procedurally unfair.
- [4] On the morning on which the present application was to be heard, the minister filed an application for leave to appeal against Myburgh AJ's judgment. In terms of s 18 of the Superior Courts Act, 10 of 2013, ordinarily, the operation and execution of the decision which is the subject of an application for leave to appeal is suspended pending the decision of the application. The application proceeded therefore on the basis that although Mr. Crouse had deposed to the founding affidavit in support of the application to place the union under administration, Mr. Ntleki was authorised, in his capacity as acting Registrar of Labour Relations, to bring the application to amend and to depose to the founding affidavit.
- [5] In the circumstances, the parties agreed ultimately that the main application was not ripe to be heard by virtue largely of the state of uncertainty occasioned by the appointment of the acting registrar, the challenge to the minister's decision to revoke Mr. Crouse's designation in the absence of any replying affidavit in the main application.
- [6] Turning then to the application to amend, in his affidavit, Mr. Ntleki avers that on his assumption of duties, he was furnished with documentation in respect of the present matter and others. After consideration of the documents, he formed the view that there were less drastic measures than those contemplated by the notice of motion and that in essence, it was appropriate to seek the amendment so as to compel the union to cure the deficiencies recorded in the founding affidavit and to provide a further opportunity for compliance within a defined period of 90 days, on penalty of the bringing of an application on the current

papers, supplemented as necessary, for an order placing the union under administration. Amongst other things, Mr. Ntleki avers that there has been 'remarkable progress' in the preparation of audited financial statements and auditors reports, and he appears to express a degree of confidence in the ability of the union to meet its statutory obligations within the required period. In short, the acting registrar premises the proposed amendment on his conclusion that placing the union under administration is not likely to be in the best interests of the union and its members, that less drastic measures are appropriate and that placing the union under administration is premature.

[7] In terms of an order granted by this court on 4 June 2015, the 2nd to 7th respondents were granted leave to intervene. The 2nd to 7th respondents are national and provincial office bearers; the second respondent is the deputy secretary-general of the union, the third respondent is its national treasurer. On 20 May 2015, the 2nd to 7th respondents filed an answering affidavit which they express their support for the relief sought by the applicant in the main application. The 2nd to 7th respondents oppose the application to amend.

[8] In effect, the proposed amendment provides the union with a final opportunity to submit audited financial statements failing which the acting registrar intends proceeding against the union in terms of s 103A. The relevant elements of the proposed amendment would require the union to be compelled to comply with the following obligations:

- 1.1 to provide to the applicant the first respondent's audited financial statements for the respondent's financial years ending on December 2010, December 2011, December 2012, December 2013 and December 2014, which financial statements ought to comply with the relevant requirements of law and its constitution;
- 1.2 that the first respondent be directed to convene and hold the relevant meetings in accordance with its constitution in order to be able to comply with paragraph 1.1 above or to comply with the applicable laws in general
- 1.3 that the respondent the order to comply with paragraph 1.1 above within 90 days of the granting of this order.

- [9] Failing compliance with the above provisions, the proposed amendment contemplates that the applicant to be granted leave to bring an application, on the existing papers supplemented as necessary, for an order placing the union under administration in terms of s 103A on certain defined terms and conditions.
- [10] The union's representative, Mr. Watt-Pringle SC, recorded that the union had no objection to the proposed amendment to the notice of motion save for the reference to the 2014 annual financial statements which for practical reasons, cannot be finalised within the 90 days contemplated by paragraph 1.3 of the amendment. Indeed, withy that caveat, the union indicated that it would support an order granted in terms of the proposed amendment.
- [11] As I have indicated, the proposed amendment is opposed by the 2nd to 7th respondents. The deponent to the affidavit opposing the amendment sought by the registrar is the union's deputy general secretary. He avers that it is his firmly held view that the present application is no more than a slight of hand intended to achieve an alternative to the withdrawal of the application. In short, the 2nd to 7th respondents submit that the proposed amendment would cause prejudice to the respondents and that in any event, it was not *bona fide*.
- [12] After submissions have been made on behalf of the 2nd to 7th respondents by Mr Cook SC who appeared on their behalf, Mr. Skosana SC, who appeared for the applicant, indicated that his client could address some of the concerns raised by the 2nd to 7th respondents, certain amendments to the proposed notice of motion. It seems to me that the amendments proposed by Mr Skosana go some way to address the concerns expressed by the 2nd to 7th respondents relating to the prejudice that they say will be caused to them by the amendment as originally cast, and their concern that the application to amend is not *bona fide*. In particular, the amendments proposed relate to the constitution of Fincom and its role in terms of the union's constitution in relation to the preparation of financial reports for submission to the NEC, the status and role of the national treasurer in this regard, and a requirement the national treasurer and other relevant officials be entitled properly to inspect the union's financial records and to carry out their

