



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 1094/17

In the matter between:

**RICHFIELD GRADUATE INSTITUTE OF
TECHNOLOGY**

Applicant

and

**PRIVATE SCHOOLS AND ALLIED WORKERS
UNION ("PRISAWU)**

First Respondent

**THE PERSONS WHOSE NAMES APPEAR ON
ANNEXURE 'A1' TO THE FOUNDING
AFFIDAVIT**

Second Respondent

MORAWSI PHILLIP MACHABA

Third Respondent

Heard: 23 May 2017

Delivered: 13 June 2017

JUDGMENT

TLHOTLHALEMAJE, J:

Introduction:

- [1] This is a return date following upon an order issued by Steenkamp J on 16 May 2017 in the following terms:

"1...

2. *Marawsi Machaba is joined to these proceedings as the Additional Respondent.*

3.....

4. *The Respondents hereby undertake to not engage in any further strike action unless and until the interim Order is discharged by this Honourable Court.*

5. *The Additional Respondent, representing the Respondents, is ordered to deliver an affidavit to this Honourable Court, duly served on the Applicant, by no later than 10H00 on Thursday, 18 May 2017, showing cause why the Respondents should not be found guilty of contempt of the Interim Order.*

6. *The Additional Respondent is further order to appear in person at the Labour Court on Tuesday, 23 May 2017 at 10:00, to answer any further questions which this Honourable Court may have regarding the Respondents' possible contempt of court.*

7. *The Respondents hereby withdraw their rescission application dated 15 May 2017, on the understanding that the Respondents reserved their right to anticipate the return date, on notice to the Applicant, and the Respondents undertake to not anticipate the return date to a date earlier than Tuesday, 23 May 2017*

8.

9....."

Background:

- [2] The above order was issued following upon an interlocutory contempt application filed by the Applicant on 15 May 2017. The application was also triggered by events subsequent to an *interim* order issued by Lagrange J on 9 May 2017. These applications were launched against the following background;

- [3] The Applicant is a registered educational institution, which operates as a Private Higher Education as well as a Private Further Education and Training College. It has 48 campuses across the Republic, with approximately 14 000 students enrolled in those campuses. It has about 800 employees of which 180 employed in the security and cleaning divisions are members of PRIWUSA.
- [4] PRIWUSA is a registered trade union with its members being the Second to further Respondents (the employees) who are in the employ of the Applicant. It alleged that its membership at the Applicant was 35% as at the time it had declared a dispute. The additional Respondent, Mr Morawsi Phillip Machaba (Machaba), is the Secretary General of PRIWUSA.
- [5] It was common cause that since October 2015, the Union had been attempting to make inroads into the Applicant's campuses, and had sought recognition or organisational rights. The Applicant's attitude to these overtures was that it was not prepared to negotiate with the Union in view of its lack of sufficient membership in the workplace.
- [6] On 10 April 2017, the Union referred a mutual interests dispute to the Commission for Conciliation Mediation and Arbitration (CCMA). Central to the referral was the Applicant's alleged 'unwillingness to negotiate wages'. In regard to the results of the conciliation required, the Union simply indicated '*Certificate of strike*'.
- [7] The dispute was scheduled for conciliation for 2 May 2017 and a certificate of non-resolution was issued on that date. Immediately upon the certificate being issued, the Union issued a strike notice, indicating that the strike was to commence on 5 May 2017. In the notice, it was further indicated that the strike was about '*wage increases for 2017 to 2018, 13th cheque and annual leave days*'.
- [8] The Applicant takes issue with the certificate of outcome in the light of the true nature of the dispute referred for conciliation by the Union. It contended that since the issue referred pertained to 'a refusal to bargain' as contemplated in section 64 (2) of the Labour Relations Act (The LRA), the Union was obliged to

obtain an advisory award in terms of the provisions of section 135 (3) of the LRA and had not done so. The argument was therefore that any strike action embarked upon by the Union members was to be deemed unprotected and unprocedural.

