



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: JS 1116/2013

In the matter between:

SACCAWU obo RAMONTHLE AND 13 OTHERS

Applicant

and

SUN CITY

Respondent

Heard: 21 – 25 August 2017, Heads of argument submitted on 1 September 2017

Delivered: 19 October 2017

Summary: Participation in unprotected strike action. Defence that it was in response to the employer's unjustified conduct has no merit. Strike action was in response to conduct of the Gupta family and their guests at a wedding hosted at Sun City and not the conduct of the employer. Strike was in breach of Court order and the employees were aware of the existence of Court order. Dismissal was fair.

JUDGMENT

PRINSLOO. J

Introduction

- [1] Before I deal with the pleadings, evidence or merits of the case, it is necessary to set out who the *dramatis personae* are.
- [2] SACCAWU on behalf of 14 members approached this Court for relief, claiming that they were unfairly dismissed. Before the commencement of the trial the Respondent and the following individuals entered into a full and final settlement agreement: Sithembiso Radebe, Margaret Kapari, Archiebald Bogopane, Elias Modieginyana, Lydia Mohlakane, Rhina Mokua, Emeldah Dipale, Oageng Ramadie and Luckyboy Mankwe and Clive Ramokgadi.
- [3] The four individuals who elected not to settle the matter and in respect of whom the trial proceeded are Clifford Ramonthle (Clifford), Koki Khojane (Koki), Donald Magano (Donald) and Sam Bothale (Sam).
- [4] It appears from the pleadings that there were three material incidents that played a role in the dismissal of the said individuals namely: 1 May 2013, 3 May 2013 and 11 May 2013.
- [5] The incident of 1 May 2013 gave rise to a charge of absenteeism and insubordination. Donald and Koki were charged for failing to report for duty on 1 May 2013, not advising management of non-attendance at work and insubordination in that they failed to adhere to a lawful instruction issued on 28 April 2013 to ensure that they attended work on 1 May 2013. It is evident that the charge relating to the incident of 1 May 2013 relate to misconduct in respect of absenteeism and insubordination, which falls squarely within the confines of section 191(5)(a)(i) of the Labour Relations Act¹ (the Act) and the fairness of the dismissal in that regard should be decided by way of arbitration. Donald was dismissed only for misconduct relating to his absenteeism and insubordination on 1 May 2013 and no other charges of misconduct were levelled against him.
- [6] Mr Molebaloa for the Applicants and Mr Ngcukaitobi with Mr Navsa for the Respondent conceded in their argument that this dispute falls outside the jurisdiction of the Court and submitted that Donald's dispute should be referred for arbitration. Section 158(2) of the Act provides that if it becomes

¹ Act 66 of 1995 as amended.

apparent that a dispute referred to this Court ought to have been referred to arbitration, this Court may stay the proceedings and refer the dispute to arbitration.

- [7] I am inclined to refer the dispute in respect of Donald Magano to the Commission for Conciliation, Mediation and Arbitration (CCMA) to be arbitrated.
- [8] It follows that this judgment would deal with the three remaining individuals namely Clifford, Koki and Sam (collectively referred to as the employees).
- [9] The incident of 3 May 2013 gave rise to a charge of inciting and intimidating employees. Clifford and Koki were charged with inciting and intimidating employees at Sun City on 3 May 2013 by causing them to participate in work stoppage, resulting in disruption and financial loss.
- [10] Mr Molebaloa submitted that the charges in respect of 3 May 2013 relate only to incitement and intimidation of employees and not participation in protest action on 3 May 2013. Mr Molebaloa conceded that incitement and intimidation constitute misconduct that would also fall within the jurisdiction of the CCMA and that this Court should confine itself to the incident of 11 May 2013.
- [11] I agree with Mr Molebaloa's submission and this judgment will be limited to the events of 11 May 2013.

The pleadings and pre-trial minute

- [12] In their statement of case the Applicant challenged the procedural and substantive fairness of the individual employees' dismissal for participating in strike action. At the commencement of the trial Mr Molebaloa indicated that the Applicant was not persisting with the challenge in respect of procedural fairness and that the only remaining challenge was in respect of substantive fairness. This challenge is now limited to the incident of 11 May 2013.
- [13] In the pre-trial minute it was recorded that the strike action was unprotected, but it was provoked by the Gupta family who refused to be served by black members of staff and the Respondent did not support the employees and did not stop the humiliation caused by the Guptas. The strike was not

premeditated but was the result of the humiliation of employees in the hands of the Gupta family.

- [14] Mr Molebaloa conceded at the onset that the protest action of 11 May 2013 was unprotected and unauthorised, but submitted that it was in response to unjustified conduct by the Respondent.
- [15] The Applicant's case is that even though the strike was unprotected, it was in response to the employer's unjustified conduct and that the sanction of dismissal is too harsh and not appropriate for mainly two reasons. Firstly, the trust relationship is not broken and secondly other employees who were found guilty of the same misconduct were not dismissed, thus discipline was not applied consistently.

The evidence adduced

- [16] The Respondent called Sir Richard Hawkins (Hawkins) to testify in respect of the events of May 2013. Hawkins explained that Sun International has two divisions namely gaming and hospitality and the resorts fall under the hospitality division. Sun City is part of Sun International's resorts portfolio and it operates in the hospitality industry that is guest focussed and orientated.
- [17] Hawkins occupied the position of Sun City's operations executive from January to August 2013 and in that capacity he had full control over Sun City's operations, which included the four hotels and all ancillary activities such as the Valley of the Waves, the conference centre and golf course.
- [18] The prominent Gupta wedding ceremony took place at Sun City between 30 April 2013 and 3 May 2013. On 3 May 2013 Hawkins and other Sun International staff members had a meeting with COSATU, SACCAWU and the shop stewards to address a matter relating to Koki and his ill-health. During this meeting Mr Phetoe (Phetoe), a COSATU representative, raised the issue of SACCAWU members' unhappiness about the Gupta wedding that took place between 30 April and 3 May 2013 and allegations of racism were made in respect of the Gupta family and their guests.
- [19] The issues relating to racism raised were that the Gupta family only wanted white drivers and waitrons, that the Guptas were allowed to bring their own

vehicles onto the Respondent's premises and that a female employee of the spa concessionaire was sexually harassed.

