

SOUTH AFRICA / JUDGMENT

Mogalakwena Municipality v South African Municipal Workers Union (SAMWU) and Others (J 1202/2022) [2022] ZALCJHB 332 (11 November 2022)

[2022] ZALCJHB 332

COURT

Labour Court Johannesburg

BEFORE

Prinsloo

CASE / FILE NUMBER

J 1202/2022

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

No: J 1202/2022

In

the matter between:

MOGALAKWENA
LOCAL
MUNICIPALITY
Applicant
And
SOUTH
AFRICAN MUNICIPAL WORKERS
UNION
("SAMWU")
First Respondent
LL
CHIPANA
Second Respondent
M
G
KEKANA
Third Respondent
S
I

KEKANA
Fourth Respondent
R
A
MOKANAYE
Fifth Respondent
J
M
LEGODI
Sixth Respondent
L
MASHAMAITE
Seventh Respondent
M
S
MOLABA
Eighth Respondent
M
J
TEFFO
Ninth Respondent
S
A
MOETA
Tenth Respondent
M
J J
MASALESA
Eleventh Respondent
L
L
RAMOTJELA
Twelve Respondent
A
K MOHUBEDI
Thirteenth Respondent
E
PHOKO
Fourteenth Respondent
INDEPENDENT
MUNICIPAL AND ALLIED
TRADE
UNION
("IMATU")
Fifteenth Respondent

Heard: 18 October 2022

Delivered: 11 November 2022
This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be 11 November 2022.

JUDGMENT

PRINSLOO, J

Introduction

[1] The Applicant approached this Court on an urgent basis for relief on 29 September 2022. The matter was unopposed and the Court (per Lagrange, J) granted an order in the following terms:

‘1. Condonation for the non-compliance with the provisions of rules relating to notice periods or any other non-compliance with the provisions of the Court Rules and/or Practice Directives is granted;

2. A rule nisi with return date 13 October 2022 is issued calling upon the respondents collectively and/or individually to show cause why an order of the following terms should not be made final:

2.1. that the strike action embarked on as from Tuesday, 20 September 2022, at the premises of the applicant by the second to fourteenth respondents, be declared an unprotected strike action;

2.2. interdicting and restraining the second to fourteenth respondents and any third party co-opted by them (hereinafter referred to as the “individual respondents”) from participating in any unprotected strike action that embarked from Tuesday, 20 September 2022, including the staging of and participating in any picketing at the applicant’s premises;

2.3. interdicting and restraining the individual respondents from preventing non-striking employees and/or officials of the applicant from performing their duties and responsibilities at the premises of the applicant;

2.4 interdicting and restraining the individual respondents from assaulting, threatening to assault or otherwise intimidating non-striking employees and/or officials and/or service providers of the applicant from performing their duties and responsibilities at the premises of the applicant;

2.5 directing the first respondent to take all necessary and possible steps to terminate all irregular and unlawful conduct by the individual respondents;

3. The relief granted in paragraphs 2.1 to 2.5 above is to serve as an interim interdict with immediate effect, pending the return date of the rule nisi;
4. This order be served on the respondents by means of email and telefax at the Provincial Office of the first to fourteenth respondent, and by affixing a copy at the applicant's premises.'
- [2] The aforesaid order was granted with a return date of 13 October 2022, which was extended to 18 October 2022.
- [3] On the return date, the Applicant sought confirmation of the rule nisi.
- [4] The First to Fourteenth Respondents (Respondents) opposed the application and the merits were argued on the return date.
- [5] The Respondents submitted that their conduct did not constitute a strike. In argument, I canvassed the issue with Mr van Graan for the Applicant, and he conceded that the Respondents' conduct did not meet all the requirements of strike action, as defined in section 213 of the Labour Relations Act[1] (LRA). Mr van Graan abandoned the relief that was granted in terms of paragraphs 2.1 and 2.2 of the Court order of 29 September 2022.
2022. The Applicant thus no longer sought relief to declare the strike action unprotected and to interdict the Second to Fourteenth Respondents (individual respondents) from participating in the alleged unprotected strike action.
- [6] The Applicant however persisted to seek confirmation of the interim relief granted in terms of paragraphs 2.3 – 2.5 of the Court order. Mr van Graan submitted that the Applicant is entitled to the relief as it is effectively interdicting and restraining the individual respondent from acting unlawfully. The individual respondents are all employees of the Applicant and members and shop stewards of the First Respondent (SAMWU).