- [9] The Applicant's contention was that on 4 May 2017, and before the strike could commence, the employees engaged in unlawful conduct including illegally hindering access to its premises by chaining and padlocking the entrances to its campuses in Diagonal Street, Harrison Street, Jorrisen Street and Troye Street. The security personnel was however able to remove the locks and chains from the entrances. Upon arrival at the campuses the next morning however, it was again discovered that the entrances were chained and locked.
- [10] On 5 May 2017, the employees commenced their industrial action. According to the Applicant, the striking employees, armed with an assortment of weapons including knobkerries, sjamboks and sticks, had engaged in unlawful conduct including but not limited to acts of intimidation, vandalism and blockading of access to its premises in and around the Johannesburg and Pretoria area.
- [11] On 8 May 2017, the striking employees continued with their violent conduct, including assaulting its officials at the Harrison Street Campus. The industrial action that started at the four campuses then spread to other campuses across the country. The Durban campus also experienced violent protest on 8 May 2017. The entrances to the Polokwane Campus were also chained and padlocked.
- [12] On 9 May 2017, the Applicant approached this Court on an urgent basis to interdict the strike. The matter came before Lagrange J, who had granted a rule *nisi* in the following terms:

1. "...

2. *A rule nisi is issued calling upon the respondents to appear and show cause on 10 August 2017, why an order should not be granted in the following*

terms and why they should not be ordered to pay the applicants costs the one paying the other be absolved-

2.1. Declaring the violent conduct of the second to further respondents ("individual respondent") in furtherance of their unprotected industrial action to be unlawful;

2.2. Declaring the strike embarked upon by the individual respondents to be unprotected;

2.3 Interdicting and restraining the individual respondents from persisting with the following conduct-

2.3.1 Blocking access and egress to and from the applicant's premises as set out on the schedule annexed hereto marked "A" ("the premises");

2.3.2 Intimidation non-striking employees, students and any other persons as they attempt to [access] the premises;

2.3.3 Assaulting or threatening non-striking employees or other persons, including security guards, who are assisting the applicant;

2.3.4 Putting chains and locks on the premises in an attempt to prevent access and exit to and from the premises; and

2.3.5 Carrying brandishing displaying or using of dangerous weapons including but not limited to knobkerries, sticks and sjamboks.

2.4. Interdicting and restraining the first respondent from encouraging or in any way instigating or assisting the second to further respondents to participate in unlawful activity, including the conduct listed above, in furtherance of their unprotected industrial action

2.5. *Ordering the first respondent to publically call upon the individual respondents to abide by the provisions of this interim order using the following means –*

(a) reading out the terms of the Interim order via loud hailer to those individual respondents, who are present at the time, in such language as are commonly used for communication on the applicant's premises;

(b) Distribution of sufficient leaflets at the applicant's premises bearing [PRIWUSA's] name, watermark, logo and contact details and which are signed by its National Secretary, National Organizer or General Secretary which reads –

"On 09 May 2017, the Labour Court issued an Order declaring your conduct during planned unprotected industrial action to be unlawful and ordering [you] to stop the unlawful conduct and action, for example the blockading of the entrance and exit to Richfield, and participating in violence and intimidation. Should you require further explanation of the Court Order, please approach your union or management."

2.6. *Ordering the first respondent to report to this Honourable Court by way of an affidavit by 10:00 on 12 May 2017 to show that they have complied with the terms of this interim order.*

..."

- [13] The Applicant in view of the events that took place subsequent to the above order seeks a further order to find the Union and Machaba in contempt of court, due to non-compliance with the terms of the above *interim* order, and further to assure that the strikers stop their unlawful conduct.

Contempt -The legal framework:

[14] The principles applicable in contempt proceedings are well established as enunciated in *Fakie NO v CCI Systems (Pty) Ltd*¹ in the following terms;

“(a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.