obligations in terms of the union's constitution. Other proposed amendments related to the terms on which any order placing the union under administration might be granted. In regard to the latter, in my view, this is a matter that should be left to the court if and when such an application is brought. There is no reason for any order granted in the present matter to constrain the court in future.

- [13] In practical terms, courts are ordinarily inclined to allow amendments unless they are *mala fide* or will cause a manifest injustice to the other side. In each instance, the question is what the interests of justice demand (see *Affordable Medicines Trust and another v Minister of Health and others* 2006 (3) SA 247 (CC)).
- [14] I intend therefore to grant the applicant leave to amend the notice of motion, substantially in the terms proposed by Mr. Skosana. I should emphasise that the order is made without any finding as to whether the first respondent or the 2nd to 7th respondents are the true guardians of the union, its constitution and its members or indeed, which of the factions represented by the first respondent and the 2nd to 7th respondents is the guardian of the truth. The order that I intend to grant is premised on the obligations that are conferred on office bearers' and officials by the terms of the union's constitution, and the union's statutory obligations.

The order reads as follows:

1. The applicant is granted leave to amend the notice of motion in the following terms:
 - 1.1 by the deletion of prayers 1 to 5 and their replacement by the following:
 - 1.1.1 that the first respondent to be and is hereby compelled to comply with the following obligations:
 - 1.1.1.1 to provide to the applicant the first respondent's audited financial statements for the respondents financial years ending on December 2010, December 2011, December 2012 and December 2013, which financial statements must comply with

the relevant provisions of the Labour Relations Act, 66 of 1995 (the LRA), and the first respondent's constitution;

1.1.1.2 to convene and hold all such meetings that are required in terms of its constitution in order to effect compliance with the provisions of paragraph 1.1.1.1, and to ensure compliance with any relevant provisions of the LRA. Such meetings shall include meetings of the first respondent's national financial committee (Fincom) in terms of clause 72 (2) of the union's constitution, so as to discharge the responsibilities of Fincom in terms of clause 72 (3) and also the national executive committee and any regional committees or other structures that are required to meet in order to facilitate the first respondent's compliance with paragraph 1.1.1.1.

1.1.2 The first respondent's general secretary and deputy general secretary shall comply with their obligations in terms of clauses 37(5) and 37(6) respectively to ensure that the meetings referred to in paragraph 1.1.1.2 above are convened, and the necessary reports prepared.

1.1.3 The first respondent's national treasurer discharge his obligations in terms of clause 37 (4) of the first respondent's constitution and that in doing so, he receives all necessary assistance by the first respondent's general secretary as contemplated by clause 37(5) of the first respondent's constitution, and by any other national and/or regional official whose assistance is necessary to enable the national treasurer to discharge his duties.

1.1.4 All such books and accounting records of the first respondent as are necessary for the national treasurer to submit final audited reports to the national congress must be made available to the national treasurer for his or her inspection.

1.2 The first respondent must comply with the provisions of paragraph 1.1.1.1 above within 90 days of the date of this order.

1.3 If the first respondent fails to comply with the provisions of paragraph 1.1.1.1 above, the applicant is granted leave to bring an application in terms of s 103A of the LRA, on the same papers supplemented as necessary, for an order placing the first respondent under administration on such terms as may be determined by the court."

2. An order is granted in terms of paragraphs 1.1, 1.2 and 1.3 above.
3. There is no order as to costs.

ANDRÉ VAN NIEKERK
JUDGE OF THE LABOUR COURT

REPRESENTATION

For the applicant: Adv. Skosana SC, with him Adv. Majapelo, instructed by the State Attorney

For the first respondent: Adv. Watt Pringle SC, with him Adv. Viljoen, instructed by Webber Wentzel

For the second to seventh respondents: Adv. Cook SC with him Adv. Williamson, instructed by Vasco De Oliveira Attorneys.