IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: J 3519/2018

In the matter between:

JOHANNESBURG CITY PARKS & ZOO SOC LIMITED **Applicant**

and

SOUTH AFRICAN MUNICIPAL WORKERS UNION (SAMWU) **First Respondent**

APPLICANTS LISTED IN ANNEXURE 'X' TO THE NOTICE OF APPLICATION **Second Respondent**

Heard: **12 December 2018**

Delivered: **20 December 2018**

JUDGMENT

TLHOTLHALEMAJE, J

<u>Introduction and background:</u>

[1] On 11 October 2018, an interim order was issued by Nkutha-Nkontwana J in the following terms;

> "…
>
> 1. A rule *nisi* is issued calling upon the respondents to show cause on 13 December 2018 at 10h00 or so soon thereafter as the matter may be heard, why should an order not be made in the following terms;

1.1 Declaring the strike threatened by the respondents in the first respondent's notice of 3 October 2018 ('the strike') to be unprotected.

1.2 Interdicting and restraining the first respondent from calling, promoting, encouraging, supporting or otherwise furthering the strike.

1.3 Interdicting and restraining the second and further respondents from promoting, encouraging, supporting, participating or otherwise furthering the strike.

1.4 Ordering the respondents, jointly and severally, to pay the costs of this application.

1.5 Granting the applicant further and/or alternative relief

2. The order set out in paragraphs 1.2 and 1.3 operate with immediate effect as interim orders pending the final determination of this matter on the return day of the rule *nisi*

3. Costs of the hearing on 11 October 2018 are reserved."

[2] On the return day, the applicant sought confirmation of the above interim order, whilst the respondents opposed the application and sought that the rule *nisi* be discharged.

[3] The applicant [Municipal Owned Entity (MOE)] is a state-owned and municipal entity in Johannesburg. It is wholly owned by the City of Johannesburg Metropolitan Municipality (the City), and is a service provider responsible for *inter alia*, the provision and upkeep of the Municipal Zoo and Parks throughout the city of Johannesburg.

[4] The dispute that triggered the notice of intention of industrial action issued by SAMWU dates back to 2013 after the Johannesburg City Parks merged with the Johannesburg Zoo. As a result of the merger, a grading of positions and benchmarking exercise was embarked upon, resulting in changes to job titles and posts in the entities.

[5] Flowing from various disputes related to the above exercise that arose in other Municipal Owned Entities in regards to job grading and applicable

remuneration in grades, SAMWU in March 2016 referred a dispute against the City and all of the MOEs, related to the failure to implement benchmarking and inconsistent application of remuneration policy (the general dispute referral). At the time that the referral was made, employees in another MOE (Pikitup SoC Limited), had already embarked on industrial action. The strike also related to job gradings and pay disparities at Pikitup.

[6] With the intervention of the CCMA, the Municipality, Pikitup and SAMWU settled the Pikitup strike on 16 April 2016 in terms of a settlement agreement *(‘CCMA Mediated Collective Settlement Agreement’*) (also known as (‘Political Facilitation Agreement’ (PFA)). The agreement settled the Pikitup strike, and all the disputes and issues between the City and SAMWU related to grading methodologies, benchmarking of posts and pay disparities in all of the MOEs. (SAMWU however as shall be dealt with in this judgment, disputes that the settlement agreement covered all the MOEs). Processes were subsequently embarked upon by the City to roll out the benchmarking and pay parity exercises as contemplated in the collective agreement.

[7] Members of SAMWU in the applicant’s Finance Department (As listed in Annexure ‘X’ to the Notice of Application) despite the rolling out of the exercises were nonetheless still aggrieved, contending that their positions had still not been graded correctly since 2013 and were thus not being remunerated correctly.

[8] An alleged unfair labour practice dispute was then referred to the CCMA in July 2017. The CCMA declined to assume jurisdiction over the matter, and it was then referred to the SALGBC. The SALGBC however ruled that the dispute, properly formulated, should be characterised as one pertaining to matters of mutual interest. The dispute having been re-referred on 23 June 2018, it was then set down for conciliation on 23 July 2018. Conciliation was then extended by agreement to 31 August 2018 in the light of the on-going exercise and attempts at addressing the employees’ concerns.

[9] Employees referred to as Accounts Payable Clerks in the applicant also entered the fray, contending that their positions had not been correctly

graded. Effectively the affected employees demanded immediate re-grading and payment of back-pay. Any attempts at conciliation failed and a certificate of outcome was issued by the SALGBC on 31 August 2018.