(b) The respondent in such proceedings is not an ‘accused person’, but is entitled to analogous protections as are appropriate to motion proceedings.

(c) In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.

(d) But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.

(e) A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities”

[15] The Constitutional Court in *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)*² reaffirmed the principles set out in *Fakie NO*, and further held that;

“Contempt of court is understood as the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official capacity. This includes acts of contumacy in both senses: wilful disobedience and resistance to lawful court orders..... Wilful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence. The object of contempt proceedings is to impose a penalty that will vindicate the court’s honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order.’

Evaluation:

¹ 2006 (4) SA 326 (SCA) para [42]. See also *Cathay Pacific Airways & another v Lin & another* (260/2016) [2017] ZASCA 35 (29 March 2017) at paragraph 26

² 2015 (5) SA 600 (CC) at paragraphs 25 - 37

- [16] Applying the above principles to the facts of this case, it was not in dispute that the *interim* order was indeed obtained on 9 May 2017. In regard to the service of that order, it was further not in dispute that in the evening on 9 May 2017, the Applicant's attorneys of record had served it on the Union's email address. On 10 May 2017, the original court order was also served at the Union's offices, *albeit* with some difficulties, as according to the Applicant, a Mr Robert van der Walt, a candidate attorney with its attorneys of record was intimidated, harassed and abused when he attempted to serve the order at the Union's premises. It was also contended that officials of the Union had refused to sign acknowledgement of receipt of the order. It was further common cause that a copy of the *interim* order was also served on the Union's attorneys of record (Rikhotso Attorneys), on 10 May 2017.
- [17] On 12 May 2017, the Applicant's attorneys of record also followed upon the service of the order by addressing a letter to Rikhotso Attorneys, and advised them that the Respondents were cautioned to immediately comply with the terms of the order, and that the Union had to inform its members of the contents thereof, and as prescribed therein, and also to advise them to return to work in view of the strike having been declared unprotected.
- [18] Rikhotso Attorneys were further advised that despite the order, the unprotected strike had continued and the terms of the order had been disregarded in that the violent and unlawful behaviour which was interdicted continued unabated. Machaba was specifically identified in this correspondence as having unlawfully and intentionally disregarded the prescripts of the order and was alleged to have been in contempt thereof.
- [19] Rikhotso Attorneys were further put on terms to immediately provide the Applicant's Attorneys of record with proof that the Respondents had honoured the prescripts of the order, and that should the requested proof not be received by 12h00 on 12 May 2017, the Applicant would be left with no alternative but to again approach the Court on an urgent basis, to seek *inter alia*, a contempt order against the Respondents.

- [20] In the light of the above, I am satisfied that the *interim* order having been obtained, was also properly served on the Union. I further did not understand it to be the Union's case that there was anything in particular contained in the order which was vague or not understood in terms of what was expected of the Respondents.
- [21] The next issue to be determined is whether there was non-compliance with the prescripts of the order, and if so, if it was wilful and *mala fide*. Thus, once the Applicant has proven non-compliance, the Respondents bear an evidential burden to establish reasonable doubt as to whether non-compliance was wilful and *mala fide*.
- [22] Paragraph 2.1 of the interim order declared the violent conduct of the employees in furtherance of their unprotected strike to be unlawful, whilst paragraph 2.3 interdicted and restrained the employees from persisting with forms of unlawful conduct detailed under sub-paragraphs 2.3.1 to 2.3.5.
- [23] The Applicant's main contention however was that despite the order being served on the Union, the strike action and violent conduct contrary to the prescripts of the order had nevertheless continued throughout its campuses on 11 and 15 May 2017. Numerous incidents of violent and unlawful conduct on the part of the striking employees were cited in the Founding Affidavit to the contempt application³. These are further supported by numerous affidavits⁴ compiled by individuals associated with the Applicant who were victims of assaults, threats, intimidation and harassment at the hands of the striking employees throughout the Applicant's campuses.
- [24] These unlawful incidents were also experienced by students at various campuses and individuals and institutions of younger learners from adjoining properties to those campuses, and in particular, Education Alive School in Harrison Street, Johannesburg. A detailed Security report by Private Security Consultants⁵ outlined various incidents of lawlessness and violent conduct on the part of the striking employees at various campuses between 8 and 18 May

