



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

REPORTABLE

Case no: 2025 – 085193

In the matter between:

SINGAMANDLA

First Applicant

ADFUSION CONTRACT MANAGEMENT SERVICES

Second Applicant

ISILUMKO

Third Applicant

LABOUR FLOW

Fourth Applicant

and

SOUTH AFRICAN PUBLIC WORKERS TRADE UNION

First Respondent

FOSTER KHOZA AND OTHERS

Second to further Respondents

Heard: 24 July 2025

Delivered: 1 August 2025

Summary: Application to confirm rule nisi and interim order. Requirements not met to interdict strike. Interim order confirmed only in respect of picket and violence.

JUDGMENT

DANIELS J

Introduction

[1] This court issued a rule nisi and interim order, interdicting strike action and violence, on 6 June 2025. On 24 July 2025, the applicants sought to confirm the rule nisi.

Material facts

[2] The facts are largely common cause:

2.1 The first applicant declares that it is a temporary employment service (hereafter “TES” or “labour broker”). Given the definition of a TES in section 198(1) of the Labour Relations Act No. 66 of 1995 as amended (the “LRA”) the court understands that, for reward, the first respondent procures for, or provides to, a client employees who perform work for the client but are remunerated by itself.

2.2 In its founding affidavit, the first applicant states that it is “*contracted [to] the second applicant, ACMS, for purposes of providing services. The second applicant, in turn, is contracted with Shoprite to provide contract management services. The second applicant has also secured the services of the third and fourth applicant companies. Said services are provided to Shoprite at its distribution centre*”. This is a rather unusual articulation of the business. It is hard to avoid the conclusion that this is designed to obscure the identity of the client to whom the first applicant provides employees. It is unclear whether the first applicant supplies employees to Shoprite, or whether it supplies employees to ACMS.

2.3 The first applicant cites itself as “Singamandla” though one of the documents submitted to the CCMA¹ by its Human Resources Director, indicates that the correct citation of the first applicant is “*LJ Personnel Management Services trading as Singamandla*”. This is strange given that the deponent to the founding affidavit (Mr. Craven Alexander) is the same person who completed the CCMA document.

2.4 The first respondent is a registered trade union, the South African Public Workers Trade Union (hereafter “SAPWTU” or “the Union”). It has members in the employ of the first applicant, and it has members in the employ of the second,² third³ and fourth applicants.⁴ SAPWTU claims that the applicants sometimes act as a single employer and, at other times, act as independent entities, depending on what is most suitable.

2.5 SAPWTU, in a letter dated 18 February 2025, claimed that it was representative trade union, and requested the first applicant to grant it the organisational rights contemplated in sections 12, 13, and 14 of the LRA.

2.6 In a letter dated 14 March 2025, the first applicant advised SAPWTU that its request did not comply with section 21(2)(b) of the LRA and would therefore not be considered. The first applicant made no reference to the other requirements⁵ of section 21(2) though, it appears, SAPWTU did not comply with those requirements either.

2.7 On 24 March 2025, the SAPWTU referred a dispute, concerning organisational rights, to the CCMA for conciliation.⁶ The dispute could not be

¹ Annexure E to the Founding Affidavit, Case Lines reference 002 - 26

² Annexure M2 to the Answering Affidavit, Case Lines reference 003 – 21 to 003 – 27; see also annexure C to the Founding Affidavit, Case Lines reference 002 – 21.

³ Annexure M5 to the Answering Affidavit, Case Lines reference 003 – 32

⁴ Annexure M5 to the Answering Affidavit, Case Lines reference 003 – 33

⁵ SAPWTU was required to attach a certified copy of its certificate of registration to the request for organisational rights.

⁶ The CCMA referral to conciliation is not included in the court papers.

resolved at conciliation, and the CCMA issued a certificate of outcome of conciliation on 22 April 2025. At approximately 12h07 that same day, the first applicant submitted a request for arbitration to the Union and the CCMA.⁷ It appears that the first applicant made the request for arbitration immediately after it had received the certificate of outcome of conciliation.

