

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J601/19

In the matter between:

ARCELORMITTAL SOUTH AFRICA LTD

First Applicant

REAL TREE TRADING 1 (PTY) LTD

Second Applicant

and

**NATIONAL UNION OF METALWORKERS OF
SOUTH AFRICA**

First Respondent

**INDIVIDUALS LISTED ON ANNEXURE "A"
(NUMSA MEMBERS EMPLOYED BY THE
FIRST APPLICANT)**

Second to Further Respondents

**INDIVIDUALS LISTED ON ANNEXURE "B"
(NUMSA MEMBERS EMPLOYED BY THE
SECOND APPLICANT)**

Third to Further Respondents

Heard: 12 April 2019

Delivered: 17 April 2019

JUDGMENT

LALLIE, J

[1] The applicants brought this urgent application seeking orders mainly in the following terms:

“2. A rule nisi is issued calling upon the Respondents to show cause on a date and at a time to be allocated by the Registrar of this Honourable Court (“the return date”) why an order should not be made in the following terms:

2.1 it is declaring that by virtue of their unlawful conduct and/or their breaches of the Varied Picketing Rules and/or their breaches of Court Orders of 13 March 2019 and 4 April 2019 (under case number J601/19), the Respondents are not entitled to picket and march at any locations (including but not limited to the premises of AMSA) in support of the strikes; and or

2.2 All picketing and march Respondents in support of the strikes at all locations (including but not limited to the premises of AMSA) is indefinitely suspended;

2.3 Alternatively, all picketing marching by the Respondents in support of the strike at all locations (including but not limited to the premises of AMSA) is suspended until such time as the First Respondent has provided this Honourable Court with a comprehensive written plan, to the satisfaction of this Honourable Court, as to how it intends to curb, control and remedy the on-going unlawful conduct and the on-going breaches of the Varied picketing Rules, and the Court Orders of 13 March 2019 and 4 April 2019;

2.4 Further alternative, all picketing by the Respondents in support of the strikes at the main picketing area only i.e at the open area near the East Gate of AMSA’s premises in Vanderbijlpark (“the main Picketing Area) is indefinitely suspended; and

CONTEMPT

4. A rule nisi issued calling upon the First Respondent to show cause on the return date why an order should not be made in the following terms:
 - 4.1 the First Respondent is found guilty of contempt of court for failing to comply with the Court Order of 4 April 2019;
 - 4.2 the First Respondent is fined in an amount that the Labour Court deems appropriate.”

[2] The application is opposed by the respondents on the grounds, *inter alia*, that the applicants failed to give them proper notice of the application and lack of urgency.

[3] The question whether the applicants gave the respondent sufficient notice of the application will be considered first as its answer will determine whether the first part of this application is properly before Court. The second to further respondents are employed by the first applicant while the third to further are employed by the second respondent. The second to further respondents and third to further respondents will be referred to as the individual respondents. They are members of the first respondent which will be referred to as the NUMSA in this judgment. The individual respondents are currently on strike. In March 2019, the Commission for Conciliation Mediation and Arbitration, (the CCMA) determined picketing rules regulating the manner in which the respondents would exercise their right to picket during the strike. The picketing rules were varied and made an order of Court on 4 April 2019.

[4] When picketing rules are breached a party may approach this Court in terms of section 69 of the Labour Relations Act¹ (LRA) for relief. Section 69 (12) of the LRA provides as follows:

¹ 66 of 1995, as amended.

“If a party has referred a dispute in terms in subsection (8) or (11), the Labour Court may grant relief, including urgent interim relief, which is just and equitable in the circumstances and which may include-

- (a) an order directing any party, including a person contemplated in subsection (6) (a), to comply with a picketing agreement or rule; or
- (b) an order varying the terms if a picketing agreement or rule.”

