

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

Not Reportable  
Case No: JR1518/23

In the matter between:

**INNOVATIVE STAFFING SOLUTIONS (PTY) LTD**

**Applicant**

And

**MINISTER OF EMPLOYMENT AND LABOUR**

**First Respondent**

**THE NATIONAL BARGAINING COUNCIL FOR  
THE ROAD, FREIGHT AND LOGISTICS INDUSTRY**

**Second Respondent**

**THE ROAD FREIGHT ASSOCIATION**

**Third Respondent**

**THE NATIONAL EMPLOYERS' ASSOCIATION  
OF SOUTH AFRICA**

**Fourth Respondent**

**CONSOLIDATED EMPLOYERS ORGANISATION**

**Fifth Respondent**

**SOUTH AFRICAN TRANSPORT  
AND ALLIED WORKERS UNION**

**Sixth Respondent**

**MOTOR TRANSPORT AND ALLIED WORKERS UNION  
OF SOUTH AFRICA**

**Eighth Respondent**

**PROFESSIONAL TRANSPORT AND ALLIED  
WORKERS' UNION**

**Tenth Respondent**

**TRANSPORT AND ALLIED WORKERS UNION**

**Ninth Respondent**

**Heard: 12 January 2024**

**Delivered: 12 February 2024**

**Summary: Practice and procedure – consolidation of applications – Labour Court proceedings – Rule 23 – Applicant bringing three different review applications to review decisions by the First Respondent to extend the Second Respondent’s main collective agreement. First and second review applications already consolidated – separate applications can be consolidated if just and expedient to do so – applications arising from similar facts, involving similar parties – consolidation ordered.**

## **JUDGMENT**

### **SCHÄFER-KING, AJ**

[1] The Applicant launched three review applications on 3 different dates seeking to challenge, essentially, whether it is bound by the Second Respondent’s main collective agreement (collective agreement). The first two applications under case numbers J668/22 and JR2749/22 were consolidated on 30 August 2023 (first consolidation application). The application before this Court is to consolidate this review application which was brought on 14 August 2023, with the first consolidation application (second consolidation application).

[2] The second consolidation application was opposed by the First Respondent.

#### *Lis pendens*

[3] The First Respondent raised *lis pendens* as a point *in limine*. The First Respondent contended that:

3.1 The first consolidation application was set down on the unopposed motion roll on 30 August 2023;

3.2 On 14 August 2023, the Applicant launched this third review application regarding the First Respondent’s decision in 2023 to extend the collective agreement to non-parties.

3.3 On 18 August 2023, the Applicant brought an application to amend its notice of motion in the first consolidation application, with a view of consolidating all three review applications into one consolidation application.

3.4 On 21 August 2023, the First Respondent served a notice of intention to oppose.

3.5 On 22 August 2023, the First Respondent through the offices of the State Attorney addressed a letter to the Applicant's attorneys informing them that the First Respondent intended to oppose the Applicant's amendment on the grounds that the reviews under case numbers JR 668/22 and JR 2749/22 are practically moot, whereas this review is not moot.

3.6 On 28 August 2023, the Applicant's attorneys responded proposing that a draft order be agreed upon as follows:

3.6.1 Only the review applications under case numbers J668/22 and JR2749/22 be consolidated on 30 August 2023;

3.6.2 Parties file their opposing papers to the amendment under case number JR1518/23 within the time frames set out in the Rules Regulating the Conduct of Proceedings in the Labour Court<sup>1</sup>;

3.6.3 The parties request that the Court provide it with an expedited date insofar as the consolidation under case number JR1518/23 is concerned.

3.7 The First Respondent agreed to the aforesaid draft order.

3.8 On 30 August 2023, Acting Justice Snyman ordered that:

'1. The review application under case numbers J668/22 and JR 2749/22 are consolidated.

2. The Registrar is directed to provide an expedited date of set down for the consolidation under case number JR1518/23.

3. There is no order as to costs.'

[4] Counsel for the First Respondent argued that the second consolidation application lies in duplicate with the order of Acting Justice Snyman wherein it was ordered that an expedited date of set down for the consolidation under this case number be provided by the Registrar. It was argued that this duplication of proceedings will prejudice the First Respondent and unnecessarily burden this

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<sup>1</sup> GN 1665 of 14 October 1996: Rules for the conduct of proceedings in the Labour Court.

