IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG CASE NO: J1809/10

In the matter between:

SONQOBA SECURITY SERVICES MP (PTY) LTD Applicant

and

MOTOR TRANSPORT WORKERS UNION Respondent

REASONS FOR ORDER MADE

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1. On 8 September 2010 after I had heard an urgent application, I dismissed the application and said to the parties that I would provide reasons for the order that I have made. These are my reasons.

2. The applicant is Sonqoba Security Services MP (PTY) Ltd and is based in Nelspruit. It provides security services to the Empilweni Payout Services (Pty) Ltd (EPS) which in turn has an agreement with the South African Social Security Agency (SASSA), to facilitate pension payouts on its behalf. The Essential Services Committee (ESC) by notice in the Government Gazette on 12 September 1997, declared the payment of social pensions, one month after they fall due, to be an essential service.

3. During October 2008, the applicant referred a demarcation dispute to the CCMA contending that it falls under the Private Security Industry Regulating Authority rather than the National Bargaining Council for the Road Freight Industry. A commissioner of the CCMA ruled on 29 June 2009 that the applicant falls under the jurisdiction of the National Bargaining Council for the Road Freight Industry. The applicant has launched an

application to review the said decision.

4. On 29 March 2010, the applicant referred a dispute to the ESC, seeking an order that the sole function of which is to provide the security services mentioned above, be declared a provider of essential services. The ESC on 12 August 2010 notified the applicant that its application of 29 March 2010 did not contain sufficient facts to support the relief sought. An agreement was reached that the applicant would file its statement of claim by 3 September 2010 which it did.

5. The respondent referred a dispute concerning matters of mutual interest to the CCMA for conciliation. The 30-day period was extended. On 30 August 2010 the conciliating commissioner issued a certificate of outcome that the dispute remained unresolved. The respondent on 5 September 2010 gave the applicant written notice that its members were going to embark on strike action from 8 September 2010. The demands are a wage adjustment from R2 300.00 to R6 500.00 and back payment to members in terms of the annual increase date.

6. The applicant brought this application on 7 September 2010. It had initially set the matter down for a hearing at 14h00 and this time was changed at the insistence of the registrar to 12h30. The respondent was not informed that the matter was going to be heard at 12h30 and did not appear. Judgment was reserved until 8 September 2010. This court was notified at 14h00 that the respondent's union official was in Court. He was allowed to file his opposing papers and the applicant was informed that the Court would hear arguments de novo on 8 September 2010. This duly happened.

7. The applicant has clearly not complied with the provisions of section 68(2) of the Labour Relations Act 66 of 1995 (the LRA) in that it has not given the respondent 48 hours notice of the application. The applicant has not applied for condonation for non compliance with the provisions of section 68(2). The application stands to be dismissed for another reason namely that no proper case has been made out for the relief sought.

8. It is trite that the requirements for temporary or interim relief are:

8.1 The right which is the subject matter of the main action which it seeks to protect by means of interim relief is clear or, if not clear, is *prima facie* established, though open to some doubt.

8.2 If the right is only *prima facie* established, there is a well grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and it ultimately succeeds in establishing it's right;

8.3 The balance of convenience favours the granting of interim relief

8.4 The applicant has no other satisfactory remedy.

9. It is trite that an applicant must make out its case in its founding papers. The applicant has set out in paragraph 20 of the founding affidavit the following:

"20 *This is, in effect, an application for interim relief. In the circumstances, I am advised that I must explain to this Honourable court why the balance of*

convenience favours the company and why irreparable harm will be suffered if this application is not granted:

20.1 The company performs a service which is vital to the health and welfare of the people of Mpumalanga. If this application is not granted, the consequence will be that the employees of the company will go on strike and the payment of social services will be halted.

20.2 It was explained in the statement of claim attached to this application that the payment of social grants begins on the first day of each month and that the cycle is usually complete by the 15th or 16th of each month. As a matter of fact, the cycle has, as usual, already commenced and is about 30 percent of the way through. In other words, 70 percent of the recipients of the social grants in Mpumalanga have yet to receive them and will continue to do so for the next week or so. If this application is not granted, those people will not receive their payments until next month at the earliest. This is because EPS uses the period from around the 16th of each month until the end of the month attending to the administration of the payment system. If the strike lasts longer than a couple of weeks, the payment of social grants beyond October could also be in jeopardy.

20.3 It is important to emphasise that the people whom the company and EPS service are the indigent residents of Mpumalanga. The overwhelming majority of them are wholly or almost wholly reliant on social grants to survive. If the strike is not interdicted, it will have disastrous and irreparable consequences for the indigent people of Mpumalanga, many of whom simply will be unable to survive, if their grants are not paid on

time.

20.4 On the other hand, if this application is not granted the MTWU will suffer minimal prejudice. The disputes between the company and MTWU, both on demarcation and on the question whether the services rendered by the company constitute essential services, have been going on for some time. Indeed, the MTWU is a participant in the process before the ESC and is scheduled to file its response to the company's statement of claim in the next couple of weeks. Furthermore, there have been negotiations between the company and some of the other companies in the EPS stable on the issue of wages for some time. There is no particular reason why the MTWU's workers must go on strike now, before the dispute in the ESC has been resolved. In these circumstances, it is submitted that the balance of convenience strongly favours the company.

10. The applicant has not addressed the issue of *prima facie* right in its founding affidavit. This is fatal to the applicant's case. The applicant's representative argued that the applicant has a *prima facie* right. I do not agree. Even if it could be argued that the applicant has a *prima facie* right, the respondent's members have a constitutional right to embark on strike action. They have complied with the provisions of section 64 of the LRA and none of the limitations set out in section 65 of the LRA apply to them. The parties have been in dispute about wages since 2006. The dispute could not be resolved due to a host of reasons including a demarcation dispute between the parties. The applicant was given more than 48 hours notice of the strike action. More importantly,the respondent's members are not engaged in essential services. The service rendered by the

applicant has not been declared an essential services in terms of section 71 of the LRA. There is an application pending before the Essential Service Committee. It would be inappropriate for this Court to make any pronouncements about the merits of the application pending before the Essential Services Committee.

11. There is simply nothing before this Court that should prompt this Court to grant interim relief pending the outcome of the application before the ESC. The applicant has been rendering services to the EPS since 2003. It is not clear why no such a referral was made to the ESC soon thereafter. The employees have a right to strike. The referral to the ESC does not limit the employees right to strike. The applicant has not made out a case for the relief that it is seeking.

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12. It was for these reasons that I made the order referred to in paragraph 1 above.

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FRANCIS J

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

FOR THE APPLICANT	:	A FRIEDMAN INSTRUCTED BY MATSANE ATTORNEYS INC
FOR THE RESPONDENT	:	MR NKADIMENG - UNION OFFICIAL
DATE OF HEARING:		7 & 8 SEPTEMBER 2010
DATE OF ORDER	:	8 SEPTEMBER 2010
DATE OF REASONS	:	10 SEPTEMBER 2010