The issues to be decided

- [7] It is evident that this Court is not required to consider any issues around the strike, but rather whether the Applicant is entitled to relief interdicting unlawful conduct. The conduct the Applicant seeks to interdict relates to the preventing of the Applicant's employees from performing their duties and responsibilities at the Applicant's premises and the assault or threatened assault or intimidation of the Applicant's employees and/or service providers.
- [8] The Applicant seeks final relief and has to satisfy the requirements for a final interdict namely, the existence of a clear right, an injury actually committed or reasonably apprehended and the lack of an adequate alternative remedy. The Applicant must show, on a balance of probability, the existence of a clear substantive legal right to the relief sought.

- [9] Mr Ndou for the Respondents submitted that the Applicant cannot satisfy the requirements for a final interdict and is therefore not entitled to the relief it seeks. Mr Ndou submitted that there is no evidence that the individual respondents were involved in the events, as alleged, and therefore no order should be granted.

The

applicable principles

- [10] In *Commercial Stevedoring Agricultural and Allied Workers Union and others v Oak Valley Estates (Pty) Ltd and another*[2] (Oak Valley), the Constitutional Court (CC) recently acknowledged the importance of interdicts in the constitutional order and said the following about the purpose of interdictory relief:

‘In a constitutional order, interdicts occupy a place of importance. In granting an interdict a court enforces “the principle of legality that obliges courts to give effect to legally recognised rights”. The purpose of injunctive relief is to “put an end to conduct in breach of the applicant’s rights”. An interdict is intended to protect an applicant from the actual or threatened unlawful conduct of the person sought to be interdicted. Thus, for an interdict to be granted, it must be shown, on a balance of probabilities (taking into account the *Plascon-Evans* rule, where final relief is sought on motion), that unless restrained by an interdict, the respondent will continue committing an injury against the applicant or that it is reasonably apprehended that the respondent will cause such an injury.’[Footnotes omitted]

- [11] The CC went on to hold that, it followed that there must be some link between the respondent and the actual or threatened injury and on this basis, held that an employer in seeking an interdict against striking employees that it contended were committing acts of intimidation, damage to property and unlawful interference with his business was not entitled to an interdict in circumstances where it had failed, on the papers, to establish a link or connection between the individual employees and the conduct sought to be interdicted. If the evidence is insufficient to establish any link between the respondent and the actual or threatened injury, the apprehension of injury cannot be reasonable.
- [12] In assessing the requirement of a link, the CC dealt with the applicable case law and held that the cases make it clear that one of the inquiries undertaken by a court asked to grant a final interdict, is a careful assessment of whether the injury committed or apprehended can be attributed to the conduct of the respondent. Furthermore, there has to be a sufficient link between the respondent sought to be placed under interdict and the alleged unlawful conduct committed or apprehended, even within the context of strike action.
- [13] The CC held that[3]:

‘In *Mondi Paper*, the High Court held that a rule nisi against a union and certain individual employees fell to be discharged “by virtue of the failure of the applicant to identify any of the respondents and link them with the alleged acts of intimidation and sabotage”. Nicholson J reasoned:

“The evil of intimidation of employees by striking workers and the unlawful blocking of transport to company premises can never be condoned. Juxtaposed against that evil is that of a court granting orders against “innocent non-participants” without evidence. The latter evil seems to me to outweigh the former. It seems to me that the whole court system will lose the respect of the public at large if it grants orders against “innocent non-participants”.”

[14] In *Oak Valley*, the CC accepted what was held in *Polyoak (Pty) Ltd v Chemical Workers Industrial Union and others*[4] (*Polyoak*) as follows[5]:

‘Perhaps the most persuasive authority for the requirement of a link is to be found in *Polyoak*, where the Labour Court emphatically held that an interdict can only be granted against a respondent when a link has been established between the respondent and the actual or threatened unlawful conduct. It held:

“Generally speaking, a person can only be restrained by interdict if the evidence demonstrates that, as a matter of probability, he or she will commit the act in question within the period encompassed by the proposed order. The conclusion is competent when the evidence shows that person has undertaken or agreed to commit the act or that an inference to this effect can be drawn from the fact that he or she has previously done so. In the absence of evidence identifying the respondent as a prospective perpetrator or accomplice in the acts of a perpetrator, however, he or she cannot be interdicted, and it matters not that the person is one of a group of strikers containing malefactors or that his or her interests as striker happen to be promoted by the wrongdoing in question. Our law knows no concept of collective guilt.”[6]

[15] In *Polyoak*, the Court decried an increasingly common litigation strategy in which employers seek rule nisi interdicts against striking workers without laying a proper factual basis for that relief:

‘In support of the application, affidavits are generally filed by a member of management and by eye-witnesses to acts of misconduct.