[10] A notice of intention to commence industrial action on 17 September 2018 was issued by SAMWU on 13 September 2018. The applicant approached this Court on an urgent basis under case number J3340/18 to interdict the strike on account of it *inter alia* not being in compliance with the provisions of section 64(1)(d) of the LRA.

[11] On 17 September 2018 when the urgent application was to be heard, the respondents agreed to call off the strike. The strike notice and the urgent application were subsequently withdrawn. This was made an order of Court before Van Niekerk J.

[12] On 3 October 2018, a fresh notice to commence with the industrial action on 15 October 2018 was issued by SAMWU. The applicant's contention was that the threatened strike was unprotected on the grounds that;

12.1 The strike was prohibited in terms of sections 65(1)(a) and 65(3)(a) of the LRA as the issues in dispute were settled in accordance with the Collective Agreement of April 2016;

12.2 The agreement regulated all disputes and prohibited strike action, and further recorded that it was in full and final settlement of not only the dispute with Pikitup, but also the disputes referred to the SALGBC related to the issues as affecting all the MOEs.

12.3 The agreement was binding on both SAMWU and its members, as it was recorded that all current disputes and those that originated from 2013 related to salary discrepancies throughout the Municipality and its entities were settled.

12.4 To the extent that there may have been any disputes arising the interpretation or application of the agreement, a mandatory mediation or arbitration process was envisaged to resolve those disputes.

[13] In seeking that the *Rule Nisi* be discharged, the respondents;

13.1 Conceded that the dispute has its origin in the benchmarking or grading exercise which the applicant commenced in 2013 when City Parks and Johannesburg Zoo were merged, but that it pertained in particular to employees in the Finance Department, who insisted that despite their job titles having been altered, their respective posts had not been graded and had therefore not been accurately remunerated.

13.2 Flowing from various attempts to resolve the matter as far back as November 2013, the employees were then issued with letters confirming their placement on the new structures. However, due to the ongoing dissatisfaction with their grading and titles, the employees had declined to sign their letters in that regard.

13.3 The Settlement Agreement relied upon by the applicant was specifically entered into with Pikitup, and the respondents were not party to the dispute between Pikitup and the applicant, as in accordance with the 'Local Labour Forum, it had been stated that anything to do with Pikitup had nothing to do with City Parks'. In essence, it was denied that the agreement covered all the MOEs, and further contended that it only resolved the Pikitup strike.

13.4 Meetings held with the Managing Director of the applicant had resulted in undertakings being made in regards to the implementation of position grading, but nothing had materialised;

13.5 The applicant only raised the issue of the settlement agreement in the face of the intended strike, and since a certificate of outcome declared the dispute as unresolved, and further since the applicants were party to the conciliation proceedings, the strike would be protected.

<u>Evaluation:</u>

[14] To the extent that reliance is placed on the Collective Agreement in contending that the intended strike action is prohibited, the starting point is

that Section 23(2)(c) of the Constitution of the Republic enshrines the fundamental right to strike, which right is given effect to by the provisions of sections 64 to 68 of the LRA, which in turn provide the substantive limitations and procedural pre-conditions for the exercise of the right to strike and the employer's recourse to lock-out[1].

[15] Aligned to the limitations in the strike provisions is that in accordance with the provisions of section 23 of the LRA, a collective agreement has a binding effect on the parties to that agreement*,* each party to that agreement*,* and the members of every other party to that agreement, in so far as the provisions are applicable between them[2].

[16] That the sanctity and primacy of collective agreements is to be preserved for the sake of the maintenance of peace in the workplace was long emphasised

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[1] *South African Transport and Allied Workers Union (SATAWU) and Others v Moloto NO and Another* 2012 (6) SA 249 (CC); 2012 (11) BCLR 1177 (CC); [2012] 12 BLLR 1193 (CC); (2012) 33 ILJ 2549 (CC) at para 14

[2] **23. Legal effect of collective agreement**

(1) A *collective agreement* binds –

a) the parties to the *collective agreement;*

b) each party to the *collective agreement* and the members of every other party to the *collective agreement*, in so far as the provisions are applicable between them;

c) the members of a registered *trade union* and the employers who are members of a registered *employers' organisation* that are party to the *collective agreement* if the *collective agreement* regulates -

(i) terms and conditions of employment; or

(ii) the conduct of the employers in relation to their *employees* or the conduct of the *employees* in relation to their employers;

d) *employees* who are not members of the registered *trade union* or *trade unions* party to the agreement if -

(i) the employees are identified in the agreement;

(ii) the agreement expressly binds the employees; and

(iii) that *trade union* or those *trade unions* have as their members the majority of *employees* employed by the employer in the *workplace*.

