



REPUBLIC OF SOUTH AFRICA

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Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Case no: C 261/15

In the matter between:

**Municipal and Allied Trade Union of
South Africa (MATUSA)**

Appellant

and

CROUSE N.O.

First Respondent

**(THE REGISTRAR OF LABOUR
RELATIONS)**

**INDEPENDENT MUNICIPAL AND
ALLIED TRADE UNION (IMATU)**

Second Respondent

Heard: 13 August 2015

Delivered: 1 September 2015

Summary: LRA s 111(3) – appeal from decision of Registrar of Labour Relations refusing to register new trade union as not being “genuine” trade union. No confusion between MATUSA and IMATU likely. Appeal upheld.

JUDGMENT

STEENKAMP J

Introduction

- [1] The applicant, MATUSA (the Municipal and Allied Trade Union of South Africa) is a breakaway trade union formed by disgruntled former office bearers and members of SAMWU (the South African Municipal Workers' Union), a COSATU¹ affiliate. The Registrar of Labour Relations has refused to register it, saying that it is not a "genuine" trade union. MATUSA appeals against that decision in terms of s 111(3) of the Labour Relations Act.²
- [2] MATUSA has invited the second respondent, IMATU (the Independent Municipal and Allied Trade Union), to join the proceedings. It has accepted the invitation. The reason is that IMATU objected to the registration of MATUSA as, in its view, the similarity in their names may lead to confusion.

Background facts

- [3] It is common cause that MATUSA is a breakaway union formed by disgruntled former office bearers and members of SAMWU intended to organise in the local government sphere. Amongst the reason for their dissatisfaction is what they term the "missing millions" of members' subscriptions that are, according to them, unaccounted for. Whatever the reasons for the formation of an alternative to SAMWU, the new union applied to the registrar to be registered in terms of ss 95 and 96 of the LRA. The registrar refused. His stated reasons were set out as follows:

"The information received by this Office [*sic*] regarding the applicant was considered. The application was perused and found not acceptable for approval.

¹ Congress of South African Trade Unions.

² Act 66 of 1995 (the LRA).

You are accordingly advised that the applicant is not a genuine trade union as envisaged by the [Labour Relations] Act and was established by individuals for their own personal benefit. The applicant failed to satisfy registration requirements of the Act.”

- [4] The second paragraph, it will be immediately apparent, is a *non sequitur*. The word “accordingly” does not refer back to any reasons in the preceding paragraph to show why, in the registrar’s view, the appellant was not a genuine trade union. Nevertheless, those were the reasons that the registrar provided to the appellant.
- [5] Unbeknownst to the appellant, IMATU had also objected to its registration on the grounds that its name may lead to confusion. Although that does not appear to be one of the grounds on which the registrar refused to register MATUSA, it invited IMATU to be joined as second respondent to these proceedings. IMATU accepted the invitation. Its objection will also be considered in this appeal.

The Registrar’s decision

- [6] The only reasons that the registrar gave for his initial decision are those set out in paragraph [3] above. Once MATUSA filed this appeal, the registrar disclosed an internal memorandum from a deputy director in the Department of Labour to the registrar recommending that the registration of MATUSA be refused on the following grounds:

“The applicant is not a genuine trade union as envisaged by the Act and was established by individuals for their own personal benefit. The applicant failed to satisfy registration requirements of the Act.”

- [7] The memorandum considered the following under the heading, “Application of section 95(8) guidelines on genuineness of trade union”:
- 7.1 The applicant was established by disgruntled SAMWU office bearers and officials.
 - 7.2 In terms of the minutes of meetings submitted by the applicant “there was no proper formation of the applicant union”.
 - 7.3 The Department requested the applicant to submit “application forms that have been completed by members and current lists of

membership indicating who the paid-up members of the applicant are". The applicant submitted a list of names and contact numbers "but failed to prove that it has members who are paying membership fees".

7.4 The income and expenditure statement submitted by the applicant was submitted "to further mislead the office of the registrar. The income of the applicant is all from donations and contributions from individuals who are behind the establishment of the applicant. The applicant has no leadership."