Specific acts of misconduct are normally referred to but only sometimes attributed to specific individuals. Allegations are frequently made against ‘the individual respondents’ as a class when it is clear from the context that the participation of every one of them is, if not inconceivable or impossible, then at least highly improbable. Hearsay evidence is commonly included for the admission of which no basis is laid in the papers, and allegations in support of such matters as balance of convenience and

claims of urgency are quite often cursory and sometimes wholly overlooked.’[7]

[16] In Oak Valley, the CC concluded that: faced with this conspectus jurisprudence, it seems that, notwithstanding the “fraught context of industrial relations”, our law requires that for interdictory relief to be competently granted, a factual link between an individual respondent and the actual or threatened unlawful conduct must be shown.

[17] The CC held that the following principles could be distilled:

‘Two important principles can be distilled from this Court’s jurisprudence, and this line of cases. First, mere participation in a strike, protest, or assembly, in which there is unlawful conduct, is insufficient to link the impugned respondent to the unlawful conduct in the manner required for interdictory relief to be granted. Second, the necessary link can however be established where the protesters or strikers commit the impugned unlawful conduct as a cohesive group. Whether this is established will, of course, turn on the particular facts of the case. Where, for instance, unlawful conduct during protest action is ongoing, widespread, and manifest, individual protesters or strikers will usually have to disassociate themselves from the conduct, to escape the inference that it is reasonably apprehended that they will cause injury to the applicant. By contrast, where a protest or strike is substantially peaceful, but there are isolated and sporadic instances of unlawful conduct, only those protesters who associate with those acts of unlawfulness can permissibly be placed under interdict. In addition, where a strike is beset by unlawful conduct and large numbers of protesters or strikers deliberately conceal their identities – for instance, through the wearing of masks – a court may be entitled to more readily conclude that an applicant has a reasonable apprehension that the participants in the strike will cause it injury.’[8]

[18] It is within this context that this application is to be decided.

The urgent application

[19] The Applicant seeks a final interdict against the individual respondents, to the effect that they are interdicted and restrained from preventing the Applicant’s employees to perform their duties and responsibilities and from assaulting or threatening

to assault or intimidating the Applicant’s employees and or service providers. The purpose of the relief sought is to restrain

the individual respondents from participating in unlawful conduct and activities.

[20] It is common cause that on 8 August 2022, a council meeting was scheduled for the purpose of appointing a municipal manager. Mr Morris Maluleka was appointed by the council as the municipal manager. On 19 August 2022, Mr Sekgota filed an application to declare the aforesaid sitting of the council, the resolution taken and the appointment of the municipal manager null and void. The application was heard in the Polokwane High Court on 6 September 2022 and on 13 September the High Court declared the meeting of 8 August 2022 to be properly constituted and lawful, but the appointment of Mr Maluleka as the municipal manager was set aside on the basis that it was premised on a selection process conducted by a selection panel which was not properly appointed in terms of the applicable regulation.

- [21] On 20 September 2022, it came to the attention of the Applicant's employees that the EXCO meeting was going to be presided over by the municipal manager whose appointment was set aside. The Respondents' case is that there was a gathering of employees on 20 September 2022, which amounted to a protest action or picket, but not a strike, regarding the unlawful appointment of Mr Maluleka.
- [22] It is evident that there was a great extent of unhappiness about the fact that Mr Maluleka, whose appointment as municipal manager was set aside by the High Court, was acting as if his appointment was not set aside. The fact that Mr Maluleka was participating in the EXCO meeting of 20 September 2022 in the capacity of municipal manager, notwithstanding the fact that his appointment was set aside, obviously sparked discontent and possibly outrage.
- [23] The Applicant filed an application for leave to appeal to the Polokwane High Court on 27 September 2022.
- [24] The following facts are placed before this Court in support of the relief sought by the Applicant:

