

SOUTH AFRICA / JUDGMENT

# Mathole and Others v Governing Body of the CCMA and Others (J2722/17) [2017] ZALCJHB 429; (2018) 39 ILJ 1079 (LC) (20 November 2017)

[2017] ZALCJHB 429

## COURT

Labour Court Johannesburg

## BEFORE

E Tlhotlholemaje

## CASE / FILE NUMBER

J2722/17

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## Source record

IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Of Interest to Other Judges

Case

no: J 2722/17

In

the matter between:

EPHRAIM MATHOLE &amp; OTHERS

Applicant

and

GOVERNING BODY OF THE CCMA

First Respondent

COMMISSIONER EVA NGOBENI N.O

Second Respondent

COMMISSIONER SETLAGO MORWA N.O

FOUNDATION/PEN/EIENDOM

BELEGGING/CBD

RESIDENCY

Third Respondent

Fourth Respondent

Heard:

15

November 2017

Delivered:

15 November 2017

Reasons:

20

November 2017

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**JUDGMENT**

TLHOTLHALEMAJE, J:

**Introduction:**

- [1] The applicant, Mr. Ephraim Mathole (Mathole), purportedly acting on behalf of other unidentified individuals approached this Court on 3 November 2017 on an urgent basis seeking what appears to be interim relief. The nub of the relief sought, to the extent that I can make sense of it, is to compel the first respondent (CCMA Governing Body) to do certain things, including dealing with his application before the Commission for Conciliation Mediation and Arbitration (CCMA); dealing with certain allegations of corruption, bribery, nepotism, abuse of powers, mismanagement, maladministration, fraud; to take disciplinary action against the third respondent (Commissioner Setlaga Morwa) on account of allegations of misconduct; and to deal with allegations of victimization against him by unnamed CCMA officials in respect of certain matters he had brought before the CCMA. He further seeks an order in terms of the provisions of the Labour Relations Act (LRA)[1] and the Constitution of the Republic[2] that he has locus standi to refer a dispute against the fourth respondents on behalf of individuals he purportedly represents to the CCMA for determination.
- [2] The curious and confusing nature of the type of relief sought is self-evident and I will not burden this judgment in this regard, save to state that at the core of the opposition of this application by the fourth respondents is that Mathole lacks the requisite locus standi to approach this Court and by extension the CCMA, in respect of this matter.

The legal position:

- [3] One of the most important requirements for any legal action is locus standi (in judicio), which is essentially the right to institute action. In other words, it relates to the right or legal capacity of a party to sue or be sued, or a party's right to make a legal claim or seek judicial enforcement of a duty or a right[3]. It is apparent that this right is directly linked to access to justice and in particular, to Courts as guaranteed under section 34 of the Constitution[4].
- [4] In *United Watch and Diamond (Pty) Ltd v Disa Hotels Ltd*[5] the court explained the test for determining this right or legal capacity as follows;

"to establish that one has locus standi in judicio, one must show,... that he has an interest in the subject matter of the judgment or order sufficiently direct or substantial..."

- [5] The right or standing to institute or defend against proceedings is not dependent on the success or merits of a case. It is a condition

precedent to a determination on the merits. In a nutshell, if the applicant has no locus standi or standing to litigate, it is not even necessary to consider whether there is a genuine case on the merits or not. That applicant's

case must then be struck out or dismissed as not being properly before a court or tribunal.

[6] The starting point with any litigation is that any person approaching a court or labour dispute resolution forum must have the necessary

authority or locus standi to do so. The provisions of section 161 of the Labour Relations Act dictates as to who can appear and represent parties in this Court[6]. Thus, given the special dispensation of our labour dispute resolution, other than merely demonstrating that a party has a direct

or substantial interest in the subject matter of the litigation, these Rules set out certain criteria to be met before a party can litigate or defend a matter in the Court.

[7] The above principles also apply to Rule 25 of the CCMA Rules, which equally makes provision as to who can appear or represent parties at CCMA proceedings[7]. Other statutory labour dispute resolution bodies have similar rules.

[8] The prevailing theme in both section 161 (2) of LRA and Rule 25 (1) (d) of the CCMA Rules for the purposes of this case is that an individual professing to be a union official/employer representative in proceedings before the Commission or the Court, is specifically

prohibited from charging a fee or receiving a financial benefit in consideration for agreeing to represent that party, unless permitted

to do so by the Commission or an order by the Court.

[9] The Supreme Court of Appeal in *Commission for Conciliation, Mediation and Arbitration and Others v Law Society of the Northern Provinces (Incorporated as the Law Society of Transvaal)*[8] has pronounced on the constitutional validity of the Rule 25 (1) (c) of the CCMA Rules, and I will not burden this judgment with the conclusions reached therein as they are not pertinent to this case.

[10] As to under what circumstances a Court, or the CCMA can permit any person other than a legal practitioner to represent a party in

proceedings for a fee is not clear from the Rules. One can only assume that the factors to be considered in that regard for the

purposes of CCMA proceedings, would include those in Rule 25 (1) (c). For the purposes of court proceedings, one can only assume that factors to be considered would include whether it is in the public interest to grant permission, or whether it would be in the interests of justice to permit such individuals to represent others at proceedings for a fee.