7.5 "The applicant union submitted lease agreement [*sic*] but it has failed to proof [*sic*] to this office it is paying rent as has been requested."

7.6 "The applicant is not a trade union as envisaged by the Act. The applicant is not a genuine trade union as envisaged by the Act. It could be safely concluded that individuals are behind the establishment of the applicant."

7.7 The applicant failed to meet registration requirements in terms of s 95(1)(a) regarding the adoption of a name. "The applicant failed to prove that it has members who adopted its name."

[8] It appears that the registrar accepted this recommendation and hence refused to register MATUSA.

Nature of the appeal

[9] Appeals of this nature are governed by s 111(3) of the LRA. That section provides:

"Any person who is aggrieved by a decision of the registrar may appeal to the Labour Court against that decision, within 60 days of –

(a) the date of the registrar's decision; or

(b) if written reasons for the decision are demanded, the date of those reasons."

[10] The Labour Appeal Court has held that an appeal of this nature is a fresh hearing, or an appeal in the wide sense. The Court must decide if the

decision of the registrar was correct. It is not akin to a review.³ And the registrar has no discretion to refuse registration once the requirements of the Act are met.

[11] The Court can, on appeal, also deal with objections that were not taken into account by the registrar at the time. Even if the objection by IMATU did not form part of the registrar's decision, therefore, the Court can still deal with it now that IMATU has been joined.

Is MATUSA a "genuine" trade union?

[12] The Minister of Labour, in consultation with Nedlac, has drawn up guidelines to be applied by the registrar in determining if an applicant for registration is a "genuine" trade union.⁴ The guidelines cannot override the provisions of the LRA but must be applied by the registrar. If he doesn't apply them to the facts, his decision would be incorrect.⁵

[13] The following parts of the guidelines are relevant:

13.1 The registrar must examine the actual operation of the trade union: in the case of an applicant for registration, the manner in which it was formed; and in the case of an existing organisation, its actual activities and functioning.

13.2 It must be an association of employees with the principle purpose to regulate relations between its members and employers.

13.3 The actual process of forming the trade union, its composition, membership and activities must be considered.

13.4 Key aspects of the process of formation include:

13.4.1 the number of founding members who attended the inaugural meeting(s) to establish the trade union and who completed signed registers indicating their names and workplaces;

³ *Staff Association for the Motor & Related Industries v Motor Industry Staff Association & Another* (1999) 20 ILJ 2552 (LAC) para [22] – [24]; *Commercial Staff (Cape) v Minister of Labour* 1946 CPD 643-4; *Tikley & others v Johannes NO* 1963 (2) SA 588 (T). See also *Workers' Union (infra)* para 12.

⁴ LRA s 9(5); GN R1446 in *Government Gazette* 25515 of 10 October 2003.

⁵ *Workers Union of South Arica v Crouse NO* (2005) 26 ILJ 1723 (LC).

- 13.4.2 how the constitution of the union was drafted and adopted;
 - 13.4.3 the election of an executive committee or council of members and the election of office-bearers;
 - 13.4.4 whether the formation of the trade union involved employees associating with one another to establish an organisation to regulate relations with their employer(s).
- 13.5 The following factors may be indicative of the genuineness of the trade union:
- 13.5.1 whether membership is limited to a particular sector;
 - 13.5.2 the size of its membership (although the LRA does not create a membership threshold);
 - 13.5.3 a history of representing its members' interests (in the case of an existing trade union whose membership has declined).
- 13.6 The primary purpose of the trade union must be to regulate relations between employees and employers through collective bargaining.
- 13.7 The failure to seek to obtain organisational rights or recognition is a strong indication that the trade union is not a genuine trade union, as these rights provide the basic platform for representing members' interests.
- 13.8 The fact that a trade union's activities solely, or to a large extent, comprise referring disputes on behalf of its members to the CCMA or the Court is an indication that a trade union is not a genuine trade union.
- 13.9 A trade union may only be registered if it is independent, i.e. not a "sweetheart union".
- 13.10 A trade union must be an association of employees.
- 13.11 In terms of s 95(5)(a) of the LRA a trade union must state in its constitution that it is an association not for gain. The purpose of this requirement is to prevent trade unions from being used as vehicles for enriching individuals or as a cover for profit-making businesses.