The EXCO meeting of 20 September 2022

- [25] The Mayor, Mr Tauetsoala, who presided over an EXCO meeting on 20 September 2022, deposed to an affidavit wherein he explained that the said EXCO meeting was unlawfully disrupted by SAMWU members and he specifically identified Levicent Chipana (Second Respondent), Enocencia Kekana (Third Respondent), Johannes Teffo (Ninth Respondent), Louis Ramotjela (Twelve Respondent), Kabelo Mohubedi (Thirteenth Respondent) and Elias Phoko (Fourteenth Respondent) as the individuals who disrupted the meeting.
- [26] Mr Tauetsoala further attached a statement of Mr Ngoepe, the Applicant's Chief Operations Officer, which was submitted to the South African Police Services (SAPS) in Mokopane. It is evident from the statement that Mr Ngoepe, acting on behalf of the Applicant, laid a criminal charge of intimidation with the police. He explained the events of 20 September 2022 and stated that at about 12:00, a special EXCO meeting was called by the Mayor and that the meeting had already opened and they were dealing with the first point on the agenda when they heard people singing freedom songs and approaching the old council chamber, where the meeting was held. Mr Ngoepe explained that the group of people forcefully opened the door and demanded that everyone should leave. Mr Ngoepe was sitting right in front of the door and when the door was forced open, he was terrified to such an extent that he could not move or get up from his chair. The group entered the chamber and went in different directions, shouting "go out, go out!". There was only one exit and people started to run to the exit, fearing for their lives and for the possibility of being assaulted. The chairs where EXCO members were sitting, were thrown at them. At that point, Mr Ngoepe was still seated and he stated that he could clearly see Johannes Teffo (Ninth Respondent), and Louis Ramotjela (Twelve Respondent) picking up chairs and throwing them at the running EXCO

members. He stated that the said individuals were very vocal and intimidating and he could also identify Kabelo Mohubedi (Thirteenth Respondent) and Elias Phoko (Fourteenth Respondent), Levicent Chipana (Second Respondent) and Enocencia Kekana (Third Respondent) shouting, instructing EXCO members to leave and intimidating them. The EXCO members ran out of the chamber for fear of their safety and he was the last member to run out of the chamber, as per the instructions of the individuals who entered the chamber and instructed them to leave.

[27] Mr Tauetsoala stated that the rest of the individual respondents are shop stewards and members of SAMWU, who acted as leaders to invite fellow employees to intervene and participate in unlawful activities on 20 September 2022.

[28] The Respondents filed an answering affidavit and the aforesaid averments made by the Applicant are denied. The Respondents' version is that at no point in time was the council's meeting disturbed and if it was, SAMWU employees and members played no part in it. The Respondents submitted that there is no proof that any of the shop stewards cited, entered the building and disrupted the council meeting.

[29] Mr Ngoepe stated that the EXCO is an official meeting of the local government structures and no one has the right to disrupt such a meeting through illegal activity.

[30] In Oak Valley, the CC held that:

'The requirement of a link, which has, save for a few instances, been consistently applied by our courts, appropriately balances these conflicting interests. On the one hand, it ensures that interdicts are not granted indiscriminately. On the other, it affords employers the required measure of protection. The requirement does not entail that an employer must lead direct evidence establishing conclusively that the interdicted employee was responsible for specific unlawful conduct. The employer could discharge its onus by putting up facts from which an inference can be drawn that it is more probable than not that the employee herself engaged in unlawful conduct or associated herself with it.'[9]

[31] When a dispute of fact arises on the affidavits before a motion court, a final order can only be granted if the facts averred by the applicant in its affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. This calls for an application of the principles set out in Plascon Evans[10].

[32] In Oak Valley, the CC held that:

'Where disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's

affidavits, which have been admitted by the respondent, together with the facts alleged by the latter, justify such an order. Of course, "[i]t may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious

disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting [that version]

merely on the papers”.[11]

[33] This Court has to consider the two versions presented and, in my view, the version presented by the Respondents has obvious difficulties. Firstly, the answering affidavit is deposed to by Mr Tlatsi, a senior national legal officer in the employ of SAMWU. Mr Tlatsi did not state that he was present at the Applicant’s premises on 20 September 2022 and that he had observed the events and

that what he is conveying (and denying), is what he had observed and which is within his personal knowledge. Mr Tlatsi is effectively

putting up a denial in respect of events he has no personal knowledge of.

[34] Secondly, the Applicant has put forward direct evidence by placing the evidence of two eyewitnesses before this Court. Mr Tauetsoala, who presided over the EXCO meeting on 20 September 2022, deposed to an affidavit wherein he explained that the said EXCO meeting was unlawfully disrupted by SAMWU members and he specifically identified the individuals. Mr Ngoepe’s evidence was that he was present at the meeting on 20 September 2022, he was seated at the door and he stated that he could clearly see the perpetrators. Mr Ngoepe mentioned them by name.

[35] None of the individuals mentioned by name or by way of group association and being cited as individual respondents, deposed to an affidavit where the events of 20 September 2022, wherein they were specifically named or implicated, were denied. They did not even depose to a confirmatory affidavit in support of Mr Tlatsi’s denial in this regard.