³ Paragraphs 54 - 78

⁴ Pages 344 – 347 of the indexed bundle

⁵ Pages 337 – 340 of the Indexed bundle

2017. An affidavit by Conrad van der Merwe⁶, a Close Protection Officer in Johannesburg cited various incidents of violence and intimidation, threats to staff and children at the Harrison Street campus. He specifically cited Machaba as the ringleader in these acts on that campus, as he had specifically spoken to him and implored him to comply with the terms of the court order.

- [25] The Applicant attributed this non-compliance with the interim order to the Union and Machaba in particular, as they had failed to inform the employees of the contents of the order including the fact that the strike was declared unlawful as per paragraph 2.5 of the order. The wilfulness and intent to disobey the order was according to the Applicant, further borne out by Machaba's insistence in his letter of 9 May 2017 that the strike was protected and would continue until the Applicant agreed to negotiate with the Union. Reference was also made to Machaba's averments in his unsigned answering affidavit filed in respect of the main application, that the strike was lawful and protected.
- [26] Paragraphs 2.4 and 2.5 of the order interdicted and restrained the Union from encouraging or in any way instigating the employees to participate in unlawful activities, and further required of it to call upon its members to abide by its provisions through various means enumerated in sub-paragraphs (a) and (b).
- [27] It was submitted on behalf of the Applicant that the Union nevertheless failed to comply with that order as at no stage did its officials publicly call upon its members to abide by the provisions of the order, or read out the terms of that order to anyone, or even communicate the order through any means as prescribed in that order. It was contended that , the Union had instead filed a defective answering affidavit stating that the strike was lawful. It was further pointed out that the Union had not anticipated the return date on 48 hours' notice to the Applicant nor ask that the *interim* order be discharged.
- [28] Paragraph 2.6 of the order further required the Union to report to the Court by way of an affidavit by 10.00 on 12 May 2017 to show that they have complied

⁶ Page 343 of the indexed bundle

with the terms of the interim order. The Applicant's contention was that the Union failed to comply in this regard.

- [29] In his answering affidavit in his capacity as the General Secretary of the Union, Machaba raised the issue of lack of authority by the deponent to the Applicant's founding affidavit. This issue was however disposed of as it was apparent that Yuven Naidoo, the Applicant's Chief Strategy Officer and deponent to the founding affidavit was duly authorised to act on its behalf.
- [30] Machaba further contended that the Applicant was not entitled to any relief as the certificate of outcome was properly issued, and that the Union had complied with the provisions of section 64 of the LRA prior to embarking on the strike. Machaba further denied that the strike was unprotected or that the employees had conducted themselves in a violent manner. He instead, accused the Applicant of provocation and alleged that it had hired bouncers to assault, intimidate and harass the striking employees. In the same vein however, Machaba conceded that after the *interim* order was received by the Union, the strike and violent conduct had continued on 11 May 2017⁷.
- [31] During argument, I had raised it with Mr Matimbi for the Respondents as to whether they still persisted with their contention that the strike action was not accompanied by violent conduct. This was particularly so in the light of the uncontested averments made by the Applicant in that regard as supported by numerous affidavits, and the fact that video material depicting violent conduct on the part of the employees was available for the court to view in respect of various incidents of violence. Most appropriately, Mr Matimbi had relented, and conceded that the denials pertaining to violent conduct and unlawful conduct as declared, interdicted and restrained under orders 2.1; 2.3 and its sub-orders, and 2.4 of the Lagrange J's *interim* order could no longer be pursued.
- [32] Machaba in his affidavit filed on 18 May 2017 to show cause why the Respondents should not be held to be in contempt, averred that that upon being served with the order, and after they were alerted to the terms of that

⁷ Paragraph 5.6 of the Answering Affidavit

order, the Union had informed its members to cease from the strike action, and as at the time of the filing of his answering affidavit, the strike action had ceased. He denied that the Respondents had defied the terms of the interim order.