Among the factors that may indicate that a trade union is in fact operating for the gain of certain individuals are the following:

13.11.1 Unrealistically high salaries and allowances are paid to the officials, office-bearers or employees of the union.

13.11.2 Interest-free or low interest loans are made to them, and those loans are not repaid.

13.11.3 Family members of office-bearers or officials are employed by the union.

13.11.4 Income earned by the union is not used for the benefit of the organisation and its members but is paid out to officials, office-bearers or employees.

13.12 Usually the major source of revenue for trade unions is a monthly subscription.

[14] The Labour Court considered a refusal to register a new trade union by the registrar who is cited as the first respondent, Mr Johan Crouse, in *Workers' Union of South Africa v Crouse N.O. and Another*.⁶ Murphy AJ⁷ found that the registrar had taken improper considerations into account when doing so. These included the fact that the union had been formed by persons not employed in any capacity other than as union organisers, that these persons were 'profiting' from members' fees, and that the applicant union was formed as a result of dissatisfaction with an existing union. The judgment was overturned on appeal on the narrow procedural ground that the registrar had not given the applicant union an opportunity to comply with the statutory provisions before it appealed. The registrar's decision therefore remained provisional and was not (yet) subject to appeal.⁸ The LAC did not deal with the merits of the registrar's decision and those of the court *a quo's* judgment on that (provisional) decision.

[15] The present case has a number of similarities with that in *Workers' Union*. In that case, the registrar was also not satisfied that the applicant union

⁶ (2005) 26 ILJ 1723 (LC).

⁷ As he then was.

⁸ *Crouse N.O. & another v WUSA* (2008) 29 ILJ 2571 (LAC).

was a genuine trade union because its formation was not initiated, formed and managed by employees in order to regulate their relations with employers and because the applicant union did not function or operate as a trade union, at all, or in accordance with its own constitution at the time that it applied for registration. (As Mr *Stelzner* correctly pointed out, this was essentially because, as in the present case, the trade union first needed to be registered in order for it to organise and to function as a trade union).

[16] In the case before me, MATUSA faced a classic Catch-22.⁹ The registrar did not consider it to be a genuine trade union and therefore refused to register it; but in order to show that it is a genuine trade union by organising workers in local government, signing them up as members, collecting subscriptions, acquiring organisational rights and representing those members' interests, it has to be registered.

[17] As Murphy AJ pointed out in *Workers' Union*:¹⁰

“Given that generally it is unlikely that an unregistered trade union will be in a position to secure organisational rights, at least until it obtains registration, it is rational that an as yet an unregistered union should not be barred from registration on the ground that it is not fully operational in terms of its constitution. In practice such a requirement would be an effective bar to the registration to all new trade unions. Therefore, the refusal to grant registration on this ground cannot be correct.”

[18] The guidelines distinguish between the requirements for applicants for registration – such as MATUSA – and existing trade unions that may face deregistration. Clause 3 provides:

“In order to determine whether an organisation is genuine, it will be necessary for the registrar to examine the actual operation of the organisation. In the case of an applicant, particular attention will have to be paid to the manner in which the organisation was established and formed. In the case of an existing organisation, attention will have to be paid to its

⁹ As described in Joseph Heller's eponymous novel.

¹⁰ *Supra* para 22.

actual activities and functioning. In evaluating whether a trade union ... is genuine, the registrar must take into account all relevant factors.”