Honourable Court.

[5] It was uncontested that:

[5.1] On 31 August 2023, the Applicant's attorneys attended at court to request a preferential date in accordance with the Court Order of 30 August 2023;

[5.2] The Registrar advised the Applicant's attorneys that the Applicant needed to bring a formal consolidation application in order to consolidate this review under case number JR 1518/23 with the first consolidation application, after which the Registrar would allocate a preferential date for the hearing of such consolidation application;

[5.3] On 10 October 2023, the Applicant duly filed the second consolidation application, which was opposed by the First Respondent.

[6] I am of the view, as correctly pointed out by Counsel for the Applicant, that the submission of *lis pendens* is misconceived. The *lis pendens* point stands to fail as there is no pending litigation between the same parties based on the same cause of action in respect of the same subject matter, as the first consolidation application has been heard and an order has been granted. It follows that there can be no amendment to the notice of motion in the first consolidation application, as sought by the Applicant prior to the hearing of the first consolidation application on 30 August 2023, as that application has been argued and an order has been granted.

#### Just and expedient

[7] Rule 23 of the Labour Court Rule<sup>2</sup> (Rules) provides that consolidation of matters may take place if it is expedient and just to do so. In *Piner v South African Breweries Ltd*<sup>3</sup>, it was held that terms such as "convenience", "expedient" and "just" imply that it must be equitable to all parties. The concept of equitability goes beyond merely determining the issue on a balance of convenience. The Court should accordingly not only consider whether the balance of convenience favours such consolidation, but it should be satisfied that the consolidation will not prejudice any other parties. Such prejudice must be substantial, which is determined by considering whether all the applications sought to be consolidated arise from substantially the

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<sup>2</sup> GN 1665 of 14 October 1996: Rules for the conduct of proceedings in the Labour Court.

<sup>3</sup> [2002] ZALC 36; (2002) 23 ILJ 1446 (LC).

same questions of law and fact or not.

[8] The Applicant argued that:

[8.1] It would be just and expedient to consolidate this review application with the review applications already consolidated in the first consolidation application as the parties in the matters are substantively identical, the relief is similar, the issues that arise are similar and the context within which the dispute is to be determined are also similar;

[8.2] During 2022, the First Respondent decided to extend the collective agreement to non-parties (2022 extension), which decision was again taken in 2023 (2023 extension). The Applicant's reviews challenge the 2022 extension decision as well as the 2023 extension decision;

[8.3] The flaws in the 2022 extension have been carried through to the 2023 extension and therefore the matters are interrelated;

[8.4] The applications require the determination of the same legal issue. By way of example, the Applicant referred to the issue of the certificate of representativity and stated that in both the second review application (case number JR2749/22), and the third review application (case number JR1518/23), the Applicant challenges the certificate of representativity. It submitted that the purpose of the certificate is to assure the First Respondent that the Second Respondent is sufficiently representative within its sector before the collective agreement is extended to non-parties;

[8.5] The Applicant contended that in making both of these decisions, the 2022 extension and 2023 extension, the Minister relied on the same certificate;

[8.6] The Applicant is challenging the validity of the certificate in the JR2749/22 review as well as the review under this case number. The Applicant requires the Court to determine the validity of the same certificate in both of these reviews, the former (JR2749/22) forming part of the first consolidation application.

[9] The First Respondent did not challenge the Applicant's submissions regarding, *inter alia*, the matters being interrelated, the parties being substantively identical, the relief similar and the issues arising from substantively the same set of facts.