- [11] There is further tendency amongst individuals who have no locus standi before either the Court or CCMA to contrive a self-serving and incorrect interpretation to the provisions of section 189 (1) (d) of the LRA[9]. These individuals suggest that these provisions entitle them to represent employees and be consulted in retrenchment processes in the event that those employees likely to be affected by retrenchments do not belong to a trade union.
- [12] A reading of these provisions as open-sesame for anybody from anywhere to raise a hand and claim to be entitled to represent employees under those circumstances cannot be correct. It would imply that anybody from the street, unrelated to the issues, or uninterested and ignorant of the facts may claim a right to represent those employees. This would create a circus out of the retrenchment process and prove untenable for employers. It would also be an avenue for people with nefarious intentions to exploit the employees facing retrenchments in the name of helping them. The facts of this case illustrate this mischievous end sought to be achieved by this incorrect interpretation of these provisions.
- [13] The provisions of section 189 (1) (d) of the LRA can only be interpreted to mean that in the event that the employees to be retrenched do not belong to a trade union, the employer must consult with those employees or their nominated representatives. The 'nominated representatives' in question can only be those from their own ranks, in the sense that those employees must appoint someone amongst them to act as their representative. This therefore cannot imply that the representative can be some other persons from the streets.
- [14] Flowing from the above, it follows that individuals who do not meet the requirements set out in Rule 25 of the CCMA Rules, and then

masquerade as union officials in order to solicit hard earned money out of recently dismissed employees with a promise of taking up their labour disputes either in courts or labour dispute resolution institutions, are nothing less than fraudsters.

- [15] These individuals are shameless predatory leeches. They feed off the misery and plight of vulnerable and unsuspecting members of the public, who find themselves in hard times and desperate after a loss of a job. They are common criminals, and the CCMA and Courts should act harshly against them in order to protect vulnerable members of our society.
- [16] It cannot be doubted that a loss of a job is a death sentence on its own not only to the ex-employees but also to those dependent on them for support. To therefore be stalked upon and taken advantage of by these marauding criminals after a loss of a job with false promises, is to add salt to injury. My exasperation with these lowlives will be appreciated within the context of the facts of this case.

The background to this urgent applications and conclusions:

- [17] The central figure in this sorry saga is Mathole, who has cited himself as the applicant in this application. The union he purports to be an official of, HOCAFAWU, has disowned him in a sworn affidavit. As shall become clearer in this judgment, and based on his own admissions during his submissions in court, Mathole together with another individual he had named as 'Matemane' (A Branch Secretary of HOCAFAWU), solicited an amount of R4 000.00, from individuals he purportedly acts on behalf of in this and other cases before the CCMA.
- [18] The unidentified individuals (a list is not attached to the founding affidavit) used to be employees of the entities collectively cited as the fourth respondent. The respondents (Herein referred to as 'PEN'), other than CBD Residency are a Foundation under the operating name, 129 Vermeulen Straat Eiendoms Belegging (Pty) Ltd. The Foundation provides affordable accommodation to students. PEN as a whole is a Section 21 company involved in social upliftment and is faith based organisation running social programmes.
- [19] The individuals purportedly represented by Mathole were retrenched by PEN in or around July 2017. At the time of their retrenchment they did not belong to any union. Prior to the conclusion of retrenchment process, Mathole approached PEN, and claimed that he was a union representative from HOCAFAWU, and thus sought to represent the employees.
- [20] The contents of Mathole's founding affidavit are difficult to decipher. Any attempt at making sense of what his case is all about from that affidavit is truly migraine inducing. He nonetheless contends that he was asked by the employees to intervene on their behalf prior to their retrenchments. Management of PEN however refused to talk to him when he attempted to intervene. Undeterred,

Mathole referred a dispute pertaining to disclosure of information to the CCMA in July 2017 under case number GATW9520-17. This dispute was set-down for conciliation in the same month.

- [21] On 28 July 2017, Mathole launched an urgent application in this court under case number J1465-2017 to interdict the respondents

from dismissing the employees he purportedly represented. Ironically, he accused PEN of inter alia seeking to proceed with a 'purported and fraudulent dismissal' against the employees. He had further alleged that he represented the employees under HOCAFAWU. That urgent application according to the respondents was incomplete and with no annexures. This appears to be the trend and his modus operandi, as the current application was equally filed without the annexures referred to in the affidavit. The respondents contend that this

urgent application also filed on 27 July 2017 and immediately enrolled on the urgent roll without being served on them

until 28 July 2017.

- [22] The urgent application under case number J1465/2017 was set down for a hearing on 4 August 2017. In the evening of 3 August 2017,

Mathole purportedly acting on behalf of HOCAFAWU filed a notice of removal of the urgent application from the roll, on the basis that the parties had signed a settlement agreement to resolve the dispute.

[23] PEN and CBD had opposed the urgent application, and had taken exception to the notice of removal of the matter and indicated to Mathole that he should attend the court proceedings as scheduled. Prior to the hearing date, PEN had made its own investigations with HOCAFAWU, and it was established that Mathole was not its official as he had consistently presented himself in his dealing with the respondents. The union's General Secretary's affidavit in this regard will be dealt with shortly.

[24] Mathole did not attend to the urgent application he had set-down. It was then dismissed by Prinsloo J with an order that he should make written representations as to why he and HOCAFAWU should not be held liable for the costs incurred by PEN and CBD, including the costs of two counsel. They were given until 21 August 2017 to file an affidavit in that regard.

