



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR 430/11

In the matter between:

B MAKHUNGA & ANOTHER

Applicant

and

SALGBC

First Respondent

K MAMBA

Second Respondent

CITY OF JOHANNESBURG

Third Respondent

Heard: 28 July 2011

Delivered: 21 June 2018

JUDGMENT

SELLO AJ

Introduction

- [1] This is an application for the review of an arbitration award in terms of section 145 of the Labour Relations¹ ('the LRA') issued by the second respondent on 24 January 2011, sitting as an arbitrator in the South African Local Government Bargaining Council, the first respondent herein. The record indicates that the matter was heard by the second respondent on 26 November 2010. The matter is unopposed.
- [2] The background to the matters is as follows. The two applicants were employed by the third respondent and were dismissed. The applicants contended that their dismissal was unlawful and instituted proceedings before the first respondent to challenge same. The applicants had instituted separate cases, but these were subsequently consolidated and were heard together on 26 November 2010.

The proceedings before the second respondent

- [3] The papers seem to indicate that the matter may have been heard on two days - 26 November 2010 and 18 January 2011. The transcript of proceedings filed however relates only to the first hearing. No record was filed in regard to a hearing on 18 January 2011 and no reference was made thereto in the second respondent's award.
- [4] From the transcript, the following arises. On the first day of hearing the applicants were represented by a fellow employee and the employer by an employee responsible for labour relations. The employer's representative challenged the status of the employees' representative, submitting that the representative was not an employee of the third respondent and as such is precluded by representing the employee in the proceedings.
- [5] In response, the employees' representative addressed the issue and stated that she is an employee of the Johannesburg Metro Police Department, employed as a Metro Police Officer and stated her

¹ 66 of 1995, as amended.

employee number (the details of which are excluded from this judgment).

- [6] The employer's representative raised a further challenge that the employees' representative was not a member of the employees' Trade Union and as such did not have the right to represent the applicants. He argued that an employee cannot be represented by another employee in proceedings before the first respondent.
- [7] In response, the employees' representative contended that in terms of the LRA and the applicable collective agreement the applicants are entitled to representation by a fellow employee. The second respondent made a ruling on this point and issued an award. It is this award that is subject to review in these proceedings.
- [8] The second respondent ruled that rule 25 of the South African Local Government Bargaining Council ("SALGABC") Rules prescribes that a party in arbitration proceedings conducted under the auspices of SALGA may be represented only by a legal practitioner, a director or employee of the party or any member, office-bearer or official of that party's registered trade union or a registered employer's organization. He concluded that as the employees' representative does not fall within any of the stated categories, their representative therefore lacked the requisite *locus standi* to represent the applicants.

The review

- [9] The applicants advanced the following grounds of review:
- 9.1. The arbitrator erred in invoking rule 25 as he did as the SALGABC Rules does not have such a rule.
- 9.2. The applicants' representative provided evidence of her employment with the third respondent and thus proved she has the necessary *locus standi*.
- [10] I will consider these grounds in turn.

- [11] The first ground concerns the existence or otherwise of rule 25 which the second respondent relied upon. The applicants contend that such a rule does not exist and assert that the applicable provision is section 25(b)(3) of the Rules to Conciliations, Arbitrations and Con-Arbs which they state provides as follows:

“In any arbitration proceedings, a party to the dispute may appear in person or be represented only by:

(3) Any member, office-bearer or official of that party's registered trade union or a registered employers' organisation' [underlying provided by the applicants].

- [12] Part Five of the SALGBC Rules deals with rules that apply to conciliation, arbitrations and con-arbs. In rule 25(2)(i) to (iii) it stipulates who may represent a party in any arbitration proceedings. It states that only a legal practitioner, a director or employee of the party or any member, office-bearer or official of that party's registered trade union or a registered employer's organization may represent a party in arbitration proceedings.
- [13] As the applicants' representative is not 'a legal practitioner' nor 'a director' or an employee of the applicants, the only basis she would have *locus standi* is if she is 'a member' or 'office-bearer' or 'official' of their registered trade union'. The applicants do not contend that their representative was at all relevant times a member of their trade union.
- [14] Section 27 of the LRA provides for the establishment of bargaining councils. The first respondent is one such bargaining council. The bargaining council has issued the SALGBC Collective Agreement on Rules For the Conduct of Proceedings Before the SALGBC.
- [15] Section 23(1) of the LRA stipulates that a collective agreement is binding on those who are parties to it as well as their respective members. The applicants are members of a trade union that is a party to this collective

agreement. They are thus bound by its terms.² In terms of section 28 of the LRA, the powers and functions of a bargaining council include the power to enforce those bargaining agreements.

