

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT PORT ELIZABETH

Case No.: P23/21

Date Heard: 23 April 2021

Date Delivered: 30 April 2021

In the matter between:

KOUGA LOCAL MUNICIPALITY

Applicant

and

THE SOUTH AFRICAN MUNICIPAL
WORKERS' UNION ("SAMWU")

First Respondent

SAMWU MEMBERS
AS PER ANNEXURE "A"

Second to Further
Respondent

JUDGMENT

RAWJEE AJ:

[1] This is an application to confirm a *rule nisi* issued on 16 March 2021 by Lallie J to interdict the respondents' strike action that commenced at the workplace of the applicant on 9 March 2021. The application is opposed by the respondents.

[2] The facts leading to the strike action are common cause. The first respondent declared a mutual interest dispute seeking a Covid-19 allowance for its members. The

The first respondent referred the dispute to the local level bargaining forum. The applicant, relying on the SALBGC Main Collective Agreement which prohibits local level bargaining in favour of divisional and national level bargaining, objected to the referral at local level. The applicant then referred a dispute of an interpretation and application of a collective agreement in terms of section 24(2) of the LRA to the CCMA. On 3 February 2021, the first respondent's attorneys served a strike notice on the applicant and its attorneys for the strike to commence on 10 February 2021 at 11:00. The applicant proposed that the strike action be held over until the dispute before the CCMA was finalised. On 8 February 2021, the applicant and respondents agreed to hold over the strike action until the dispute was finalised. This agreement was made an order of court on 9 February 2021 under case number P10/21. On 5 March 2021, the CCMA found that it lacked jurisdiction to hear the dispute and transferred the dispute to the SALGBC. On 9 March 2021, the respondents commenced with the strike action without any notice and in contempt of an order of this Court, by agreement, dated 9 February 2021.

[3] The respondents have not denied the existence of the Court Order or disputed the agreement between the parties and there is no evidence to gainsay the allegations of intimidation and violence by the second to further respondents during the strike action. The respondents' opposition to the rule *nisi* being confirmed is two-fold - that Rule 8 has not been complied with and that the strike is a protected strike. The alleged non-compliance with Rule 8 of this Honourable Court was correctly abandoned by the respondents at the hearing of the matter. Mr Modi, appearing on behalf of the respondents, submitted that the respondents were now only opposing

the confirmation of the rule insofar as the applicant sought a punitive cost order against the respondents.

[4] Mr Grobler, acting on behalf of the applicant moved for the confirmation of the rule *nisi*. He submitted that the rule *nisi* must be confirmed as the applicant has established a clear right to have the dispute finalised by the bargaining council in accordance with the settlement agreement (which is an order of this Court) without the respondents continuing with the strike action; that the applicant and the community it services suffered irreparable harm when seventy five percent of the applicant's employees participated in the strike action when it commenced and no essential services were rendered by the applicant which harm will continue if the rule is discharged and the applicant continues with the strike action and that the applicant has no alternative remedy available. The evidence supports the submissions made by Mr Grobler and are accepted by this court.

[5] Mr Modi submissions regarding costs is that it should not be granted against the first respondent as the Union was not legally represented and did not understand the terms of the settlement agreement and that there is an ongoing relationship between the applicant and the respondents. I first deal with the alleged difficulty in understanding the settlement agreement. The pertinent terms of the settlement agreement are clear and unambiguous - that the strike action would not continue until the dispute was finalised and that if the matter was resolved in favour of the first respondent no further notice of intention to strike is necessary and the strike action will commence immediately or soon thereafter. The settlement agreement is devoid of any legal jargon or ambiguity. It is highly improbable that the first respondent, a trade union of long standing, can mistake the transfer of a dispute to a bargaining

council as the resolution of the dispute in favour of the respondents. This court accordingly cannot accept the first respondent, an established trade union, steeped in the dispute resolution processes, can hide behind a veil of ignorance.

[6] This court is required to consider the law and fairness when exercising its discretion in respect of costs which includes a consideration of the conduct of the parties in proceeding with the matter before court and their conduct in court. In this matter, not only did the respondents agree not to embark on strike action until the dispute was resolved but agreed to make this agreement an order of court. The respondents' actions are not only in breach of an agreement between the parties but are in flagrant disregard of an existing court order. The respondents then opposed this application on frivolous grounds and only abandoned the opposition of the confirmation of the rule *nisi* at the hearing of the matter. The violent actions of the second to further respondents does not go unnoticed by this Court. It is unbecoming of a union of the stature of the first respondent not to have control of its members when exercising the right to strike - a right which was hard fought for pre-1994 and which is now protected by section 17 of the Constitution of the Republic of South, 1996¹ and Chapter IV of the LRA. In our constitutional democracy, the leadership displayed by unions and guidance offered to members to ensure the lawful exercise of this right to embark on strike action is pivotal. Union leadership is instrumental in ensuring property and lives are not harmed during strike actions. The facts of this matter speak to the first respondent's leadership of the second to further respondents being absent or is seriously lacking. The second to further respondents are members of the first respondent and are dependent on the first respondent to

¹ "Everyone has the right, **peacefully and unarmed**, to assemble, to demonstrate, to picket and to present petitions."

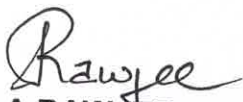
protect their interests. Mulcting the second to further respondents with a cost order in these circumstances will not be fair. Having considered the law and fairness in this matter, this court finds that the applicant has made out a case for punitive costs against the first respondent.

[7] In respect of the rule nisi issued by Lallie J on 16 March 2021, I accordingly make the following order:

7.1. Paragraph 2.1 interdicting and restraining the respondents from continuing with a strike that commenced on 9 March 2021 at the workplace of the applicant until the dispute referred to the CCMA under case number ECPE658-21 and referred to the South African Local Government Bargaining Council has been finalised is confirmed; and

7.2. Paragraph 2.2 ordering the first respondent to pay costs of the application at an attorney and own client scale is confirmed with the deletion of any reference to the second and further respondents; and

7.3. Save as aforesaid, the rule *nisi* is discharged only in respect of the order as to costs against the second to further respondents.


A RAWJEE

ACTING JUDGE OF THE LABOUR COURT

Appearances:

For Applicant: Adv M Grobler instructed by Labuschagne Van Der Walt Inc,
Port Elizabeth

For Respondent: Mr S Modi instructed by S Modi Attorneys, Queenstown

Labour Court