- [19] The Labour Court held in *Workers' Union*¹¹ that the distinction is rational given the fact that an unregistered trade union seeking registration is limited as to the activities it can undertake on behalf of its members. And so it is with MATUSA. Given that it is generally unlikely that an unregistered trade union will be able to obtain organisational rights, it is rational that an as yet unregistered union should not be barred from registration on the ground that it is not yet fully operational in terms of its constitution. In *Workers Union* the registrar's refusal to register the applicant union on this ground was held to be incorrect.
- [20] In the case before me it is even more difficult for MATUSA to organise effectively and to strive to obtain organisational rights before it is registered, as collective bargaining and operational rights in the local government sphere is governed by a collective agreement between the employers' organisation and two registered trade unions representing by far the majority of employees, and which had done so for many years, namely SAMWU and IMATU.
- [21] The Labour Court in *Workers' Union* also held that the fact the union was formed by a self-employed and an unemployed person did not justify the refusal to register the union. The Court referred to s 213 of the LRA which provides that a trade union is 'an association of employees whose principle purpose is to regulate relations between employees and employers, including employer organisations'. It held that the fact that non-employees played a central role in the formation of the organisation did not *per se* render it not an association of employees. In that case, the documentary evidence revealed that the union was formed by a group of employees at a general meeting exercising their right to freedom of association. The court held that the fact that assistance was given to the employees who formed the union by former colleagues who are unemployed or self-employed was not a bar to registration. To impose a requirement that associations can only be formed by those who qualify for

¹¹ *Supra* para 21.

membership would be an unnecessarily restrictive limitation upon the freedom of association.

[22] As I debated with counsel during the course of oral argument, the 2002 amendments to the LRA sought to discourage the formation of unions which were no more than disguised labour consultancies registered for the sole purpose of gaining appearance rights at the CCMA, bargaining councils and the Labour Court or those which were registered in order for financial and insurance brokers to market financial or insurance products through them.¹² As was the case in *Workers' Union*, there is no evidence in the case before me that supports any claim that the appellant is involved in any of the activities referred to in the explanatory memorandum.

[23] The registrar in *Workers' Union* also assigned to himself the authority and power of halting the proliferation of trade unions in general. He disapproved of the formation of a new union as a result of dissatisfaction by employees with their existing union. Although that is not pertinently stated as a reason in the present appeal, it does appear that the registrar took into account the fact that MATUSA was formed by disgruntled former office bearers of SAMWU. But in *Workers' Union*, the court held that this was also a misdirection resulting in the misapplication of the registrar's authority. Sections 95 and 96 make it clear that the registrar no longer enjoys a majoritarian gatekeeper role at the registration stage. The right to freedom of association must be interpreted generously and requirement of registration, insofar as they restrict that right, should be interpreted restrictively. The same considerations apply in the appeal before me.

[24] None of the parties referred to the recent judgment of this Court in *SASEGWU v Registrar of Labour Relations*.¹³ In that judgment, Molahlehi J considered an application in which, inexplicably, the applicant union – the South African Security and General Workers Union (SASEGWU) –

¹² Explanatory Memorandum to the Labour Relations Amendment Bill, 2000 (*Government Gazette* 27 July 2000); *Workers' Union (supra)* para 26; *National Entitled Workers' Union v Ministry of Labour* (2011) 32 ILJ 1372 para [10]; *Registrar of Labour Relations v CAESAR* (2015) 36 ILJ 182 (LAC) para [27].

¹³ [2015] ZALCJHB 187 (25 June 2015).

brought an application in terms of s 158(1)(a)(iii) to review and set aside the decision of the registrar refusing to register it, rather than appealing in terms of section 111(3). The court refused the application after taking into account the following factors that were considered by the registrar:

24.1 The meeting founding the applicant union took a resolution to appoint an interim leadership which had no basis in the union's own constitution. This effectively meant that no leadership was elected for the applicant since the constitution does not provide for interim leadership.

24.2 The constitution was not adopted by the members of the applicant.

24.3 There was no election conducted of the office bearers by the general membership of the applicant. There was also no adoption of the constitution or the name.

24.4 The applicant union failed to provide its bank statements for three months despite a request by the registrar to do so.

24.5 Despite an allegation by the union that members pay subscriptions and that receipts had been issued consequent thereto, it failed to produce proof when requested to do so by the registrar.