[25] Mathole did not file representations as ordered by Prinsloo J. He instead filed a rescission application in circumstances where he had elected not to attend the court proceedings he had initiated and set-down. Even if there was any merit in any contention that he had removed the matter from the roll, this was no justification to be absent from court. His contention was that he did not 'bother' to attend the court as the matter was properly removed from the roll. It is unheard of for a party to bring others to court and simply not show up at proceedings on the basis that a matter was removed from the roll on short notice and without a tender of costs. Such conduct constitutes utter abuse of the court process, especially the court's continuously over-burdened urgent roll.

[26] Despite the above conduct, Mathole was not done. In his affidavit in the present matter, he contends that the Prinsloo J's order was 'obtained by improper means such as fraud and corruption' in his absence, as he had properly removed the matter from the roll. This is indeed ironic. It is a cheap shot, coming from someone

disowned by HOCAFAWU as a fraudster.

[27] On 21 August 2017, an affidavit was obtained from HOCAFAWU's General Secretary, Ms. Linah Mashala[10]. The net effect of that affidavit in contending why HOCAFAWU should not be liable for costs in a matter before Prinsloo J is that the union does not know Mathole, nor does it know the people he purportedly represents under its name. Ms. Mashala further averred

that Mathole is using the name of HOCAFAWU for his own benefit and is not recognised by the union.

[28] Mathole's contention was that the affidavit was obtained out of the Union because there is collusion between it and the respondents'

attorneys. The conspiracy theory is nonetheless a smokescreen as on his version as shall later be demonstrated, he could not show whether he was a bona fide union official. There cannot be any other meaning to be ascribed to Mashala's averments. It is apparent that Mathole is a fraudster, as he is masquerading as a union official.

[29] In the answering affidavit in this matter, it is averred that Mathole despite being disowned by HOCAFAWU, had made multiple false and misleading averments under oath regarding his capacity and status as a legal representative and member of HOCAFAWU, which amount to perjury, and thus a criminal offence. I could not agree more with these submissions, as shall further be more evident in my exchanges with him in court as shall be illustrated in due course.

[30] PEN and CBD had submitted representations as to why Mathole should be held personally liable for costs in the application before Prinsloo J. Amidst the shenanigans, Mathole somehow managed to secure a settlement agreement out of PEN on 1 August 2017 in the amount of R294 117.00 for each of the employees he purportedly represented. Amongst the relief he seeks in the notice of motion is an order making that settlement an order of court. As to how he had managed to secure that settlement agreement out of PEN is unclear from his convoluted founding affidavit. On 7 August 2017, Mathole sent correspondence to PEN and CBD, demanding settlement in terms of the agreement. The settlement agreement and the amounts therein are seen by PEN as an attempt at extortion in view of the fact that the ex-employees were paid their retrenchment packages.

[31] The initial dispute referred to the CCMA in regard to disclosure of information was set down for a hearing on 11 September 2017

before Commissioner Ngobeni, the second respondent. A preliminary point was raised in those proceedings by the respondents that Mathole lacked the requisite locus standi to act on behalf of the dismissed employees.

[32] Commissioner Ngobeni agreed in a ruling issued on 21 September 2017, pointing out that Mathole had not satisfied the requirements under Rule 25 (4) of the CCMA Rules. Mathole therefore could not appear before the CCMA, and the Commissioner had also advised the individual employees of their rights to secure alternative representation. Before the Commissioner at the time the ruling was made was the Mashala affidavit, in terms of which HOCAFAWU had disowned Mathole. It was therefore apparent at that stage that Mathole was indeed a fraudster and nothing else.

[33] Mathole nonetheless takes issue with the ruling, and contends that Commissioner Ngobeni did not also determine the locus standi of PEN's representative. In similar fashion, in these proceedings, Mathole sought to question the locus standi of the respondents' counsel. In Mathole's parallel universe, when his locus standi is disputed, a ruling in that regard confirming that he lacks locus standi can only be fair if his opponents' locus standi is equally questioned. In the same universe, Mathole seriously believes that legal

representatives are not allowed to represent

parties at arbitration proceedings, notwithstanding the fact that they wish to raise jurisdictional points, because Rule 25 of the CCMA Rules says so.

[34] Mathole's tenacity is clearly in abundance and limitless. Undeterred by Commissioner Ngobeni's ruling, he then on 26 September 2017

made an application at the CCMA to substitute HOCFAWU as a party in his referral to that of his name in his personal capacity. In seeking a substitution, he relied on the provisions of section 189 (1) (d) of the LRA. This is indeed strange in view of his continuous assertions that he acts under that union. In the meantime, he also launched an application to review that ruling under case number JR2307-2017. PEN denies having received a copy of the review application. The application to substitute before the CCMA was dismissed by the third respondent, Commissioner Setlago Morwa on 13 October 2017.

[35] Notwithstanding the dismissal of his application to substitute, Mathole caused the CCMA to issue subpoenas in respect of certain individuals associated with PEN, to appear at arbitration proceedings scheduled for 9 November 2017 in respect of his initial referral. This he obtained notwithstanding the fact that in terms of Commissioner Ngobeni's ruling, he could no longer appear as he had no locus standi.