- [33] Mr. Matimbi further submitted that Machaba's affidavit in respect of the contempt proceedings constituted a sufficient compliance report as directed in the order of Steenkamp J, and that to the extent that the Court may find that there was non-compliance with the interim order, there was no wilfulness on their part or intention to defy the interim order.
- [34] As already indicated elsewhere in this judgment, and as can further be gleaned from various affidavits deposed to by affected individuals as further supported by a detailed report of incidents throughout the campuses between 5 and 18 May 2018, I am satisfied that the Applicant was indeed able to demonstrate that that the *interim* order was indeed not complied with. In the light of the conduct of the striking employees between 4 and 18 May 2017, which entailed unlawful industrial action, unlawful conduct in the form of violence, vandalism, intimidation, and threats, I am satisfied that the Respondents conducted themselves in contemptuous defiance of the court order.
- [35] The allegations made on behalf of the Respondents that the strike action or concomitant violent conduct was provoked by the Applicant is clearly a red herring. Machaba's bare denials, in the face of overwhelming evidence that the strike was accompanied by unlawful and violent conduct as gleaned from the numerous affidavits and reports referred to above, are so palpably far-fetched and untenable that they warrant rejection.
- [36] Paragraph 2.5 of the interim order required of the Union to publically call upon its members to abide by the provisions of the interim order by using various means. Machaba's allegations that he had informed his members of the terms of the order are thin and unsubstantiated, as it is not indicated when and how those terms were communicated to the employees. There is nothing in Machaba's answering affidavit or his 'contempt report' that indicates that

indeed the Union had taken any means to comply with these provisions. In fact, no attempt was made by Machaba in the answering affidavit to even respond to the Applicant's averments in this regard that the Union failed to communicate the order to its members in the manner prescribed.

- [37] Paragraph 2.6 of the Interim order also required of the Union to submit a report to show that the terms of the order were complied with. However, as at 10.00 on 12 May 2017, the Union had not submitted a report as directed by the Court, and had instead filed an Answering Affidavit in the main application. Upon receipt of the answering affidavit, the Union was advised by the Applicant that there was still non-compliance with paragraph 2.6 of the interim order. Obviously the answering affidavit as filed by the Union do not comply with the prescripts of the interim order, and more specifically since it was filed a week after the time periods stipulated in that order.
- [38] Machaba in his answering affidavit to the contempt application merely noted the Applicant's averments in regard to the requirement that a report ought to have been filed. In the light of his glib response to the Applicant's averments, there is no reason why based on the papers, it should not be concluded that indeed the Union failed to submit a report by 10.00 on 12 May 2017 as per the prescripts of the *interim* order.
- [39] In the light of the above conclusions, I am satisfied that the Applicant has proven beyond reasonable doubt that the Respondents failed to comply with the prescripts of the *interim* order. On the papers, I am further satisfied that the Respondents failed to discharge an evidential burden to establish reasonable doubt that the non-compliance was not wilful and *mala fide*.
- [40] The issue of whether the non-compliance was wilful and *mala fide* was obviously not addressed in the Respondents' papers, and was only raised in argument by Mr. Matimba. It is trite that a case cannot be made out from the bar and to this end, I am satisfied that on the papers, a conclusion should be reached that indeed the non-compliance was wilful and *mala fide*.
- [41] The above conclusion is reached in the light of the Respondent's persistent stance despite the *interim* order being obtained and served, that the strike

action was protected. In persisting with their conduct solely based on their contention that the strike was protected, it needs to be pointed out that the Union's attitude throughout when it referred the dispute to the CCMA was nothing more than to obtain a certificate and embark on a strike. This is apparent from the nature of relief they sought at conciliation, and their immediate issuing of the strike notice on 2 May 2017.

