



Not reportable

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT JOHANNESBURG**

Case no: J 309/17

In the matter between:

BIDVEST SERVICES (PTY) LTD

Applicant

and

NUMSA

First Respondent

**THE INDIVIDUALS LISTED IN
ANNEXURE "X" TO THE NOTICE
OF APPLICATION**

**Second and further
Respondents**

Heard: 13 February 2017

Delivered: 13 February 2017

JUDGMENT (EX TEMPORE)

LAGRANGE J

Introduction

[1] Having considered the matter and having heard the applicant's counsel, I am satisfied that on the papers before me:

1.1 The applicant is justified in launching proceedings less than 48 hours' notice as required by section 68(2) of the labour relations act, 66 of 1995 ('the LRA') in view of the first respondent initially indicating it might be amenable to postponing the strike pending arbitration proceedings requested by the applicant, but then reverted late on 10 February 2017 to say the strike would proceed today.

1.2 On the face of it, the first respondent is asserting its claim to organisational rights based on having majority membership at the workplace. As such, it is not entitled to embark on protected strike action over organisational rights demands, which is an election available only to minority unions since the Constitutional Court's decision in NUMSA v Bader Bop (Pty) Ltd & another [2003] 2 BLLR 103 [CC] at 122 para [43]. See also National Transport Movement & others, Transnet SOC Ltd v (2014) 35 ILJ 1418 (LC) at 1423 para [14].

1.3 In the circumstances, I am satisfied the applicant has established a clear right that open to some doubt to the relief sought. Further, the respondents will not be unduly prejudiced if they are ultimately entitled to strike over their demands, as compared to the prejudice that the applicant will suffer if they are not entitled to strike, but are allowed to do so pending a final determination of the issue.

Order

In light of the above, an order is made in the following terms:

[2] The Labour Court Rules relating to the time and manner of service of applications are dispensed with and the matter is dealt with as one of urgency in terms of Rule 8 and the applicant's failure to give 48 hours' notice of this application is condoned.

- [3] The respondents are called upon to show cause on 10 March 2017 why an order should not be made in the following terms:
- 3.1 Declaring the strike threatened by the first respondent to commence on 13 February 2016 ('the strike') to be unprotected.
 - 3.2 Pending the outcome of the CCMA arbitration under case number LP 7000-16 the respondents are interdicted restrained from promoting, encouraging, supporting, participating in or otherwise furthering the strike.
 - 3.3 Ordering the respondents, jointly and severally, to pay the costs of this application.
- [4] It is ordered that the orders in paragraphs 3.1 and 3.2 above shall operate with immediate effect pending the final determination of this matter on 10 March 2017.
- [5] Service must be effected on the first respondent by fax and, if possible, by email. Service on the second and further individual respondents must be effected, as far as possible, by the distribution of copies of the order and SMS notifications to them.



Lagrange J

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:

W Hutchinson instructed by
Moodie & Robertson

RESPONDENTS:

No appearance

LABOUR COURT