



Of interest to other judges

**THE LABOUR COURT OF SOUTH AFRICA  
HELD AT PORT ELIZABETH**

**Case no: P421/2015**

In the matter between:

**NKONKOBE LOCAL MUNICIPALITY**

**First Applicant**

and

**SOUTH AFRICAN MUNICIPAL  
WORKERS UNION**

**First Respondent**

**INDEPENDENT MUNICIPAL AND  
ALLIED TRADE UNION**

**Second Respondent**

**THE INDIVIDUALS LISTED IN  
ANNEXURE "A" TO THE NOTICE OF  
MOTION**

**Third Respondent**

**Heard:** 12 February 2016

**Delivered:** 05 April 2016

**Summary:** (Interdict – unprotected strike and other misconduct – opposition vexatious and frivolous – costs – enforcement of court orders by SAPS)

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**JUDGMENT**

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LAGRANGE J

Introduction

- [1] In December last year, an interim order was granted prohibiting the individual members of the two unions from participating in certain unprotected strike action and acts of intimidation, harassment, assault or unlawful interference with other employees, persons connected with the municipality's operations. The only portion of the order directly concerning the union required it to communicate to their members their obligation to stop their participation in unprotected strike action and unlawful conduct and to take reasonable steps to ensure their members complied with the interdict. The interim order was extended pending the handing down of a final order in this matter.
- [2] An answering affidavit was deposed to by the provincial secretary of the first respondent, SAMWU, before the return day and the applicant filed a replying affidavit. IMATU did not oppose the relief sought. The answering affidavit appeared to have been filed solely on behalf of the office bearers of the union. Before addressing the factual averments in the founding affidavit, SAMWU raised a number of issues contesting the appropriateness of the type of relief granted. In the answering affidavit, the union raised *in limine* objections, *inter-alia*, to the precision of the pleadings, whether the founding affidavit described a cause of action and the lack of necessity of authorising the South African Police Services to enforce the order if it was not complied with.
- [3] I do not intend to repeat the factual averments in the founding affidavit save to state that they contained sufficient detail to lay a proper basis for the conclusion that the individual respondents had embarked on unprotected strike action and that the strike action was accompanied by other acts of misconduct some of which were criminal in nature. There was also sufficient detail for anyone who wished to contradict what was stated in the founding affidavit to know what they had to respond to. It is true that the South Africa Police Services do not require this court's authority to address criminal acts, but it is not true they cannot be required to assist in

the enforcement of civil court orders.<sup>1</sup> In the circumstances, it was not inappropriate to affirm their authority to enforce the order, which was broader than merely curtailing criminal conduct.

- [4] In dealing with the portion of the interim order compelling the union to take certain steps, SAMWU disputes the necessity of such relief in the following terms:

“Again prayer number 2.4 on the same interim order this prayer need also not to be enforced by court as it is implemented on daily basis on meetings, workshops, and Congress that members must not engage with unprotected strikes and as the South African municipal workers union we have got our own code of conduct and ethics as a union wearing the union must be presumed to exercise its autonomy as the organised labour any interference by any tribunal will be unconstitutional see section 23(4)(a) of the South African Constitution act 108/1996 that every trade union has a right to determine the its own administration programs and activities so in the circumstance all these prayers are imperative outside the ambience of law and need this application to be dismissed with costs “

(sic)

- [5] Having attacked the validity of the form of relief granted on an interim basis on this and other grounds, which I do not do need to address, the deponent purports to address the factual averments of the applicant. Most of his response consists of bald denials and sweeping contemptuous rejections of the averments in the founding affidavit, without providing any contrary factual details. In the replying affidavit of the applicant, deposed to by the acting municipal manager of the local authority, the ability of the provincial secretary to depose to any of the factual averments based on his personal knowledge is directly challenged. The applicant acknowledges that in the affidavit, the provincial secretary admitted to placing some reliance on “external sources”, which he never identified, but points out that the provincial secretary is based in Port Elizabeth and did

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<sup>1</sup> **Modderfontein Squatters, Greater Benoni City Council v Modderklip Boerdery (Pty) Ltd (Agri SA And Legal Resources Centre, Amici Curiae); President of The Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd (Agri SA And Legal Resources Centre, Amici Curiae) 2004 (6) SA 40 (SCA)** at 48, para [6].

not participate in any of the meetings referred to in the founding affidavit nor was he present at any of the events described in the founding affidavit.

- [6] What is also glaringly absent from the answering affidavit is any evidence that SAMWU complied with paragraph 2.4 of the interim order. In other words, the union appears to have adopted the view that it did not even need to explain to the court if it has complied with the provisions of that part of the order which related to it. Those obligations were supposed to have been performed once the interim order was issued. Judging from the objection to the nature of that relief, it seems the union adopted the view that the court was merely a tribunal which had no right to tell it what to do when it came to matters regarding its internal communications to members.
- [7] Thus, the union is approaching the court to discharge the interim ruling at least in part on the basis that the court had no power to order the union to communicate to its members that they should stop participating in unprotected action and unlawful conduct or to order it to take reasonable steps to ensure its members did comply. In opposing final relief, SAMWU neglects to show that it had nonetheless complied with the interim order in so far as its obligations were concerned. On the face of it, the union's response coupled with a failure to account for its actions in relation to paragraph 2.4 of the order strongly suggests disdain for the court's authority.
- [8] What is even more surprising is that the union was assisted by an attorney who ought to have known better than to contest the authority of the court to order the kind of relief set out in paragraph 2.4 of the order on the spurious basis that it did.
- [9] As to the merits of granting a final order, the bald denials of the provincial secretary to events he had no personal knowledge of and in the absence of any confirmatory affidavits by anyone who could attest otherwise means that the union has not set up any factual basis why the court should come to a different conclusion than the court did in granting the interim order in relation to the unprotected nature of the strike and the occurrence of other unlawful conduct by the individual respondents. In passing, I note that

nowhere in the answering affidavit does the deponent say that SAMWU is opposing a final order both in its own right and on behalf of the individual respondents.

[10] The applicant in reply notes that the underlying dispute which concerned a demand for payment of workers who embarked on a previous strike for the time they were on strike has still not been resolved and has a concern that if the order is discharged, the unlawful strike action and related misconduct might recur. Under these circumstances and given the nature of the union's response, it is appropriate to confirm the rule.

[11] On the question of costs, the union's opposition was without merit and its response on the facts did not even rely on anyone with personal knowledge of the events in question. There was ample time between the interim order being granted and filing the answering affidavit for the union to have obtained someone with first-hand knowledge of events to depose to them. In the circumstances, the union's opposition was frivolous and vexatious and an appropriate cost order should be made.

Order

[12] The rule issued on 17 December 2015 by Whicher J, is confirmed.

[13] The first respondent must pay the applicant's costs on an attorney own client scale.



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**Lagrange J**

**Judge of the Labour Court of South Africa**

**APPEARANCES**

APPLICANT: F Le Roux instructed by H Skosana – Le  
Roux Inc.

FIRST RESPONDENT: H N Mkhongozeli of HN Mkhongozeli  
Attorneys.

LABOUR COURT