- [20] Hawkins testified that he addressed the concerns raised and that he asked COSATU and SACCABU to submit evidence to support their claims that there had been acts of racism at the Gupta family's behest.
- [21] Hawkins explained that the spa is run by an independent concessionaire and the employee reported the incident to the concessionaire and she was afforded the required assistance and support. From Sun City's side, the guest involved in the sexual harassment of the spa employee was removed from the premises straight away.
- [22] In respect of the drivers, Hawkins explained that Sun City does not tolerate racism and he disputed that all the drivers were white. He testified that he saw the drivers hired by the Guptas and that they were of mixed race.
- [23] The other allegations of racism that were raised related to the allegation that black staff members were removed from the kitchen and that the Guptas brought their own chefs to Sun City. Hawkins explained to the meeting that every employee who was rostered to work, worked and that none of the employees were displaced or missed a shift that they were supposed to work because of the Guptas. He explained that the Guptas required their own specialist chefs for the wedding as they wanted a unique cuisine from a specific region in India to be prepared and Sun City did not have chefs available to prepare the required cuisine. The Sun City kitchen staff worked with the chefs brought by the Guptas and Hawkins denied that any of the Respondent's kitchen staff had been removed from the kitchen. There was no evidence adduced by the Applicant to support these allegations.
- [24] Hawkins explained that the number of waitrons was increased for the Gupta wedding and they were all black individuals and no waiter employed by Sun City was removed from his or her duties and no waiter lost out on a shift they were rostered to work.
- [25] In cross-examination it was put to Hawkins that the Applicant's case is not that the employees were prevented to serve or work in the kitchen by the

Respondent, but by the Guptas and this frustration was made known to the employer.

- [26] According to Hawkins the issues raised at the meeting of 3 May 2013 regarding the drivers, kitchen staff and sexual harassment were addressed and Phetoe and the shop stewards requested an opportunity to address the staff on the responses arising from the meeting and to give feedback to them. Hawkins acceded to the request for a meeting and the Sun City Hotel theatre was provided as a venue and the employees were relieved from duty in order to attend the meeting. It was agreed that the meeting would take place from 16:30 - 17:30 on 3 May 2013.
- [27] After the conclusion of the meeting the SACCABU members left the theatre in a group singing and chanting and they did not resume their duties and the group of employees made their way through the entertainment centre towards the Palace. This conduct caused a disruption and the guests were unsettled and had to clear the way for the protesting group. Hawkins approached the leaders of the group and asked them to stop the protest. He testified that Clifford and Koki were there and he spoke to Clifford to desist from the protest but they failed to do so and instead encouraged employees to participate in the protest.
- [28] This event resulted in the charge relating to 3 May 2013 that was levelled against Koki and Clifford. As the charge relates to incitement and intimidation, it falls outside the jurisdiction of this Court and it is not necessary to decide the charge. The version in respect of the events of 3 May 2013 is included in this judgment only insofar as it provides background and context to the events of 11 May 2013.
- [29] On 7 May 2013 COSATU addressed a letter to Sun City and Hawkins regarding a request to receive a COSATU memorandum on 11 May 2013 at 15:30 at Sun City's main gate. The reason for the planned march was explained as *"to demand answers from Sun City over the Guptas wedding arrangement and racial treatment meted out to our members by both Sun City and their rich friends (Guptas)."*

- [30] Hawkins explained that 11 May 2013 was an important date for the Respondent as the South African Music Awards (SAMA) event was taking place on that day at Sun City. The SAMA event is an important event for Sun City as it gives exposure as the event is broadcasted on national television and because it brings business for the Respondent.
- [31] On 8 May 2013 Sun City issued a press release and it was circulated to all the Respondent's e-mail users. In the press release the Respondent stated that the issues were addressed on 3 May 2013 and the responses were reiterated in the press release. It was stated that Sun City employs a diverse complement of staff of all races and did not deviate from the usual staff roster during the period of the Gupta wedding. Sun City had to hire additional temporary staff to assist with the additional work created by the large scale and complex event, which was done through a service provider, Instaff. Sun City further explained that the Gupta family hired their own support staff, mostly chefs specialising in Indian cuisine, private security to act as body guards for certain VIP guests and drivers to chauffeur the Gupta guests around in privately hired vehicles. The allegation of rape was not substantiated but was found to be a case of inappropriate sexual advances which was dealt with by Sun City and the employee involved indicated that she was satisfied with the procedures followed and did not want to pursue the matter any further.
- [32] Also on 8 May 2013 Sun City responded to COSATU's letter of 7 May 2013 stating that feedback was provided on 3 May 2013 and that COSATU was requested to furnish the Respondent with the details, proof and evidence of the allegations made in respect of racism so that the Respondent could act accordingly, but to date Sun City did not receive anything from COSATU, SACCWU or the employees who were allegedly racially mistreated. The Respondent made it clear that the employees who would be participating in the COSATU march instead of working will be participating in an unprotected and unauthorised strike action and that the march is not lawful in terms of the provisions of the Act.
- [33] The Respondent specifically called on COSATU to provide a written undertaking that SACCWU and its members would not be participating in the march of 11 May 2013. It was also mentioned that approval for the march had

not been obtained from the relevant authorities. COSATU was asked to provide the written undertaking by 10:00 on 9 May 2013, failing which Sun City would approach this Court for relief on an urgent basis. In the same vain SACCAWU was asked to provide an undertaking that its members who were scheduled to be on duty on 11 May 2013 would not participate in the march as it would constitute unauthorised and unprotected strike action.

- [34] As no undertaking was provided, Sun City approached this Court on an urgent basis on 10 May 2013 at 14:00 for an order *inter alia* declaring the strike action unprotected and interdicting and restraining COSATU and SACCAWU from inciting and encouraging the unprotected strike action and picketing at the Respondent's premises and interdicting and restraining the employees from participating in the unprotected strike action and picketing. A Court order was issued on 10 May 2013 wherein the strike action and picketing had been interdicted and restrained and SACCAWU and its members were interdicted and restrained from gathering at the Respondent's premises until they have complied with the provisions of the Regulations of Gatherings Act².
- [35] Hawkins testified that he instructed the human resources department to distribute a copy of the Court order and to place it on the notice boards.
- [36] In terms of the Court order the strike action and protest had been interdicted and COSATU and the SACCAWU members were prohibited from gathering at the entrances of Sun City and they were restricted from approaching the Respondent's access gates within 100 metres.
- [37] Hawkins testified that the Court order was brought to the attention of all the employees and that he saw it being put up on the notice boards. In cross-examination he testified that on 10 May 2013 after the Respondent received the Court order he went around to see that it was put up on the notice boards and bus stops.
- [38] In cross-examination it was put to Hawkins that the employees' version is that they did not see the Court order at the bus stop and only learned about the Court order when they were inside the Respondent's premises and on their way to the main gate, to which he responded that he would be very surprised

² Act 205 of 1993.

if that is the case as the Court order was put up on the notice boards and at the bus stops.

