



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J 199/20

In the matter between:

DEMOCRATIC MUNICIPAL AND ALLIED

WORKERS UNION OF SOUTH AFRICA (DEMAWUSA) Applicant

and

REGISTRAR OF LABOUR RELATIONS

Respondent

Heard: Via Zoom on 23 June 2020, further submissions on 29 and 30 June 2020

Delivered: 06 July 2020, via email and saflii website due to precautionary measures to avoid the spread of Covid-19.

JUDGMENT

MABASO, AJ

Introduction:

- [1] This application comes before this court on an urgent basis. After hearing both Counsel for the Applicant and the Respondent, this court adjourned the matter for judgment. This court in its preparation for judgment noted that it might happen that both parties have taken untenable collective argument, as they concentrated on the provisions of subsection 18(3) of the Superior Court

Act¹ (the Act), considering the Order stated in paragraph 4 below. This court then proceeded to issue a directive to be addressed about this aspect. Answers thereto determine the outcome of this matter.

[2] In this judgment, this court avoids expressing its views on the nature of the Order (whether or not it is an interlocutory or final order), since there is a leave to appeal pending against the Order and Learned Judge, Langrage J, might be required to apply his mind on the appealability of the Order because of the belated submission by the Applicant relating to section 18(2) of the Act, dealt with below. This judgment focuses on this tardy submission by the Applicant.

[3] Initially, the Applicant sought an order in the following terms:

“ 2.1 ordering that the operation of this Honourable Court order of 10 March 2020 in the above matter remain in effect:

2.1 Until the respondent’s application for leave to appeal against the above order is determined; and

2.2 if the application for leave to appeal is granted, until the respondent’s appeal is determined.”

[4] These prayers refer to the order (the Order) issued by Lagrange J, on 10 March 2020, which reads thus:

*“The decision of the Respondent, the Registrar of Labour Relations, to cancel the registration of the Applicant, the Democratic Municipal and Allied Workers Union, with effect from 30 January 2020 in terms of s 109(2) read with s 106(2A) of the Labour Relations Act, 66 of 1995, **is suspended pending the outcome of the applicant’s leave to appeal against the decision.**”²*

¹ 10 of 2013.

² Court emphasis.

- [5] The genesis of this application is the deregistration of the Applicant, as a trade union, by the Respondent with effect from 30 January 2020. As a result, the Applicant engaged the Respondent and intended to appeal the deregistration decision. Subsequently, an urgent application (first urgent application) seeking ***“interim relief to reinstate the registration”***³ was launched wherein the Applicant asked that court, Lagrange J, to uplift its deregistration pending its appeal.⁴ That court, after being satisfied with the merits presented by the Applicant, then issued the Order. For example, paragraph 21 of that judgment, that court held that it would be worthwhile if it does not grant the interim relief that was sought by the Applicant.
- [6] On 01 June 2020, the Respondent delivered an application for leave to appeal against the Order/judgment. Consequently, the Applicant then brought this application seeking the relief mentioned in paragraph 2 above. The proffered motivation, as per paragraph 13 of the founding affidavit, is the jurisprudence of this court in that an application for leave to appeal and/or an appeal automatically suspends the order or judgement pending determination thereof. I interpose and state that this general rule is subject to the nature of the order issued by a court. If it is an interlocutory order, the rule is that its operation is not suspended and the party against whom that order is made may bring an application before a court to show *inter alia* exceptional circumstances.
- [7] The Applicant, in its papers, relied on Section 18 of the Act. For the sake of brevity, this court opts to cite the full section due to its relevance herein. It reads thus:

“18. Suspension of decision pending appeal.—(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or

³ Para 1 of the Judgment of Lagrange J. Democratic Municipal and Allied Workers Union of South Africa (DEMAWUSA) v Registrar of Labour Relations (J119/2020) [2020] ZALCJHB 61 (10 March 2020).

⁴ Section 111 (5) of the Labour Relations Act 66 of 1995 which provides that: An appeal in terms of this section against a decision by the registrar in terms of section 106 does not suspend the operation of the registrar's decision.

of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

(4) If a court orders otherwise, as contemplated in subsection (1)—

(i) the court must immediately record its reasons for doing so;

(ii) the aggrieved party has an automatic right of appeal to the next highest court;

(iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and

(iv) such order will be automatically suspended, pending the outcome of such appeal.