[25] In the case before me, on the other hand, I cannot agree with the registrar that MATUSA is not a genuine trade union. On the facts now before the Court, as amplified by the parties' affidavits, the following factors point to it being a genuine trade union.

25.1 The manner in which the union was formed is spelt out in detail and is not seriously in dispute: disaffected former SAMWU office bearers met, resolved to form the union, formally adopted a constitution and have since then engaged in various union activities and started functioning as a union. They adopted the name "MATUSA" at a meeting on 17 December 2014 in Paarl, where an interim leadership was also elected.

25.2 The reason why MATUSA has not yet insisted on members paying subscriptions to it prior to registration, is that SAMWU and IMATU have an agency shop agreement with the employer in local

government compelling employees in that sector to pay membership dues to one of the recognised unions. That leads, once again, to the classic Catch-22: the registrar expects of would-be MATUSA members to sign up and pay subscriptions to it, but the new union can do nothing for them before it is registered and recognised; and in the meantime, they are also compelled to pay over membership dues through an agency shop agreement to either SAMWU or IMATU. For workers who do not earn a lot of money, paying dual membership fees due to trade unions when they only wish to join one of them must be a serious consideration. As the members present at the meeting of 14 February 2015 in Worcester noted:

“We find ourselves in a very peculiar position. We cannot recruit and ask our members to resign from their union which would ultimately expose them in not being represented in the workplace and even in the Bargaining Council.

The other issue is the payment of subscriptions. In discussions with some employers they will not deduct while we are not a registered union. We cannot have a situation where members must pay double deductions. We are governed by an Agency Shop Agreement which sets a threshold in the sector. We need to meet that threshold before deductions can be made in favour of MATUSA.”

25.3 In terms of its constitution, the union’s principal purpose is to regulate relations between employees and employers in the local government sector.

25.4 It is an association of employees. It has submitted the names and application forms for membership of a number of would-be employees. Some 600 membership forms have been completed. Of course, the union would only be in a position to organise more effectively and embark on a recruitment drive once it is registered.

25.5 An executive committee and office-bearers have been elected.

25.6 The new union’s activities are not solely, nor to a large extent, that of referring disputes and cases on behalf of its members to the CCMA, the South African Local Government Bargaining Council, this court or

other courts, although one of its purposes is to represent its members in disciplinary hearings.

25.7 MATUSA is not under the control of any employer or employers' organisation and is free of interference or influence of any kind. It is intended to operate in competition with SAMWU.

25.8 The new union operates from its own premises and is in the process of establishing branches in the Western Cape, Johannesburg and Durban. It will move its offices to more centrally located premises which are more readily within reach of members as soon as it obtains registration.

25.9 The union is not intended to be used as a vehicle for enriching individuals or as a cover for a profit-making business. The reimbursement of expenses for those travelling to and attending meetings is reasonable. No high salaries or allowances are paid to the officials, office bearers or employees of the trade union. It operated own bank account and can vouch for all flows of money through this account.

25.10 It has appointed a firm of accountants and has its own email and domain addresses (under MATUSA) and its own telephone number.

[26] The memorandum from the deputy director on which the registrar's decision was based contains a number of factual errors. It is not correct that MATUSA does not have any members; nor that it had been asked to submit application forms for members (in fact, it was asked for "the current list reflecting paid-up membership"); nor that it does not have any leadership; nor that the meetings that were held to discuss the formation of a new trade union were in fact SAMWU meetings.

[27] It is so that most of those members of the appellant who attended the various meetings which resulted in its formation and the adoption of its constitution at the meeting of 7 December 2014 were former office bearers of SAMWU. Their intention in forming a new trade union, though, was to further the interests of SAMWU members who have lost faith in that union. That does not suggest that MATUSA is not a genuine trade union.

[28] On balance, and taking into account all these factors at the hand of the guidelines published under section 95 (8), I am persuaded that the appellant is a genuine trade union and that the registrar's decision to the contrary, apparently based on the memorandum from the deputy director, was mistaken.

[29] The appeal on this aspect, i.e. whether the appellant is a genuine trade union, must succeed. Once it is registered, it will become clear whether it is able to organise and recruit successfully or not.