- [39] On 11 May 2013 the South African Police Service (SAPS) was at Sun City's premises and they marked the 100 metre mark, as per the Court order. As a bus with COSATU and SACCAWU supporters was approaching, SAPS proposed that the Respondent relaxed the 100 metre mark to 50 metres as it would be a positive gesture and would appease the employees.
- [40] In the afternoon of 11 May 2013 employees gathered outside the entertainment area and prepared to join the proceedings outside Sun City's main gate. The employees requested a vehicle to take them to the gate and Hawkins agreed to make a bus available to take the employees to the gate. This he did because SAPS advised him to do so as it would calm the situation down. Once the bus was made available, the SACCAWU members refused to use the bus and instead they walked to the gate and in the process they passed the venue where the SAMA event was taking place.
- [41] Hawkins testified that the situation was very tense and he took advice from SAPS to relax the 100 metre mark and to provide transport to the gate.
- [42] In cross-examination it was put to Hawkins that when he made a bus available to the employees to be transported to the main gate, the employees understood that they were released to attend the rally. The employees' version is that they participated in the rally as they thought that the Respondent was okay with them participating when a bus was made available to transport them, despite the fact that there was a Court order to the contrary. Hawkins responded that he never communicated that to the employees and that it was a bad and an incorrect assumption.
- [43] Hawkins explained that when the employees learned of the existence of the Court order on their way to the gate, they should have stopped any further participation in the strike and protest action that had been interdicted by a Court order.
- [44] Hawkins referred to photographs where Clifford, Koki and Sam were visible and he testified that they gathered in breach of the Court order. Employees left

their work station and walked to the main gate to participate in an event that was interdicted.

- [45] Hawkins explained that dismissal was the culmination of the situation and that the relationship with the employees was harmfully damaged and it was worse since Clifford, Koki and Sam were individuals in leadership positions as shop stewards and they ignored a Court order and violated the law. They marched to the main gate and sat down at the entrance of the property in violation of the Court order.
- [46] On the issue of consistency Hawkins testified that the employees' circumstances should be considered and as shop stewards in leadership positions, they were more accountable than other employees who did not hold leadership positions. In cross-examination it was put to Hawkins that Peter Mojawesi, who is a full time shop steward and who was at the Sun City gate on 11 May 2013 was not dismissed. This was not disputed. It was further put to Hawkins that M Mathibe, W Molepe, J Khumalo, D Ntladi and R Malefetsa, all shop stewards were at the main gate on 11 May 2013 and they were not dismissed. Hawkins responded that he did not know the employees.
- [47] It was put to Hawkins that the trust relationship cannot be said to have broken down as Sun City is able to continue with an employment relationship with Mojawesi and other shop stewards who participated in the strike action on 11 May 2013 and for this reason Sun City should be in a position to work with the employees as well. Hawkins disagreed and insisted that dismissal was an appropriate sanction in respect of Clifford, Koki and Sam.
- [48] In cross-examination it was put to Hawkins that room service waiters took food to a room of the Gupta guests and they were prevented from taking the food into the room but instead the food was taken into the room by a white body guard. Hawkins explained that if an individual requested to bring a body guard, such request is accommodated and Hawkins said that the fact that room service waiters were not allowed to enter certain Gupta rooms was never brought to his attention. The issues that were brought to his attention were taken seriously and dealt with.

- [49] The Respondent's second witness was Mr Sidney Seakamela (Seakamela) who was Sun City's employee relations manager from 1 May 2013 for a period of six months. He testified that after the Court order was obtained on 10 May 2013 he was given a copy of the order at around 16:00 and he was instructed as to what he should do with the order.
- [50] Seakamela deposed to a service affidavit in the urgent Labour Court application and he explained that after the Court order was received, he effected service thereof on 10 May 2013 at around 16:30 by placing copies thereof on various notice boards at the entertainment centre executive offices, the Palace Hotel, the Cabanas Hotel, the Cascades Hotel, the Sun City Hotel, the vacation club, staff entrance, front entrance, resort bus stops, repairs and maintenance workshop, Gary Player Lost City golf course and the canteen notice boards at the casino, Sun City Hotel, entertainment centre, the transport section and Valley of Waves. He deployed the services of the security department and other staff members to assist him to place a copy of the Court order on the said notice boards and he explained that he had resources at his disposal that he used to make sure that the Court order was communicated.
- [51] Seakamela testified that on 10 May 2013 at around 17:00 he went to the SACCAWU office, which was in the same block as his office and he met Clifford and another shop steward, Johannes Khumalo (Khumalo), there and he wanted to hand Clifford a copy of the Court order but he refused to accept it. Clifford called Seakamela names and made derogatory remarks. Seakamela told Clifford to take the Court order as it was proper service but Clifford left and locked the office and went to the canteen, where after Seakamela told him that he would make sure that the Court order was served by pushing a copy of the Court order under the office door of SACCAWU.
- [52] In cross-examination it was put to Seakamela that Clifford's version is that he never met Seakamela and that he was never given a copy of the Court order, which Seakamela disputed and insisted that he met Clifford and Khumalo and that he tried to serve the Court order on them.
- [53] The Applicant's first witness was Mr Mokokeng who testified that he is a room services waiter. He testified that he was around during the time of the Gupta

wedding because he was rostered to work and he served the Guptas and their guests. He testified about two occasions when he was not allowed to take food that was ordered into the rooms and he felt frustrated by this and regarded it as unacceptable.