- [42] The issue of whether the strike was protected or not in view of the contention that the certificate of outcome was erroneously issued is neither here nor there for the purposes of determining whether there was compliance with the order. The fact of the matter is that the *interim* order remained in place and the Respondents were bound by it and expected to comply with its terms until such time that it was discharged. Even if the strike was for some reason deemed to be protected, this could not have been justification for the violence and lawlessness that accompanied that strike.
- [43] The Union as appears from the papers, wilfully failed to call upon its members to abide by the provisions of the *interim* order, solely in the firm belief that the strike was protected. Its members had, as gleaned from the various affidavits and reports, continued with their unlawful conduct despite the terms of the order. Machaba as is apparent from the affidavit of van der Merwe as stated elsewhere in this judgment was at the forefront of the strike. He had made no attempts to dispute van der Merwe's averments or other detailed incidents of unlawful conduct on his or the part of his members as outlined in those affidavits and reports. On the contrary, he had in his capacity as the General Secretary of the Union, failed to advise his members of the terms of the order and had in fact, acquiesced and taken part in the unlawful conduct complained of, with his main attitude being that the strike was protected.
- [44] In the light of a contempt finding having been made, the next issue for consideration is what measures should be taken against the Respondents. As already indicated, the Court in *Pheko*, confirmed that the object of contempt proceedings is to impose a penalty that will vindicate the court's honour,

consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order.”⁸

[45] The Court in *Pheko* further held that in circumstances where a court finds a recalcitrant litigant to be possessed of malice on balance, civil contempt remedies other than committal may still be employed. These include any remedy that would ensure compliance such as declaratory relief, a mandamus demanding the contemnor to behave in a particular manner, a fine and any further order that would have the effect of coercing compliance⁹.

[46] In considering the most appropriate penalty in this case, it is taken into account that;

- a) Even though the right to strike is constitutionally entrenched, there is an obligation on the part of the Union to conduct its strike activities in an orderly and peaceful manner. Striking employees who commit acts of criminality and other form of misconduct during the course of strike action in breach of an order of this court must accept that the consequences thereof would be severe for themselves and their union.
- b) In this case, before the strike could commence in accordance with the notice issued, the striking employees had conducted themselves in the most deplorable of manner by disrupting the Applicant’s activities;
- c) Allegations of misconduct and lawlessness on the part of the striking employees remained unchallenged, and this was despite the *interim* order specifically interdicting and restraining such conduct;
- d) Because of the striking employees conduct, and more specifically vandalism of its property, the Applicant suffered damages (*albeit* unquantified). The Applicant obviously suffered damage to its reputation, and it being an educational institution, learners or students were also adversely affected;

⁸ At para 28

⁹ At para 37

- e) The Union in flagrant disregard of the *interim* court order failed to advise and inform its members of the terms of that order;
- f) Machaba, as already indicated was identified as being in the forefront of the strike and its associated unlawful activities, and there is nothing in his answering affidavit or 'contempt report' that militates against why a contempt finding should not have been made or anything to indicate that he had in fact in his official capacity, ensured that his members complied with the terms of the interim order. As a Union leader, it was expected of him to lead in the true sense by imploring his members to respect the terms of the order.
- g) The Union's and Machaba's stance, was always that the strike was protected. As already indicated, even if the strike was protected, there was no justification for the violent and unlawful conduct that accompanied that strike, and both him and the Union did nothing to reign in on their members.
- h) As at the hearing of this application, despite different versions conveyed by counsel on behalf of the parties, it should be concluded that even though other employees had returned to their normal duties, some were still not reporting for duty despite the strike having been declared unprotected, and there is nothing to indicate that either the Union or Machaba made any attempts to persuade their members still not reporting for duty to go back to work in the light of the *interim* order, and pending the return date.

