COVER SHEET

INDUSTRIAL COURT VERDICT

HELD AT **PRETORIA**

CASE NUMBER **NH11/2/21326**

LABOUR APPEAL COURT VERDICT

DIVISION

CASE NUMBER

SUPREME COURT - APPELLATE DIVISION

CASE NUMBER

AGRICULTURAL COURT VERDICT

HELD AT

CASE NUMBER

IN THE INDUSTRIAL COURT OF SOUTH AFRICA
(held at Pretoria)

CASE NO: NH 11/2/21326

In the matter between;

SA CLEANERS, SECURITY AND ALLIED WORKERS UNION APPLICANT

AND

MASONIC HAVEN (PRETORIA) RESPONDENT

On 5 September 1995;

Presiding officer: Adv E Botha , A M

On behalf of the applicant: mr B J Mahlangu

On behalf of the respondent: mr C Vermeulen

JUDGMENT

The applicant lodged an application in terms of section 46(9) of the LRA, and seeks the following relief;

'declaring the termination of the Recognition agreement by the respondent on or about the 21st September 1994 to constitute an unfair labour practice;

2. ordering the Respondent to reinstate the Recognition agreement in it's employ on terms and conditions that no less favourable than those which governed the Applicant's employ prior to it's termination on or about 21st September 1994 to constitute an unfair labour practice;

3. ordering the Respondent to reinstate the relationship in existence before the introduction of the unfair labour practice in existence;

4. Ordering that an order in paragraph 3 and 4 above operate retrospectively with effect from the 21st September 1994;'

and that the respondent pay the costs.

The respondent condoned the late filling of the statement of case of the applicant.

Both parties chose to address me from the bar without leading any evidence or submitting any affidavits. Documents were handed up by agreement.

The facts according to the pleadings are the following, and are not in dispute. The parties entered into an agreement called, 'RECOGNITION AND PROCEDURAL AGREEMENT' signed on 25/5 1993. In the agreement the following clause appears;

'The COMPANY recognises the UNION'S right to conduct its own affairs; and its right to represent the interests of, and to act as bargaining agent for its members in the COMPANY'S employ so long as the UNION'S membership for the purpose of this agreement exceeds 50% of the COMPANY'S workforce eligible for UNION membership. Should the UNION'S membership fall below that percentage, the COMPANY shall be entitled to give one (1) months written notice of its intention to cancel this agreement unless the UNION again becomes representative within that period.'

At the time of signing of this agreement the respondent accepted that the applicant had the authority according to it's constitution to represent the respondent's workforce, but on receipt of a copy of the applicant's constitution and certificate of registration, the respondent realised that the applicant had no authority to represent their workforce. According to both these documents the applicant were registered as a trade union in respect of; 'all persons employed in the: (i) cleaning services undertaking; (ii) brush, broom and mop manufacturing industry; (iii) security services undertaking; (iv) accommodation establishment trade; and (v) creche undertaking, as defined in the annexure hereto.' The definitions in the annexure reads as follow;

'(i) "Cleaning Services Undertaking" means the undertaking in which employers and their employees are associated for the purposes of cleaning and maintaining industrial and commercial premises and buildings.

(ii) "Brush, Broom and Mop Manufacturing Industry" means the industry in which employers and their employees are associated for the purpose of manufacturing brushes, brooms and mops, and includes all operations incidental thereto and consequent thereto.

(iii) ""Security Services Undertaking" means the undertaking in which employers and their employees are associated for the purpose of guarding or protecting premises, buildings structures or any other fixed property, vehicles vessels or boats or other craft and employees or other persons, and includes the depositing, withdrawal and cashing or transportation of

money for or on behalf of a client, the making up thereof in specified amounts, the placing of specified amounts in envelopes and the handing over of the envelopes to persons, as instructed by the client, or the transportation of any other goods that have to be guarded or protected while in transit.

(iv) "Accommodation Establishment Trade" means the trade carried on by persons who carry on the business of an accommodation establishment by supplying lodging and one or more meals per day for reward: Provided that for the purpose of this definition "lodging" means bedroom accommodation and the services ordinarily associated therewith.

(v) "Creche Undertaking" means the undertaking in which children are cared for during the day for reward, and includes all operations incidental thereto and consequent thereon.'

