IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Reportable

Case No: C 671/18

In the matter between:

MUNICIPAL AND ALLIED TRADE WORKERS UNION OF SOUTH AFRICA	**Applicant**
and	
CENTRAL KAROO DISTRICT MUNICIPALITY	**First Respondent**
PRINCE ALBERT MUNICIPALITY	**Second Respondent**
KANNALAND MUNICIPALITY	**Third Respondent**
CAPE AGULHAS MUNICIPALITY	**Fourth Respondent**
SALDANHA MUNICIPALITY	**Fifth Respondent**
SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION	**Sixth Respondent**
INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION	**Seventh Respondent**
SOUTH AFRICAN MUNICIPAL WORKERS UNION	**Eighth Respondent**

Heard: **19 October 2018**
Delivered: **06 November 2018**

JUDGMENT

TLHOTLHALEMAJE, J

Introduction and background:

[1] Central to this application is the controversy surrounding whether members of a minority union that enjoys certain organisational rights at a workplace should continue paying an agency fee in accordance with a collective agreement entered into between the employer and majority unions, over and above their normal subscription fees payable to their own trade union.

[2] The application initially framed in two parts came before Whitcher J on 28 August 2018 on an urgent basis. In Part A (which has since been abandoned), the applicant (MATUSA) sought interim relief, pending the determination in Part B, to interdict the 1st to 5th respondents from enforcing a double deduction on the salary of its members in circumstances where it had obtained organisational rights in terms of section 13[1] of the read with section 21 and 25[2] of the Labour Relations Act (LRA)[3]. MATUSA has also since abandoned all constitutional challenges raised in its application.

[3] The proceedings were postponed on 28 August 2018 for the determination of only prayers 6 and 7 of Part B, with an order that MATUSA should pay to the 7th respondent, wasted costs of the day. In prayers 6 and 7 of Part B in the Notice of Motion, MATUSA seeks;

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[1] **Deduction of trade union subscriptions or levies**

(1) Any employee who is a member of a representative trade union may authorise the employer in writing to deduct subscriptions or levies payable to that trade union from the employee's wages.

(2) An employer who receives an authorisation in terms of subsection (1) must begin making the authorised deduction as soon as possible and must remit the amount deducted to the representative trade union by not later than the 15th day of the month first following the date each deduction was made.

(3) An employee may revoke an authorisation given in terms of subsection (1) by giving the employer and the representative trade union one month's written notice or, if the employee works in the public service, three months' written notice.

(4) An employer who receives a notice in terms of subsection (3) must continue to make the authorised deduction until the notice period has expired and then must stop making the deduction.

(5) With each monthly remittance, the employer must give the representative trade union-

(a) a list of the names of every member from whose wages the employer has made the deductions that are included in the remittance;

(b) details of the amounts deducted and remitted and the period to which the deductions relate; and

(c) a copy of every notice of revocation in terms of subsection (3).

[2] **25. Agency shop agreements**

(1) A representative *trade union* and an employer or *employers' organisation* may conclude a *collective agreement*, to be known as an agency shop agreement, requiring the employer to deduct an agreed agency fee from the wages of *employees* identified in the agreement who are not members of the *trade union* but are eligible for membership thereof.

[3] Act 66 of 1995 (as amended)

"…

6. An order declaring that the first to fifth respondents are not entitled to impose a double deduction (*i.e.* a union subscription fee as well as an agency shop fee) on the salary of an employee where that employee is a member of the applicant and the applicant has obtained the organisational rights in terms of section 13 of the LRA read together with section 21(8C) of the LRA.

7. Ordering the first to fifth respondent to reimburse the members of the applicant with the double deductions to which the first to fifth respondents were not entitled."

[4] Only the seventh respondent, the Independent Municipal Workers Union (IMATU), and the eighth respondent, the South African Municipal Workers Union (SAMWU) opposed the application. The urgency of the matter and the jurisdiction of the court is not disputed.

[5] The background facts to this dispute are fairly common cause. In summary, SAMWU, IMATU and SALGA are the founding parties to the South African Local Government Bargaining Council (SALGBC). The scope of registration is the local government undertaking in the whole Republic, covering all 257 local municipalities with a combined workforce of 250 000 employees. SAMWU has the largest membership of 140 000 or 56%, and IMATU has some 90 000 or 36%. The rest of the employees are either non-union members, or are members of minority unions such as MATUSA and DEMAWUSA, who have or are attempting to gain entry into the sector.