(2) A *collective agreement* binds for the whole period of the *collective agreement* every person bound in terms of subsection (1)*(c)* who was a member at the time it became binding, or who becomes a member after it became binding, whether or not that person continues to be a member of the registered *trade union* or registered *employers' organisation* for the duration of the *collective agreement*.

(3) Where applicable, a *collective agreement* varies any contract or employment between an *employee* and employer who are both bound by the *collective agreement*.

(4) Unless the *collective agreement* provides otherwise, any party to a *collective agreement* that is concluded for an indefinite period may terminate the agreement by giving reasonable notice in writing to the other parties.

in *CUSA v Tao Ying Metal Industries and Others*[3], where the Constitutional Court held that:

> "[55] The right of every trade union and every employers' organisation and employer to engage in collective bargaining is entrenched in section 23(5) of the Constitution. The concomitant of the right to engage in collective bargaining is the right to insist on compliance with the provisions of the collective agreement which is the product of the collective bargaining process.
>
> [56] Compliance with a collective bargaining agreement is crucial not only to the right to bargain collectively through the forum constituted by the bargaining council, but it is also crucial to the sanctity of collective bargaining agreements. The right to engage in collective bargaining and to enforce the provisions of a collective agreement is an especially important right for the workers who are generally powerless to bargain individually over wages and conditions of employment. The enforcement of collective agreements is vital to industrial peace and it is indeed crucial to the achievement of fair labour practices which is constitutionally entrenched. The enforcement of these agreements is indeed crucial to a society which, like ours, is founded on the rule of law."

[17] This Court has restated that in the scheme of the LRA and section 23 of the Constitution, the right to strike is by its nature not absolute and may justifiably be limited in certain situations. This must be so because a strike is not an end in itself. Rather, a strike is primarily a means to the end of an effective collective bargaining system in which workers are able ultimately to exercise power in order to influence the terms and conditions of employment[4].

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[3] [2009] 1 BLLR 1 (CC) at paras [55] and [56]; See also *Ekurhuleni Metropolitan Municipality v The SA Municipality Workers' Union on behalf of workers,* (2015) 36 ILJ 624 (LAC) at paras 25 and 26, where it was held that;

> "…Collective agreements are to be accorded primacy. In *National Bargaining Council for the Road Freight Industry and another v Carlbank Mining Contracts (Pty) Ltd and another*, this Court held that the purpose of s199 of the LRA, read together with s23(3) of the LRA, is to advance the primary object of the LRA, namely the promotion of collective bargaining at sectoral level and giving primacy to the collective agreements above individual contracts of employment…"

[4] *Association of Mineworkers and Construction Union and Others v Chamber of Mines of South Africa and Others* (unreported case no J99/14, 23-6-2014) (Van Niekerk J) At para [50]

[18] To the extent that the applicant sought to rely on the collective/settlement agreement, which it contend had effectively resolved the issues and the dispute which precipitated the notice of intention to strike, the relevant provisions of section 65 of the LRA (**Limitations on right to strike or recourse to lock-out**) provides that;

> (1) No person may take part in a *strike* or a *lock-out* or in any conduct in contemplation or furtherance of a *strike* or a *lock-out* if –
>
> (a) that person is bound by a *collective agreement* that prohibits a *strike* or *lock-out* in respect of the *issue in dispute*.
>
> (b) that person is bound by an agreement that requires the *issue in dispute* to be referred to arbitration;
>
> (c) the *issue in dispute* is one that a party has the right to refer to arbitration or to the Labour Court in terms of *this Act* or any other employment law;
>
> (d) (i) …
>
> (ii) …
>
> (2) …
>
> (3) Subject to a *collective agreement*, no person may take part in a *strike* or a *lock-out* or in any conduct in contemplation or furtherance of a *strike* or *lock-out* –
>
> (a) if that person is bound by-
>
> (i) any arbitration award or *collective agreement* that regulates the *issue in dispute;* or
>
> (ii) …

[19] The applicant contended that the intended strike action is prohibited by virtue of the provisions of section 65(1)(a); (b) and (c) of the LRA in the light of the settlement agreement. The settlement/collective agreement is extensive and substantive in nature. For the sake of completeness, the relevant clauses

relied upon by the applicant are summarised below (with emphasis placed on the underlining);

