



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR1536/24

In the matter between:

SACTWU obo MEMBERS

Applicant

and

**THE COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION (CCMA)**

First Respondent

KAMOHELO MOROE N.O

Second Respondent

STARFIBCO MANUFACTURING (PTY) LTD

Third Respondent

Heard: 27 August 2025

Delivered: 02 December 2025

JUDGMENT

MNISI, AJ

Introduction

[1] This application concerns the review of an award made by the second respondent under the auspices of the first respondent ("the CCMA"), in which he upheld a point *in limine* raised by the third respondent that the CCMA does

not have jurisdiction to entertain an application for organisational rights in terms of sections 12, 13 and of the Labour Relations Act¹ (LRA).

- [2] The first, second and third respondents (“the respondents”) did not file any papers in opposition to this application.

Background to the relevant facts

- [3] The uncontested evidence of the applicant is that during 2023, it successfully recruited 40 members at the third respondent’s establishment. This resulted in the matter being referred to the CCMA for an organisational rights dispute, which was scheduled to be heard on 17 July 2024.

- [4] At the hearing of the matter before the CCMA, the third respondent opposed the application and submitted that the CCMA does not have jurisdiction to hear the matter due to *inter alia*:

1. That the applicant’s scope does not cover the company’s activities;
2. Clause 3.2.12 of the trade union’s constitution defines ‘other’ as meaning any additional activity, industry or interest group as defined by the National Executive Committee or the National Office bearers on a periodic basis;
3. That even though the first respondent’s activities fall under the trade union’s constitution in terms of the resolution provided. However, the industry, interest group and or activity was not defined in such resolution.

- [5] It was further contended that the applicant was required first, to comply with section 101(3)(b) of the LRA and that the applicant did not meet the relevant requirements, second, that the applicant did not comply with section 95(5) and (6) when registering its constitution and detailing its scope.

- [6] Moreover, the third respondent contended that the applicant is registered with the MEIBC due to its main activity being plastic manufacturing, whereas the

¹ Act 66 of 1995, as amended.

registered scope of the applicant does not make provision for the plastic industry.

Issues for determination

- [7] It is axiomatic that the issue at the heart of the merits of this case is a legal and interpretational one. This Court is called upon to determine whether the second respondent committed an error of law or whether the error was material to the determination of the dispute. This is because it resulted in the dismissal of the applicant's case, particularly by depriving the CCMA of jurisdiction, which prevented the applicant from making a section 21 referral.

The evidence and submissions before the Commissioner

- [8] The applicant contended that its constitution covers the scope of the third respondent's industry in accordance with its resolution as stipulated in clause 3.2.12 of its constitution. Consequently, there was no need to register the extension of the scope in terms of section 101 of the LRA.
- [9] Clause 3 of the applicant's registered constitution deals with its scope, and it reads as follows under sub-clause 3.1:

'The union shall open to all workers employed in the following industries and trades:

- 3.1.1. Garment Industry;
- 3.1.2. Textile Industry;
- 3.1.3. Wool/Mohair Processing Industry;
- 3.1.4. Wool/Mohair, Hides and Skins Trade;
- 3.1.5. Leather and Footwear Industry;
- 3.1.6. Tanning, Woolpulling and Fellmongering Industry;
- 3.1.7. Knitting Industry;
- 3.1.8. Canvas and Ropeworking Industry;
- 3.1.9. Retail, Commercial and Distributive Trade;
- 3.1.10. Laundry, Dyeing and Dry-Cleaning Industry;
- 3.1.11. Farming and Agricultural Industry and includes workers engaged in operations incidental to or consequential on such operations or

manufacture and the workers engaged in the sale, delivery, distribution, retailing, storage and/or administration of such goods;

3.1.12. Other.'

[10] It was further argued that for purposes of this application, '*Other*' is defined as listed in clause 3.1.12 as '*any other activity, industry, or interest group as defined by the National Executive Committee or the National Office Bearers from time to time*'.

[11] On 7 May 2024, the National Office Bearers of the applicant, by formal resolution, extended its scope of operations to include the activities of the third respondent. The resolution, signed by the applicant's President, first Deputy President, second Deputy President and the National Treasurer, reads as follows:

'Resolution on the Demarcation of:

Starfibco Manufacturers (Pty) Ltd

The SACTWU national Office Bearers having considered the membership applications of employees of DMS Security hereby resolves that the company is covered by the scope of our trade union, in terms of Section 3.2.12. of our constitution.

Starfibco Manufacturers (Pty) Ltd are accordingly demarcated as an "other" interested group, in terms of sub-clause 3.2.12 of the SACTWU's constitution as amended.

Date: 7 May 2024

[Signatures as stated].'

The statutory legal framework

[12] Section 101(3) of the LRA requires that where a trade union or employers' organisation seeks registration of a changed or new constitution:

'(3) The registrar must –

- (a) register the changed or new constitution if it meets the requirements for registration; and
- (b) send the registered trade union or registered employers' organisation a copy of the resolution endorsed by the registrar, certifying that the change or replacement has been registered.'

[13] Section 95(1) of the LRA provides that any trade union may apply to the registrar for registration, provided that it has adopted a name that meets the requirements of subsection 4, it has adopted a constitution that meets the requirements of subsections (5) and (6), it has an address in South Africa, and it is independent.

[14] Section 95(5) requires that the constitution of any trade union or employers' organisation that intends to register must inter alia '*prescribe qualifications for, and admission to, membership*'.

[15] Section 95(6) requires that the constitution of any trade union or employers' organisation may not include any provision that discriminates directly or indirectly against any person on the grounds of race or sex.