[6] On 25 August 2015, SAMWU, IMATU and SALGA adopted the Main Collective Agreement which granted bargaining, organisational and other rights to the unions on condition that a specific membership threshold was met[4]. The agreement remains in force until June 2020. IMATU and SAMWU

[4] **ORGANISATIONAL RIGHTS**
11.1 **THRESHOLD OF REPRESENTATIVENESS**
11.1.1 The *parties* to the *Council* establish, in respect of the rights referred to Sections 12, 13 and 15 of the *A*ct, a *threshold of representativeness* equivalent to the membership percentage established in clause 4.2.2 of the Constitution of the Council
11.1.2 This *threshold of representativeness* will be applied equally to any *Trade Union* seeking any organisational rights referred in Sections 12, 13 and 15 of the Act.

by virtue of their membership as indicated above satisfy the threshold, which is that a union must have at least 15% of the total number of employees in the scope of the Council.

[7] In September 2015, SALGA, IMATU and SAMWU concluded an agency shop agreement in accordance with the provisions of section 25 of the LRA. The agreement sought to ensure that all employees within the scope of the Council contributed to the costs of the benefits of collective bargaining between those three parties. In line with the objectives of the agency shop agreement, the parties 16 April 2018 concluded an agency fee agreement, which authorised the levying of a fee equivalent to 1% of the employees' salaries but not exceeding R75 (Seventy-Five Rand) from employees' who are not members of either IMATU and SAMWU. In a nutshell, there are about 20 000 employees who are paying the agency fee monthly. The fee upon being paid to the Council is then distributed to IMATU and SATAWU proportionally in accordance with their membership figures.

[8] The consequences of these agreements are that members of trade unions that did not meet the minimum threshold in terms of clause 11.1 of the main collective would be liable for both the agency fee and their trade union subscription. However, members of IMATU and SAMWU as parties to the main collective agreement are only liable for their subscriptions.

[9] In its opposing papers, IMATU indicates that in the 2016/2017 financial year, it received about R5.8m in agency fee income, which was used to fund authorised expenses, and which accounted for 4.4% of its total income, and defrayed 5.3% of its total expenditure. It thus contends that without the agency fee income, and in order to make up for the loss of revenue, it would have to increase its monthly membership fee by 5.3%. This would imply that its members would then be sponsoring MATUSA members insofar as they benefitted from the collective bargaining effort at the Council, without being members of representative unions, and thus making it unfair.

11.1.3 Any registered *Trade Union* with fewer members than the *threshold of representativeness* set out in clause 11.1.1above will not qualify for any rights set out in Sections 12, 13 and 15 of the Act.

[10] In 2014, the provisions of section 21(8A) - (8D) of the LRA[5] were promulgated to govern the process under which certain organisational rights may be granted to trade unions that do not meet the necessary threshold. MATUSA was granted organisational rights in accordance with sections 12, 13 and 15 of the LRA at the 1st - 5th respondents' municipalities and other various municipalities throughout the Republic. Some of these municipalities do not apply a system of double deductions, and MATUSA has referred a number of claims in terms of section 21(8C) of the LRA and in instances where a municipality has continued to levy both the agency fee and the membership fee.

The submissions:

[11] The submissions made on behalf of MATUSA are summarised as follows;

[5] Section 21. **Exercise of rights conferred by this Part**

(8A) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant a registered trade union that does not have as members the majority of employees employed by an employer in a workplace—
  (a) the rights referred to in section 14, despite any provision to the contrary in that section, if—
    (i) the trade union is entitled to all of the rights referred to in sections 12, 13 and 15 in that workplace; and
    (ii) no other trade union has been granted the rights referred to in section 14 in that workplace.
  (b) the rights referred to in section 16, despite any provision to the contrary in that section, if—
    (i) the trade union is entitled to all of the rights referred to in sections 12, 13, 14 and 15 in that workplace; and
    (ii) no other trade union has been granted the rights referred to in section 16 in that workplace.

(8B) A right granted in terms of subsection (8A) lapses if the trade union concerned is no longer the most representative trade union in the workplace.