- [54] This witness did not contribute to the Applicant's case and his testimony did not assist at all in respect of the issues this Court has to decide.
- [55] The fact that a room service waiter is not allowed to enter a guest's room does not *per se* constitute an act of racism as there may be a number of reasons why a guest would not want a waiter to enter his or her room, which may be personal or security or other reasons not related to race. *In casu* no case was made out that Mofokeng was not allowed to enter certain rooms because of his race and on Mofokeng's own version he never reported this to Hawkins.
- [56] The Applicant's second witness was Clifford Ramontle who testified that he was a full time shop steward at Sun City since 2011. On 1 May 2013 he received reports that the Guptas were treating employees unfairly and he was told about a case of sexual harassment of a female employee, room service waiters who were not allowed to go into the guests' rooms and the fact that the Guptas came with their own drivers. SACCAWU viewed this a discrimination based on race.
- [57] On 3 May 2013 a meeting was held with the Respondent, COSATU and SACCAWU regarding Koki's health and at this meeting they discussed the issues relating to racial discrimination and the Guptas. Hawkins asked them to provide evidence of the alleged conduct. In respect of the issue of sexual harassment Clifford testified that Hawkins never informed them that the culprit guest was removed from the premises and they did not know that action was taken in that regard.
- [58] Clifford testified that at the conclusion of the meeting there was tension at Sun City and it was caused by the racial discrimination and treatment employees received from the Guptas. They requested permission to meet with the employees at Sun City on 3 May 2013 and Hawkins agreed to this request and the meeting with the employees indeed took place. The employees wanted to remove the Guptas from the premises but COSATU and

SACCAWU intervened and they told the employees that the Guptas would not be removed. After the meeting the leadership remained behind to have further discussions when they were called and found that the employees were singing and chanting outside and that they were moving from the main reception at the hotel and moving in the direction of the Cascades. Clifford explained that the employees were uncontrollable and that he tried to calm them down, but without success and from there the shop stewards accompanied the employees to make sure that they do not cause damage and to monitor the situation. Clifford conceded that this protest action was unprotected but denied that he instigated and intimidated employees to participate in the strike.

- [59] On 11 May 2013 Clifford did not work as he did not work on Saturdays, but he went to the bus stop where employees assembled to hand over the COSATU memorandum. He explained that the employees assembled at the bus stop as they wanted to use a bus to go to the main gate. Hawkins made a bus available for the employees to be transported to the main gate, but they did not use the bus as the employees chose to walk and the shop stewards had to accompany them to make sure that they do not damage anything. Clifford was unable to provide any reason as to why the employees would ask for a bus to go to the main gate and once it was provided to them, chose not to use it but to walk instead.
- [60] Clifford testified that when the employees gathered at the bus stop, Peter Mojawesi, another shop steward, phoned one of the employees and told them about the Court order and they discovered that the Respondent obtained the Court order on 10 May 2013. The employees nonetheless proceeded with the strike action which was prohibited by the Court order because Hawkins made a bus available to transport them to the gate and they thought that by making a bus available, Hawkins allowed them to participate and to go to the march. Clifford however conceded that Hawkins did not explain to him the circumstances under which the bus was released.
- [61] In cross-examination Clifford conceded that they were informed about the Court order when they were still at the bus stop and they were told that the Court order interdicted the strike and the march and despite knowledge of the Court order, they proceeded with the strike action and march on 11 May 2013.

- [62] Clifford testified that he never met Seakamela on 10 May 2013 and he was never handed a copy of the Court order on that date.
- [63] In respect of inconsistency Clifford testified that other employees participated in the event of 11 May 2013 and they were not dismissed and there was still an employment relationship ongoing between Sun City and those employees and Sun City cannot claim that the trust relationship was destroyed because of the events of 11 May 2013.
- [64] In cross-examination it was put to Clifford that all the employees who were identified from photographs taken of the events of 11 May 2013 were charged for the incident of 11 May 2013. Clifford conceded that others who participated were not in the photographs and that the shop stewards who appeared in the photographs, were all charged.
- [65] Clifford conceded in cross-examination that he was upset and still is upset about the Guptas and the way they treated the Sun City employees and he is not satisfied with the explanation given by the Respondent as he is still of the view that Sun City did not do enough.
- [66] The Applicant's last witness was Mr Koki Kojane. He testified that he did not see the Court order on 10 or 11 May 2013 on any notice board. On 11 May 2013 he went to the bus stop to participate in the COSATU event. He conceded in cross-examination that whilst they were at the bus stop they received a call from Majowesi and they were informed about the Court order that prohibited the strike and the march and despite knowing that the strike and the march had been prohibited by a Court order, he continued with the strike action.
- [67] Koki confirmed that despite the fact that the Respondent made a bus available to transport them to the main gate, the bus was not used and the employees instead marched to the gate. He explained that the bus was not used as the employees were angry.
- [68] Koki conceded in cross-examination that he was upset and is now even more upset about the Guptas and the way they treated the Sun City employees.

The issues this Court has to decide:

- [69] Koki was charged for the incidents of 1 May 2013, 3 May 2013 and 11 May 2013. Clifford was charged for the incidents of 3 May 2013 and 11 May 2013 and Sam only for the incident of 11 May 2013.
- [70] Mr Molebaloa conceded that this Court should confine itself to the incident of 11 May 2013 and submitted the misconduct related to absenteeism (1 May 2013) and incitement and intimidation (3 May 2013) should be dealt with by the CCMA. Even if the events of 3 May 2013 may be related to strike action, the charge levelled against the employees in respect of 3 May 2013 was *“inciting and intimidating employees at Sun City Resort by causing them to participate in work stoppage..”* and it was not for participation in unprotected strike action. A dismissal for an act of misconduct relating to incitement and intimidation would be a dismissal relating to conduct which is to be determined by arbitration.
- [71] The question is whether this Court should refer Clifford and Koki’s dispute about the fairness of their dismissal in respect of the charges of absenteeism, incitement and intimidation to the CCMA.
- [72] The incident of 11 May 2013 related to participation in an unprotected strike and resulted in the dismissal of Clifford and Koki and is a dispute this Court has jurisdiction to adjudicate. As the said misconduct was considered by this Court and in view of the findings of this Court, which are discussed *infra*, it would make no sense to refer another unfair dismissal dispute to the CCMA. Once the dismissal is found to be fair, there is no basis for another tribunal to consider other acts of misconduct and to determine whether dismissal was fair and appropriate. In view of my findings on the incident of 11 May 2013 I am not inclined to refer the dispute about the fairness of Clifford and Koki’s dismissal in respect of the charges of absenteeism, incitement and intimidation to the CCMA.
- [73] Clifford, Koki and Sam were charged and dismissed for participating in an illegal work stoppage in that they on 11 May 2013 participated or joined an illegal protest, which resulted in the disruption of the Respondent’s business.
- [74] The charge levelled against the employees in respect of 11 May 2013 was: *“Participating in an illegal work stoppage, in that, on 11 May 2013 they*

participated or joined an illegal protest, which resulted in the disruption of business, affecting customers and normal course of business.”

