



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: 2025 – 095121

In the matter between:

UMHLATHUZA LOCAL MUNICIPALITY

Applicant

and

**THE SOUTH AFRICAN MUNICIPAL WORKERS
UNION (SAMWUA)**

First Respondent

**THE SHOPSTEWARDS OF SAMWU
(AS PER ANNEXURE A)**

Second Respondent

**THE MEMBERS OF SAMWU
(AS PER ANNEXURE B)**

Third Respondent

**THE SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING UNIT**

Fourth Respondent

K KEMI N.O.

Fifth Respondent

Heard: 26 June 2025

Delivered: 2 July 2025

JUDGMENT

PHEHANE, J

Introduction

[1] This is an urgent application in which the applicant seeks interim interdictory relief, in essence, declaring the strike action embarked upon by the first to third respondents on 17 June 2025 as unprotected for failure to comply with the provisions of section 64(1)(a) and 65(1)(d)(i) of the Labour Relations Act¹ (LRA) and restraining and interdicting the strike action and unlawful acts in furtherance of the strike action, including conduct in breach of the picketing rules concluded between the parties on 2 May 2024.

[2] The first to the third respondents oppose this application on the basis that, firstly, it does not comply with the provisions of section 68(3) of the LRA; secondly, it is not urgent; and thirdly, it is unmeritorious.

Relevant background

[3] On 2 February 2024, the first respondent (Union) referred a mutual interest dispute to the fourth respondent (bargaining council) in terms of the provisions of section 64(1) of the LRA. A certificate of non-resolution of the dispute, as well as picketing rules, were issued by the bargaining council on 2 May 2024 under case number KPD 022402.

[4] Armed with the certificate of outcome dated 2 May 2024, the Union served the applicant with a strike notice on 10 May 2024 of the intention of its members to commence strike action on 17 May 2024. The applicant launched an urgent

¹ Act 66 of 1995, as amended.

application in this Court under case number D279/24 to interdict the strike action, together with relief under Part B in that application, to review and set aside the certificate of outcome dated 2 May 2024.

[5] When the application was heard on 16 May 2024, by agreement between the parties, this Court issued an order stating that no strike action was to take place on 17 May 2024, and the parties agreed to engage further to resolve their dispute. The proceedings were adjourned to 24 July 2024. On that date, by agreement between the parties, the application was postponed *sine die*. Therefore, the matter is *lis pendens*. This is not disputed.

[6] The parties met for the purposes of engaging further during May 2024. Some issues were resolved, and others remained unresolved. It is not necessary due to the decision of this Court in this present application, to delve into the details of what issues were resolved and what issues remained unresolved, save to state that the applicant alleges that the issues that remained unresolved are not matters of mutual interest and therefore, are not strikable issues, rendering any strike action pertaining to those issues unprotected. The applicant contends, in any event, that the 2024 dispute fell away and '*new questions have arisen*' which are the subject of current engagement between the parties.

[7] On 2 June 2025, the Union referred a mutual interest dispute to the bargaining council, recording that the issues in dispute are ongoing and similar to issues in another dispute already before the bargaining council under case number KPD 022402.

[8] On 5 June 2025, the Union issued a strike notice in terms of section 64(1)(d) of LRA to commence strike action on 17 June 2025, and in line with the picketing rules of May 2024. This notice referred to the certificate of outcome under case number KPD 022402. It is not disputed that the certificate of outcome under KPD 022402 was issued on 2 May 2024.

[9] On 9 June 2025, the Union sent written correspondence to the applicant, entitled '*Notice of Strike in terms of section 64(1)(d) of the LRA, SAMWU obo*

Members/ Umhlathuze Municipality' and in this letter, set out its demands in relation to the intended strike action and notified the applicant that the starting time was 08h00 until 14h00. The applicant avers that no date was set in this notice for the commencement of the strike action. However, on reading the notice of 5 June 2025 with the same title as the correspondence of 9 June 2025, it is clear that the latter supplements the former. There can be no question of this. The respondents aver that the notice of 9 June 2025 supplements the notice of 5 June 2025. There is no ambiguity.²

[10] The Union issued notices in terms of the Regulation of Gatherings Act³ on 2 June 2025 and 9 June 2025. These were not persisted with, and it is not necessary to deal with them, as they unnecessarily convolute an issue that is straightforward, and that is, that the Union issued a strike notice on 5 June 2025 and supplemented this notice on 9 June 2025.