(8C) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant the rights referred to in sections 12, 13 or 15 to a registered trade union, or two or more registered trade unions acting jointly, that does not meet thresholds of representativeness established by a collective agreement in terms of section 18, if—
  (a) all parties to the collective agreement have been given an opportunity to participate in the arbitration proceedings; and
  (b) the trade union, or trade unions acting jointly, represent a significant interest, or a substantial number of employees, in the workplace.

(8D) Subsection (8C) applies to any dispute which is referred to the Commission after the commencement of the Labour Relations Amendment Act, 2014, irrespective of whether the collective agreement contemplated in subsection (8C) was concluded prior to such commencement date.

11.1 From the intention of the legislature as contained in the objectives in the explanatory memorandum[6], the motivation behind section 21 (8C) of the LRA was to assist minority unions to obtain rights, which they would not ordinarily have obtained, but for the Collective Agency Shop Agreement.

11.2 Even though SALGA, IMATU and SAMWU had concluded a binding recognition agreement which excluded MATUSA from collective bargaining, the provisions of section 21(8C) of the LRA were enacted as a remedy for trade unions which do not satisfy the minimum threshold to approach a competent *fora* in order to be granted the rights contemplated in terms of section 12, 13 and 15 of the LRA.

11.3 The proper interpretation of the provisions of section 21(8C) of the LRA does not contemplate the burdening of the employees with a double deduction. The clear intention of the provisions was to provide a trade union with sufficient representativeness, the means to bypass the restrictive threshold requirements of a recognition agreement in pursuit of organisational rights *e.g.* the right to deduction of membership in terms of section 13 of the LRA.

11.4 The provisions of the LRA in general did not foresee double payments, and sections 25(1) and 13 of the LRA envisaged one fee payable. The agency fee agreement was therefore in conflict with the intention of the provisions of section 21(8C) of the LRA, or these provisions specifically intend to give minority unions the ability to circumvent the restrictive consequences of an agency shop agreement.

11.5 Section 25 of the LRA envisaged a situation where employees were not members of a trade union at all, and thus ought to be considered against the backdrop of sections 21 (8C) and 13 of the LRA.

11.6 The purpose of the provisions of section 25 of the LRA is to ensure that non-unionised workers do not unjustly benefit from the bargaining

[6] Memorandum of Objects Labour Relations Amendment Bill, 2012, published by the Department of Labour

endeavours of those who make contribution to the bargaining process through their trade union subscription. However, in this case, members of MATUSA were members of a registered trade union, and thus did not fall within the definition of 'free riders', which an agency shop agreement was intended for. These provisions therefore ought not to be interpreted in a manner that would interfere with the employees' right to choose a trade union, which is a fundamental principle of freedom of association.

11.7 MATUSA acknowledged the right of parties to engage in collective bargaining under the provisions of section 23 (5) of the Constitution, but however contended that minority unions have equally achieved collective bargaining rights which ought to be recognised.

11.8 In essence, to the extent that the agency shop agreement permitted double deductions from MATUSA members, this was unlawful and invalid.

[12] In opposing the application, the submissions made on behalf of IMATU, which SAMWU effectively aligned itself with were that;

12.1 Even if MATUSA members were subjected to a double deduction, that did not detract from the fact that they remained "free riders", as their union did not satisfy the prerequisite minimum threshold to participate in the collective bargaining that they benefitted from. Thus, the election to become a MATUSA member was irrelevant to a continued obligation to pay the agency fee.

12.2 The agency fee and the union subscription are not for the same expense or purpose since the subscription does not yield any returns at least from the collective bargaining. Thus membership of MATUSA did not convert its members from being free riders into paying riders.

12.3 The obligation to pay the agency fee withstood the enactment of the provisions of section 21(8C) of the LRA, which merely allowed the CCMA to override the provisions related to threshold, with no serious

implications for the agency shop. In this regard, MATUSA had not explained why the interpretation/application pf sections 25, 21(8C) and 23 of the LRA leads to double deductions being unlawful.

12.4 Section 25 of the LRA envisaged that members of minority unions who pay union dues were liable to pay an agency shop fee, and the award of section 13 rights did not alter the position. In the end, MATUSA had failed to establish a clear right to the relief it seeks.

Evaluation:

[13] Since the constitutionality of all the relevant provisions to be considered in this matter is not challenged, the starting point nonetheless is that section 23 of the Constitution guarantees the right to form and join a trade union, and the right of every trade union to organise and engage in collective bargaining[7]. Those rights find expression in Chapters II (Freedom of Association and General Protections), and Chapter III (Collective Bargaining) of the LRA.