2.8 On or about 30 April 2025, an inflammatory voice note was circulated, by the regional or general secretary of the SAPWTU, threatening violence against those who refused to support the strike. The applicants' attorney directed a letter to the Union demanding the retraction of the voice note and an apology. This did not materialize, nor did the Union deny that the voice note emanated from its leadership.

2.9 On 5 June 2025, SAPWTU issued a notice to the first applicant giving it notice of its members' intention to embark on protected strike action. In the letter, the Union indicated that it had demanded organisational rights in terms of section 21 of the LRA and the dispute remained unresolved after conciliation. The strike notice indicated that the strikers would gather at the Shoprite Distribution Centre.

2.10 By the return date, no picketing rules were issued by the CCMA in terms of section 69(5) of the LRA, though the strike notice suggests that the strikers would picket in support of the strike. It is common cause that there is no collective agreement establishing picketing rules.

2.11 The annexures to the founding and answering affidavits suggest that the Union has, unsuccessfully, sought organisational rights from the second to fourth applicants.

⁷ Annexure E to the Founding Affidavit, Case Lines Reference 002-25; see also annexure H to the Founding Affidavit where Kirchmanns Inc state that the request for arbitration was made "at the same time" as the issue of the certificate of outcome of conciliation, Case Lines Reference 002 – 43

2.12 SAPWTU alleges that the applicants are behaving in a male fide manner and are intent on using whatever means are available to frustrate the union in its desire to secure organisational rights.

Relevant provisions of the LRA

[3] The following provisions of the LRA are relevant:

3.1 Sections 11 to 15 permits trade unions to request an employer to grant it the organisational rights contemplated by those sections. If the employer refuses to grant the organisational rights, the union or the employer may refer a dispute to the CCMA for conciliation in terms of section 21(4).

3.2 Section 21(7) provides that, if the dispute remains unresolved after conciliation, either party to the dispute may request that the dispute be resolved through arbitration.

3.3 Section 65(1) provides: *"No person may take part in a strike or a lockout or in conduct in contemplation or furtherance of a strike action or lockout if:*

(a) ...

(b) ...

(c) *if the issue in dispute is one that a party has a right to refer to arbitration, or the Labour Court, in terms of the LRA or any other employment law".*

3.4 Section 65(2)(a) provides: *"Despite section 65(1)(c), a person may take part in a strike or a lockout or in any conduct in contemplation or in furtherance of a strike or lockout if the issue in dispute is about any matter dealt with in sections 12 to 15".*

3.5 Section 65(2)(b) provides that, if a trade union has issued a strike notice about any matter dealt with in sections 12 to 15, it may not request

arbitration in terms of section 21 for a period of 12 months from the date of the notice.

3.6 Section 65(3)(a)(i) provides that “*subject to a collective agreement no person may take part in a strike or a lockout or in any conduct in contemplation or furtherance of a strike or lockout if that person is bound by any arbitration award or collective agreement that regulates the issue in dispute*”.

(own emphasis)

[4] At first blush, there appears to be a conflict between section 21(7) and 65(2)(a) of the LRA. This is explored below.

Legal principles and analysis

[5] The applicant seeks final relief and must therefore satisfy three essential requisites namely:⁸

- (a) a clear right of the party asserting it;
- (b) an injury actually committed or reasonably apprehended; and
- (c) the absence of any other satisfactory remedy that may have been available to the party seeking the interdict.

[6] The employer cannot exercise its right to request arbitration in terms of section 21(7). Before the employer may exercise its right under section 21(7), the jurisdictional prerequisites in the LRA must be met. The LRA requires that there be a prior request for organisational rights, one which complies with section 21(1) and (2). As explained in para 2.6 above, on the first applicant’s own version, there was no such request. In the circumstances, the prohibition on strike action contemplated in section 65(1)(c) does not arise.