[36] The Governing body of the CCMA did not oppose this application despite being cited as the first respondent in these proceedings. I am uncertain as to the reasons it did not oppose this application. The most likely one is that Mathole did not serve his papers on it. My concern nonetheless is the reason CCMA continues to indulge Mathole in the face of its own standing ruling that he has no locus standi. This is clearly beyond comprehension, unless the CCMA finds some entertainment value in his shenanigans.

[37] The future of 18 or so ex-employees of the respondents and that of their dependants is at stake as they find themselves without a job and a support base. These ex-employees are entitled to expeditious finalisation or resolution of their dispute. There cannot therefore be any entertainment value in all of this farce orchestrated by Mathole in the name of these employees, and there are clearly no reasons why he should be indulged any further by the CCMA.

[38] Mathole's conduct is not doing any justice or favours to these ex-employees' case. On the contrary, the more Mathole under false pretexts continues to litigate on their behalf, the longer it would take to have their matter be resolved. This case and all other cases before the CCMA purportedly brought on behalf of these ex-employees are no longer about them. They are now about Mathole, who appears to be on an ego and self-righteous trip. The CCMA is unfortunately dancing to his out of sync tune, by indulging him when by law, and based on its own ruling it should not.

- [39] I am constrained to say that by indulging Mathole in these circumstances, the CCMA in effect is failing in its obligations towards the ex-employees, as they clearly need protection from him. These employees are entitled to an expeditious resolution of their dispute, and Mathole is clearly not conducting himself in their best interests or to that end.
- [40] The essence of Commissioner Ngobeni's ruling is that Mathole is not supposed to be anywhere near the CCMA's premises in pursuance of that dispute or any other dispute for that matter. Once it was established that he had no locus standi, this meant that he could not take any steps in respect of the referral before the CCMA, including a request to have subpoenas

issued. In effect, the CCMA should treat him as persona non-grata. Equally so, and on the strength of Commissioner Ngobeni's standing ruling, this Court and any other statutory labour dispute resolution bodies should treat Mathole likewise. This is until such time that he can demonstrate that he has the necessary locus standi to litigate.

- [41] The various factors highlighted in this judgment clearly point to the invariable conclusion that Mathole is indeed a fraudster, who together with his colleague he had identified as HOCAFAWU's branch secretary, Matemane, masquerade as union officials and solicit money out of vulnerable employees for a living. If ever there was any doubt about this fact, it was put to rest through my exchanges with him in court which I deem appropriate to extract from the record. The exchanges went as follows;

MR MATHOLE: Ja, thank you, M'Lord. I think you are right, I can deal with the issue of locus standi, why I thought I had locus standi, M'Lord. I think that is the major point that I can deal with, M'Lord. M'Lord, let me just, I will give you, because the pagination is not proper, I cannot, but I will try to refer on the bundle that I have. We have a dispute, I was approached by the various employees of the fourth respondent concerning a purported retrenchment internally. We normally work with the union called HOCAFAWU. We have a union in Pretoria, it is HOCAFAWU. We have so many cases, M'Lord, where we represent through HOCAFAWU.

I wrote, I contacted the branch secretary of HOCAFAWU in Pretoria called Mr Matemane, that we have these employees where a retrenchment is pending, that, Matemane, these employees were not members of the union, I have to be clear on that regard. Then Mr Matemane said, no, let us take this matter, M'Lord, but these people they must pay some logistic money for the union, and he said they must pay at least plus/minus R4 000 to the union, M'Lord, which the employees did ... [intervenes]

COURT: Sorry, let me understand this. These employees of the fourth respondent were not members of the union?

MR MATHOLE: They were not the members of the union.

COURT: So how many employees are we talking about?

MR MATHOLE: It is plus/minus 18, but there were ...[intervenes]

COURT: Sorry?

MR MATHOLE: Plus/minus 18 of them, but there were others, there were more than 50 but most of them were not affected.

COURT: Alright, so we are talking about 18 employees?

MR MATHOLE: Ja, 18 employees that were ...[intervenes]

COURT: Now, of these 18 employees, because you wanted to represent them they had to pay an amount of how much?

MR MATHOLE: He said plus/minus R4 000 so that ...[intervenes]

COURT: R4 000 each or for the whole group?

MR MATHOLE: No, the whole group.

COURT: For the whole group?

MR MATHOLE: Yes, so that we can assist them, that is correct.

COURT: And they paid it?

MR MATHOLE: And they paid it, M'Lord.

COURT: These employees paid that amount?

MR MATHOLE: That is correct, they gave it to me and I gave it to, we paid to Mr Matemane the ...  
[intervenes]

COURT: Mr Mathole, I want you to understand the consequences of what I am asking you ...  
[intervenes]

MR MATHOLE: Okay, they paid...

COURT: And I am going to repeat my question again.

MR MATHOLE: Yes.

COURT: This plus/minus 18 employees, who came to you for assistance or who you approached to assist to them ...[intervenes]

MR MATHOLE: That is correct.

COURT: Were asked to pay an amount of R4 000 in order to get assistance from the union?

MR MATHOLE: That is correct, M'Lord.

COURT: Did they pay it into the union's account or did they pay it into any individual's account?

MR MATHOLE: They normally pay to Mr Matemane.

COURT: Who is he?

MR MATHOLE: The branch secretary for Pretoria.

COURT: The branch secretary?

COURT: Now do we know where the money went to?

MR MATHOLE: The money went to Mr Matemane, the money went to ...[intervenes]

COURT: To his account?

