



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR 927/24

In the matter between:

SHONISANI KHOMOLA AND 192 OTHERS

Applicant

and

MASTECH GENERAL TRADING

First Respondent

JABULANI MASUNDA

Second Respondent

Heard: 30 April 2025

Delivered: 13 October 2025

JUDGMENT

DANDADZI, AJ

Introduction

- [1] This matter concerns an application for contempt brought by the Applicant against the First and Second Respondents (collectively, the Respondents), arising from the certification and subsequent making of a settlement agreement concluded between the Applicant and the First Respondent in

February 2024 an arbitration award under section 142A of the Labour Relations Act¹ (LRA). In this application, the Applicant also seeks certain declaratory relief which, in my view, cannot properly be sought by way of a contempt application. The application is opposed by the First and Second Respondents, who raise points *in limine* to the application.

- [2] The Respondents raise three points in *limine*. The first pertains to the alleged improper service of the application on the Respondents, as it was not served by the Sheriff. The second relates to the locus standi of the First Applicant, who, according to the Respondents, lacks a resolution authorising him to act on behalf of the other Applicants and is, in any event, no longer in the employ of the First Respondent. The third point in *limine* concerns the declaratory relief sought by the Applicants, which the Respondents contend is not competent in contempt proceedings, as it introduces new matters that were not covered in the original settlement agreement.
- [3] Should any of the points *in limine* raised by the Respondents be upheld, it would be dispositive of the present application. Our courts have consistently held that where a jurisdictional or procedural defect goes to the root of the proceedings, such as defective service, lack of authority, or the impermissibility of the relief sought, the court or tribunal is entitled to dispose of the matter without entering into the merits.

Points in *limine*

- [4] I will address the points in *limine* in turn.
- [5] It is evident from the court file and the submissions made that the Applicants did not serve the application on the Respondents in accordance with the Rules of this Court. Service was effected personally by the First Applicant at the Respondents' offices, rather than through the Sheriff as required. It was further submitted that the Applicants had previously been cautioned by the Court to ensure compliance with the Rules regarding service, yet there has been continued non-compliance. While it is evident that there was no service

¹ Act 66 of 1995, as amended.

through the Sheriff, there appears to be no prejudice suffered by the Respondents. The Respondents were clearly aware of the proceedings and have participated fully. The Labour Court has, in appropriate circumstances, condoned defective service where the purpose of service, to give notice and allow participation, has been achieved and no prejudice is shown. The interests of justice further dictate that finality be afforded to the parties through the proper ventilation of the issues on their merits. I am therefore inclined to condone the non-compliance with the Rules relating to service.

- [6] The next point in *limine* raised by the Respondents concerns the *locus standi* of the First Applicant. It is common cause that the First Applicant is no longer in the employ of the First Respondent and that no resolution has been signed by the remaining 192 employees authorising him to act on their behalf in these proceedings. In the absence of such written authority, the First Applicant lacks the requisite standing to institute and prosecute this application in a representative capacity. The Labour Appeal Court has held that a person who purports to act on behalf of others must demonstrate proper authorisation at the time of instituting proceedings, failing which the application is fatally defective. There being no proof of authority before me, I find that the First Applicant lacks *locus standi* to act on behalf of the other Applicants, and this point in *limine* accordingly stands to be upheld.
- [7] The third point in *limine* concerns the declaratory relief sought by the Applicants, which the Respondents contend is not competent in contempt proceedings, as it introduces new matters that were not covered in the original settlement agreement. I agree with this contention. Contempt proceedings are *sui generis* and are designed solely to enforce compliance with an existing court order or arbitration award. They are not a vehicle through which a party may seek new or additional declaratory or substantive relief. Contempt is a narrow and exceptional remedy which must not be used to create or extend rights beyond those already confirmed by an existing order and is limited to determining whether a party has wilfully and *mala fide* failed to comply with an existing order. Should new relief be sought, it must be properly referred to the

Bargaining Council or the Labour Court, as the case may be. On that basis, the third point in *limine* must accordingly be upheld.

[8] While I need not deal with the merits of the matter having upheld the points in *limine*, it appears to me that there was compliance with the terms of the settlement agreement insofar as the Provident Fund, UIF, and SARS payments are concerned. This contention was not disputed by the Applicants during argument, nor was any proof tendered to demonstrate that these payments remain outstanding. To the extent that the Applicants contend non-compliance, it is incumbent upon them to place before the Court evidence in support of such contentions. In the absence of proof, the Court would be constrained to find that the Respondents are in contempt of the settlement agreement and the subsequent arbitration award made in terms of section 142A of the LRA.

[9] In considering the points *in limine*, I am satisfied that the irregularity in respect of service does not warrant the dismissal of the application. The Respondents were clearly aware of the proceedings and have suffered no prejudice. The non-compliance with the requirement that service be effected by the Sheriff is therefore condoned. However, the objections relating to the *locus standi* of the First Applicant and the inclusion of new matters and relief outside the scope of the contempt application are well-founded. Accordingly, the points in *limine* pertaining to the First Applicant's authority and the impropriety of seeking declaratory relief within these proceedings are upheld.

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

Order

1. Having upheld the relevant points *in limine*, the application falls to be dismissed.
 2. There is no order as to costs.
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N. L. Dandadzi

Acting Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the Applicants: Mr Shonisani Khomola

For the Respondents: Advocate M Pienaar

Instructed by: Nico van der Westhuizen Attorneys

LABOUR COURT