[11] The applicant launched an urgent application under case number 2025-088932 in this Court to interdict the strike action set to commence on 13 June 2025 as notified by the Union in its strike notice dated 5 June 2025.⁴ On 12 June 2025, this Court struck the application off the roll with costs for non-compliance with the provisions of section 68(2) of the LRA, as the applicant failed to provide the Union with 48 hours' notice of the application.

[12] The Union avers that, given this Court order, it was impractical to commence strike action on 13 June 2025, and a decision was taken to commence strike action on 17 June 2025. It must be borne in mind that 16 June was a public holiday.

[13] In a letter dated 13 June 2025 by the Union's attorney of record, the applicant was notified that the strike action, as contemplated in its strike notice of 5 June 2025, would commence on 17 June 2025.

² Answering affidavit at para 45 on p 003-21.

³ Act 205 of 1993.

⁴ In the application under case number 2025-088932, the applicant was clear that the strike notice was issued on 5 June 2025, yet in this application, it states that, in the alternative, the strike notice was issued on 9 June 2025. There is no question that the strike notice was issued on 5 June 2025 and supplemented on 9 June 2025. The applicant elected not to file a replying affidavit – it could not, in any event, given the severely truncated time frame within which it launched this application.

[14] Strike action commenced on 17 June 2025, on which date, the Union handed over to the applicant a memorandum of its demands.

[15] The applicant avers that it elected to withdraw the application under case number 2025- 088932 rather than supplement its papers and instead, launched a fresh application under the current case number to interdict the strike action.

[16] In a letter dated 17 June 2025, the applicant informed the Union that, in its view, the strike was unprotected, citing reasons for its view and demanded that the Union make an undertaking that it would cease the strike action, and such undertaking was to be provided by 19 June 2025. The Union responded, disagreeing that the strike action was unprotected and reminded the applicant *inter alia*, that the strike notice was issued on 5 June 2025. In a further letter of 19 June 2025, the applicant indicated its willingness to meet with the Union on 20 June 2025. The Union avers that the meeting was arranged for Sunday, 22 June 2025, but it did not take place as it was cancelled by the applicant.

[17] This application was served on the first to third respondents on 23 June 2025.

Submissions

[18] Against the backdrop of this background, the applicant approaches this Court on an urgent basis averring that the strike action that commenced on 17 June 2025 is unprotected for several reasons: first, the demands of the first to third respondents were referred to the bargaining council on 2 June 2025 and the dispute is scheduled for conciliation for 3 July 2025, therefore, there is non-compliance with the provisions of section 64(1)(a) of the LRA; second, members of the Union who are engaged in essential services are participating in the strike action contrary to the provisions of section 65(1)(d) of the LRA; third, the first to third respondents are engaging in unlawful acts in the furtherance of the strike action; fourth, the first to third respondents are in breach of the picketing rules of 2 May 2024; fifth, the certificate of outcome on which the first to third respondents rely to engage in strike action is

stale, alternatively, the effect of the Court order by consent of 16 May 2024 bars the first to third respondents from participating in strike action.

[19] Without delving into the merits of this dispute in light of this Court's order, but of relevance to urgency, the first to third respondents deny that the certificate of outcome is stale. They contend that the dispute under case number D279/24 is still pending; therefore, the applicant is incorrect in alleging that the certificate is stale.

[20] I do not propose to deal with the merits of the validity of the certificate, as that dispute is *lis pendens*.

[21] The issue to be determined at this juncture in this urgent application having regard to the background as set out above, is whether the application is urgent and whether the provisions of section 68(3) of the LRA have been complied with.