The objection by IMATU

[30] The registrar did not mention the objection by IMATU as a reason for the refusal to register MATUSA initially. However, he did rely on it in his answering affidavit filed in this appeal.

[31] In terms of section 95 of the LRA, registration should be refused if either the full name or the acronym of the applicant union is so similar to that of another union that confusion could be created. Section 95 (1) provides that any trade union may apply for registration if it has adopted a name that does not closely resemble the name or shortened form of the name of another trade union. In this case, IMATU objects that the name "Municipal and Allied Trade Union of South Africa" closely resembles "Independent Municipal and Allied Trade Union"; and that the acronym MATUSA so closely resembles IMATU that it may lead to confusion or mislead would-be members.

Onus

[32] As Mr *Morley* SC pointed out, in the analogous trade mark environment, the onus is on the applicant for registration to satisfy the Registrar (of trade marks) that there is no reasonable probability of confusion or deception.¹⁴

[33] It does not seem to me, though, that similar considerations apply in this case. IMATU has objected to the registration of MATUSA on the basis that

¹⁴ *The Upjohn Company v Merck* 1987 (3) SA 221 (T).

its name may lead to confusion. It seems to me that the onus rests on IMATU to show why that is so, and thus why the Registrar (of trade unions) should refuse to register MATUSA on this basis.

Would the name and acronym lead to confusion?

[34] In the *SAMRI* case¹⁵ the Labour Appeal Court considered the meaning of section 95 (4) of the LRA and stated that the Act sought to prevent the registration of a name that so resembles that of another trade union that there is “a reasonable likelihood that the one union may be confused for the other”. Section 95 (4) reads:

“Any trade union or employers’ organisation that intends to register may not have a name or shortened form of the name that so closely resembles the name or shortened form of the name of another trade union or employers’ organisation that it is likely to mislead or cause confusion.”

[35] In that case, Ngcobo AJP¹⁶ referred to the analogous test in s 44(1)(a) of the Trade Marks Act 62 of 1963, which has subsequently been repealed by the Trade Marks Act 194 of 1993. That section provided that rights acquired by registration of a trade mark are infringed by:

“(a) Unauthorised use as a trade mark in relation to goods ... in respect of which the trade mark is registered, if the mark so nearly resembling it as to be likely to deceive or cause confusion”.

[36] In that context, the test was set out as follows in *Plascon-Evans Paints Ltd v Van Riebeeck Paints*¹⁷:

“In an infringement action the onus is on the plaintiff to show the probability or likelihood of deception or confusion. It is not incumbent upon the plaintiff to show that every person interested or concerned (usually as customer) in the class of goods for which his trade mark has been registered would probably be deceived or confused. It is sufficient if the probabilities establish that a substantial number of such persons will be deceived or confused. The concept of deception or confusion is not limited to inducing

¹⁵ *Staff Association for the Motor & Related Industries v Motor Industry Staff Association & another* (1999) 20 ILJ 2552 (LAC).

¹⁶ As he then was.

¹⁷ 1984 (3) SA 623 (A) 640G – 640E.

in the minds of interested persons the erroneous belief or impression that the goods in relation to which the defendant's mark is used are the goods of the proprietor of the registered mark, i.e. the plaintiff, or that there is a material connection between the defendant's goods and the proprietor of the registered mark; it is enough for the plaintiff to show that a substantial number of persons will probably be confused as to the origin of the goods or the existence or non-existence of such a connection.”

[37] More recently, in *Adidas AG v Pepkor Retail Ltd*¹⁸, the Supreme Court of Appeal noted:

“It must be borne in mind that the question of the likelihood of confusion or deception is a matter of first impression and that ‘one should not peer too closely at the registered mark and the alleged infringement to find similarities or differences’. The court must not consider the question of deception or confusion as if the purchaser of the goods will have had the opportunity of carefully considering the marks and even comparing them side by side. They must look at the marks as they will be seen in the marketplace and take into account a notional purchaser: ‘a person of average intelligence, and proper eyesight, buying with ordinary caution’”.

