THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-000072

In the matter between:

GLENDA MATHANE AND 133 OTHERS	**Applicant**
and	
NATIONAL REGULATOR FOR COMPULSORY SPECIFICATIONS	**First Respondent**
ACTING CHIEF EXECUTIVE OFFICER: DUNCAN MUTENGWE	**Second Respondent**
MINISTER OF TRADE, INDUSTRY AND COMPETITION: PARKS TAU	**Third Respondent**

Heard: **14 January 2025**

Delivered: **16 January 2025**

JUDGMENT

MAKHURA, J

[1] The 134 employees of the first respondent cited as the applicant in this matter (applicants) are members of the National Education, Health and Allied Workers' Union (NEHAWU), who embarked on a protected strike called by NEHAWU with effect from 20 November 2024. The strike notice was issued on 15 November 2024. On 18 November 2024, two days prior to the commencement of the strike, the first respondent informed the applicants that the "no-work-no-pay" principle would apply. The strike commenced as scheduled.

[2] On Friday, 13 December 2024, pursuant to a meeting between NEHAWU and the first respondent and an agreement to refer the issues to mediation, NEHAWU and the applicants decided to suspend the strike, with effect from Tuesday, 17 December 2024.

[3] The applicants reported for duty on 17 December 2024 and accessed their payslips on the same day. Surprisingly, according to them, the first respondent had made "deductions" from their salaries, which were labelled as "no-work-no-pay". One of the applicants, Glenda Mathane, requested the first respondent to furnish her with the list of employees who participated in the strike action, were affected by the no-work-no-pay principle, the number of days they participated in the strike action and the amounts "deducted" from their salaries. This information was provided by the first respondent without listing the specific names of the employees. The information showed that the no-work-no-pay principle was applied for a maximum of 13 days and set out the amounts withheld or "deducted" per employee.

[4] The applicants were unhappy with the first respondent's decision and they, through NEHAWU, informed the respondents that they had resolved, following the first respondent's decision to "*implement a No Work, No Pay*" before the agreed mediation process could commence. This letter further withdrew the

notice of suspension of the strike action dated 13 December 2024. The applicants resumed their strike. The first respondent informed the applicants that it would implement the no-work-no-pay principle with effect from 18 December 2024. The upshot of this is that for the month of December 2024, the employees tendered their services on 17 December 2024 only.

[5] The applicants contend that when they received their salaries on 20 December 2024, they noticed that the first respondent "*had deducted substantial amounts from their salaries without prior consultation or notice or agreement or finalisation of the mediation process*". These "deductions", so the applicants further contend, ranged between 9 to 52% of their gross salaries.

[6] On 24 December 2024, the applicants' attorneys of record addressed a letter to the first respondent, arguing that the first respondent made unlawful deductions from the applicants' salaries and misapplied the formula used to calculate the deductions. They demanded the refund of the alleged unlawfully deducted amounts. In response, the first respondent, through its attorneys of record, informed the applicants that it had not deducted any amounts from their salaries, that it implemented the no-work-no-pay principle and rejected the demand for a refund.

[7] Aggrieved by the "deductions" and the first respondent's rejection of their demands, the applicants launched these proceedings, on an urgent basis, seeking a final declaratory relief that the "deductions" are unlawful. Further, the applicants seek to interdict the respondents from making any deductions from their salaries which are labelled as no-work-no-pay pending finalisation of the mediation process. Finally, the applicants seek an order directing the first respondent to refund all the monies "deducted" as no-work-no-pay and costs on an attorney and client scale.

[8] In their founding affidavit, the applicants contend that their urgent application should not be misconstrued as a challenge to the principle of no-work-no-pay but rather should be construed as an application that seeks to safeguard their rights against unlawful deductions that flagrantly disregard the established legal and regulatory framework. They contend that the "deductions" undermine the spirit of the *bona fide* negotiations that culminated in the agreement between the parties to engage in mediation to resolve the issues, which included the no-work-no-pay issue.

[9] The first respondent raised three points in *limine* – the alleged defective notice of motion, nonjoinder of NEHAWU and lack of *locus standi*. These are all technical points with no merits. They have been addressed by the applicants and I need not be detained by them any further. They are all dismissed.