[47] In the light of the above, I am satisfied that a severe suspended fine should be imposed on both the Union and Machaba. Such a penalty will hopefully be a reminder to them that court orders are to be taken seriously in future. As it has been repeated on different occasions in this court, it is not for employees and their unions to pick and choose which court orders must be obeyed or ignored, and they cannot simply ignore court orders because they do not like them. In a case such as this where an interim order is granted, the Respondents were

compelled to comply with that order, and thereafter anticipate the return date as they are entitled to.

- [48] I have further had regard to the Applicant's contentions that there is a need to supplement the *interim* order by directing the employees to withdraw to a distance of 100 metres from the Applicant's campuses across the country, and further authorising members of the SAPS to enforce a perimeter of 100 metres, and to maintain such a perimeter against those employees still on strike. Such an order is in my view, appropriate, to the extent that it would dissuade the striking employees from any thought of disrupting the Applicant's activities.
- [49] Furthermore, in the light of the concessions made on the Respondent's behalf in respect of the confirmation of paragraphs 2.1; 2.3 and its sub-paragraphs and 2.4 of the *interim* order, there is no reason why those orders should not be confirmed rather than wait for the return date as per paragraph 2 of that order.
- [50] I have further regard to the requirements of law and fairness in regards to the issue of costs. To the extent that contempt findings have been made, I would not have hesitated to grant a punitive cost order against the Respondents. I am however precluded from considering costs in respect of this application and the rescission application in the light of paragraph 9 of the Steenkamp J's order of 16 May 2017, in terms of which costs in respect of all these applications are to be determined on the return date as set out in the *interim* order of 9 May 2017.

Order:

- [51] In the light of all factors considered in this judgment, the following order is made;
1. It is declared that the First Respondent (PRISAWU) is in contempt of the order of this Court issued on 9 May 2017.
 2. The First Respondent (PRISAWU) is ordered to pay a fine of R100 000.00 (One Hundred Thousand Rand), which is suspended for a period of 18 months from the date of this order, on condition that the

Union is not found guilty of contempt of any order of this Court during that time.

3. It is declared that the Additional Respondent, Morawsi Phillip Machaba, as duly joined to these proceedings on 16 May 2017, is in contempt of the Court order issued on 9 May 2017.
4. Morawsi Phillip Machaba is ordered to pay a fine of R50 000.00 (Fifty Thousand Rands), which is suspended for a period of 18 months from the date of this order, on condition that he is not found guilty of contempt of any order of this Court during that time.
5. Paragraphs 1; 2.1; 2.3 and all its sub-paragraphs, and paragraphs 2.4; 2.5 and 2.6 of the *interim* order issued on 9 May 2017 are herein confirmed.
6. Paragraph 2.2 of the order of 9 May 2017 shall remain *interim* pending the return date in that regard as stipulated in paragraph 2 of that order.
7. The Second to Further Respondents as identified in Annexure 'A1' to the Founding Affidavit, and to the extent that they are still on strike, are directed to withdraw a distance of no less than 100 metres from the Applicants' premises as set out in the schedule annexed to the Founding Affidavit marked 'A'.
8. Members of the South African Police Services (The SAPS), or any other persons under their direction and control are authorised to effect the withdrawal of the Second to Further Respondents to a distance of no less than 100 metres from the Applicant's premises as further directed in paragraph (7) above, and to maintain such a perimeter against all persons who are on strike.
9. The costs in relation to the main application, the contempt application, together with the costs associated with the Respondents' Rescission application are to be determined on the return date being 10 August 2017.

E Tlhotlhemaje

Judge of the Labour Court of South Africa

LABOUR COURT

APPEARANCES:

For the Applicant:

Adv. M Meyerowitz

Instructed by:

Kyriacou Inc.

For the First -Third Respondents:

Adv. T.L Matimbi

Instructed by:

Rikhotso Attorneys

LABOUR COURT