[38] The LAC in the *SAMRI* case held that the name *Staff Association of the Motor and Related Industries* so closely resembled the name *Motor Industry Staff Association* that it was likely to mislead or cause confusion. Does the same apply in this case?

[39] In order to decide this question, it seems to me that the court has to consider, especially, the position of employees in local government as the notional or would-be members of the two trade unions. The existing trade unions in that sphere – SAMWU and IMATU – are well established and have enjoyed collective bargaining rights for many years. Their respective memberships are very evenly poised. Workers in local government are well aware of the two unions and who they represent. It seems to me most unlikely that those employees would confuse the acronym MATUSA for the acronym IMATU.

¹⁸ [2013] ZASCA 3 (28 February 2013) para [22].

[40] Not only is the history, context and notorious nature of the established unions important; the very pronunciation of the acronyms “IMA’TU” and “MATU’SA” are so different as to be unlikely to cause any confusion.

[41] When one considers the full names of the two trade unions, the difference is even more apparent. In the case of the Independent Municipal and Allied Trade Union, the prefix “Independent” is an important signifier. It stems from a history where SAMWU was affiliated to COSATU and IMATU distinguished itself by being independent of any affiliation. On the other hand, the Municipal and Allied Trade Union of South Africa contains no such signifier. The words “Allied Trade Union of South Africa” are generic and appear in the names of many other trade unions. For example, from the list of registered trade unions in South Africa, it appears that 51 have the word “allied” in their name; 43 have the clause “allied workers”; 59 contain “South Africa” or “South African”; 130 have the word “union”; 59 have the clause “workers’ union”; and only two contain the word “independent”, of which IMATU is one and the appellant is not the other. And the words “Municipal” and “trade union” are merely descriptive.¹⁹

[42] MATUSA’s logo – a clenched fist in a circle below the union’s name in the revolutionary colours of red, yellow and black – is also entirely different to that of IMATU. The latter consists of the acronym ‘IMATU’ in blue, and above that four figurines in blue, yellow, green and red. There is no similarity or likelihood of confusion between the two.

Conclusion

[43] Having regard to all the factors outlined above, I’m satisfied that MATUSA is a genuine trade union and that its name or acronym will not mislead or cause confusion when compared to that of IMATU. The appeal against the registrar’s refusal to register MATUSA must succeed.

¹⁹ Cf *African Market Agency v Union Market Agency* 1926 CPD 245 at 247 [per Benjamin J]; *Office Cleaning Services Ltd v Westminster Office Cleaning Association* 1944 All ER 269 (CA).

Costs

[44] The applicant has had to approach this Court in terms of s 111(3) to vindicate its rights. It was not unreasonable for the registrar to defend his decision; and in refusing to register the appellant, he did not act *mala fide*. As between MATUSA and IMATU, the latter joined the proceedings at the invitation of the former. Both trade unions had to get certainty about the certification of a new entrant to the local government bargaining table. They will have to work together in that forum, albeit in competition for members. I do not consider a costs order to be appropriate in law or fairness.²⁰

Order

[45] I therefore grant the following order:

45.1 The appeal in terms of section 111 (3) of the Labour Relations Act is upheld.

45.2 The decision of the registrar (the first respondent) refusing to register the appellant (MATUSA) is set aside.

45.3 The registrar is ordered to register MATUSA as a trade union in terms of section 96 of the Labour Relations Act and to issue a certificate of registration in its name within 14 days of this order.

A J Steenkamp
Judge of the Labour Court of South Africa

²⁰ In terms of s 162 of the LRA.

APPEARANCES

R G L Stelzner SC

APPLICANT: Instructed by Hannes Pretorius, Bock & Bryant,
Somerset West.

FIRST RESPONDENT: N Mangcu-Lockwood and B Mthamzeli
Instructed by the State Attorney, Cape Town.

SECOND RESPONDENT: G E Morley SC
Instructed by Savage Jooste & Adams, Pretoria.

LABOUR COURT