- [75] The issue to be decided is whether the employees' dismissal for participation in illegal strike action on 11 May 2013 was substantively fair. The challenge in respect of procedural fairness had been abandoned.
- [76] The Applicant conceded that the strike action of 11 May 2013 was unprotected and unauthorised.
- [77] The Applicant's case is that although the strike was unprotected, the employees did not deserve dismissal as the protest action was in response to unjustified conduct by the Respondent. In the event that the employees are found guilty of participating in illegal strike or protest action, there are strong mitigating factors that render their dismissal unfair.
- [78] The two main issues in the Applicant's case that have to be determined is firstly whether their participation in the unprotected strike or protest action was in response to unjustified conduct by the employer and secondly whether the sanction of dismissal was appropriate.

The applicable legal principles

- [79] The legal principles to be applied in a dispute concerning a dismissal for participation in an unprotected strike are well established. Item 6(1) of the Code of Good Practice contained in Schedule 8 of the Act (the Code) reads as follows:

‘Dismissals and industrial action.

- (1) Participation in a strike that does not comply with the provisions of chapter IV is misconduct. However, like any other act of misconduct, it does not always deserve dismissal. The substantive fairness of dismissal in these circumstances must be determined in the light of the facts of the case, including—
- (a) the seriousness of the contravention of this Act;
 - (b) attempts made to comply with this Act; and
 - (c) whether or not the strike was in response to unjustified conduct by the employer.’

- [80] Item 6(1) of the Code provides that the substantive fairness of dismissal in the event of participation in unprotected strike action must be determined in the light of the facts of the case, including the seriousness of the contravention of the Act, attempts made to comply with the Act and whether or not the strike was in response to unjustified conduct by the employer.
- [81] The distinction between a protected and unprotected strike is not an academic one. It is one that ought to have consequences. The Act establishes dispute resolution procedures that are inexpensive, expeditious and efficient. If the employees felt aggrieved, they could have and should have explored legitimate remedies to address their concerns.
- [82] The Labour Appeal Court in *NUMSA v CBI Electric African Cables*³ observed that it is clear from the provisions of section 68(5) of the Act that a Court called upon to determine the fairness of a dismissal effected on the ground of participation in an unprotected strike should consider, in addition to Item 6 of the Code, the provisions of Item 7.
- [83] Item 7 regulates dismissal for misconduct more generally and as participation in unprotected strike action is misconduct, it should logically be applied. Item 7 requires the determination of whether dismissal was an appropriate sanction for contravention of the relevant rule or standard.
- [84] The determination of the substantive fairness of a strike related dismissal must therefore take place in two stages. Firstly, under Item 6 when the strike related enquiry takes place and secondly under Item 7.
- [85] It is undisputed that the employees embarked on an unauthorised and unprotected strike or protest action on 11 May 2013 and that there was no attempt to comply with the provisions of the Act.

Was the strike action in response to the employer's unjustified conduct:

- [86] The first issue to be decided is whether the employees' strike or protest action was in response to unjustified conduct by the employer.
- [87] The Applicant's pleaded case is that on 3 May 2013 they protested in response or in reaction to the Gupta family who displayed racism and

³ (2014) 1 BLLR 31 (LAC).

discrimination towards the employees and that the protest was triggered by the behaviour of the Guptas. In respect of the events of 11 May 2013 the Applicant's pleaded case is that they demonstrated with the intention to put more pressure on the Respondent to deal with the Gupta saga as it was the Applicant's view that Sun City failed to act after the demonstration of 3 May 2013.

- [88] The employees' defence for participation in unprotected strike action was that it was in response to unjustified conduct. What became clear at trial is that the offensive conduct complained of was not perpetrated by the employer but that the issues that gave rise to the strike action arose from the conduct of a third party, the Guptas and their guests.
- [89] In my view a clear distinction is to be drawn between the events of 3 May 2013 and 11 May 2013. The protest action of 3 May 2013 was on the Applicant's own version was triggered by the conduct of the Guptas and such protest action was not in response to the conduct of the employer.
- [90] Item 6 of Schedule 8 of the Act clearly articulates that the unjustified conduct must be on the part of the employer and there is no indication that the conduct could extend to third parties.
- [91] The protest action of 11 May 2013 was to put more pressure on the Respondent to deal with the Gupta saga as it was the Applicant's view that Sun City failed to act after the demonstration of 3 May 2013.
- [92] The issues in respect of the Guptas were raised with the Respondent on 3 May 2013 and the question is how or to what extent did Sun City fail to act after the issues were raised and whether the alleged failure to act constituted unjustified conduct that justified the strike action.
- [93] This certainly raises the question as to what Sun City was expected to do after 3 May 2013. The evidence was that the Gupta wedding took place from 30 April 2013 until 3 May 2013 and SACCAWU reported the complaints and allegations of racism to the Respondent on 3 May 2013, when the wedding was almost done.

- [94] The Applicant's case is that the Respondent did not do enough in respect of the issues raised regarding the Guptas. The Applicant's witnesses testified that the Respondent should have investigated the issues but did not elaborate on what else should have been done and in clarification I asked Clifford what else did they expect the Respondent to do. Clifford responded that the Respondent should not have entered into an agreement with the Guptas and should not have agreed to the Guptas' requests and the Respondent should have communicated the agreement it had with the Guptas to the workers. Clifford also said even if it was communicated to them that the waiters would not be allowed in the rooms or that the guest who was accused of sexual harassment was removed from the premises, they would still have problems. It is evident that Clifford would not have been satisfied with any response or action taken by the Respondent.
- [95] I also asked Koki what he expected the Respondent to do and he responded that the Respondent failed to respond to the issues timeously as the ill treatment of employees started before 3 May 2013 as it started when the Guptas arrived.
- [96] Sun City's version that the person accused of sexual harassment had been removed from the premises immediately and that the issue was dealt with to the satisfaction of the involved employee was undisputed and I have no reason not to accept that the Respondent dealt with the serious allegation of sexual harassment on 3 May 2013. The fact that the trade union or employees did not know that the issue was dealt with and that the guest was removed from the premises does not mean that the issue was not dealt with, but is rather indicative of poor communication between the parties.
- [97] Hawkins testified that he requested proof of the allegations made in respect of racism so that the issues could be investigated. This is a sound approach when allegations are made and when there is a need to investigate those based on facts or evidence produced. He testified that at no stage did SACCWU or the employees provide any proof of the allegations they made. Unfortunately, Hawkins' request for proof of the allegations made was interpreted and understood by SACCWU and the employees to indicate that he was not taking their concerns or the allegations seriously.