MR MATHOLE: Yes, to his account, M'Lord.

COURT: Sorry, what is the person's name again?

MR MATHOLE: Mr Matemane.

COURT: Matemane?

COURT: What is his name, the other name, Matemane?

MR MATHOLE: They call him Matemane, his name is Matemane.

COURT: And his first name you do not know?

MR MATHOLE: His first name, they normally, that is his first, that is his African name, Matemane.

COURT: But he is the branch secretary?

MR MATHOLE: He is the branch secretary of ...[intervenes]

COURT: Of this union?

MR MATHOLE: Ja, in Pretoria. When we have cases we approach him. We have so many cases where we approach him for assistance, we assist these employees by contracting him, and he normally said because these people are not members of the union, they must pay so much amount of money.

COURT: So that money was paid into his personal account?

COURT: Yes.

MR MATHOLE: Yes. Can I proceed?

COURT: Sorry, maybe just to get a few more details, when was this amount paid?

MR MATHOLE: I have to check, M'Lord, but it was paid, I think, when, it was paid somewhere in September, September or October, October, August, sorry, August.

COURT: August this year?

MR MATHOLE: Ja, August, because the matter started in July, we referred a matter to the CCMA for conciliation, for disclosure of information.

COURT: Alright, no, no, I get it thus far. Now tell us about your own involvement with the union.

MR MATHOLE: Yes, sir. My own involvement in the union?

COURT: Yes. Are you an official of the union, are you a member of the union? In what capacity are you in the union?

MR MATHOLE: No, normally we are working with the union. When I joined them, because I was unemployed I was working with the union ...[intervenes]

COURT: In what capacity?

MR MATHOLE: As an official.

COURT: As an official of the union?

MR MATHOLE: Yes.

COURT: So therefore you are an employee of the union?

MR MATHOLE: Yes, then I ...[intervenes]

COURT: From when?

MR MATHOLE: Since some previous years, M'Lord.

COURT: Sorry?

MR MATHOLE: Since some previous years.

COURT: Until when, even up to now?

MR MATHOLE: Even up to now I represented the union, I am instructed by Matemane to represent the union at the CCMA.

COURT: No, no, let me understand this. If you are acting on behalf of the employees, who are not the union members, you are acting in your capacity as a union official, so you can only be instructed by the union to act on behalf of those people that you took money from, not you personally but Matemane. Is that the way I understand it?

MR MATHOLE: That is correct.

COURT: So now you affirm that you are a union official?

MR MATHOLE: I am a union official but I have to put it clear to you, M'Lord, that I am a union official. The union is so very small, it does not have a payslip, it does not have a contract of employment. I asked the union concerning some of those documentation, the payslip. They said it is a small union and they also told me that the union is having some logistical problems because the general secretary is dead. That is what I asked them, because ...[intervenes]

COURT: So since you joined the union you have never been paid through a payslip or anything?

MR MATHOLE: No, we never, we do not ...[intervenes]

COURT: How do you get paid?

MR MATHOLE: Normally they get paid by representing ...[intervenes]

COURT: No, no, I am talking about you.

MR MATHOLE: Even myself, we get paid by representing people in the CCMA.

COURT: So let me understand this then, you find people to represent either in this court or at the CCMA ...[intervenes]

MR MATHOLE: Normally we...

COURT: No, no, hold on, I am just trying to, so that we are on the same page.

MR MATHOLE: Okay.

COURT: The way you operate is this, you find people who are employees who are dismissed, you undertake to represent them to assist them with their cases as long as they pay you?

MR MATHOLE: That is correct, M'Lord. We also advertise in the CCMA, we assist people who do not have a representative, they pay it and that is how we survive, M'Lord.

COURT: So now does it mean that every time you get 10 people that you can represent, they pay you or they pay the union, I need to clarify that?

MR MATHOLE: No, they pay the union, but that is where the union, Mr Matemane, once we, I said I go to him, I say we have got this group of employees, and he says they must pay so much, and when they paid I took the money to him and that is where we get a share from that money, M'Lord.

COURT: So you share the proceeds from the employees?

COURT: And how long has this been going on?

MR MATHOLE: I think, M'Lord, it is a lot, so many years, I think I have so many cases in Rustenburg ...[intervenes]

COURT: And this is how you have been operating?

MR MATHOLE: That is who it has been happening.

COURT: And the union is registered?

MR MATHOLE: The union is registered, it is a registered union, M'Lord.

COURT: So as things stand, you do not have any documents to prove that you are a union official, either by payslips or anything that indicates that you are a union official?

.....

COURT: Okay, alright, as things stand then, the way you operate, let me summarise it for you, you find people that you can assist, they pay you money and then you take up their cases, either in this court or at the CCMA or Bargaining Council?

MR MATHOLE: Normally we do it at the CCMA, we never ...[intervenes]

COURT: At the CCMA.

MR MATHOLE: We never have a matter in this court. When a matter goes to court we normally advise them to find an attorney because the issues ...[intervenes]

COURT: Alright, now for the purpose of this application here, to the extent that you are the applicant, also with the others, who is funding this application?

MR MATHOLE: This one is funded by me, by myself.

COURT: By you?

COURT: From your personal pocket?