19.1 Under the introduction clause(1.2), it is agreed that on 14 March 2016, SAMWU and its members referred a dispute to the CCMA regarding benchmarking and alleged failure to implement remuneration policy by the Municipality or any of its Municipal Entities (cited in that referral namely, Pikitup Johannesburg Soc Limited, Johannesburg Water Soc Limited, City Power Johannesburg Soc Limited, Johannesburg Metrobus Soc Limited, Johannesburg Roads Agency Soc Limited and Johannesburg City Park and Zoo)

19.2 Clause 1.3 stipulates that the parties agreed to settle, in full and final settlement, the dispute and all claims between them.

19.3 Under clause 1.4, the parties agreed to resolve in its entirety all disputes between the parties in relation to benchmarking and/or the application of remuneration policies and practise of the City of Johannesburg and all its municipal entities (and not limited to those entities cited in the benchmarking dispute referral)

19.4 Under clause 2 (Scope of Agreement), the parties agreed that the agreement binds members of SAMWU, both individually and collectively employed by the City or any of the entities as at the time of its conclusion and ratification by the respective affected entities, including all of those employees who may join SAMWU subsequent to the conclusion of that agreement; and binds SAMWU and the City or all of its entities;

19.5 Under clause 3, it was agreed that the City would implement a common job grading system in all its entities

19.6 The agreement then makes provision for the adoption of TASK as the common job grading system; for external benchmarking; for equal pay for work of equal value etc.

19.7 Clause 12 provides that the agreement, its contents and annexures are in full and final settlement of all and every claim of any nature whatsoever arising, which SAMWU or any of its members has or may have against the City, Pikitup or any of the entities, arising out of or pertaining to, or in connection with the dispute pertaining to benchmarking or alleged failure to implement the remuneration policy.

19.8 Clause 13 makes provision for breach and dispute resolution procedure, and at 13.2, it is specifically provided that in the event of a dispute related to the interpretation or application of any provision of the agreement or any claims arising thereform, the parties shall endeavour to resolve the dispute internally; where they are unable to amicably resolve the dispute, it shall be referred for conciliation by following normal dispute resolution procedures. If mediation failed, the dispute may be referred for arbitration following the normal procedures as provided in the LRA.

19.9 Under clause 13.3, it was agreed that no party or any person bound by the terms and provisions of the agreement shall be entitled to call for, encourage, or participate in any strike action in respect of any issue or demand dealt with or resolved in terms of the agreement whilst it remained in force.

19.10 Under the General provisions, the parties agreed that the provisions of the agreement by way of *stipulatio alteri* constituted a contract of employment for the benefit of any entity which was not party to the agreement

[20] In *North East Cape Forests v SA Agricultural Plantation and Allied Workers Union and Others*[5], it was stated that a collective agreement is unlike other ordinary contracts and that the primary objects of the Act are better served by an approach that is practical to the interpretation and application of such agreements. It is further trite that when it comes to interpretation of collective agreement or similar covenants, the Court must give effect to the grammatical

[5] (1997) 18 ILJ 971 (LAC) at 980C

and ordinary meaning of the words used therein. Furthermore, in ascertaining the meaning, the Court must give the words their plain, ordinary and popular meaning, unless it appears clearly from the contract that both the parties intend them to bear a different meaning[6].

[21] I find it perplexing given the plain grammatical and ordinary meaning of the terms used in the agreement, that the respondents and SAMWU in particular, would strenuously argued that they are not bound by the provisions of that agreement, or that the agreement does not cover all the MOEs. Even more worrisome is that SAMWU seeks to disavow its own agreement in justification for its members to yet again go on strike, in circumstances where the very collective agreement disavowed, is a product of protracted negotiations between itself, the City and Pikitup, in the face of a protracted strike that brought the City of Johannesburg to a complete standstill in regards to service delivery in late 2015 and early 2016.

[22] Having had regard to the provisions of the agreement as summarised above, the provisions, even from their linguistic constituent as argued on behalf of the respondents, are clearly binding, as its scope not only covers Pikitup as a sole entity, but all the other entities that falls under the City. The respondents were hard-pressed to convince the court otherwise.