- [98] I observed Hawkins as a witness and from his testimony it was clear that he agreed with the employees that any act of racism was unacceptable and should not be tolerated and his request for proof of allegations made was to gather information on the issues to be investigated and was not to disregard the complaints or to sweep the issues raised under the carpet. The fact that the employees understood his request for proof in the manner they did, is once again rather indicative of poor communication between the parties.
- [99] It is evident from the evidence adduced that the employees were and still are angry about the manner in which they were treated by the Guptas and their guests. The employees experienced the treatment they received as racist and discriminatory. The feelings of anger and frustration are understandable and justified in a democracy where the Constitution⁴ provides that the Republic of South Africa is founded on values including *inter alia* human dignity and non-racialism. Sun City contracted to host the Gupta wedding and acceded and agreed to specific requests from the Guptas in relation to the provision of private security and body guards, chefs and drivers. I have no reason to find that at the time Sun City agreed to host the wedding and to accommodate the specific requests made by the Guptas, it was done with the intention to host an event where racist or discriminatory practices would be displayed towards the Sun City employees. In any event there was no evidence adduced that Sun City displayed racist or discriminatory conduct towards its employees. The only 'sin' Sun City committed is to do business with the Guptas.
- [100] Sun City's evidence that it does not practice or tolerate racism was undisputed. In fact, Hawkins agreed with the employees that any racist conduct displayed towards them was unacceptable.
- [101] This is a case where employees proverbially cried at the wrong funeral.
- [102] The employees were angry and disgruntled because of the manner in which the Guptas and their guests treated them and they took out that anger and frustration on their employer, who did not act in a racist or discriminatory manner. The alleged acts of racism on the part of the Guptas and their guests cannot be attributed to the employer.

⁴ The Constitution of the Republic of South Africa 1996 section 1.

- [103] The question remains: was the strike action justified because the employer did not do enough. The answer to this question is no for a number of reasons. The issues were reported to Sun City on 3 May 2013, when the wedding was almost done. It is not clear from the Applicant's pleaded case or evidence what they expected the employer to do in respect of the issues raised regarding the chefs, drivers, body guards etcetera after the event was almost done. It is undisputed that Sun City took action on 3 May 2013 in respect of the allegations of sexual harassment.
- [104] The complaint that the issues were not investigated must be seen in light of the request to provide proof, which was never provided and even if the Respondent acted slowly in investigating the issues it did not constitute unjustified conduct that justified unprotected strike action.
- [105] The employees' version on what the employer should have done more is to be rejected. Clifford expected the Respondent not to have entered into an agreement with the Guptas and not to have agreed to the Guptas' requests, which expectation is unrealistic and immature as the Respondent operates in the hospitality industry and could not have foreseen the conduct of the Guptas when it agreed to host the wedding. Koki's evidence was that the Respondent failed to respond to the issues timeously as the ill treatment of employees started before 3 May 2013 but started when the Guptas arrived. I find this expectation difficult to accept as the undisputed evidence was that the issues were raised with the Respondent in a meeting on 3 May 2013. There was no evidence adduced to show that the issues the Applicant had with the Guptas were raised with the Respondent or Hawkins before 3 May 2013 or when the Guptas arrived on 30 April 2013.
- [106] The Applicant's case that the strike action on 11 May 2013 was justified because the Respondent did not do enough is without merit. The complaint that the employer did not do enough is a vague and unsubstantiated allegation and did not justify strike action.
- [107] Sun City issued a press release on 8 May 2013 wherein the issues raised with management were addressed and responded to. The issues were further addressed in subsequent correspondence and meetings with the union.

[108] Evidence before this Court showed that Sun City addressed the union's concerns, albeit not to the satisfaction of the union. However, the employees were unable to provide any practical or reasonable suggestions on what the employer could have or should have done differently.

[109] SACCWU knew as early as 3 May 2013 that the conduct complained of was not that of the employer, but a third party. The issue was raised with the employer on 3 May 2013 and Sun City has taken steps to address the issues and even if the steps taken were not to the satisfaction of the union, it was grossly disproportionate to instigate strike action and to participate in a protest against the employer.

[110] The evidence before this Court does not support the case that the Respondent's conduct was unjustified and that the strike was in response to such conduct.

Was the sanction of dismissal appropriate?

[111] The second issue to be decided is whether dismissal was an appropriate sanction. The Applicant's case is that the sanction of dismissal is too harsh and not appropriate because the trust relationship is not broken and discipline was not applied consistently.

[112] Item 7 of the Code provides that:

'Any person who is determining whether a dismissal for misconduct is unfair should consider—

- (a) whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the work-place; and
- (b) if a rule or standard was contravened, whether or not—
 - (i) the rule was a valid or reasonable rule or standard;
 - (ii) the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
 - (iii) the rule or standard has been consistently applied by the employer; and
 - (iv) dismissal with an appropriate sanction for the contravention of the rule or standard.'

- [113] The employees participated in an unprotected strike action and such participation constitutes misconduct. The Labour Appeal Court⁵ approved the view that Item 6 is neither exhaustive nor rigid and that other factors are also relevant. Therefore, I have to consider not only the provisions of Item 6 and 7 of the Code, but also other relevant factors to determine the fairness of the strike related dismissal.
- [114] Firstly, I have to consider the timing of the strike. The employees commenced strike action on 11 May 2013, the day the prestigious SAMA event was hosted at Sun City. The chronology of events shows that by 11 May 2013 the Respondent had a meeting with the Applicant, issued a press release on the issues raised and that the Guptas had left the Sun City premises and the conduct they displayed towards the employees no longer existed or continued. There was no need to embark on protests action specifically on 11 May 2013 and the only reason to strike and protest on 11 May 2013 was because of the SAMA event and the media coverage the event enjoyed. The timing of the strike and protest action was aimed to cause the most disruption and embarrassment possible to the employer. The strike was planned at a time that would harm the employer most and that was critical to its business operations.
- [115] The legitimacy of the strikers' demands is another consideration. The intention of the employees was to put pressure on the Respondent to deal with the Gupta saga and effectively the demand was for the employer to deal with the issues. At that point the issue of sexual harassment had been dealt with and the other issues were either responded to or were still to be investigated, an aspect I fully dealt with *supra*. As at 11 May 2013 there was no legitimate reason to resort to unprotected strike action.
- [116] Another pertinent factor is the conduct of the employees. It is undisputed that Sun City obtained a Court order on 10 May 2013 that interdicted the strike or protest action on 11 May 2013. Sun City adduced evidence that the Court order was put up and displayed at various points on the premises and that there was an attempt to serve a copy on the SACCAWU shop stewards. The employees denied that they saw the Court order or that it was served on the

⁵ (2014) 1 BLLR 31 (LAC) at para 30.

shop stewards. The issue whether the employees saw the Court order or whether it was served on the shop stewards on 10 May 2013 becomes irrelevant in view of the employees' evidence that they knew that the strike was interdicted before they commenced participation in the unprotected action.