[42] The above exchanges clearly put an end to any need for this court to indulge Mathole and his contrived application ostensibly brought on behalf of vulnerable ex-employees. He therefore has no reason to be in this court either in his name or the name of others as he does not satisfy the requirements set out in section 161 of the LRA. It would therefore not be necessary to consider the merits of his case when he has not surpassed the first hurdle of proving that he is a bona fide union official. It is in the light of the failure to surmount this first hurdle that his application to postpone as made from the bar was dismissed, and it followed that this application ought also to be dismissed.

[43] It is further evident from the exchanges with him that Mathole and his colleague, Matamane masquerading as a Branch Secretary are smooth operators who not only advertise their services right inside the CCMA, but also use the CCMA's premises to solicit business from vulnerable employees. There is fundamentally everything wrong and twisted in all of this. Whether Mathole's claims are true or not is something the CCMA must look at, as it cannot do its reputation any good as a statutory body, if it is established that its premises are utilised by fraudsters to the detriment of the very same vulnerable members of the public it is duty bound to serve and protect.

[44] The above factors call upon the CCMA, and all other statutory labour dispute resolution bodies, to be vigilant and be on the lookout for predators like Mathole and his ilk, when processing or adjudicating labour dispute referrals on behalf of vulnerable ex-employees. That obligation is not only legal, it is a moral one. In instances where ex-employees such as in this case are left in the lurch as a consequence of trusting people such as Mathole, and find themselves without representation, there is nothing that prevents the CCMA from invoking the provisions of section 149 of the LRA[11] to assist them.

The order:

- [45] After the matter was heard on 15 November 2017, I had issued an order without reasons. The ink had hardly dried on that order when Mathole approached my Secretary, Mr Ndabukelweyo, and informed him that he wanted reasons for the order for the purposes of launching an application for leave to appeal. That was also followed by a formal application on the same date and an e-mail which I had received via the office of the Judge President of this Court. In his e-mail, which was also sent to countless other people, Mathole states that he wants ‘full written reasons of the order granted on the 15-November-2017 as a matter of urgent failing I will legal steps without further notice’ (Sic).
- [46] This Court implores Mathole to thread very carefully in the manner he conducts himself in his dealings with it and its officers. Inasmuch as he has every right to the full reasons for an order given in court, it is not only inappropriate for him to make such demands accompanied by threats, but it also borders on contempt. This Court, especially the urgent court, is under strain, and can do without the extra burden of having to indulge and entertain narcissist individuals, who abuse its processes, refuse to comply with its orders, and who on their own version, are fraudsters living off the plight of vulnerable members of our society.
- [47] This Court and its officers, as much as it is meant to serve members of the public without fear or favour, is not there to serve individuals at their pleasure and pander to their every whim. It will thus not acquiesce to its abuse or to that of its officers by individuals with a delusional sense of entitlement or importance, and will do everything within its powers to preserve its dignity and integrity.
- [48] The order granted on 15 November 2017 was based on the draft order submitted on behalf of the respondents. In the light of what had transpired in court, I had added to that order to call upon the Registrar of Labour Relations to take certain steps, specifically in the light of *inter alia*, what appears to be a *prima facie* case of criminal conduct on the part of Mathole and his associate, Matamane, who also appears to be associated with HOCAFAWU. To this end, the complete order is reiterated as below;

Order:

1. The application from the bar to postpone the proceedings is refused;
2. The applicant’s urgent application is dismissed, specifically on the grounds that Mr Ephraim Mathole lacks the requisite *locus standi* to bring the application either in his name or in the name of other individuals, he purports to represent;
3. The applicant, Mathole, is prohibited from enrolling any dispute in the Labour Court against PEN, 129 Vermeulen Straat Eiendoms Belegging (Pty) Limited and CBD Residency, in the name of any individual or otherwise, without providing proof to the Registrar or the Acting Registrar in Registrar’s absence, that the complete application, including all annexures purported to be attached

thereto, have been duly served on the relevant respondents and that the said respondents are afforded a reasonable time period within which to oppose the application.

4. The applicant, Mathole is prohibited from instituting fresh proceedings in this Court or the Commission for Conciliation Mediation and Arbitration (CCMA) against PEN, 129 Vermeulen Straat Eiendoms Belegging (Pty) Limited and CBD Residency whether in his own name, in the name of HOCAFAWU, or in the names of any individuals or otherwise until the costs of this application as ordered in paragraph 6 below have been paid.
5. The Registrar of this Court is directed to furnish a copy of this Order together with a copy of the transcribed record of these proceedings to the Office of the Registrar of Labour Relations for a determination of:

5.1 Whether HOCAFAWU as a registered union conducts its affairs as a proper and bona fide union, and complies with the provisions of section 98, 99 and 100 of the Labour Relations Act 66 of 1995;

5.2 Whether HOCAFAWU, its Branch Secretary in the Tshwane Central District and surrounding areas, Mr Matemane, together with the applicant Mathole, are not soliciting money or a fee from non-members and members of the public with a promise of taking up their labour disputes either in this Court, the CCMA or any other statutory labour dispute resolution body.

6. The applicant, Ephraim Mathole, is to personally pay the legal costs incurred by PEN, 129 Vermeulen Straat Eiendoms Belegging (Pty)

Limited and CBD Residency, on the scale as between attorney and client, including the costs consequent upon the employment of each counsel.

