Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA,

HELD AT JOHANNESBURG

Case no: J 1524/17

In the matter between:

SOUTH AFRICAN CHEMICAL WORKERS' UNION ('SACWU')	**First Applicant**
MOSEHLE PETRUS MAMPHO	**Second Applicant**
and	
THOMAS TUMEDISO MODISE	**Respondent**

Heard: 06 July 2017

Delivered: 07 July 2017

Summary: (Urgent – to interdict the union's general secretary from convening a purported meeting of the union – labour court jurisdiction under s 158(1)(e)(i) – confined to disputes about the interpretation and application of the constitution between union members and a union – does not extend to a dispute between the union and an office bearer who is not a member)

JUDGMENT

LAGRANGE J

Introduction

[1] This is an urgent application interdict brought by the President of the applicant in his own right and on behalf of the first applicant ('SACWU') as authorised by a resolution of the National Executive Committee of the union.

[2] The applicants seek to stop the respondent, who currently holds the position of general secretary of the union proceeding to convene a so-called "One Day reporting National Congress" on Saturday, 8 July 2017. They also seek to act in to act on behalf of the union in convening meetings or taking any decisions in contravention of the union's Constitution, and various other ancillary relief.

[3] At the start of the proceedings, the court *mero motu* raised a concern about its jurisdiction to entertain the application on the basis that the court's jurisdiction to intervene in intra-union disputes is founded on section 158 (1) (e) (i) of the Labour Relations Act, 66 of 1995 (' the LRA'), which states:

> (1) The Labour Court may-
>
> ...
>
> (e) determine a dispute between a registered trade union or registered employers' organisation, and any one of the members or applicants for membership thereof, about any alleged non-compliance with-
>
> (i) the constitution of that trade union or employers' organisation (as the case may be);..."

(emphasis added)

[4] Initially, it was argued that the respondent as an office bearer of the union and as the office bearer as the general secretary of the union that was also a member of the union by virtue of being part of the executive Council under clause 10.1.1, and a member of the "National Office Bearers" which is defined to be a substructure of the National Executive Council under clause 10.3.1 of the Constitution. However, applicant's counsel rightly conceded that membership of such structures of the union was not the same as being a member of the union itself. The notion of union

membership in s 158(1)(e) is clearly the more fundamental one of being a member of a union by virtue of applying and being admitted as one. The reference in that section to 'applicants for membership' is irreconcilable with a concept of membership based only on being a participant in a substructure of the union.

[5] It was then suggested that the general secretary might in fact be a member in the ordinary sense meant in that subsection, but the applicants were unable to produce any evidence of the respondent's union membership after the court stood the application down for a couple of hours to give them an opportunity to adduce some evidence to that effect.

[6] *Ms Lottering*, who appeared for the applicants, then advanced an ingenious alternative argument. Instead of focusing on the membership status of the general secretary, she inverted the issue by relying on the membership status of the President, which she contended could be inferred from the fact that in terms of the Constitution, the President must be a union member. It was argued that the dispute over the interpretation and application of the Constitution between the applicants and the respondent should be construed as a dispute between the President (a union member) as the second applicant and the respondent, who purported to be acting as a representative of the union. In other words, the respondent now assumed the mantle of the union party to the dispute with the member being the President, by virtue of the respondent purporting to be acting for the union in convening the meeting which the applicants sought to prevent.

[7] The fundamental difficulty with this reconfiguration of who supposedly represents the respective union and member parties to the dispute for the purposes of s 158(1)(e) is that, the President himself brings the application jointly with the union against the respondent and attaches a resolution of the union's NEC authorising him to initiate and prosecute the application in its name. The President cannot on the one hand assert the union's status as a co-applicant in dispute with the respondent, while on the other hand claiming that the union party to the dispute is in fact the respondent because of his purported representative capacity.

[8] The respondent also argued that the President had not in fact been eligible for election at the union's last National Congress by virtue of not being employed in any of the industrial sectors in which a SACTWU member must be employed, and that consequently, he did not claim to be the "union member" party to a dispute under the subsection. That claim is not properly substantiated on the papers, but in any event is not necessary to decide on this occasion.

[9] In the circumstances, I am not satisfied that the applicant has made out a case that the dispute falls within the ambit of 158(1)(e) which circumscribes the Labour Court's jurisdiction to intervene in intra-union disputes. It may be somewhat anomalous that the legislature did not deem it fit to extend this court's jurisdiction to deal with all intra-union disputes including disputes between any interested parties with *locus standi* to enforce the provisions of a union constitution vis-à-vis other parties, but the mere existence of an anomaly does not entitle the court to effectively amend the LRA just because it makes sense for a specialist court of this nature to be able to deal with all such internal constitutional disputes of unions or employer organisations.

[10] The applicants are still at liberty to use the common law remedies available to enforce the provisions of the union's Constitution to nullify any unlawfully constituted meeting and set aside any decisions taken at it.

[11] On the question of costs, I am satisfied that considerations of fairness dictate that applicants should not bear the respondent's costs because the outcome of the application was decided not on the merits of the application, but simply on a jurisdictional point, which neither party was aware of prior to the hearing.

Order

[12] The application is dismissed for lack of jurisdiction.

[13] No order is made as to costs.

Lagrange J

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANTS:	U Lottering instructed by De Korte Du Plessis Inc
RESPONDENT:	L A Musi instructed by Mabuza Attorneys