- [16] The bargaining agreement is therefore enforceable against the applicants and rule 25(2) must be complied with, unless a basis is advanced why it should not be upheld in this case. None has been advanced by the applicants and I have no basis to depart from the requirements of the rule.
- [17] In the review application, the applicants have submitted a copy of the representative's salary advice. From this salary advice, a deduction of R62.00 is reflected as an IMATU Union fee. Therefore, on the face of it it would appear that the representative is a member of IMATU, a member of the SALGBC.
- [18] In the founding affidavit the applicants claim that the arbitration was held on 18 January 2011 and the award received on 15 February 2011. No reference is made to the record of proceedings of 26 November 2010. In their heads of argument, the applicants claim that the salary advice as well as appointment certificate of their representative was availed to the second respondent. It is not clear when. They argue that the second respondent had all the evidence that their representative was a member of their trade union. Consequently, the argument goes, he erred in his finding that there was no proof that such representative was 'a member' or 'office-bearer'.
- [19] I point out that the second respondent's award does not make any reference to the salary advice as well as appointment certificate of the applicants' representative. A reading of his award suggests that he did not have these documents at hand.
- [20] It bears mentioning that the salary advice submitted and relied upon by the applicants is dated 20 December 2010. This is clearly a later date

² *Kem-Lin Fashions CC v Brunton* [2001] 1 BLLR 25 (LAC)

than 26 November 2010 when the hearing was held. This is the date, according to the transcript, when the issue of the applicants' representative's *locus standi* was squarely raised.

- [21] The applicants were well aware that the issue for determination was whether their representative at the time she purported to represent the applicants in the arbitration, including 26 November 2010, was a member of IMATU. The salary advice provided clearly does not answer this question.
- [22] It is unclear why the applicants rely on a later salary advice when they were well aware of the purpose it was intended to serve. Their representative was involved in these proceedings as early as 25 August 2010 when the request for conciliation was submitted. In fact, she made an application for consolidation of the two matters on 11 November 2010.
- [23] The inescapable conclusion is that until December 2010, and in particular, as at 26 November 2010 the applicants' representative was not a member of IMATU.
- [24] The applicants' reliance on the date of 18 January 2010 as the hearing date is intended to convey a suggestion that the *locus standi* of their representative was raised at such hearing and that when this matter was heard, their representative was a member of IMATU, and thus fell within the provision of rule 25(2)(iii). There is no evidence however that there was a hearing on this date. As I have stated, the applicants have not produced any other record except to those pertaining to the hearing of 26 November 2010. On the papers before me therefore, there is no evidence that the second respondent's award is based on a hearing other than that of 26 November 2010.
- [25] I conclude that the applicants have failed to discharge the onus they bore to prove that their representative was a member of IMATU as at 26 November 2010 and thus had the requisite *locus standi* as contemplated in rule 25(2)(iii).

[26] I have not been able to locate section 25(b)(3) of the Rules that the applicants assert apply to this matter. I take the reference to be an error as in the heads of argument the applicants refer to 'Part Five Sect 25(b)(3)'. I conclude that this reference is to rule 25(2)(iii), which is indeed in Part Five of the SALGBC Rules. I am fortified in my conclusion by the applicants' own quotation of the so-called section 25(b)(3) which is in exact terms as rule 25(2)(iii).

[27] The second ground of review advanced is that the applicants' representative provided evidence of her employment with the third respondent and thus proved she has the necessary *locus standi*.

[28] I am willing to accept that the applicants' representative was an employee of the third respondent at all material times. As already indicated, the representative was able to place her employee number on record. There is no evidence that the employer's representative challenged this evidence. The evidence with regards to the applicants' representative's employment cannot be gainsaid. This fact alone however would not entitle her to represent the applicants as rule 25(2)(iii) requires membership to the applicants' trade union, and not employment with the employer. This ground is therefore without basis and falls to be rejected.

[29] Based on the evidence adduced before the second respondent, I find that his award is unassailable and must stand.

Order

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

1. The application is dismissed.

M Sello
Acting Judge of the Labour Court

Appearances

For the Applicant : Ms V Mgcima

For the Respondent: None

LABOUR COURT