- [5] Notice to be given by a party intending to seek relief in terms of section 69 (12) is provided for in section 69 (13) as follows:

“The Labour Court may not grant an order in terms of subsection (12) unless-

- (a) 48 hours’ notice of an application seeking relief referred to in subsection (12) (a) or (b) has been given to the respondent; or
- (b) 72 hours’ notice of an application seeking relief referred to in subsection (12) (c) or (d) has been given to the respondent.”

- [6] Section 69 (14) provides for exceptions to section 69 (13) in the following words:

“The Labour Court may permit a shorter period of notice than required by subsection (13) if the-

- (a) applicant has given written notice to the respondent of its intention to apply for the order;
- (b) respondent has been given a reasonable opportunity to be heard before a decision concerning the application is taken; and
- (c) applicant has shown good cause why a period shorter than that contemplated by section (13) should be permitted.”

- [7] The respondents submitted that the applicants seek an order contemplated in section 69 (12) (c) but have neither given them 72 hours’ notice as envisaged in section 69 (13) (b) nor sought condonation as contemplated in section 69 (14) (c). They submitted that the application was served on them on 10 April at 19h19 and was enrolled for hearing on 12 April 2019 thus giving them less than 48 hours’ notice of the application. The applicants, on the morning of 12

April 2009, being the date of the hearing of the application, served and filed an affidavit in which their attorney confirmed that they sent a letter to the respondents' attorneys on 8 April 2019 informing them of their intention to bring the application at hand on 12 April 2019. They therefore submitted that they at least gave the respondents 72 hours' notice.

[8] In the founding affidavit the respondents submitted that there is no bar to the relief being sought under this application as this Court is empowered in terms of section 69 (12) to grant the relief they are seeking. The respondents' averments that the applicants served this application on them at 19h19 on 10 April 2019 and set it down for hearing on 12 April 2019 were not refuted. I therefore accept the respondents' submission that the applicants failed to give them the 72 hours' notice envisaged in section 69 (13). The applicants' argument that they gave the respondents 72 hours' notice of the application is not supported by the averments in their affidavits. I accept the respondents' argument that compliance with section 69 (13) (b) is a jurisdictional fact which must exist before this Court can exercise the jurisdiction in section 69 (12). Compliance with the terms of section 69 (12) is therefore necessary. The correctness of this interpretation is supported by the provisions of section 69 (14) which set out the procedure to be followed by a party which is unable to comply strictly with provisions of section 69 (13) (b).

[9] The applicants sought to rely on a letter addressed by its attorneys to the respondents' attorneys in arguing that they complied with the provisions of section 69 (14) (a). The letter reads thus:

“ARCELORMITTAL SOUTH AFRICA LIMITED AND REAL TREE TRADING (PTY) LTD / NUMSA: STRIKE 2019

1. We are informed by our clients that your client and/or its members are not complying with the Court Order.
2. We are intending to bring an application on Thursday, 11 April 2019, as a result of your clients' breach. We are in the process of liaising with the Registrar.”

[10] The respondents denied that the letter constitutes compliance with provisions of section 69 (14). Their argument is based on the interpretation of the term 'notice of the application' contemplated in section 68 (3) of the LRA which is interpreted in the following words in *Automobile Manufacturers Employers' Organisation v NUMSA*²:

"The wording of the Act refers to a notice of application. A notice of application is generally a notice of motion together with supporting affidavits. In my opinion this is the construction which must be given to section 68(3). A respondent, such as the union and other respondents in this case require to know what the case is that is being brought against them. They need to know whether they can oppose the case and they require more than simply the gist of the case. The applicant's attorney's letter of 26 August 1998 sets out the relief which is going to be claimed and the grounds but not the facts which are to be relied upon."

[11] I accept the respondent's interpretation because it give provisions of section 69 (14) a purposive interpretation. Both section 68 (3) and section 69 (14) deal with interfering with the fundamental rights. In the former, with the right to strike an in the latter with the right to picket. Both the form and content of the letter the applicants seek to rely on fall short of the notice contemplated in section 69 (14). The notice did not take the form of a notice of motion and supporting affidavit. Even if the form would be overlooked, the contents of the letter exclude the facts the applicants relied on. Of significance is the applicants' omission to state, in the letter, the relief it was going to claim. The content of the letter does not place the respondents in a position to take a decision whether to oppose the application. The letter was an unsuccessful attempt by the applicants to cure its failure to comply with provisions of section 69 (13) (b). As the applicants have not complied with provisions of section 69 (13)(b) or section 69 (14)(a) their claim to have the respondents' right to picket suspended or varied is not properly before Court and stands to be dismissed.