[14] In accordance with the provisions of section 23(1)(d) of the LRA, parties to a collective agreement such as in this case, are entitled to extend that agreement to, and bind, employees who are not members of a trade union that is party to that agreement. This is inclusive of employees who are members of minority unions such as MATUSA. Obviously on the face of it, the provisions of section 23(1)(d) of the LRA impacts on or impose limitations on

[7] The Constitution of the Republic of South Africa, 1996, Act 108 of 1996.
23. Labour relations.- (l) Everyone has the right to fair labour practices.
(2) Every worker has the right—
(a) to form and join a trade union;
(b) to participate in the activities and programmes of a trade union; and
(c) to strike.
(3) Every employer has the right—
(a) to form and join an employers' organisation; and
(b) to participate in the activities and programmes of an employers' organisation.
(4) Every trade union and every employers' organisation has the right—
(a) to determine its own administration, programmes and activities;
(b) to organise; and
(c) to form and join a federation.
(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
(6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

various other individual or collective rights as guaranteed either in the Constitution or the LRA itself, such as the right of freedom of association; collective bargaining or the right of unions to embark on protected strike actions.

[15] In *Association of Mineworkers and Construction Union and Others v Chamber of Mines of South Africa and Others*[8], it was held that section 23(1)(d) of the LRA furthers the legitimate governmental purpose of promoting effective collective bargaining by way of a scheme premised on majoritarianism, and that as the provision was a constitutionally permissible limitation on certain entrenched rights, it is by corollary rational[9]. In further explaining the general scheme of majoritarianism as permeating through the LRA, the Court had held that;

> "Majoritarianism is both a premise of and recurrent theme throughout the LRA. Our case law has long recognised this, from at least the judgment in *Kem-Lin*, but probably earlier. In *Kem-Lin*, Zondo JP said:
>
> > "The legislature has also made certain policy choices in the Act which are relevant to this matter. One policy choice is that the will of the majority should prevail over that of the minority. This is good for orderly collective bargaining as well as for the democratisation of the workplace and sectors. A situation where the minority dictates to the majority is, quite obviously, untenable. But also a proliferation of trade unions in one workplace or in a sector should be discouraged. There are various provisions in the Act which support the legislative policy choice of majoritarianism."
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> Zondo JP instanced various LRA provisions that illustrate the legislative policy choice. Two of the most obtrusive suffice. It is majoritarianism that underlies the statute's countenancing of both agency shop agreements (deductions for majority union fees from all employees, both members and non-members), and closed shop agreements (collective agreement may oblige all employees to be members of the majority trade union). This is not to say that these provisions are invulnerable to constitutional attack. It is

[8] (2017) 38 ILJ 831 (CC); 2017 (3) SA 242 (CC); 2017 (6) BCLR 700 (CC); [2017] 7 BLLR 641 (CC)
[9] At para 76

only to point to them as piquantly instancing the scheme of the statute as a whole."[10] (Citations omitted)

[16] Cameron J in the judgment above went further to define the purpose of section 23(1)(d) as being to give enhanced power within a workplace, as defined, to a majority union, and it did so for powerful reasons that are functional to enhancing employees' bargaining power through a single representative bargaining agent[11]. The Court went further and emphasised that the LRA, though premised on majoritarianism, did not make it an implement of oppression, nor does it entirely suppress minority unions, as its provisions gave ample scope for minority unions to organise within the workforce, and to canvass support to challenge the hegemony of established unions[12].

[17] Obviously enjoying majority representation comes with a number of perks for a union, viz, the right to appoint representatives; to disclosure of information; the right to enter into a collective agreement and set thresholds of representivity for the granting of access, stop-order facilities; the right to conclude agency shop and closed shop agreements; to apply for the establishment of a workplace forum; and the right to conclude collective agreements which will bind employees who are not members of the union or unions party to the agreement[13].