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E. Tlhotlhemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicants:

Mr. E Mathole (Lacking Locus Standi)

For the Respondents:

(a) Foundation/PEN/Eiendom Belegging Adv. C de Witt

Instructed by:

Johannette Rheeder Inc

(b) For CBD Residency:

P Kirstein SC

Instructed by:

Adams & Adams

- [1] Act 66 of 1995, as amended
- [2] Act 108 of 1996 (The Constitution of the Republic of South Africa)
- [3] Black's Law Dictionary (7th edition) 1999
- [4] 'Access to courts 34. Anyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum'
- [4] 'Access to courts
- 34. Anyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum'
- [5] 1972 (4) SA 409 (C) at 415A
- [6] Section 161: Representation before Labour Court; (1) In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented only by – (a) a legal practitioner; (b) a director or employee of the party; (c) any office-bearer or official of that party's registered trade union or registered employers' organisation; (d) a designated agent or official of a council; or (e) an official of the Department of Labour. (2) No person representing a party in proceedings before the Labour Court in a capacity contemplated in paragraphs (b) to (e) of subsection (1) may charge a fee or receive a financial benefit in consideration for agreeing to represent that party unless permitted to do so by order of the Labour Court.
- [6] Section 161: Representation before Labour Court;
  - (1) In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented only by –
    - (a) a legal practitioner;
    - (b) a director or employee of the party;
    - (c) any office-bearer or official of that party's registered trade union or registered employers' organisation;
    - (d) a designated agent or official of a council; or
    - (e) an official of the Department of Labour.

- (2) No person representing a party in proceedings before the Labour Court in a capacity contemplated in paragraphs (b) to (e) of subsection (1) may charge a fee or receive a financial benefit in consideration for agreeing to represent that party unless permitted to do so by order of the Labour Court.
- [7] Rule 25: Representation before the Commission (1)
- (a) In conciliation proceedings a party to the dispute may appear in person or be represented only by - i) if the party is an employer, a director or employee of that party and, in addition, if it is a close corporation, a member of that close corporation; ii) any office bearer, official or member of that party's registered trade union or registered employers' organization; iii) if the party is a registered trade union, any office bearer, official or member of that trade union authorized to represent that party; or iv) if the party is a registered employers' organization, any office bearer or official of that party or a director or employee of an employer that is a member of that employers' organization authorized to represent that party. (b) Subject to paragraph (c), in any arbitration proceedings a party to the dispute may appear in person or be represented only by - i) a legal practitioner; or ii) an individual entitled to represent the party at conciliation proceedings in terms of sub-rule (1)(a). (c) If the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or capacity, a party is not entitled to be represented by a legal practitioner in the proceedings unless -
- i) the commissioner and all the other parties consent; ii) the commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering - a) the nature of the questions of law raised by the dispute ; b) the complexity of the dispute; c) the public interest; and d) the comparative ability of the opposing parties or their representatives to deal with the dispute. (d) No person representing a party in proceedings before the Commission in a capacity contemplated in paragraph (a) or (b), other than a legal practitioner contemplated in paragraph (b)(i), may charge a fee or receive a financial benefit in consideration for agreeing to represent that party unless permitted to do so by the Commission. (2) If the party to the dispute objects to the representation of another party to the dispute or the commissioner suspects that the representative of a party does not qualify in terms of this Rule, the commissioner must determine the issue. (3) The commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this Rule. (4) A representative must tender any documents requested by the commissioner for the purposes of sub-rule (2), including constitutions, payslips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organization. 5) Despite the provisions of sub-rule (1), a commissioner may exclude any person who is representing a party in any proceedings on the basis that they are a member of the same employers' organization as an employer party, or a member of an employers' organization that is a party to proceedings, if the commissioner, after enquiring into the matter and considering relevant representations, believes that- (a) the representative joined the

employer's organization for the purpose of representing parties in the Commission; or (b) the representative's participation in the dispute resolution process -

- (i) would be contrary to the purpose of the rule which is to promote inexpensive and expeditious dispute resolution in a manner that is equitable to all parties; (ii) is not in keeping with the objectives of the Labour Relations Act 66 of 1995; or (iii) may have the consequence of unfairly disadvantaging another party to the dispute.

[7] Rule 25: Representation before the Commission

(1)

(a) In conciliation proceedings a party to the dispute may appear in person or be represented only by -

i) if the party is an employer, a director or employee of that party and, in addition, if it is a close corporation, a member of that close corporation;

ii) any office bearer, official or member of that party's registered trade union or registered employers' organization;

iii) if the party is a registered trade union, any office bearer, official or member of that trade union authorized to represent that party; or

iv) if the party is a registered employers' organization, any office bearer or official of that party or a director or employee of an employer that is a member of that employers' organization authorized to represent that party.

(b) Subject to paragraph (c), in any arbitration proceedings a party to the dispute may appear in person or be represented only by -

i) a legal practitioner; or

ii) an individual entitled to represent the party at conciliation proceedings in terms of sub-rule (1) (a).

