



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J1164/21

In the matter between:

ASSOCIATION OF MINE WORKERS AND

CONSTRUCTION UNION ("AMCU"), OBO MEMBERS

Applicant

and

CHROME TRADERS (PTY) LTD

Respondent

Heard: 9 September 2025

Delivered: 10 December 2025

JUDGMENT

RAJAH, AJ

Background

- [1] The applicant, Association of Mineworkers and Construction Union (AMCU), approached this Court in terms of section 158(1)(c) of the Labour Relations Act¹ (LRA), seeking to have a settlement agreement dated 25 February 2019 and a wage agreement dated 11 February 2020 made orders of court, which later became only the settlement agreement in question.
- [2] AMCU further sought that the respondent, Chrome Traders (Pty) Ltd, be ordered to pay the costs of the application in the event of opposition. I deal with this issue in the body of this Judgment.
- [3] The respondent filed an answering affidavit in which it made clear that it did not oppose the relief sought in respect of the settlement agreement but opposed the prayer regarding the wage agreement on the basis that such agreement was never finalised or signed by the parties, and thus did not fall within the ambit of section 158(1)(c).
- [4] Section 158(1)(c) of the LRA grants this Court the power to make a settlement agreement or arbitration award an order of the court, provided the agreement is clear, the defaulting party has failed to comply, and the agreement meets the requirements of section 158(1A) of the LRA (for settlement agreements).
- [5] AMCU, in its replying affidavit, persisted in seeking to have the wage agreement made an order of court. The matter was set down for hearing during August 2023, after a number of procedural directives from the Court.
- [6] On or about 18 September 2023, AMCU delivered its heads of argument belatedly, in which it for the first time expressly abandoned reliance on the wage agreement and indicated that it sought only to have the settlement agreement made an order of court.
- [7] Chrome Traders pointed out that during September 2023, AMCU referred a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) concerning the calculation of production bonuses in terms of the settlement agreement. That matter remains pending at conciliation.

¹ Act 66 of 1995, as amended.

- [8] This Court must disregard the existence of that dispute for present purposes. The issue before the Court is confined to whether the settlement agreement may properly be made an order of court, and whether a costs order is appropriate.

Condonation

- [9] Chrome Traders sought condonation for the late delivery of its answering affidavit in terms of rule 12 (3) of the now repealed Rules for the Conduct of Proceedings in the Labour Court². In its affidavit, it explained that the delay was due to operational difficulties during the COVID-19 pandemic, that the delay was not deliberate, nor aimed at frustrating the proceedings, and that AMCU suffered no prejudice.
- [10] Having considered the authorities referred to and the explanations provided, this Court is satisfied that good cause has been demonstrated. The interests of justice favour the granting of condonation, and the late delivery of the answering affidavit is accordingly condoned.

Applicable legal principles on costs

- [11] The general rule in civil litigation is that costs follow the result. However, in labour proceedings, this position does not apply with equal force. Section 162 of the LRA empowers the Labour Court to make orders for costs according to the requirements of the law and fairness.
- [12] The Constitutional Court in *Zungu v Premier of the Province of KwaZulu-Natal and Others*³ held that the practice of this Court is ordinarily not to award costs in labour matters, to avoid deterring parties, particularly trade unions, from approaching the courts in vindication of labour rights.
- [13] However, the discretion is not absolute. Where a party has acted unreasonably, frivolously, or in a manner that frustrates legitimate processes, costs may justifiably be awarded.

² Replaced with Rules regulating the conduct of Proceedings of the Labour Court. Effective 17 July 2024.

³ [2018] 4 BLLR 323 (CC).

- [14] Chrome Traders referred this Court to *Bapotrans (Pty) Ltd v AMCU and Others*⁴ where a union's irresponsible conduct, despite its bargaining power, was held to justify a costs order. The respondent submits that AMCU's conduct in persisting with untenable relief in respect of the wage agreement places it in the same category.

Evaluation

- [15] It is common cause that Chrome Traders did not oppose the relief in respect of the settlement agreement. Its opposition was directed solely at the attempt to have the wage agreement made an order of court, which AMCU ultimately abandoned.
- [16] The respondent argues that it was compelled to oppose the application, and that its opposition was justified, reasonable, and *bona fide*. It contends further that AMCU framed its relief incorrectly, thereby incurring unnecessary costs.
- [17] While it is accepted that Chrome Traders' opposition was *bona fide*, the Court is not persuaded that AMCU's conduct rises to the level of unreasonableness or irresponsibility that warrants a costs order. The union was misguided in persisting with relief it could not sustain, but this does not justify a punitive approach.
- [18] Section 162 requires the Court to balance fairness with law. On the facts, it is not unfair that each party bear its own costs. To order otherwise may discourage trade unions from approaching this Court, contrary to the constitutional imperatives of ss 23 and 34 of the Constitution of the Republic of South Africa, 1996.
- [19] In the result, the following order is made:

Order

⁴ (J666/20) [2021] ZALCJHB 435 (15 November 2021).

1. The settlement agreement concluded between the parties on 25 February 2019 is made an order of court in terms of s 158(1)(c) of the Labour Relations Act, 66 of 1995.
2. The late delivery of the respondent's answering affidavit is condoned.
3. No order is made in respect of the wage agreement dated 11 February 2020.
4. There is no order as to costs.

S. Rajah

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant : M Edwards
Instructed by : LDA Attorneys
For the respondent : T Mila
Instructed by : Malatji & Co