² [1998] 11 BLLR 1116 (LC) para 8.

- [12] The applicants' argument that the jurisdictional facts in sections 69 (13) and (14) do not find application in this case because the picketing rules were made an order of Court has no legal basis. The applicants sought relief in terms of section 69 (12) which deals with the suspension and variation of a picketing agreement or rules and is silent on Court orders. Making a picketing agreement an order of court does create an exemption from complying with provisions of section 69 (13) and (14). It instead created an obligation for the applicants to follow the procedure of enforcing the Court order of a picketing agreement or rules which has been made an order of court.
- [13] The applicants seek an order finding the respondents in contempt of the court order of 4 April 2019 (the court order). The respondents denied being in contempt of court. It is common cause that the respondents failed to comply with parts of the court order. They however submitted that the non-compliance does not constitute contempt of court as it did not result from *wilful* and *mala fide* conduct on their part. In this regard they relied on *Fakie NO v CCI System (Pty) Ltd*³.
- [14] The court order was served on the respondents. I have considered the submissions made by the applicants in their effort to prove that the respondents acted wilfully and *mala fide* in breach of the court order, however I will deal only with those which tend to prove their case. In paragraph 4 of the court order the first respondent is ordered to instruct identified marshals to keep a register of those persons present at the picket on a daily basis and to provide the register to the applicants as and when requested.
- [15] On 9 April 2019 NUMSA failed to provide the applicants with the register. Mr Makoko on behalf of NUMSA informed the applicants that they were unable to provide the registers owing to some technicalities. The technicalities were not disclosed. The applicants submitted that NUMSA's purpose for not providing the registers is an attempt to conceal a clear violation of the court order in that it failed to instruct its marshals to compile a register of its members present at

³ 2006 (4) SA 326 (SCA).

the picket on 8 April 2019 or it is a means of concealing those members of NUMSA who blocked the road on 8 April 2019. NUMSA's failure to provide an explanation for non-compliance with provisions of paragraph 4 of the court order supports the applicants' submission that the non-compliance was *wilful* and *mala fide*.

[16] Contrary to the respondents' contentions, the applicants proved the urgency of this application. The violent conduct during the strike and picketing requires an immediate enforcement of the court order. Failure to provide the register in terms of paragraph 4 of the court order may appear to be but one paragraph of the order, however, it has far reaching consequences. Had the register been provided the applicants would have been in a position to prove a number of breaches of the court order. The applicants seek a *rule nisi* and have fulfilled all the requirements.

[17] In the premises the following order is made:

Order:

1. The application to suspend or vary the picketing rules is dismissed.
2. A rule nisi issued calling upon the First Respondent to show cause on 7 June 2019 why an order should not be made in the following terms:
 - 2.1 the First Respondent is found guilty of contempt of court for failing to comply with the Court Order of 4 April 2019;
 - 2.2 the First Respondent is fined in an amount that the Labour Court deems appropriate.
 - 2.3 the First Respondent is ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved.
3. Service of this court order to be effected:

- 3.1 on the First Respondent by e-mailing same to the attorneys of the First Respondent.
- 3.2 on the Second to Further Respondents and the Third to Further Respondent by placing copies of same at the entrances to the First Applicant's premises; and by sending a summarised version of this Court Order to the Second to Further Respondents and to the Third to Further Respondents by way of SMS or WhatsApp.

Z. Lallie
Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate F Boda Sc

Instructed by: Cliffe Dekker Hofmeyr Inc

For the Respondent: Advocate De Vos

Instructed by: Cheadle Thompson & Haysom