THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Not Reportable

Case no: P115/2023

In the matter between:

SOUTH AFRICAN MUNICIPAL WORKERS UNION Applicant

and

MATJHABENG LOCAL MUNICIPALITY Respondent

Heard: 2 February 2024

Delivered: 6 February 2024 (This judgment was handed down electronically by emailing a copy to the parties. The 6 February 2024 is deemed to be the date of delivery of this judgment).

Summary: Return date. Urgent application to interdict deductions allegedly in breach of section 34 of the Basic Conditions of Employment Act, 1997. Court held that there was no breach of the BCEA. Application dismissed with no order as to costs.

JUDGMENT

DANIELS J

Introduction

[1] Acting on its members behalf, who are employed by the respondent, the applicant (hereafter "the Union") sought and was granted a rule nisi and interim order interdicting and restraining the respondent (hereafter "the Municipality") from making deductions from the salaries of its employees for arrear municipal rates and taxes.

[2] An interim order was issued by Lallie J on 1 December 2023, with the return date of 25 January 2024. Paragraph 1 of the order recorded the following: "*The applicant's failure to comply with the rules of this court is condoned and the matter is disposed of as one of urgency in accordance with the provisions of Rule 8 of the Rules of the above Honourable Court*." On 25 January, the rule was extended, and the return date of 2 February secured. On that date, the matter came before me.

Material facts

[3] On or about 19 January 2022, the Chief Financial Officer of the Municipality issued a letter to all its employees advising them that, with effect from the end of February 2022, it would begin making deductions from their salaries of arrear rates and taxes. The letter further advised that:

3.1 The deductions were lawful because they were permitted in terms of section 34 of the Basic Conditions of Employment Act No. 75 of 1997 as amended (hereafter the "BCEA").

3.2 The deductions were permitted under Schedule 2, Item 10 of the Local Government Municipal Systems Act No. 32 of 2000 (hereafter the "Systems Act"),

3.3 Those employees in arrears should approach Credit Control to arrange for the payment of the arrears.

[4] Many employees came forward arrange to pay the outstanding arrears, but others did not.

[5] On 17 March 2022, the Union's local secretary addressed a letter to the Municipality advising that the intended deductions were unlawful

because the Union was entitled to first be consulted on such matters at the Local Labour Forum. The letter stated that the deductions would undermine collective bargaining.

[6] During September 2023, the Municipality addressed individual letters to affected employees and advised them that the deductions would commence at the end of that month. In that letter, the Municipality advised that the deductions would not exceed the lesser of two amounts, (1) 25% of the debt outstanding for more than 90 days, or (2) 50% of net salary.

[7] Despite the warning that deductions would be implemented in September 2023, the deductions only commenced at the end of October 2023.

Urgency

[8] The Municipality argued that the application was not urgent, and that the court was entitled to reassess urgency despite the earlier order made by this court. No authority was given for the proposition.

Challenge to the lawfulness of the deductions

The applicant did not challenge the lawfulness of the deductions on the basis that the amounts deducted would exceed the percentage in section 34(2)(d) of the BCEA. That section provides that, where the deductions are made in accordance with a written agreement, between the employee and the employer, the deductions may not exceed 25% of salary. On the contrary, here, the applicant's case was that the deductions were made in the absence of the employee's consent.

[9] The applicant pinned its colours to the mast. It contends that the deductions were unlawful because section 34 of the BCEA requires consent, and there was none. In reply, the applicant stated that the deductions were also unlawful because the employees disputed the amounts which were said to be owing to the Municipality, and they were entitled to be heard before the deductions were made. This secondary contention was not pursued during oral argument.

[10] The applicant contended that there was a conflict between the BCEA and the Systems Act, because the BCEA *allegedly* always requires the employee's consent whereas the Systems Act does not. The applicant contended that the BCEA must trump the Systems Act, because the BCEA embodies the right to fair labour practices, it ensures the right of access to court, and the right to fair administrative justice. Although, the applicant was clear that it did not challenge the constitutionality of any legislation, it handed up two cases which related to the constitutionality of section 38(2)(b)(ii) of the Public Service Act No. 103 of 1994, which provided for the deduction of monies erroneously paid to government employees.