- [117] Clifford testified that when the employees gathered at the bus stop, Peter Mojawesi phoned and told them about the Court order and they discovered that the Respondent obtained the Court order on 10 May 2013. Clifford conceded that they were informed about the Court order when they were still at the bus stop and they were told that the Court order interdicted the strike and the march and despite knowledge of the Court order, they proceeded with the strike action and march on 11 May 2013.
- [118] Koki conceded that whilst they were at the bus stop they received a call from Majowesi and they were informed about the Court order that prohibited the strike and the march and despite knowing that the strike and the march had been prohibited by a Court order, he continued with the strike action.
- [119] It is evident from the employees' own concessions that on 11 May 2013, whilst they were still gathering inside the Respondent's premises and before they commenced their strike and protest action, they knew about the Court order and the fact that it prohibited the strike and protest action.
- [120] Notwithstanding their knowledge of the Court order, the employees proceeded with the strike action which was prohibited by the Court order.
- [121] Section 165(5) of the Constitution provides that: 'An order or decision issued by a court binds all persons to whom and organs of State to which it applies. It is not for a party to litigation unilaterally to elect whether or not to comply with orders of court. In the absence of an application for rescission or appeal, court orders must be complied with.'
- [122] In complete defiance of the Court order, the employees commenced with their strike action and at that point their participation was deliberate and calculated in contravention of a Court order. The employees' defence is that notwithstanding their knowledge of the Court order, they proceeded with the strike action because Hawkins made a bus available to transport them to the

gate and they thought that by making a bus available, Hawkins allowed them to participate and to go to the march. Clifford however conceded that Hawkins did not explain to him the circumstances under which the bus was released. Hawkins testified that he made the bus available as the employees demanded a bus and the SAPS advised him to make the bus available to calm the situation down. He expressly stated that the employees were wrong in assuming that they had permission to participate in the protest action simply because a bus was made available. The bus was made available to avoid mayhem and in an attempt to calm the situation down in view of the ongoing SAMA event.

- [123] The employees' defence is far-fetched and opportunistic. In circumstances where they demanded a bus and a bus is made available to them they are not entitled to interpret that to mean that they have the employer's blessing and permission to participate in strike and protest action, the same strike action in respect of which the employer obtained an interdict. The employees should at least have enquired from the employer whether they had permission to participate in the strike action, especially after they became aware of the fact that the employer obtained a Court order interdicting the same strike and protest action.
- [124] The employees are adults and shop stewards and as such they should not have acted on assumptions but should have clarified the employer's position before embarking on strike action they knew was unprotected and interdicted by an order of Court. To make matters worse for the employees, the bus they demanded and that the employer made available was not used and the employees instead marched to the gate and in all probability this was done for effect and to cause maximum disruption.
- [125] This should serve as a stern warning to employees who act in contravention of Court orders: An order or decision issued by this Court binds all persons to whom it applies and if employees consciously, deliberately and knowingly act in contempt of such order, they should not expect sympathy or mercy from this Court. They should not expect this Court to reward their contemptuous conduct and it is a factor to be considered when the issue of relief is decided. Effectively the employees are seeking relief from the same Court they disrespected and whose orders they breached.

- [126] Where an employer obtained a Court order that interdicts certain conduct and such Court order is deliberately breached by employees, it does not only constitute contemptuous conduct, but it undermines the rule of law which cannot be tolerated or condoned.

Inconsistency

- [127] The Applicant challenged the fairness of the employees' dismissal on the ground that the Respondent acted inconsistently in dismissing the employees as other workers who participated in the strike or protest action on 11 May 2013 were not dismissed.
- [128] On the issue of consistency, it was put to Hawkins that Peter Mojawesi, who is a full time shop steward and who was at the Sun City gate on 11 May 2013 was not dismissed. This was not disputed. It was further put to Hawkins that M Mathibe, W Molepe, J Khumalo, D Ntladi and R Malefetsa, all shop stewards were at the main gate on 11 May 2013 and they were not dismissed. Hawkins responded that he did not know the said employees.
- [129] In respect of inconsistency Clifford testified that other employees participated in the event of 11 May 2013 and they were not dismissed.
- [130] The Respondent's case is that it was clear from the photographic evidence available that the employer took action against all the shop stewards that were identified therein.
- [131] In cross-examination it was put to Clifford that all the employees who were identified from photographs taken of the events of 11 May 2013 were charged for the incident of 11 May 2013. Clifford conceded that others who participated in the march were not in the photographs and that the shop stewards who appeared in the photographs, were all charged.
- [132] In *CEPPWAWU v National Bargaining Council for the Chemical Industry*⁶ employees were dismissed for committing misconduct while participating in a lawful strike after the employer charged the ones it was able to identify in photographs. The Labour Appeal Court held that in cases of collective misconduct an employer can only act against those employees it can prove to

⁶ (2010) 31 ILJ 2836 (LAC) para 20.

have committed the misconduct complained of and an employer is obliged to charge only those employees against whom it has evidence. The Labour Appeal Court held that:

'Hence, where there has been collective misconduct and the employer only charges some of the employees because it only has evidence against them and from amongst those charged some are found to have committed the wrong and are dismissed and a few acquitted, it does not and cannot follow that the dismissal was unfair because of any selective application of discipline. An employer can only be accused of selective application of discipline if, having evidence against a number of individual employees, it arbitrarily selects only few to face disciplinary action.

An employer is also not obliged to investigate the identity of each and every employee who may have participated in a wrongful activity and then proceed to take disciplinary measures against all the wrongdoers. An employer need only proceed against those it has evidence against'.

[133] In *Mabinana and others v Baldwins Steel*⁷ the Labour Appeal Court held that while only a handful of employees were dismissed despite the large number of persons who had participated in the unlawful act, their dismissal was not unlawful as the employer is not obliged to ensure that it has identified all the perpetrators.