[23] If ever there was any doubt, the respondents' arguments that the strike is permissible are equally unsustainable on the further reasoning of Snyman AJ in *City of Johannesburg Metropolitan Municipality v South African Municipal Workers Union and Others*[7]. That matter involved the same issues related to

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[6] See *Fedqen Insurance Limited v. Leyds* 1995(3) SA 33 (AD) at 38 A-E:

[7] (J1746/16) [2016] ZALCJHB 310 (19 August 2016), where it was held that;

"The <u>2016 Settlement Agreement</u>

[60] The above being said, and even accepting that the grading dispute of the respondents constitute an interest dispute, the question of the impact of the CCMA conciliated collective settlement agreement concluded between the parties in 2016 arises (the collective agreement). The applicant, as stated, contended that this collective agreement determined the issue in dispute forming the subject matter of the proposed strike by the respondents.

[61] As I have discussed above, the issue in dispute is about grading, or using the related term 'benchmarking', of the individual respondents. It is a dispute that arose by virtue of a grading process in 2014. The 2016 collective agreement clearly and unambiguously sought to finally dispose of all grading and benchmarking disputes in all the municipal entities of the applicant that existed

the grading of posts and pay disparities in another MOE, the JMPD (Training Academy). The intended strike action in that case was interdicted on the same if not similar grounds, flowing from exactly the same arguments. I did not understand the respondents' case to be that Snyman AJ's judgment was taken on appeal, and I see no reason why I should hold a contrary view to that decision.

[24] It follows from the above that the intended strike action is clearly prohibited under the provisions of sections 65(1)(a)-(b) and 65(3) of the LRA. SAMWU

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prior to the conclusion of the collective agreement. This is confirmed in no uncertain terms in the clauses of the collective agreement I have set out above.

[62] In disposing of all the earlier grading / benchmarking disputes, the settlement agreement then implements a new system and basis of grading to be applied to all jobs and positions in the applicant. In other words, no matter what the position may have been before in the various municipal entities in the applicant, where it came to the grading / benchmarking of employees, this has been replaced with a new grading dispensation. This constitutes, in effect, a novation of all the obligations and possible entitlements relating to grading / benchmarking in the past. In *Tauber v Von Abo* the Court aptly described novation as follows, which in my view is exactly what happened *in casu*:

'Novation can be described as the replacing of an existing obligation by a new one, the existing obligation being discharged by the new obligation.'

[63] Accordingly, the 2014 ICT grading issue which forms the cornerstone of the respondent's case is no longer, after the 2016 settlement agreement, a live dispute. The issue has been compromised, so disposed of, and in the end novated. In *Wilson Bayly Homes (Pty) Ltd v Maeyane and Others*, the Court said:

> 'The contract in the present case was one of compromise. The nature of such a contract is that it is concluded because the rights of the parties are uncertain, and they choose not to resolve that uncertainty. By the very nature of such a contract, there can be little room for finding that the parties must have intended their contract to depend upon the existence of one or other of the factors relevant to their respective rights. It is precisely to avoid testing them that they compromise.'

I am satisfied the same considerations apply *in casu*.

[64] Further, and in any event, the collective agreement itself, determines the issue in dispute in another way as well. In the collective agreement, the respondents commit themselves to an undertaking not to pursue strike action where it comes to any issue determined by the agreement. Where there may be a dispute about grading of employees in the applicant, the parties have further committed themselves to a process of conciliation, followed by arbitration. This dispute resolution process makes sense, for the simple reason that as the parties have agreed to a grading ideology, methodology and process where it comes to grading / benchmarking across the applicant which is to be applied to all positions, the only remaining issues can be that the grading was not properly or incorrectly applied, or not applied at all when it should have been. This would be readily determinable by way of arbitration.

[66] *In casu*, clause 13.3 of the collective agreement clearly prohibits strike action in respect of any issue or demand dealt with or resolved in terms of the agreement whilst it remains in force. I have no doubt that the dispute pursued by the respondents in this instance is such a dispute. Again, at its core, it is about grading, and grading is fully and finally determined by the collective agreement to the specific exclusion of all prior arising disputes on this issue. Section 65(1)(a) and (b) thus squarely stands in the way of the respondents' proposed strike action…"

and its members are bound by a *collective agreement* that prohibits the *strike* in respect of the *issue in dispute*. To the extent that SAMWU and its members are aggrieved with the manner with which the provisions of the collective agreement were applied, and in particular, as related to benchmarking, grading of posts or pay parities, they are bound to either refer a dispute for mediation and/or arbitration. They are prohibited from embarking on any strike action in respect of the same issues referred for conciliation leading to the certificate of outcome, as those issues are regulated by that agreement. The intended strike action would therefore be unprotected and unlawful.