Mr Vermeulen for the respondent argued, quite correctly, that the respondent is an old age home under supervision of the Department of National Health and Population Development, and does not fall within the ambit of the registration of the applicant. After establishing that the applicant had no jurisdiction to represent it's workforce, the respondent cancelled the agreement with the applicant, and states in it's reply to the applicant's statement of case;

'Had it been known by the Respondent at the time of the signing of the recognition agreement that the Applicant Union had been acting

unconstitutionally, the Respondent would not have agreed to sign the agreement nor grant stop order facilities.'

On the day of the trial Mr Mahlangu for the applicant handed to the court a document stating the following;

'A copy of the resolution amending your Union's constitution, which has been approved with effect from 1995/07/12 is attached.'

Attached to this document is a document stating the following;

'At a meeting of the National Executive Committee of the Union which was held on 24 September 1994, it was resolved to amend the Union's constitution as follows:

CLAUSE 5: MEMBERSHIP

Add the following new definition after subclause 5.1.9:

5.1.10 WELFARE UNDERTAKING

"Welfare Undertaking" means the undertaking in which employers and their employees are associated for the purpose of taking measures or instituting programmes and / or activities regarding:

(a) the prevention and treatment of social pathological or in groups or in families or individuals;

(b) the promotion, protection or stabilization of family or marital life;

(c) the welfare of the aged or physically or mentally handicapped persons and the welfare of children;

(d) the prevention of alcoholism or dependence upon habit forming substances or the treatment of persons who are dependent upon alcohol

or any other habit forming substances;

(e) the provision of housing to indigent person or persons in need;

(f) any corrective service;

(g) the provision and maintenance of houses, homes, youth hostels, youth institutions or institutions; and

(h) social relief

and includes all activities incidental thereto or consequent thereon.'

Only 8 of the 36 employees of the respondent, are members of the applicant.

On the facts as set out above it is clear that at the time of signing the agreement the applicant had no authority to represent the employees of the respondent because those employees did not fall within the ambit of the applicant's constitution. The respondent acted quite correctly in cancelling the agreement, because it was null and void from the start. I am of the opinion that, because of this fact, the act of the respondent does not constitute an unfair labour practice. Consequently to that the constitution of the respondent was amended with effect from 12/7 1995. This means that from that date the applicant had the right to represent the employees of the respondent, provided that it represented 50% of the workforce. Apparently the last prerequisite is not complied with, which means that the applicant is still not in a position to represent the

respondents employees. With regards to all the above said I have no other option but to dismiss this application.

There is only one other factor in this matter that I wish to deal with, and that is the fact that no evidence was put before this court by either of the parties. Eventhough none of the facts were in dispute the parties should have lead evidence under oath, unless they convinced the court to dispense with oral evidence. Rule 29(8) states;

'Any hearing under this rule shall be in the nature of a civil trial and in every case evidence shall be adduced on oath unless the court dispenses with oral evidence, save that in determining the dispute the court in order to expedite proceedings or arrive at a just decision may make suggestions with regard to the calling of such witnesses as the court considers necessary or it may itself call witnesses and put to such witnesses such questions as it deems fit.'

This rule clearly states that the court is the only entity which have a discretion to dispense with oral evidence. There was no application before me to ask me to dispense with oral evidence: In this matter this question might be purely academical, because as I indicated, none of the facts were in dispute.

The question of costs were not argued before me.

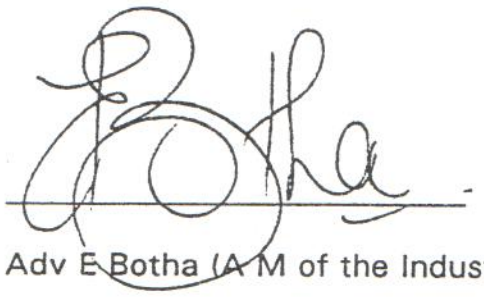
After consideration of all the arguments and perusing of the documents set before me I make the following determination;

1) The cancellation of the agreement by the respondent does not constitute an unfair labour practice;

2) The application of the applicant in toto is dismissed;

3) No order is made as to costs.

Signed at Pretoria on 20 November 1995.



Adv E Botha (A M of the Industrial Court of South Africa.)