[134] *In casu* Clifford conceded that the employees who participated but were not charged were not in the photographs and that the shop stewards who appeared in the photographs, were all charged. It is evident that the employer took disciplinary action against the employees it was able to identify and against whom it had evidence. In *CEPPWAWU v National Bargaining Council for the Chemical Industry* it was found that such conduct does not constitute the selective application of discipline and I see no reason why the same does not apply *in casu*.

[135] Be that as it may, in *Absa Bank Ltd v Naidu and others*⁸ the Labour Appeal Court held that:

'However, it ought to be realised, in my view, that the parity principle may not

⁷ (1999) 5 BLLR 453 (LAC) at paras 7 – 10.

⁸ (2015) 36 ILJ 602 (LAC).

just be applied willy-nilly without any measure of caution. In this regard, I am inclined to agree with Professor Grogan when he remarks as follows:

'[T]he parity principle should be applied with caution. It may well be that employees who thoroughly deserved to be dismissed profit from the fact that other employees happened not to have been dismissed for a similar offence in the past or because another employee involved in the same misconduct was not dismissed through some oversight by a disciplinary officer, or because different disciplinary officers had different views on the appropriate penalty.'

[136] Consistency is but an element of fairness. There was no evidence or argument that the Respondent acted capriciously or with bias in dismissing the employees. The argument is that the Respondent applied discipline inconsistently and therefore the employees' dismissal was unfair.

[137] The fact that others participated in the events of 11 May 2013 but were not charged and dismissed, does not, in view of the evidence, the applicable principles and Clifford's concession that those employees who could be identified from the photographs were charged, constitute an inconsistent application of discipline.

[138] The employees cannot escape the consequences of their misconduct because of others who escaped the same consequences.

The trust relationship

[139] The Applicants' case is that dismissal was not appropriate as the trust relationship is not broken. Based on the evidence adduced in Court, I am convinced that the trust relationship between the parties broke down. The fact that others who participated in the strike were not dismissed and are still employed by Sun City, does not change the fact that the relationship between Sun City and the employees broke down and a continued employment relationship would be intolerable. This is evident from the testimony of Hawkins when he testified that the relationship with the employees was harmfully damaged and it was worse since Clifford, Koki and Sam were individuals in leadership positions as shop stewards and they ignored a Court order and violated the law. They showed disrespect not only to their employer, but also to the court and the law. The employees on the other hand held Sun

City responsible for the conduct of the Guptas and they still do and nothing the employer did or do would change their attitude. The employees can hardly dispute the breakdown of the relationship with the employer based on their testimony in court.

Mitigating factors

[140] Mr Molebaloa submitted that even if the employees were guilty of participating in the unprotected strike action on 11 March 2013, there are strong mitigating factors that render their dismissal unfair. Those included the issue of inconsistency and that the trust relationship that has not broken down, which I already dealt with *supra*. In addition to those factors Mr Molebaloa submitted in mitigation that a bus was made available to transport the employees to the march and it had the potential of sending a confusing message which was construed as permission to attend. The employees were not informed of the circumstances under which the bus was made available. The flip side of this argument is that the employees never asked about the circumstances.

[141] I already considered this issue and found that the employees' assumption that they had permission to attend was unreasonable, more so where there was an interdict obtained by the employer to prohibit participation and where the employees made no effort to ascertain whether permission was indeed granted. The unfortunate thing about assumptions is that they are sometimes wrong and making the assumption could be fatal. In relying on an assumption or interpretation about what it meant when busses were made available, the employees failed to ask certain obvious questions and they acted on what they thought they knew and not on real information.

[142] In mitigation Mr Molebaloa further submitted that Koki and Clifford were off duty when they participated in the strike action and march. In my view this is rather aggravating as it shows that there was no reason for them to be at the Respondent's premises other than to participate in the strike and notwithstanding knowledge of the Court order, they proceeded to participate as that was the reason for them to go to Sun City and they were intent to do what they came out to do, no matter what. They always intended to participate in the strike action and they had no intention or inclination to act in accordance

with the terms of the Court order, in fact they took active steps to disregard the interdict issued by this Court on 10 May 2013.

- [143] Mr Molebaloa also submitted that the strike action did not take long and there was no violence or damage to the property. It may be so that the strike or protest action was not violent or caused damage to property and did not take long, but I have to consider the fact that it was scheduled on a date and time that would have caused the most embarrassment and disruption for the employer. It was deliberately planned for 11 May 2013, to coincide with the SAMA event which carries significance as Sun City was hosting the prestigious event on that day and it was planned to happen at the main entrance gate where the guests and media would enter. Furthermore, it proceeded in direct violation of a Court order.
- [144] In mitigation Mr Molebaloa further submitted that the employees at no stage left their members alone or uncontrolled. In my view this ground is also aggravating rather than mitigating. The employees as shop stewards participated in the strike and march, despite their knowledge that it was interdicted. They should have rather advised their members not to participate and to rather comply with the terms of the Court order. They did none of that and to say to this Court that they did not leave their members alone and uncontrolled is opportunistic when what they should be saying in mitigation was that they tried to stop their members from participating in the interdicted strike and protest action.
- [145] Considering all the factors *supra*, dismissal was an appropriate sanction for the misconduct committed by the employees.
- [146] It follows that the employees' dismissal was substantively fair.
- [147] Mr Molebaloa did not make submissions on the issue of costs other than to submit that the employees should be reinstated retrospectively and that the Respondent should be ordered to pay the costs. Mr Ngcukaitobi with Mr Navsa submitted that the employees' claim should be dismissed with costs.
- [148] It is evident that both parties are seeking an order that costs should follow the result. I can see no reason to deviate from the general rule that the cost

should follow the result, more so where no submissions were made to justify a deviation.

[149] In the premises, I make the following order:

Order

1. The unfair dismissal dispute of Donald Magano is referred to the Commission for Conciliation, Mediation and Arbitration for arbitration;
2. The dismissal of Sam Botlhale, Clifford Ramontle and Koki Khojane was substantively fair;
3. The case of Sam Botlhale, Clifford Ramontle and Koki Khojane is dismissed;
4. The Applicant is to pay the Respondent's costs, including the cost of one counsel.

Connie Prinsloo

Judge of the Labour Court

Appearances:

For the Applicants: Mr M S Molebaloa of M S Molebaloa Inc Attorneys

For the Respondent: Advocate T Ngcukaitobi and Advocate Z Navsa

Instructed by: Bowman Gilfillan Attorneys