

**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Case no: J 2590/16

In the matter between

**SATAWU OBO MEMBERS**

**Applicant**

and

**ELECTRONIC TOLL COLLECTION**

**(PTY) LTD**

**Respondent**

**Delivered: 27 March 2019**

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**JUDGMENT**

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**MAHOSI. J**

Introduction

- [1] This is an application in terms of section 158(1)(c) of the Labour Relations Act<sup>1</sup> (LRA) for an order to make the settlement agreement entered into between the parties on 30 May 2016 under the auspices of the Commission for Conciliation, Mediation and Arbitration (CCMA) under case number GAJB2054-16 an order of this Court. It is the applicant's case that this order is sought as a result of the respondent's failure to comply with the terms of the said settlement agreement.

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<sup>1</sup> Act 66 of 1995 as amended.

[2] On 30 May 2016, the applicant referred a refusal to bargain dispute to the CCMA. The dispute was set down for conciliation where the parties concluded a settlement agreement in terms of which it was agreed as follows:

‘6.10.1 The respondent will grant the union (applicant herein) the rights as per the LRA Sections 12,13, 14 and 15 organisational rights.

6.10.2 The trade union stop order authorisation will be effective from the 30<sup>th</sup> June 2016.

6.10.3 The issue of access and trade union representative and the number of days for leave will be dealt with by the parties through a recognition agreement to be finalised no later than 30<sup>th</sup> June 2016.’

[3] The basis on which the applicant seeks an order to make the settlement agreement an order of court was that, despite numerous requests, the respondent refuses to bargain in good faith and to adhere to the terms of the settlement agreement.

[4] The respondent disputes that a valid and enforceable settlement agreement came into existence on 30 May 2016. The respondent alleged that it was induced to conclude the agreement on the basis of a material misrepresentation which caused it to act to its detriment as the applicant is not a sufficiently representative of the employees within its workplace. The respondent submits that it would not have concluded a settlement agreement if it had known that the actual membership figures of the applicant were only some 209 members which is 23% of its entire workforce. The respondent further submits that the settlement agreement is void and that the applicant was afforded sufficient opportunity to rectify or clarify the discrepancy raised by the respondent, but the applicant has failed to do so.

[5] In its replying affidavit, the applicant submits that the respondent verified the membership on its own without the involvement of the trade union and other stakeholders, which is contrary to section 21 of the LRA. The applicant further

submits that the respondent's representative cannot claim that he was induced into signing a settlement agreement, he is a commissioner in the CCMA with legal background, he is not a lay person.

[6] The issue is whether this Court has jurisdiction to make the parties' settlement agreement an order of the court. Section 158 (1) (c) deals with the powers of the Labour Court and it provides that:

'(1) The Labour Court may –

...

(c) make any arbitration award or any settlement agreement an order of the Court.

[7] In *South African Post office Ltd v CWU obo Permanent Part-Time Employees*,<sup>2</sup> the Labour Appeal Court (LAC) held that:

'[21] ...before the Labour Court will grant an order sought in terms of Section 158(1)(c) of the LRA, it must be satisfied, at the very least, that:

- i. the agreement, is one which meets the criteria set in s 158 (1)(c) read with section 158(1A) of the LRA, and if it is an award, it satisfies the criteria set in section 142A of the LRA;
- ii. that the agreement or award is sufficiently clear to have enabled the defaulting party to know exactly what it is required to do in order to comply with the agreement or award; and,
- iii. there has not been compliance by the defaulting party with the terms of the agreement or the award.

[22] Once the Labour Court is satisfied with all of the above then it must, nevertheless, exercise its discretion whether to grant or refuse the order. In exercising the discretion, the Court must take relevant facts and circumstances

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<sup>2</sup> [2013] 12 BLLR 1203 (LAC).

into account, such as are necessary to satisfy the demands of the law and fairness. Necessarily, each case must be decided on its own facts and circumstances. There is, otherwise, no closed list of factors to be taken into account. A relevant factor is the time it took the party seeking the relief to launch the application to make the settlement or award an order of court. The Labour Court may, for example, be more reluctant to make an award for reinstatement of employees an order of court where the employees unreasonably delayed in seeking the enforcement of the award, yet a delay in years in seeking to make an award for payment a sum of money may not be grounds for refusing to make the award an order of Court. Finally and most crucially it must be remembered that the purpose of making an agreement or award an order of the Labour Court is to compel its enforcement, or enable its execution and not for some other purpose.<sup>3</sup>  
[Footnotes omitted]

[8] Section 158(1A) of the LRA provides as follows:

‘For the purposes of subsection (1)(c), a settlement agreement is a written agreement in settlement of a dispute that a party has the right to refer to arbitration or to the Labour Court, excluding a dispute that a party is only entitled to refer to arbitration in terms of section 22(4), 74(4) or 75(7).’

[9] In this matter, the settlement agreement relates to a dispute that was referred to the CCMA in terms of section 22(4). In view of section 158(1A) and the LAC judgment in the case of *South African Post office Ltd*,<sup>4</sup> the applicant’s application to make the settlement agreement an order of court cannot succeed because it is a matter that cannot be referred to arbitration as the applicant is seeking to exercise its organisational rights. With regard to costs, I am of the opinion that the requirements of law and fairness dictate that there should be no order as to costs.

[10] In the circumstances, I make the following order:

### Order

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<sup>3</sup> At paras 21-22.

<sup>4</sup> *Supra* n 2.

1. The application for an order to make a settlement agreement issued by the CCMA under case number GAJB2054-16 an order of the court is dismissed.
2. There is no order as to costs.

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D. Mahosi

Judge of the Labour Court of South Africa

Appearances:

For the Applicant Advocate G.Z Maphanga

Instructed by: Mafauya Attorneys

For the Respondent Advocate F. Venter

Instructed by: Cowan-Harper Attorneys