[18] Central to MATUSA's case is that on a proper interpretation of the provisions of section 21(8C) of the LRA, the intention was to provide a trade union with sufficient representativeness, the means to bypass the restrictive threshold requirements of a recognition agreement in pursuit of organisational rights

[10] At paragraph 43. See also *Association of Mineworkers and Construction Union and Others v Chamber of Mines of South Africa and Others* [2016] 9 BLLR 872 (LAC) at para 105, where it was held that;

> 'Section 23(1)(d) of the LRA is but one instance in the LRA where the legislature had chosen to apply the principle of majoritarianism. There is nothing unconstitutional about the principle itself. It is a useful and essential principle applied in all modern democracies, including the Republic of South Africa. It has been recognised as an essential and reasonable policy choice for the achievement of orderly collective bargaining and for democratisation of the workplace and the different sectors.'

[11] At para 44

[12] At para 55

[13] Sections 14; 16 ; 18; 23(1)(d)(iii); 25; 26; 80 and 82 of the LRA

such deduction of membership dues in terms of section 13 of the LRA, and the restrictive consequences of an agency shop agreement.

[19] MATUSA is correct in pointing out that the purpose of section 21(8C) of the LRA is to assist minority unions to obtain certain rights which it would not ordinarily have obtained but for the Collective agreements entered into with majority unions. But this is where the line in the sand is drawn between that contention and the overall purpose of those provisions. These provisions merely allows a CCMA Commissioner to grant the rights referred to in sections 12, 13 or 15 of the LRA to a minority union that does not meet thresholds, and nothing more. Effectively, once those rights are granted by the CCMA as a point of entry into the workplace or sector, in the words of Cameron J in *AMCU*, they give ample scope for minority unions to organise within the workforce, and to canvass support to challenge the hegemony of established unions.

[20] It would however be incorrect to regard the provisions of section 21(8C) of the LRA on their own, as panacea to minority unions' attempts at upsetting the apple cart that is the hegemony of established unions at municipalities. Inasmuch as these provisions permit the CCMA to grant certain organisational rights to minority unions where thresholds have been set in accordance with collective agreements, the legislature could not have intended that their overall objective, and on a general level, be to circumvent the consequences of any other collective agreements already entered into by majority unions with the employer, including Agency shop agreements. To hold otherwise would be to countenance the demise of majoritarianism upon which the scheme of the LRA is predicated, and in particular, the whole import of the provisions of section 23 of the LRA. To put it bluntly, the provisions of section 21(8C) of the LRA are not a free pass for minority unions to gain other organisational rights (outside of the rights contemplated in section 21(8A), which are ordinarily gained through hard collective bargaining processes.

[21] To the extent that the provisions of section 23 (1) (d) of the LRA are not unconstitutional, which by implication extends to the Agency Shop Agreements, and further to the extent that there is no constitutional challenge

to the provisions of section 25 of the LRA, the following observations as made in *National Manufactured Fibres Association & another v Commissioner & others Bikwana*[14] remains pertinent and ought to be re-emphasized;

21.1 Established unions have taken time and effort to reach a stage where they are in a position to can acquire collective bargaining rights as well as the status of representivity.

21.2 It cannot be doubted that representative unions such as IMATU and SAMWU generally invest time, money and other resources when negotiating better terms and conditions of employment on behalf of their members with the employer.

21.3 It would thus be unfair to simply pass the benefits of the deals secured through such efforts to other employees who are not members of those trade unions, without them being required to contribute towards the costs which the representative trade union incurs in connection with collective bargaining work. If a contrary view was to be held, the implications thereof are that minority unions such as MATUSA and their own members, would be beneficiaries of new deals struck by IMATU and SAMWU, without having put an effort into the collective bargaining process. To the extent that such unions are unable to make any meaningful contribution to the collective bargaining effort as a result of the thresholds set, these are the consequences of the provisions of section 18 of the LRA, which are merely an expression of those of section 23(6) of the Constitution of the Republic.

21.4 In a nutshell, 'free riders' and their unions, cannot simply be allowed to be subsidized by majority/representative unions and their members. Agency shop agreements merely seek to make free riders pay for the fruits of the labour of the representative trade unions without compelling them to join those trade unions[15].

[14] [1999] 10 BLLR 1079 (LC)
[15] At para 20

21.5 Employees that are members of non-representative or minority unions such as MATUSA are not automatically converted into paying riders simply by virtue of their payment of subscriptions to MATUSA. They remain free riders because MATUSA does not contribute to the fruits of collective bargaining between the employer and IMATU and SAMWU. As it was correctly pointed out on behalf of SAMWU, the agency shop and subscription levies serve different purposes. Effectively, the double pay complained of by MATUSA is not for the same 'product' or 'service'.

