



Of interest to other judges

**THE LABOUR COURT OF SOUTH AFRICA,  
HELD AT PORT ELIZABETH**

**Case no: P 272/18**

In the matter between:

**SOUTH AFRICAN MUNICIPAL  
WORKERS UNION**

**Applicant**

and

**AMATHOLE DISTRICT  
MUNICIPALITY**

**Respondent**

**Heard:** 12 & 13 July 2018

**Delivered:** 17 July 2018

**Summary:** (urgent interdict – *pendente lite* – implementation of restructuring in accordance with newly adopted organogram – struck off for lack of urgency)

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**JUDGMENT**

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LAGRANGE J

## Introduction

- [1] This is an application for urgent interim relief launched on 3 July 2018. SAMWU, the applicant union, seeks the following substantial relief, apart from bringing the application as a matter of urgency:
- 1.1 that the intended restructuring by the respondent municipality, Amathole District municipality ('the municipality') in accordance with its newly adopted organic be stayed;
  - 1.2 interdicting it from implementing restructuring in accordance with the organic and adopted by it on 29 June 2018;
  - 1.3 that the relief above operate as an interim order pending the finalisation of disputes already referred to the bargaining Council and the CCMA, and a review of the Council's adoption of the organogram, which has yet to be launched.
- [2] At the hearing of the matter on 12 July 2018, the respondent had raised a host of preliminary objections to the application and the application was postponed until the following day to allow the applicant to address those objections, which it chose to do by way of making submissions. The parties argued the *in limine* issues the following day and the filing of a replying affidavit by the applicant was postponed pending the outcome of the court's ruling on the *in limine* issues.

## Background

- [3] The municipality first invited SAMWU and IMATU union representatives on the Local Labour Forum ('LLF') to attend a meeting of the Forum on 23 April 2018 at which a report on institutional arrangements, the proposed new structure of the municipality were items on the agenda.
- [4] Prior to that, there had been a policy workshop, which had not taken place under the auspices of the LLF and the union had declined to make any inputs at that workshop because it was supposed to be only an information sharing session, and it reserved its right to deal with it in the LLF.
- [5] At the LLF meeting, the municipality representatives pointed out the obligations of the Council to adopt an integrated development plan under

section 25 Of the Local Government: Municipal Systems Act ('the MSA') which included aligning the resources and capacity of the municipality with the implementation of the plan. Neither of the unions were willing to engage with the municipality in discussions on the new proposed structure for a number of reasons, including a complaint that they should have been consulted earlier and had not had sight of a report, which was mentioned in the Report on Institutional Arrangements tabled by the municipality at the meeting.

- [6] It is clear from the extract of the minute of the LLF meeting of 23 April 2018, included in the union's founding affidavit, that both SAMWU and IMATU were both in dispute with the municipality whether any consultation prior to that meeting had taken place. The municipality was clearly of the view that they had already engaged in consultation with the unions and the union's maintained that there had not been consultations as such about the new structure.
- [7] SAMWU wanted the consultation process to start afresh. The discussion on the point ended on the basis that IMATU complained that the proposed structure was incomplete because it lacked certain details and SAMWU demanded the diagnostic report before they would engage further. It was agreed that the labour representatives would submit their proposals in writing and the employer would call a special LLF meeting to discuss them.
- [8] Following the LLF meeting, a written request was made by SAMWU on 4 May 2018 to be provided with the diagnostic report and that the author of the report make a presentation to the LLF. On 28 May at a meeting with the municipal management and SAMWU, it was agreed that the municipality would hold a workshop on policies and the proposed organogram for shop stewards from both unions.
- [9] The municipal manager sent out the invitation on 29 May. It invited 10 SAMWU and 7 IMATU delegates to attend "a Workshop on presentation, discussion and input, on the organic and the policies as resolved in the bilateral with SAMWU on Monday, 28 May 2018". The workshop was scheduled for 1 June 2018. SAMWU raised concerns about the invitation because it suggested that there would be discussion and inputs, when

SAMWU contended that they had only agreed a workshop would be held to capacitate the unions. It was also unhappy with the fact that the notice suggested that the unions had already held meetings with their members on the issues whereas it had been agreed that they needed time to consult with their constituencies *after* the workshop. Moreover, contrary to SAMWU's understanding, all shop stewards were supposed to be invited to the workshop.