[11] Despite the letter from the Union during March 2022, indicating that the deductions were unlawful because they undermined collective bargaining and, presumably, collective agreements or recognition agreements between the Union and the Municipality, the applicant did not pursue this as a basis for its contention that the deductions were unlawful.

Analysis

[12] I simply cannot accept the proposition that I must reassess urgency on the return date, despite an earlier order expressly finding that the application may be treated as urgent. One needs no authority for this.

[13] As to the unlawfulness of the deductions, in the present circumstances, I am bound by the applicant's pleaded case.[1] The applicant's argument was that the BCEA did not permit any deductions except those agreed upon. If the applicant is incorrect in that regard, its application must fail.

[14] Section 34(1)(b) of the BCEA specifically provides that deductions may be unilaterally made from an employees' salary where this is mandated by a law, collective agreement, court order or arbitration award. Clearly, this section does not permit arbitrary deductions. In addition, where a law mandates the deduction, it is hard to understand why the employee's consent must also be required. In its erroneous interpretation of section 34, the applicant fails to recognize the use of the word "or" between subsection 34(1)(a) and subsection 34(1)(b). The use of the word "or" makes it clear that an employer must either make the deduction by consent, or if no consent exists, the deduction must be permitted under subsection 34(1)(b). The section is therefore crystal clear and requires no interpretation. In any event, interpretation of statutes begin with the text itself.[2]

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[1] With one exception, namely where an issue has been fully canvassed during the hearing and there is no prejudice in having regard to such issue. See *Robinson v Randfontein Estates G.M. Co. Ltd* 1925 AD 173 at 198

[2] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 at para 18

> [18] Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors.[15] The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document. (own emphasis)

[15] Section 69 of the Systems Act provides as follows: "The Code of Conduct contained in Schedule 2 applies every staff member of a municipality". Schedule 2, item 10 provides:

> "*A staff member of a municipality may not be in arrears to the municipality for rates and service charges for a period longer than 3 months, and a municipality may I deduct any outstanding amounts from a staff member's salary after this period*."

[16] In the circumstances, the BCEA and the Systems Act are both perfectly clear - the deductions are lawful. The deductions are permitted under the Systems Act. The Systems Act is a law contemplated by section 34(1)(b). The applicant has thus failed to establish a clear right and has failed to satisfy the requirements for a final interdict. The application must be dismissed.

Costs

[17] Both parties sought costs. However misguided, the applicant genuinely believed it was acting in defence of its members rights. In these circumstances, there is nothing in law or fairness which requires that the applicant be mulcted in costs. I therefore exercise my discretion by making no costs order. In *MEC for Finance: Kwazulu-Natal and Another v Dorkin NO and Another*[3] the court stated as follows:

> "*The rule of practice that costs follow the result does not govern the making of orders of costs in this Court. The relevant statutory provision is to the effect that orders of costs in this Court are to be made in accordance with the requirements of the law and fairness. And the norm ought to be that cost orders are not made unless those requirements are met. In making decisions on cost orders*

[3] [2008] 6 BLLR 540 (LAC) at para 19

this Court should seek to strike a fair balance between on the one hand, not unduly discouraging workers, employers, unions and employers' organisations from approaching the Labour Court and this Court to have their disputes dealt with, and, on the other, allowing those parties to bring to the Labour Court and this Court frivolous cases that should not be brought to Court. That is a balance that is not always easy to strike but, if the Court is to err, it should err on the side of not discouraging parties to approach these Courts with their disputes." (Own emphasis)

Conclusion

[18] In the result, the following order is made:

1. The interim order is and rule nisi is discharged.
2. There is no order as to costs.

RN DANIELS
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Adv PT Masihleho
Instructed by: Machini Motloung Attorneys

For the Respondent:

Mr. Qwelane (Attorney)
Qwelane, Theron & Van Niekerk Attorneys