(c) If the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or capacity, a party is not entitled to be represented by a legal practitioner in the proceedings unless -

i) the commissioner and all the other parties consent;

ii) the commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering -

a) the nature of the questions of law raised by the dispute ;

b) the complexity of the dispute;

c) the public interest; and

- d) the comparative ability of the opposing parties or their representatives to deal with the dispute.
- (d) No person representing a party in proceedings before the Commission in a capacity contemplated in paragraph (a) or (b), other than a legal practitioner contemplated in paragraph (b)(i), may charge a fee or receive a financial benefit in consideration for agreeing to represent that party unless permitted to do so by the Commission.
- (2) If the party to the dispute objects to the representation of another party to the dispute or the commissioner suspects that the representative of a party does not qualify in terms of this Rule, the commissioner must determine the issue.
- (3) The commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this Rule.
- (4) A representative must tender any documents requested by the commissioner for the purposes of sub-rule (2), including constitutions, payslips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organization.
- 5) Despite the provisions of sub-rule (1), a commissioner may exclude any person who is representing a party in any proceedings on the basis that they are a member of the same employers' organization as an employer party, or a member of an employers' organization that is a party to proceedings, if the

commissioner, after enquiring into the matter and considering relevant representations, believes that-

- (a) the representative joined the employer's organization for the purpose of representing parties in the Commission; or
- (b) the representative's participation in the dispute resolution process -
  - (i) would be contrary to the purpose of the rule which is to promote inexpensive and expeditious dispute resolution in a manner that is equitable to all parties;
  - (ii) is not in keeping with the objectives of the Labour Relations Act 66 of 1995; or
  - (iii) may have the consequence of unfairly disadvantaging another party to the dispute.

[8]

[2013] 11 BLLR 1057 (SCA)

- [9] Section 189: Dismissals based on operational requirements (1) When an employer contemplates dismissing one or more employees for reasons based on the employer's operational requirements, the employer must consult - (a) any person whom the employer is required to consult in terms of a collective agreement; (b) if there is not collective agreement that requires consultation - (i) a workplace forum, if the employees likely to be

affected by the proposed dismissals are employed in a workplace in respect of which there is a workplace forum; and (ii) any registered trade union whose members are likely to be affected by the proposed dismissals; (c) if there is no workplace forum in the workplace in which the employees likely to be affected by the proposed dismissals are employed, any registered trade union whose members are likely to be affected by the proposed dismissals; or (d) if there is no such trade union, the employees likely to be affected by the proposed dismissals or their representatives nominated for that purpose.

[9] Section 189: Dismissals based on operational requirements

(1) When an employer contemplates dismissing one or more employees for reasons based on the employer's operational requirements, the employer must consult -

(a) any person whom the employer is required to consult in terms of a collective agreement;

(b) if there is not collective agreement that requires consultation -

(i) a workplace forum, if the employees likely to be affected by the proposed dismissals are employed in a workplace in respect of which there is a workplace forum; and

(ii) any registered trade union whose members are likely to be affected by the proposed dismissals;

(c) if there is no workplace forum in the workplace in which the employees likely to be affected by the proposed dismissals are employed, any registered trade union whose members are likely to be affected by the proposed dismissals; or

(d) if there is no such trade union, the employees likely to be affected by the proposed dismissals or their representatives nominated for that purpose.

[10] Page 99 of the Indexed Bundle

[11] Section 149: Commission may provide assistance (1) If asked, the Commission may assist an employee or employer who is a party to a dispute - (a) together with the Legal Aid South Africa[11], to arrange for advice or assistance by a legal practitioner. (b) together with the Legal Aid South Africa, to arrange for a legal practitioner - i. to attempt to avoid or settle any proceedings being instituted against an employee or employer in terms of this Act. ii. to attempt to settle any proceedings instituted against an employee or employer in terms of this Act. iii. institute on behalf of the employee or employer any proceedings in terms of this Act. iv. to defend or oppose on behalf of the employee or employer any proceedings instituted against the employee or employer in terms of this Act; or (c ) by providing any other form of assistance that the Commission considers appropriate (2) The Commission may provide the assistance referred to in subsection (1) after having considered- (a) the nature of the questions of law raised by the dispute; (b) the complexity of the dispute; (c ) whether there are conflicting arbitration awards that are relevant to the dispute; and

- (d) the public interest. (3) As soon as practicable after having received a request in terms of subsection (1), but not later than 30 days of the date the

Commission received the request, the Commission must advise the applicant in writing whether or not it will assist the applicant

and, if so, the form that the assistance will take.

[11] Section 149: Commission may provide assistance

(1) If asked, the Commission may assist an employee or employer who is a party to a dispute -

(a) together with the Legal Aid South Africa[11], to arrange for advice or assistance by a legal practitioner.

(b) together with the Legal Aid South Africa, to arrange for a legal practitioner -

i. to attempt to avoid or settle any proceedings being instituted against an employee or employer in terms of this Act.

ii. to attempt to settle any proceedings instituted against an employee or employer in terms of this Act.

iii. institute on behalf of the employee or employer any proceedings in terms of this Act.

iv. to defend or oppose on behalf of the employee or employer any proceedings instituted against the employee or employer in terms of this Act; or

(c) by providing any other form of assistance that the Commission considers appropriate

(2) The Commission may provide the assistance referred to in subsection (1) after having considered-

(a) the nature of the questions of law raised by the dispute;

(b) the complexity of the dispute;

(c) whether there are conflicting arbitration awards that are relevant to the dispute; and

(d) the public interest.

(3) As soon as practicable after having received a request in terms of subsection (1), but not later than 30 days of the date the

Commission received the request, the Commission must advise the applicant in writing whether or not it will assist the applicant

and, if so, the form that the assistance will take.

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