- [10] According to SAMWU, management did not respond to this request. Consequently, on 4 June 2018, SAMWU referred a mutual interest dispute to the municipality demanding, as it expressed it in the founding affidavit, "the reversal of the reorganisation of the workplace." The dispute referral form is attached to the founding affidavit, but without the annexure providing details of the dispute that was attached to the referral form. The following day a further dispute was referred to the CCMA concerning the alleged failure of the municipality to supply SAMWU with information. Once again, the referral form, without the annexure describing the dispute in more detail, was attached to the founding affidavit.
- [11] On 26 June 2018, the LLF convened and again the policies and organogram were on the agenda. By its own admission, the union representatives refused to discuss the items because of the pending dispute because they felt the municipality was intent on "steam rolling" the organogram through despite allegedly acknowledging that it had failed to engage with the unions on the issue.
- [12] Subsequently, a special Mayoral committee approved the organogram on 27 June 2018 and two days later it was adopted by the Municipal Council. This application was launched a couple of days later.
- [13] In setting out the sequence above, I have relied exclusively on SAMWU's own account of events.

#### Urgency

- [14] The municipality raised a number of *in limine* objections as mentioned. However for the reasons which follow, it is only necessary to deal with the question of urgency.

- [15] It is apparent that by 23 April 2018 SAMWU was already of the view that any consultations over the adoption of a new organogram consultation had to commence afresh. Further, it declared a dispute on this very issue on 4 June 2018. Having referred the dispute it was clearly of the view that no further meeting of the LLF could serve any purpose until that dispute was resolved. Accordingly, it did not have to wait a month before launching an application for interim relief pending the outcome of that dispute and the dispute over the alleged failure to disclose information.
- [16] Furthermore, though it was not made very explicit in the founding affidavit, it was argued by SAMWU that, depending on the outcome of those two disputes, it would then decide sometime in the future whether it was necessary to review the adoption of the organogram at the Council meeting on 29 June. It also seeks interdictory relief to prevent the municipality giving effect to that decision pending such a review which might be brought. The apparent ground of review being contemplated in that regard is that, the organogram was allegedly adopted without giving SAMWU and its affected members an opportunity to be heard, in breach of the principle of *audi alterem partem*.
- [17] SAMWU gave the municipality two working days to respond, but in the event the municipality only filed its answering affidavit on the morning the matter was set down for hearing. The two day period was patently inadequate given the subject matter of the application and it is highly improbable that it took SAMWU only two days to draft the application. Be that as it may, in the end, the municipality answered the founding affidavit within a reasonable time, *albeit* that it then left SAMWU with no time to file a replying affidavit, which prompted it to ask for a postponement to do so. Even if I accept that the municipality could have answered more promptly, there is a bigger question about the urgency of the application apart from the time given to the respondent to oppose the application: that goes to the more fundamental question of whether the timing of the application was unduly delayed to warrant it being treated as urgent.
- [18] Whether or not there was adequate consultation over the proposed organogram is inextricably linked with SAMWU's potential claim that its

members were not afforded *audi* before the decision was taken. The adoption of the organogram without an adequate opportunity to make inputs, on SAMWU's version, was foreseeable at the time it referred the first dispute on 4 June, and that was already more than a month after it had demanded the consultation process start from scratch. It adopted an implacable stance that it would not engage with the municipality on the issue after the dispute was declared and that no consultation could occur while the dispute was pending. Instead of acting promptly to halt any further developments at the time it felt the municipality had failed to follow a proper consultation process or, at the very least, at the time of declaring the dispute, it did nothing for more than a month. It did not even call on the municipality to halt the process once it had declared the dispute.

- [19] In the circumstances, I am satisfied the application was not launched with sufficient urgency.

#### Order

- [1] The application is struck of the roll for lack of urgency
- [2] No order is made as to costs.

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**Lagrange J**

**Judge of the Labour Court of South Africa**

**APPEARANCES**

APPLICANT:

Z Feni instructed by Qhali  
Attorneys

RESPONDENT:

J Grogan instructed by  
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LABOUR COURT