21.6 MATUSA's insistence in this case that the provisions of section 25(1) of the LRA are directed only against employees who are non-union members at all is without merit. Those provisions are directed against employees who are not members of the representative trade union irrespective of whether or not they are members of any other trade union[16]. This interpretation by Zondo JP (as he then was) in my view makes sense in the light of the overall objectives of an agency shop agreement. It would not, as a general proposition, make sense to exclude members of a minority union from the provisions of an agency shop, when that union is not a party to the collective bargaining effort. If in this case as alleged by MATUSA, that some municipalities have exempted its members from paying agency shop levies as a result of the minimum organizational rights gained flowing from the provisions of section 21 (8C) of the LRA, that is a matter between it and those municipalities, which cannot by any stretch of imagination be regarded as setting a legal precedent.

[22] The application and relief that MATUSA seeks in this case is not dissimilar to the one considered by Basson J in *UASA & another v BHP Billiton Energy Coal SA & another*[17], where the learned Judge had referred to *National Manufactured Fibres Association & another v Commissioner & others Bikwana* with approval. The suggestion that these authorities pre-date the 2014 LRA amendments and are therefore unhelpful is clearly misplaced. The

[16] At paras 23 - 26
[17] (2013) 34 ILJ 1298 (LC)

ratio in those decisions remains valid, particularly within the context of the nature of this application and the relief that MATUSA seeks. In essence, notwithstanding the amendments, and in particular, the provisions of section 21(8C) of the LRA, the general substance, purpose and consequences of agency shop agreements on non-union members or members of minority unions falling outside the threshold remains the same. It would be wrong to suggest that the provisions of section 21(8C) of the LRA change the tone, colour, texture or purpose of agency shop agreements.

[23] It follows from the above conclusions that in the absence of a constitutional challenge to the provisions of sections 23 and 25 of the LRA, there can be no basis for a finding to be made that the Agency Shop Agreement in question is unlawful or invalid on account of MATUSA members having to pay double. In any event, the invalidity of the closed shop agreement can only be challenged if *inter alia*, it was demonstrated that it was not in compliance with the provisions of section 25 (3) of the LRA or if it was shown that any amounts deducted in that regard were not administered appropriately[18]. In my view, the fact that the consequences of this agreement are that MATUSA members must pay double can at best be described as unintended consequences of the individual member's exercise of a right of freedom of association. Accordingly, MATUSA has not established any right to the relief that it seeks.

[24] What remains to be determined is the issue of costs. It was submitted on behalf of both IMATU and SAMWU that costs should follow the results. It is however trite that costs orders in this court are awarded upon a consideration of the requirements of law and fairness[19].

[25] The issues raised in this case may be contentious, but are not in my view novel. As already indicated, the provisions of section 21 (8C) of the LRA which formed the basis of MATUSA's challenge have little or no bearing on those of section 25 of the LRA. MATUSA's application, which initially

[18] See *Greathead v South African Commercial Catering & Allied Workers Union* (2001) 22 ILJ 595 (SCA); *Solidarity & Others v Minister of Public Service & Administration & Another* (2004) 25 ILJ 1764 (LC)

[19] *Zungu v Premier of the Province of KwaZulu-Natal and Others* (2018) 39 ILJ 523 (CC); [2018] 4 BLLR 323 (CC); 2018 (6) BCLR 686 (CC) at paras 23 - 26

concerned constitutional challenges, fizzled down to questions of invalidity and unlawfulness, which ultimately turned out to be without merit. In my view, in the light of the established authorities referred to in this judgment, of which importance MATUSA had without any basis sought to downplay, it follows that this application *albeit* raising contentious issues which had already been determined, was indeed ill-conceived. In the circumstances, there is no reason based on either law or fairness, why MATUSA should not be burdened with the costs of this application.

Order:

[26] In the premises, the following order is made;

1. The Applicant's application is dismissed.

2. The Applicant is ordered to pay to the 7th and 8th Respondents, the costs of this application.

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E. Tlhotlhalemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:	A. Montizinger
Instructed by:	Hannes Pretorius Bock & Braynt
For the 7th Respondent:	A Myburgh SC
Instructed by:	Francois Du Plessis Attorneys
For the 8th Respondent:	T Manda
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