⁸ *Setlogelo v Setlogelo* 1914 AD 221; *Minister of Health v Drums & Pails Reconditioning CC t/a Village Drums & Pails* 1997 (3) SA 867 (N) at 872C

[7] The right of employees to engage in strike action is a fundamental right enshrined in our constitution. It is an individual right, though it may only be exercised collectively. As a constitutional right, our courts are enjoined to avoid restricting the right more than is expressly required by the language of the LRA. Furthermore, the limitation must be strictly constrained by the purpose of the limitation. This principle was captured by our apex court in *SA Transport & Allied Workers Union & others v Moloto NO & another* as follows:⁹

“The right to strike is protected as a fundamental right in the Constitution without any express limitation. Constitutional rights conferred without express limitation should not be cut down by reading implicit limitations into them and when legislative provisions limit or intrude upon those rights they should be interpreted in a manner least restrictive of the right if the text is reasonably capable of bearing that meaning.”

[8] Even if my analysis in paras [6] is incorrect, I cannot accept that an employer party is permitted to frustrate the constitutional right to strike in the manner proposed by the first applicant. If the first applicant's proposition were upheld, section 65(2)(a) would be hollowed out and rendered meaningless. The first applicant contends that a limit on the right to strike must be implied in section 65 of the LRA, when the legislation does not expressly provide for it. As the apex court warned, this is impermissible. I do not accept that section 21(7) is reasonably capable of the interpretation¹⁰ the first applicant seeks to impose on it – that it takes precedence over section 65(2)(a). The legislature did not choose to make section 65(2)(a) subordinate to section 21(7), or it would have stated as much.

[9] I am fortified in my view by the difference in wording in section 21(7), on the one hand, and sections 65(1)(c) and 65(2)(a) on the other. Section 21(7) refers to a “dispute” which may be referred to arbitration. The dispute in that instance would be about whether the union is representative or (where the employer agrees that the

⁹ (2012) 33 ILJ 2549 (CC) at para [43]

¹⁰ *Investigating Directorate: Serious Economic Offences & others v Hyundai Motor Distributors (Pty) Ltd & others: In re Hyundai Motor Distributors (Pty) Ltd & others v Smit NO & others* 2001 (1) SA 545 (CC) at para [23]

union is representative) the manner in which such rights are to be exercised. Section 65(1)(c) and 65(2)(a), on the other hand, refers to the “issue in dispute”. The issue in dispute is the demand, grievance, or the dispute that forms the subject matter of the strike.¹¹ In a strike where organisational rights are the “issue in dispute” the union does not seek an acknowledgement that it is representative. Instead, it seeks the organisational rights themselves. That is its demand or grievance.

[10] When statutes are interpreted, courts are required to have regard to the interpretative triad of language, context, and purpose. This is fully explained in *Natal Joint Municipal Pension Fund v Endumeni Municipality*.¹² I believe the interpretation adopted in paras [8] and [9] above, is consistent with the language, context, and purpose of the LRA. The language and context are apparent from my analysis above and require no further explanation. As to the purpose, it is trite that one of the primary purposes of the LRA¹³ is to give effect to the constitutional right to strike, which requires that the right be interpreted in the least restrictive manner.

[11] The first applicant contends that Zondo JP (as he then was) held in *Bader Bop v National Union of Metal and Allied Workers of South Africa*¹⁴ that an employer may frustrate the exercise of the right to strike by making a referral to arbitration in terms of section 21(7) and that this court is bound by such finding. This argument is based on a misunderstanding of the judgment. The former Judge President found that the issue of an arbitration award could frustrate any strike because there would no longer be a live dispute. This is apparent from para [45]. More importantly, the comments by the former Judge President were unsupported by Du Plessis JA and do not form part of the *ratio decidendi*. In that dispute, the employer had not made any request for arbitration in terms of section 21(7). In any event, the Constitutional Court¹⁵ made it clear that the comments by the former Judge President are not binding. On behalf of the majority of the court, Justice O’ Regan stated: “*I conclude*

¹¹ See the definition of “issue in dispute” in section 213 of the LRA.