Has the applicant complied with section 68(3) of the LRA?

[22] The applicant was aware since 5 June 2025 of the intended strike action; therefore, it had in excess of 10 days written notice of the commencement of the strike action.

[23] The respondents were served with the application on 23 June 2025 for the hearing of this application on 26 June 2025, thus they were afforded merely 48 hours' notice of this application in contravention of the provisions of section 68(3) of the LRA. In terms of that section, if written notice of the commencement of the proposed strike action was given to the applicant at least 10 days prior to the commencement of the strike action, the applicant must give at least five days' notice to the respondent of an application to interdict the strike action.

[24] If I am wrong concerning the non-compliance with section 68(3) of the LRA, then, in any event, I find that this application is not urgent and falls to be struck off the roll for the reasons that follow below.

Urgency

[25] Rule 38⁵ provides that an affidavit in support of an urgent application must contain averments setting out the reasons for urgency and why urgent relief is necessary.

[26] In *East Rock Trading 7 (Pty) Ltd and Another v Valley Granite (Pty) Ltd and Others*⁶, the Court stated that an applicant in urgent proceedings must set out explicitly in his or her affidavit the circumstances she or he avers render the matter urgent. Failure to approach the court without delay constitutes an automatic ground to refuse to hear the application on an urgent basis. Further, an applicant must persuade the court that he or she will not be afforded substantial redress at the hearing in due course.

[27] As stated above, this application was served on the respondents on 23 June 2025. The notice to oppose was delivered on 24 June 2025. The answering affidavit was uploaded on CaseLines on 26 June 2025 at 09h25, before the court proceedings commenced at 10h00. This had the effect of delaying the court proceedings and the adjudication of this dispute, as the papers are voluminous and this Court required sight of the pleadings referred to in this application under different case numbers, given the argument before the Court.

[28] The applicant was aware on 13 June 2025 that the strike action would proceed on 17 June 2025 at 08h00, yet it failed to approach this Court for urgent relief without delay. The applicant demanded an undertaking by 19 June 2025 that the Union would cease the strike action. When this did not happen, it still did not approach this Court urgently.

[29] The applicant did not seriously engage the Union to resolve the dispute. It proposed a meeting and then cancelled it. No replying affidavit was filed by the applicant to refute this allegation. None could have been filed, as the applicant brought this application under severely truncated time frames, putting the

⁵ Rule 38 of the Rules Regulating the Conduct of the Proceedings of the Labour Court published in GN 477a in GG 50608 of 3 May 2024.

⁶ 2011 JDR 1832 (GSJ) at para [9].

respondents and this Court under undue pressure. There is a growing trend in this Court where litigants rush to Court and deliver and upload pleadings on CaseLines minutes before Court proceedings proceed or during Court proceedings. This must be discouraged. Applicants are to ensure that they approach the Court within a time frame that is commensurate with the urgency of their applications, are to ensure pleadings are filed timely and are to set out in their affidavit averments justifying urgency.⁷

[30] Further, the applicant has failed to set out any averments demonstrating why it will not obtain substantial redress in light of its review application, which it has not abandoned.

Costs

[31] Due to the conduct of the applicant as aforesaid, including the applicant's conduct in this application of averring in the alternative, that the strike notice was issued on 9 June 2025 in an attempt to avoid history repeating itself in suffering the same fate as the application it abandoned recently, this Court shows its displeasure by making an order for the applicant to pay the costs of this application.

[32] In view of the afore-going, the following order is made:

Order

1. The application is struck off the roll with costs.

M. T. M. Pehane

Judge of the Labour Court of South Africa

Appearances:

For the applicants:

Adv Piller SC

⁷ Luna Meubelvervaardigers (Edms) Bpk (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 (W); Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk 1972 (1) SA 773 (A).

Instructed by: Hlela Attorneys Incorporated

For the first to third respondents: Adv Xulu

Instructed by: M Dlamini Attorneys Inc.

LABOUR COURT