[25] It therefore follows from the above that the applicant in this case has demonstrated the necessary right to the final relief it seeks, and it follows that issues of prejudice and of an alternative remedy become moot. The requirements for final relief have been met, and the *rule nisi* ought to be confirmed.

Costs:

[26] In the face of the clear provisions of the agreement, which had determinatively disposed of all disputes related to benchmarking, post grading and pay disparities in the City and its entities, and further in the face of Snyman AJ's judgment, the rhetorical question to be asked is why would SAMWU and its members ignore the peace clause in the agreement and insist that they are entitled to embark on a strike?

[27] The applicant surmised that since many employees have already been graded and benchmarked in terms of an objective exercise, SAMWU and its members in the Finance Department merely seek to circumvent the exercise by demanding a favourable grading without any proper assessment of their positions.

[28] The other summation, which in my view is not far-fetched, could be that industrial action and its concomitant effects at the City is regarded by SAMWU and its members as some form of self-indulgence or a pastime, to gain some leverage in the face of any demand made, irrespective of the merits of the demand and the consequences of the strike action. The intended strike action

in this case had it been sanctioned, would have involved the employees in the Finance Department of the applicant, who are responsible for *inter alia* taking funeral bookings. The impact of the strike would have been immense on attempts at service delivery, especially on the long-suffering members of the public, who would have sought to make funeral arrangements for their lost loved ones.

[29] SAMWU's contention that the intended strike action is protected as it had obtained a certificate of outcome, and that the applicants had not objected to the referral of the dispute nor raised the issue of a settlement agreement until in this application is clearly hogwash. These excuses are indeed lame and ought to be rejected out-rightly. If SAMWU cannot be trusted to read and familiarise itself with its own collective agreements, it cannot blame the SALGBC for erroneously accepting a referral and issuing the certificate of outcome. In any event, a certificate of outcome is not a license to go on strike if that strike falls foul of the provisions of section 65 of the LRA. Thus, even if the applicants had not objected to the conciliation processes before the SALGBC leading to the certificate of outcome, or had not raised the issue of the settlement agreement, that in itself did not entitle SAMWU and its members in this case to go on strike, as it is more the provisions of sections 64 to 65 of the LRA that determined whether the strike was permissible or not.

[30] If ever there was any doubt that SAMWU's approach was ill-conceived, it was warned in the previous urgent application under J3340/18 that the intended strike was prohibited under the provisions of section 65 of the LRA because of the same settlement agreement. The Snyman AJ's judgment pronounced on the matter in any event, and SAMWU for its own reasons elected to ignore the applicant's warning and that judgment.

[31] In *Plastic Converters Association of South Africa on behalf of Members v National Union of Metalworkers of SA*[8], the Labour Appeal Court held, that;

> "[t]he scale of attorney and client is an extra-ordinary one which should be reserved for cases where it can be found that a litigant conducted itself in a

[8] [2016] ZALAC 39; [2016] 37 ILJ 2815 (LAC) at para 46

clear and indubitably vexatious and reprehensible conduct. Such an award is exceptional and is intended to be very punitive and indicative of extreme opprobrium."

[32] I have no doubt that in this case, given the conclusions reached in this judgment, and further in the light of Snyman AJ's judgment and the applicant's warnings which went unheeded, the respondents by seeking to disavow their own agreement in order to embark on a strike which would have been unprotected, conducted themselves in a clear and indubitably vexatious manner. This Court having pronounced on the same or similar issues, it cannot be burdened with a determination of exactly the same issues repeatedly without consequences. In the circumstances, I see no reason why upon a consideration of the requirements of law and fairness, they respondents should not be burdened with a punitive cost order, inclusive of the costs of 11 October 2018.

[33] Accordingly, the following order is made;

Order:

1. The *Rule Nisi* issued by Nkutha-Nkontwana J on 11 October 2018 is confirmed

2. Paragraph 1.4 of the *Rule Nisi* is amended to read that;

   The first and second respondents are ordered jointly and severally, the one paying the other to be absolved, to pay the applicant's costs, on a scale as between attorney and client, inclusive of the costs of 11 October 2018.

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Edwin Tlhotlhalemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicants:	W. Hutchinson
Instructed by:	Moodie & Robertson
For the 1st and 2nd Respondents:	T Manda
Instructed by:	Maenetja Attorneys