¹² 2012 (4) SA 593 (SCA) at para [18]

¹³ Section 1(a), read with section 3(a) and (b) of the LRA.

¹⁴ (2002) 23 ILJ 104 (LAC)

¹⁵ *National Union of Metalworkers of SA & others v Bader Bop (Pty) Ltd and another* (2003) 24 ILJ 305 (CC) at para [45]

therefore that the relevant provisions of the Act can be read so as to avoid the limitation of fundamental rights occasioned by the interpretation placed upon those provisions by the LAC. It must follow that the interpretation adopted by the majority in the LAC is not the constitutionally appropriate interpretation of the relevant provisions of the Act. “

[12] In *Bader Bop* the Constitutional Court held as follows at para [25]: “Sufficiently representative trade unions, and those unions that claim to be sufficiently representative, may seek to enforce those organizational rights which they claim the Act confers upon them by adjudication (mediation and arbitration) or by industrial action. It is not clear what options (if any) those unions that are not sufficiently representative to be the beneficiaries of the rights conferred by chapter III part A of the Act have to obtain organizational rights. There is no express provision of the Act regulating their position. The question that arises is whether the Act must necessarily be interpreted to preclude non-representative unions from obtaining organizational rights, either through agreement with the employer, or through industrial action.” At para [44], the Constitutional Court gave the employer’s argument, that the union had asserted that it was a representative trade union in its referral to conciliation and it was therefore bound to follow the path to arbitration, short shrift. That principle applies here too.

[13] There is a further reason why the first applicant cannot succeed in this matter. It is plain that the first applicant made its request for arbitration to frustrate the right to strike. It made the request for arbitration on the same date, and at the same time, that the CCMA issued a certificate of outcome of conciliation. Its haste to commence arbitration is wholly inconsistent with its earlier technical approach that the request for organisational rights was defective.

[14] Given my analysis of section 21 and section 65 above, I find that the first applicant has failed to demonstrate a clear right to an interdict of the strike action. It is therefore unnecessary to consider the further requirements for final relief.

Interdict of the picket

[15] The LRA prohibits a picket in the absence of picketing rules, whether agreed between the parties, or determined by the commissioner conciliating the dispute. This is apparent from section 69(6C) which is unambiguous in its terms. It is common cause that there are no picketing rules, whether agreed or determined by the CCMA. The Union denies that it intends to picket, but the strike notice itself suggests otherwise. In the circumstances, I am inclined to interdict any picketing until picketing rules are established. In the exercise of my broad powers under section 158(1)(a)(iii) of the LRA, it is necessary and desirable to direct the CCMA to issue picketing rules without delay.

Threats of violence and intimidation

[16] The first applicant alleges that the Union's leadership has made statements of an inflammatory nature. The Union has not denied this as one might have expected. In the circumstances, I am inclined to issue an order interdicting violence or threats of violence.

Costs

[17] Mulcting a party with costs can strain the relationship, and hinder the resolution of the underlying dispute. I am guided by the judgment in *Zungu v Premier of the Province of KwaZulu-Natal & others*¹⁶ that, in employment matters, costs do not automatically follow the result. Exercising my wide discretion in terms of section 162(1) of the LRA, I believe no costs order is appropriate.

Conclusion

[18] In my view, for the reasons explained above, the strike and participation in the strike is protected. The relief to be granted is restricted to an interdict against picketing and violence.

¹⁶ (2018) 39 ILJ 523 (CC) at para 25

[19] In the result, the following order is made:

1. Prayers 2.2, 2.2 and 2.3 of the interim order issued by Prinsloo J on 6 June 2025 are made final;
2. The CCMA is directed to issue picketing rules as a matter of urgency;
3. There is no order as to costs.

R Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Applicants:

Adv M Meyerowitz

Kirchmanns Inc

For the Respondents:

Union Official