[10] It was argued on behalf of the First Respondent that the consolidation would not be just and expedient in the circumstances of this case for the following reasons:

[10.1] Consolidating all three reviews would deprive the First Respondent of its right to raise the mootness defence in respect of the reviews in the first consolidation application (case numbers J668/22 and JR2749/22), as these reviews would then be kept alive under the current review application;

[10.2] Consolidating all three reviews will unnecessarily burden the First Respondent by forcing him to continue financing the exorbitant costs of litigation in respect of two reviews over which the decision will have no practical effect;

[10.3] Consolidating all three reviews will place an unwarranted burden on this Court by forcing it to plough through mountains of paper in respect of two review applications of which there is no longer a live controversy between the parties.

### Mootness

[11] The First Respondent argued that:

[11.1] The 2022 extension will lapse on 10 February 2024, which means that the two review applications which form part of the first consolidation application will as a consequence become moot;

[11.2] The certificate that has been challenged under the second review application (JR2749/22) lapsed on 8 December 2023, which has resulted in that application also becoming moot;

[11.3] Consolidating all three reviews would deprive the First Respondent of its right to raise the mootness defence in respect of the reviews in the first consolidation application (case numbers J668/22 and JR2749/22), as these reviews would then be kept alive under the current review application.

[12] As correctly pointed out by the Applicant, the application before the Court is that of consolidation. It is not for this Court at this juncture to delve into and consider the merits of the review applications. As such it would be premature to make a finding on mootness. I do not agree with the First Respondent's argument that by consolidating this matter with the first consolidation application it would be deprived of its right to raise the mootness defence in respect of the reviews under the first consolidation application. At the hearing of the consolidated review applications, the First Respondent would not be precluded from raising such a point.

## Conclusion

[13] Counsel for the First Respondent conceded that the two reviews which have been consolidated under the first consolidation application have to be argued. It therefore seems futile to expect this Court to conduct two separate hearings to determine the outcome of the two review applications under the first consolidation application and thereafter to determine the outcome of this review application. By not consolidating all three review applications into one consolidated application, the parties will be required to argue on two different dates which would increase the costs of litigation and burden this Court with two hearings instead of one consolidated application.

[14] All three review applications involve substantively identical parties, arising out of similar facts, are interrelated and seek similar relief.

[15] I am of the view that the First Respondent will suffer no prejudice if the second consolidation application is granted, and all three review applications are consolidated and heard at the same time.

[16] I therefore conclude that it would be in the interests of expeditious dispute resolution that the application for consolidation should succeed.

## Costs

[17] In terms of section 162 of the Labour Relations Act<sup>4</sup> (LRA), a court has the discretion to make an order for the payment of costs, according to the requirements of the law and fairness. Although this is a labour matter, the rule that ordinarily applies to labour matters as expressed in the case of *Zungu v Premier of the Province of KwaZulu-Natal and others*<sup>5</sup>, is not appropriate here. The rule that costs orders should not be granted in labour matters is based on, *inter alia*, the ongoing relationship that exists between the parties. Here the circumstances are different, there is no ongoing relationship between the Applicant and the First Respondent. Therefore, the usual rule

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<sup>4</sup> Act 66 of 1995, as amended.

<sup>5</sup> 2018 (6) BCLR 686 (CC); [2018] ZACC 1.

that costs follow the result should apply.<sup>6</sup>

[18] There was no reason for this consolidation application to be opposed. The First Respondent will be entitled to raise its defence of mootness at the hearing of the consolidated review application, this was not the forum to raise merit-based defences.

[19] In the premises, I make the following order:

#### Order

1. This review application under case number JR1518/23 is consolidated with the already consolidated review applications under the consolidated case number JR2749/22.
2. The Registrar is directed to provide an expedited date of set down for the hearing of the consolidated review applications.
3. The First Respondent is ordered to pay the costs of this application.

L Schäfer-King  
Acting Judge of the Labour Court of South Africa

#### Appearances:

For the Applicant: Advocate De Vos  
Instructed by: Hanelle Vry Incorporated Attorneys

For the First Respondent: Advocate M. Nguta  
Instructed by: Office of the State Attorney, Pretoria

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<sup>6</sup> *Association of Mineworkers and Construction Union and others v Ngululu Bulk Carriers (Pty) Limited (In Liquidation) and others* 2020 (7) BCLR 779 (CC); [2020] ZACC 8 at 33.