[10] The substantive opposition of the application is based on two crisp issues – the lack of urgency and that the first respondent did not deduct any amounts from the applicants' salaries but instead implemented the no-work-no-pay principle by withholding remuneration for the 13 days that the applicants did not render their services.

[11] The applicants' case insofar as the interim relief is concerned is that the first respondent should be interdicted from making any deductions from their salaries pending the finalisation of the mediation process. However, there is nothing in the papers that suggests that the first respondent intends to make any deductions from the applicants' salaries. Further, the applicants had on 17 December 2024 withdrew their letter of suspension of the strike and resumed their strike action. The consequence of the applicants' decision on 17 December 2024 and their resumption of the strike action is that they reneged from the mediation process agreement reached on 13 December 2024. Therefore, an interim interdict as sought by the applicants in paragraph 3 of the notice of motion pending the mediation process that they abandoned on 17 December

2024 is incompetent. Regardless, the interim order sought is dependent on the Court granting the final relief declaring that the "deductions" are unlawful. Ms Makola, counsel for the applicants, conceded that the nature of the relief sought by the applicants is in fact final. Therefore, although the applicants addressed the requirements for an interim relief in their founding affidavit, the application was dealt with as one for a final relief.

[12] Rule 38(2) of the Rules Regulating the Conduct of Proceedings of the Labour Court[1] requires an urgent applicant to set out in his or her founding affidavit the reasons that make the matter urgent and the reasons why the relief is sought on an urgent basis. In other words, an applicant who brings urgent proceedings must make the necessary averments why he or she claims that the application is urgent and why she seeks relief now and why she claims that she cannot be afforded a substantial redress if the matter is brought and heard in the normal course.[2]

[13] The applicants contend that some of them may be adversely affected by the deductions, which may lead to an adverse credit record and their inability to afford basic necessities. Further, they contend that because the first respondent did not follow a proper process and acted unlawfully, "*there is no other alternative process [they] can use internally or externally except to obtain a court order*". The applicants pleaded further that they would suffer irreparable harm because they would not be in a position to initiate legal proceedings and that in any case, such process would be protracted.

[14] The applicants' contentions are vague, speculative and unsubstantiated. They have not explicitly set out the facts that render the application urgent and why they cannot be afforded substantial redress at a hearing in the normal course.

[1] GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.
[2] *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196; 2011 JDR 1832 (GSJ) at para 6.

That the proceedings in the normal course may be protracted does not on its own render the application urgent. The contention that there may not be able to initiate legal proceedings in the normal course is absurd because the applicants are still employed and they were able to bring these proceedings on an urgent basis. They are also members of a trade union, which could assist them in funding the application. The applicants have failed to show why this matter deserves the Court's attention urgently. The application falls to be struck off the roll.

[15] Even if I was inclined to entertain the application on an urgent basis, I am not persuaded that the applicants have made out a case for a final relief. The requirements for a final interdictory relief are trite. The applicant must establish a clear right, a reasonable apprehension of harm or imminent harm to the right and lack of satisfactory remedy.[3]

[16] The applicants seek to assert their rights in terms of section 34 of the Basic Conditions of Employment Act[4] (BCEA), which provides that:

> '(1) An employer may not make any deduction from an employee's remuneration unless –
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> (a) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or
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> (b) the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

[3] See: *Setlogelo v Setlogelo* 1914 AD 221 at 227.
[4] Act 75 of 1997.

(2) A deduction in terms of subsection (1) *(a)* may be made to reimburse an employer for loss or damage only if –

(a) the loss or damage occurred in the course of employment and was due to the fault of the employee;

(b) the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;

(c) the total amount of the debt does not exceed the actual amount of the loss or damage; and

(d) the total deductions from the employee's remuneration in terms of this subsection do not exceed one-quarter of the employee's remuneration in money.'

