

SOUTH AFRICA / JUDGMENT

BHUTHOLICA Social Justice For All Workers Union v Registrar of Labour Relations (J951/23) [2023] ZALCJHB 224; (2023) 44 ILJ 2221 (LC) (11 July 2023)

[2023] ZALCJHB 224

COURT

Labour Court Johannesburg

BEFORE

Z Lallie

CASE / FILE NUMBER

J951/23

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

CASE

NO: J951/23

In

the matter between:

BHUTHOLICA
Social Justice For
All
Workers Union
(BUSJU) Applicant
and
REGISTRAR
OF LABOUR RELATIONS (DEPT OF Labour) Respondent

Heard:

4 and 7 July 2023

Delivered:

This judgment was handed down electronically by circulation to the Applicant's and Respondent's Legal Representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing - down is deemed to be 16h00 on 11 July 2023.

JUDGMENT

LALLIE, J

- [1] The applicant launched this urgent application seeking an order suspending the respondent's decision cancelling its registration pending the finalisation of the appeal against the respondent's decision. The application is opposed by the respondent.
- [2] The applicant was registered as a trade union as the Construction, Transport, Hotel, Liquor, Catering, Commercial and Allied Workers Union of South Africa (BHUTOLICCA) on 25 April 2012. As a result of internal problem changed its name and was registered as BUTHOLICCA Soc Justice for All Workers Union (BUSJU) on 1 February 2017. As the internal problems continued unabated, on 4 March 2023 the applicant took a decision to further change its name at its second national congress. It communicated the decision to the respondent. Instead of receiving a new registration certificate reflecting the latest change, the applicant received, on 27 June 2023, an email and government notice informing it of the cancellation of its registration with effect from 23 June 2023. On 3 July 2023, the applicant filed the application at hand.

Urgency

- [3] The applicant submitted that its cancellation was brought to the attention of its General Secretary on 29 June 2023 who promptly sought reasons for the deregistration. The applicant also pegged the urgency of its application on its obligation to represent its members at arbitrations at the Commission for Conciliation, Mediation and Arbitration (the CCMA) and the Metal and Engineering Industries Bargaining Council (MEIBCO). Some arbitrations are scheduled for hearing in July and August 2023. The respondent challenged the urgency of this application on the basis that its office made the applicant aware of its intention to cancel its registration as early as 31 May 2022. The applicant was afforded an opportunity to make representations within 60 days thereafter. On 5 August 2022, the respondent afforded the applicant an opportunity to cure its non-compliance which threatened its registration. The applicant failed to seize that opportunity. It was the respondent's case that the urgency the applicant was attempting to rely on is self-created. The applicant denied having received part of the correspondence which supports the respondent's attack on urgency. It submitted that it requested the reasons for the cancellation of its registration on 30 June 2023 and they were provided on 4 July 2023.
- [4] The respondent invoked the provisions of section 106 (2B) of the Labour Relations Act^[1] (The LRA) in cancelling the applicant's registration as a trade union. The reason for the cancellation were that the applicant failed to comply with sections 98) 99 and 100 of the LRA and ceased to function in terms of its constitution. The respondent concluded that the applicant had ceased to function as a genuine trade union as envisaged in the LRA.

- [5] Section 111 (1) of the LRA grants a person aggrieved by the respondent's decision the right to demand reasons for the decision with 30 days of the notice of the decision. Subsection (2) requires the registrar to provide the reasons in writing within 30 days after they have been demanded. Subsection (3) grants the applicant the right to appeal to the Labour Court against the respondent's decision within 60 days of the date of the reasons for the cancellation of its registration. The urgency of this application must therefore be determined against the background of the provisions of section 111 of the LRA. There is no basis to conclude that the applicant has delayed in bringing this application when it has complied with the provisions of section 111 of the LRA by acting within the prescribed time frames. It is common cause that the applicant requested reasons for the respondent's decision within the 30 day period laid down in section 111 (1) of the LRA. The respondent complied with subsection
- (2) in providing the reasons. The period for the filing of the appeal prescribed in subsection (3) has not yet expired. The respondent's argument that the delay in filing the appeal supports its contention of lack of urgency is not valid. The applicant has proved the urgency

of this application.

- [7] The respondent's grounds for opposing this application are that the applicant has no prima facie right as it was given timely notice of the cancellation of its registration. It was also afforded time to make representations. It was the respondent's further submission that the applicant will not suffer prejudice or irreparable harm should this application be refused. The respondent expressed the view that the applicant is the author of its inconvenience because its deregistration resulted from its failure to fulfil its statutory obligations as a trade union.
- [8] In determining whether the applicant has proved its entitlement to the relief it seeks I have noted that in terms of section 106 (3) of the LRA all the rights a trade union enjoys come to an end when its registration has been cancelled.

Section 111 (5) of the LRA provides that an appeal against the registrar's decision cancelling the registration of a trade union does not suspend the operation of the registrar's decision. Chapter VI of the LRA which regulates trade unions and employers' organisations does not expressly grant the Labour Court the power to suspend the registrar's decision to cancel a trade union's registration pending the finalisation of the appeal against it. Section 158 (1)(u) of the LRA grants this court wide powers to 'deal with all matters necessary or incidental to performing its functions in terms of this Act or any other law'.

- [9] The lacuna resulting from the absence of a statutory provision granting this court express powers to suspend the decision of the registrar pending the finalisation of the appeal does not prevent this court from granting the relief the applicant seeks. Section 106 of the LRA precludes a deregistered trade union from operating. Section 111 of the LRA grants a deregistered trade union an automatic right to appeal against the decision deregistering it. The deregistration of a trade union has far reaching consequences on it as an organisation,

as an employer and on the rights of its members. The rights include the right to represent vulnerable employees at arbitration. The circumstances of this case justify the application of section 158 (1) U) of the LRA. The provisions of section 18 of the Superior Courts Act[2] constitute appropriate guide-lines. The general rule that can be gleaned from that piece of legislation is that the operation and

execution of a decision which is the subject of an appeal is suspended pending the decision of the appeal, unless the court under

the exceptional circumstances orders otherwise.

[10] I acknowledge the essential role the registrar plays in regulating trade union activities and the necessity for compliance with the decisions the registrar makes based on the LRA. I further take cognisance of the rights of deregistered trade unions as well as the prejudice those unions and their members stand to suffer during the deregistration period pending the outcome of the appeal. Part of the harm that trade union members stand to suffer during the deregistration period is loss of assistance which may result in job losses. I could find no exceptional circumstances for deviating from the general rule in section 18 of the Superior Court Act. The submissions on the merits of the appeal both parties sought to rely on could not assist them owing to their irrelevance. In the circumstances, the application must succeed.

[11] The respondent did not act unreasonably in opposing this application. Making a costs order in the circumstances would not be appropriate.

[12] In the premises, the following order is made:

1. The application is dealt with as one of urgency and non-compliance with the Rules of the Labour Court dealing with time period and service is condoned.
2. The decision of the Respondent, the Registrar of Labour Relations, to cancel the registration of the Applicant, the BUTHOLICCA Social Justice for All Workers Union (BUSJU), with effect from 23 June 2023 in terms of section 106(2B) of the Labour Relations Act, 66 of 1995, is suspended pending the outcome of the applicant's appeal against the decision.
3. There is no order as to costs.

Z. Lallie

Judge of the Labour Court of South Africa

Appearance:

For the Applicant:

Mr T Faku of Faku Attorneys

For the Respondent:

Advocate K. Mokoena

Instructed by:

State Attorney

[1] 66 of 1995 as amended.

[2] 10 of 2013.

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Prepared on 13 October 2026 · Esheria