



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 181/12

In the matter between

**NATIONAL UNION OF MINEWORKERS
OBO NONGANGA AND 170 OTHERS**

Applicant

and

MCC CONTRACTS (PTY) LTD

Respondent

Heard: 10 May 2017

Reasons: 19 May 2017

REASONS FOR THE ORDER

MABASO AJ

Introduction and background

- [1] These are the reasons for the order, in paragraph 11 below, that was made 10 May 2017.
- [2] The applicant is the National Union of Mineworkers, which delivered a statement of case on behalf of its members (the list of all those members is attached to the statement of case marked Annexure A). The total number of members is 172. The respondent is MCC Contractors (Pty) Ltd. This matter was set down for trial on 8 May 2017.
- [3] On the date of the trial, the respondent indicated that this matter should be dismissed, as the attorneys for the applicants had failed to deliver affidavits as per the agreement contained in the pre-trial minutes.
- [4] The applicable clauses, in the pre-trial minutes, that the respondent based its submission on read as follows:

“12.1 the parties agree that each and **every individual applicant** that is to be considered to be a party to these proceedings, **and who shall be entitled to relief in terms of these proceedings**, shall be required to submit an affidavit deposed to by such Applicant, **which affidavit shall record that such Applicant is in fact a party to the proceedings, and which affidavit shall record the starting date of employment of the applicant, the applicant's company number and position in the Respondent at the time of his dismissal, and the salary earned by the Applicant at the time of his / her dismissal.**

12.2 these affidavits must and shall be filed with the Respondent's attorneys within 60 (sixty) days of date of signature of this pre-trial minute by the Applicants' attorneys.

12.3 Upon the receipt of such affidavits, the Respondent's attorneys shall verify the information as contained in such affidavits as to length of service, occupation and remuneration of the Applicants with the Respondent, within 30 (thirty) days of receipt of such affidavits. Once

so verified in writing by the Respondent's attorneys, these affidavits shall be admitted as undisputed evidence on these issues.

- 12.4 the parties however specifically record and agree that any Applicant that does not deposited to such an affidavit as referred to in paragraph 12.1, and any Applicant whose affidavit is not actually filed with the Respondent's attorneys by the deadline prescribed by paragraph 12.2 above, shall not be a party to this dispute and shall not be entitled to any relief in terms of this matter" (Emphasis added.)

Principles and Application thereof

- [5] The Union referred a dispute in this Court , on behalf of the individual applicants in terms of the provisions of the Labour Relations Act 66 of 1995 (the Act), as contained in paragraph 1 of the statement of case. However, the respondent in its affidavit dated 9 May 2017 states its submission as follows: *"the focus of paragraph 3.1 of the answering statement of case is therefore clearly not a challenge to the individual respondent identity as parties having locus standi in this matter per se, the focus is **rather the union's locus standi to act on behalf of each and every individual applicant and concomitantly whether they are still parties to the dispute if the first applicant do not have the locus standi to so act on their behalf.**"* (Emphasis added.)
- [6] It is important to indicate that the respondent's statement of response, paragraph 3.1, provides, *inter alia*, that *"The respondent has no knowledge of which of the individual applicants...are in fact members of the [union] and/or have authorized the [union] to bring these proceedings on their behalf and/or are in fact a party to these proceedings..."* In the matter of *MacDonald's Transport Upington Pty Ltd v Association of Mineworkers and Construction Union and others*,¹ the LAC, in clarifying a *locus standi* of a trade union to represent its members, held thus:

1 (2016) 37 ILJ 2593 (LAC)

“Moreover ... the relationship between a union and its members is a private matter. To interfere with the private contractual relationship of other persons, a stranger would have to demonstrate some sort of delictual harm. None exist to justify the appeal and seeking to pierce the veil of AMCU’s internal affairs in relation to the dismissal dispute.”²

[I am mindful of what the LAC said in paragraph 35 to 37, however, the facts and issues in Macdonald’s matter and *in casu* are not the same].

[7] In this matter, on 8 May 2017, the date when the trial should have commenced, I made an order that the applicant’s attorneys should deliver an affidavit explaining why they failed to comply with clause 12.2 of the pre-trial minutes, taking into account that some of the affidavits were delivered on the eve of the trial. Likewise, that the respondent’s attorneys were given an opportunity to deliver an answering affidavit in respect of the explanatory affidavit by the applicants’ attorneys. Both parties complied with this order. The attorneys for the applicants in their affidavit stated, among other things, that, they acknowledged that they were supposed to deliver the affidavits as per clause 12.2 of the pre-trial minutes within a specified period. Further, that they agreed to this paragraph believing that they were to comply with this time frame, unfortunately, it was not possible for them to contact the individual applicants as they did not have their contact details. And they oppose the application to dismiss the matter saying they have delivered some of the affidavits, therefore, to dismiss the matter will not be the right thing to do.

[8] I have also taken into account, that the dismissal of the individual applicants in this matter is not in dispute, and that the respondent is not inviting the individual applicants to prove an employment relationship. The employer evidently is in possession of all the required information, which the individual employees are required to disclose in terms of clause 12.1 of the pre-trial minutes and the respondent is not alleging that the required information has

² Id at 42.

been lost nor destroyed. In my view, under these circumstances paragraph 12 of the pre-trial minute is both incongruous and inconsequential. And the statement of case cannot be dismissed based on failure to fully comply with clause 12 of the pre-trial minutes, because the issue as to who will be entitled to the relief in this matter will still be decided at the trial, formed by individual applicants present and the outcome thereof

- [9] As indicated above, the Union referred a dispute before this Court acting on behalf of its members in terms of section 200, and as per *Macdonald's* case, that relationship is between the Union and those members and it has nothing to do with the respondent, therefore, before me, I do not have anything that makes me doubt the *locus standi* of any party as all applicants have complied with the provisions of the Act in respect of referring a dispute to this Court.
- [10] I also note that the only relevance for the submittal of these affidavits was to assist this Court to shorten the proceedings of the trial. Rule 6 of the rules of this Court requires an applicant, in matters such as in *casu*, to deliver a statement of the case and a respondent may deliver a statement of response if he/she/it wishes to oppose. Thereafter, pre-trial minutes to be filed. There are timeframes in respect of when documents should be delivered in this Court, and any party who has defaulted in those time frames will be required to deliver a condonation application. Condonation applications are issues between the courts and the applicants thereof. A respondent may deliver an opposing affidavit. However, discretion will lie with such court. Therefore, my view is that this court cannot be bound by agreements entered into by parties which are not in line with the rules and the Act, meaning there is no need for the Applicants to deliver condonation for the late delivery of "the affidavits" based on my conclusion in paragraph 9 above.

Order

[11] In the circumstances, the following order is made:

1. The application to dismiss the statement of case is dismissed with no order as to cost.
2. The trial is postponed to 26-28 June 2017.

S. Mabaso

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: H Molotsi
Instructed by: M S Molebaloa Attorneys INC.

For the Respondent: RJC Orton
Instructed by: Snyman Attorneys

LABOUR COURT