[16] Section 96(3) provides that the registrar must consider an application for registration made by a trade union or employers' organisation and, in terms of section 96(3)(b), that the registrar –

- (b) if satisfied that the applicant meets the requirements for registration, must register the applicant by entering the applicant's name in the register of trade unions or the register of employers' organisations.'

[17] The Labour Appeal Court (LAC) In *South African Clothing and Textile Workers Union v The Bargaining Council for the Furniture Manufacturing Industry and Others*² held as follows:

- '[46] For the union's constitution to have been registered, the registrar would have had to have been satisfied that the requirements for registration had been met. This included that the constitution provided the "qualifications for, and admission to, membership". The registered

² [2024] 9 BLLR 976 (LAC).

constitution not only set out in C 3.1.1 to C 3.1.11 specified industries which fell within the union's scope of operation, but included, in clause C 3.1.12, that other industries may fall into the union's scope where, in terms of clause C 3.2.12, either the National Executive Committee or the National Office Bearers from time to time defined "any other activity, industry, or interest group" as falling within the scope of the union. In providing as much, the registrar was clearly satisfied that the constitution provided the "qualifications for, and admission to, membership".'

[18] The LAC further held that:

'[47] The resolution taken by the National Office Bearers under clause C 3.2.12 of the appellant's constitution did not amount to a change to or replacement of the appellant's constitution as contemplated in section 101(1). This is so since the National Office Bearers acted in accordance with the terms of the union's registered constitution in that clause C 3.2.12 expressly provided that either the National Executive Committee or the National Office Bearers from time to time were entitled to define "any other activity, industry, or interest group" as falling within the scope of the union. In resolving that the furniture industry fell within the union's scope, the National Office Bearers did not change the union's constitution but acted, as they were permitted, in accordance with the express terms of clause C 3.2.12.'

The review test and evaluation

[19] The test on review is well-known as buttressed in *Duncanmec (Pty) Ltd v Gaylard NO and Others*³. The enquiry into the reasonableness of a decision involves consideration of the merits, and it has been said that unreasonableness would warrant interference only if the impugned decision is of the kind that could not be made by a reasonable decision-maker. It was added that it is not the task of a reviewing Court to evaluate the reasons provided by the arbitrator with a view to determining whether it agrees with them. The principal enquiry is whether the award itself meets the requirement

³ 2018 (11) BCLR 1335 (CC) at paras 41 – 43.

of reasonableness, in the sense that there are reasons supporting its conclusions.

- [20] The LAC in *South African Breweries (Pty) Ltd v Hansen and others*⁴, referring with approval to its earlier judgment of *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation & Arbitration & Others*⁵ (*Gold Fields*), held that:

'In *Gold Fields* ... this Court refined the Sidumo test by introducing a two-stage enquiry. In short, this requires the Labour Court to consider two issues: The first is whether the applicant has established an irregularity. this irregularity could be a material error of fact or law, the failure to apply one's mind to relevant evidence, or misconceiving of the enquiry or assessing factual disputes in an arbitrary fashion. The second is whether the applicant has established that the irregularity is material to the outcome by demonstrating that the outcome would have been different having regard to the evidence before the arbitrator. An arbitration award will, therefore, be considered reasonable when there is material connection between the evidence and the result.'

- [21] This was further confirmed in the Supreme Court of Appeal in *Herholdt v Nedbank Ltd (Congress of SA Trade Unions as Amicus Curiae)*,⁶ wherein the Court stated:

'For a defect in the conduct of the proceedings to amount to a gross irregularity as contemplated by s 145(2)(a)(ii) ... the arbitrator must have misconceived the nature of the enquiry or arrived at an unreasonable result. A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors of fact ... are not in and of themselves sufficient for an award to be set aside, but are only of any consequence if their effect is to render the outcome unreasonable.'

⁴ [2017] 9 BLLR 892 (LAC) at para 11.

⁵ (2014) 35 ILJ 943 (LAC).

⁶ (2013) 34 ILJ 2795 (SCA) at para 25.

Grounds of review and evaluation

[22] Having referred, *inter alia*, to passages from the cases of *Van Wyk and Taylor v Dando and Van Wyk Print (Pty) Ltd*⁷, *National Union of Metalworkers of SA v Lufil Packaging (Isithebe) (A division of Bidvest Paperplus (Pty) Ltd) and Others*⁸ (*Lufil*), and the provisions of section 4(1)(b) and 21(1) of the LRA, the second respondent held that a trade union cannot create a class of membership outside the provisions of its own constitution, and if they purport to do so, they act in excess of its powers, and such an act has no validity. The second respondent further held that the scope of the trade union, SACTWU, does not include the business of the third respondent (Starfibco), which is plastic.

[23] The Second Respondent was tasked with determining whether the Applicant possessed adequate representation in accordance with Section 21 of the LRA. Instead of addressing the aforesaid obligation, the Second Respondent addressed a challenge concerning the Applicant's *locus standi* to refer an organisational rights dispute.

Conclusion

[24] In my view, the union's decision to expand its scope to include the operations of the third respondent is clear. This extension was made through the resolution dated 7 May 2024.

[25] In the results, I make the following order:

Order

1. The ruling of the second respondent dated 29 July 2024, in respect of the dispute between the applicant's members and the third respondent (under case number: GATW17249-23), is hereby reviewed and set aside;

⁷ [1997] 7 BLLR 906 (LC) at 910.

⁸ (2020) 41 ILJ 1846 (CC).

2. The matter is referred back to the first respondent to deal with the merits of the organisational rights dispute between the applicant, its members and the third respondent.
3. There is no order as to costs.

J Mnisi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: K.R Munsamy

Instructed by: Purdon & Munsamy Attorneys

For the respondents: No appearance for any of the respondents

LABOUR COURT