[17] They contend that the amounts allegedly not paid constitute deductions. They further rely on the Salary Administrative Policy, which provides that the first respondent shall make deductions as agreed with the employee in writing or as permitted in law and that the deduction should not exceed 25% of the employee's gross salary. Finally, the employees rely on Article 8 of the International Labour Organisation Convention No 95 of 1949 (ILO), which prohibits deductions from salaries unless permitted by laws or regulations, collective agreements or arbitration awards or other conditions. The provisions of the Policy and the ILO are expressly encapsulated in section 34 of the BCEA.

[18] For the above contention, the applicants rely on the Labour Appeal Court judgment in *North West Provincial Legislature and another v National Education Health & Allied Workers Union on behalf of Members,*[5] the judgment of this Court

[5] [2023] ZALAC 12; (2023) 44 ILJ 1919 (LAC).

in *National Education, Health & Allied Workers' Union on behalf of Mamogale and others v North West Department of Community Safety and Transport Management and another*[6] and the High Court judgment in *Gqithekhaya and others v Amathole District Municipality*[7]. In all these judgments, the courts dealt with employers who made the deductions from salaries and who did so many months after the strike.

[19] The matter before me is different on the facts and the first respondent disputed that it made deductions from the applicants' salaries. The first respondent's case is that it withheld the remuneration for the 13 days the applicants were on strike and did not render services in December 2024. It is common cause that at the commencement of the strike, the first respondent's payroll run had already closed in mid-November 2024 and the employees were paid on the 25th of the month. The next payroll run closed in mid-December 2024. It is further common cause that the applicants did not render services from 20 November 2024 and that their strike continued until 13 December 2024 and resumed in the afternoon of 17 December 2024.

[20] The first respondent's contention is that it withheld the payments to the applicants for 13 days in December 2024 because they did not render services. In simple terms, it implemented the no-work-no-pay principle for December 2024, in accordance with section 67(3) of the LRA[8]. Whether the implementation is right or wrong is a different issue. The applicants suggest that the number of days and calculations are wrong. They have however not substantiated this contention. That the first respondent is entitled to apply or implement the no-work-no-pay principle for December 2024 is not in dispute. The applicants cannot therefore claim to have established a clear right. The applicants have no right to demand that the first respondent should not implement the no-work-no-pay principle. On

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[6] [2022] ZALCJHB 182; (2022) 43 ILJ 2369 (LC).
[7] [2022] 11 BLLR 1066 (ELC); (2023) 44 ILJ 627 (ECL).
[8] In terms of this provision, an employer is not obliged to remunerate an employee for services that the employee did not render during a protected strike.

this basis alone, the application for an interdict would fail. Even if they were able to establish a clear right which was or is or may be threatened, they have not in my view established a lack of satisfactory remedy and the application would also fail on this ground.

[21] The next issue to consider is costs. The employees embarked on a protected strike, as they were entitled to. However, they knew or ought to have known that the strike comes with its price – the application of the no-work-no-pay principle. From the papers, they understand this principle and they claim not to challenge it. However, their application directly challenged the first respondent's decision to apply and implement the very same principle they claimed not to challenge. They approached the Court on an urgent basis where there was no urgency.

[22] They sought costs on an attorney and client scale against the respondents. They persisted with their stance that they should be awarded costs on an attorney and client scale if they are successful but argued that there should be no costs order if they are unsuccessful. This is an application for payment of money based on a contract. The Court retains its overall discretion to grant or refuse costs. Having considered the matter, I am persuaded that this is a matter that warrants a costs order against the applicants in favour of the first and second respondents.

[23] The applicants did not seek any substantive relief against the third respondent. The third respondent's opposition of the application was unnecessary and therefore I am not inclined to make a costs order in this regard.

[24] In the premises, the following order is made:

<u>Order</u>

1. The application is struck off the roll for lack of urgency.

2. The 134 applicants are ordered to pay the costs of the first and second respondents, jointly and severally the one paying the other to be absolved.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Ms TM Makola
Instructed by:	MP Mannya Incorporated
For the 1st & 2nd Respondents:	Mr M Letwaba of Cliffe Dekker Hofmeyr Inc.
For the Third Respondent:	Mr JL Basson
Instructed by:	The State Attorney, Pretoria