(5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.”

- [8] The Respondent vigorously opposed the application by the Applicant. Before this court, on 23 June 2020, the issue revolved around whether the Applicant has managed to show the exceptional circumstances as per the provisions of section 18(3) of the Act. The Applicant's initial stance was that the Order was suspended as per the provisions of subsection 18(1) of the Act.

[9] Before judgement could be finalised, *mero motu* this court raised the issue of jurisdiction by issuing a directive inviting the parties to file written submissions to address this court on whether the Order was not an interlocutory order as per the provisions of subsection 18(2) of the Act. The parties were directed to read the LAC's judgment of *Road Traffic Management Corporation v Tasima (Pty) Ltd and others* [2019] 5 BLLR 434 (LAC), which further clarified a distinction between an interlocutory order and the final order.

[10] The Applicant's Counsel in their supplementary submissions, as directed by this court, returned with a concise and well-researched presentation and advised this court that the Order of Lagrange J is an interlocutory order based on the following:

10.1 Corbett JA, writing for the court, in *South Cape Corp. (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (AD) at 549G, defined "interlocutory" thus:

"In a wide and general sense the term 'interlocutory' refers to all orders pronounced by the court, upon matters incidental to the main dispute, preparatory to, or during the progress of, the litigation."

10.2. In *Legal Skills and Practice Management: Litigation Skills for South African Lawyers*,⁵ CG Marnewick SC explained the difference between substantive and interlocutory applications in the following,

"There are two main forms of application. Substantive applications are applications with the purpose of obtaining final relief on affidavit evidence. A substantive application stands on its own. Interlocutory applications, on the other hand, are used for interim or procedural relief and are parasitic in the sense that they cannot have an independent existence; they are always made in the course or in

⁵ [See www.mylexisnexus.co.za]

anticipation of an action or substantive application. Interlocutory applications take their name from the Latin loqui, meaning to speak and inter, meaning in the course of.

[11] Now, the Applicant advises this court that the Order is an order under subsection 18(2) of the Act, wherein lodging an appeal does not suspend its operation. Due to this belated submissions by the Applicant, this court issued a second directive inviting the Applicant to indicate its intention as its belated argument suggests that the application was erroneously lodged.

[12] The Applicant's Counsel responded by filing further submissions whereby they contended as follows :

*"5. The Applicant's original application is one contemplated in section 18 (1) of the Superior Courts Act 10 of 2013 ("the Act"). Upon receipt of the Honourable Court's directive regarding whether the Order of Lagrange J is an interlocutory order contemplated in section 18 (2) of the Act, **the Applicant's legal representatives researched the matter and submitted that they were of the view that the Order of Lagrange J is an interlocutory order. It should be noted that the law regarding this issue is complex.**"*

[13] After submitting that the Order is interlocutory as stated above, the Applicant delivered an amended notice of motion, wherein it seeks this order:

"In the light of section 18 (2) of the Superior Court's Act 10 of 2013 ("the Act"), declaring that the operation of this Honourable Court's order of 10 March 2020 in the above matter is an interlocutory application and that therefore it remains in effect:

2.1. until the Respondent's application for leave to appeal against the above order is determined; and

2.2. if the application for leave to appeal is granted, until the respondent's appeal is determined."

In essence, now the Applicant asks this court to give advice. This court is not competent to do so. Furthermore, there was no averment in the affidavit supporting this aberrant prayer.

[14] Based on the belated argument by the Applicant, that the Order of Legrange J is an order in terms of section 18(2) of the Act, it is concluded that there was no need for the Applicant to bring this application. This application has to be dismissed, as it lacks merits.

[15] Accordingly, the following order is made:

Order:

1. The requirements of Rule 8 of the Rules of this Court are dispensed with, and the matter is heard as one of urgency.
2. The application is dismissed.
3. No order as to costs.

Mabaso AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: Mr Roskam

Instructed by: Haffegge Roskam Savage Attorneys

For the Respondents: Adv Mooki SC

Instructed by: The State Attorney, Pretoria