[36] There seem to be several confirmatory affidavits filed, but those are not referred to in the Respondents’ answering affidavit and they are not incorporated as evidence. The Respondents should know that confirmatory affidavits cannot be filed separately and independently from an answering affidavit and that such affidavits do not become evidence before court if not incorporated in an answering affidavit and no weight can be attached to them.

[37] The Respondents admitted that a criminal charge, relating to intimidation, was laid against the individual respondents at the Mokopane police station.

[38] The Respondents did no more than to put up a bare denial by a person who has no personal knowledge of the event, as opposed to the version of the Applicant, where direct evidence was adduced.

[39] On the evidence placed before this Court, I accept that the individual respondents acted unlawfully on 20 September 2022 and that they intimidated others. The version put up by the Respondents is no more than a bare denial, alternatively a version that is so improbable that it must be rejected. The Applicant has a clear right to lawful conduct and is entitled to relief to prevent unlawful and criminal conduct.

21 September 2022

[40] The Applicant's version is that on 21 September 2022 at approximately 07:30, members of SAMWU, including the individual respondents, congregated and picketed unlawfully outside the municipal building, on the Applicant's premises and attempted to prevent members of the public and other employees from entering the building. Mr Maluleka had to approach the SAPS to assist, as he anticipated a continuation of the unlawful activities which had occurred on 20 September 2022. After the arrival of the SAPS, the SAMWU members who congregated at the Applicant's premises were dispersed.

[41] In the answering affidavit, the Respondents' case is that at the time of lodging the criminal complaint, Mr Maluleka did not have locus standi to do so as his appointment had been set aside by a Court of law. Furthermore, it was the employees of the Applicant that congregated

and SAMWU did not issue an instruction to down tools. The meeting was not a SAMWU meeting, but a general workers' meeting.

[42] Applying the principles I already alluded to supra, the Applicant's version is once again to be accepted. It is not denied by the Respondents that the individual respondents congregated and picketed unlawfully and attempted to prevent members of the public and other employees from entering the municipal building or that the assistance of the SAPS had to be sought.

[43] The only version put up by the Respondents is that Mr Maluleka did not have the locus standi to lodge a complaint with the SAPS and that SAMWU did not instruct a decision to down tools. The Respondents' stance is misconceived to some extent as the right to lodge a criminal complaint is not subject to, nor does it hinge on Mr Maluleka's position. The issue is also not whether SAMWU instructed the downing of tools, but rather whether the individual respondents were involved in the unlawful conduct, as alleged by the Applicant.

[44] It is evident that there is no real or concrete response to the material allegations made by the Applicant and there is no reason for this Court not to accept the Applicant's version. The individual respondents have been sufficiently linked to conduct relating to preventing members of the public and other employees from entering the municipal building.

[45] The Applicant has a clear right that members of the public must have free access to municipal buildings and services and for employees to report for duty. The Applicant further has a duty to protect its employees, to provide a safe working environment and to provide an environment wherein the safety of employees and members of the public are not threatened by unlawful activities.

22 September 2022

[46] According to the Applicant, the individual respondents unlawfully gathered on its premises at the main entrance. In order to avoid a repetition of the events of 20 September 2022, a letter was forwarded to Mr Patrick Aphane, SAMWU's provincial secretary, to inform him that there were serious allegations of misconduct against members of SAMWU, including shop stewards, and they were mentioned by name in the said letter. Mr Aphane was informed of the intention to suspend the SAMWU members who participated in unlawful activities.

[47] The letter shows that Mr Aphane was notified of the intention to suspend 12 members of SAMWU, who are shop stewards and mentioned by name. The individuals so mentioned are the Second to 13th Respondents. Mr Phoko was not mentioned.

[48] Mr Aphane did not respond to the letter.

[49] The Respondents' version is to deny that a letter was sent to Mr Aphane and if it was sent and received, it would have been unlawful, because the author, Mr Maluleke, was not authorised to "depose to the letter".

[50] The Respondent further submitted that the gathering and protest indeed took place on 28 September 2022, as opposed to 22 September 2022, and there is no basis to interdict a strike as it was not looming.

[51] The Applicant no longer seeks to interdict a strike but seeks to interdict unlawful activities. There is no denial that the individual respondents unlawfully gathered on the Applicant's premises at the main entrance. The dispute is rather focused on the date of the events.

[52] Applying the principles I already alluded to supra, the Applicant's version is once again to be accepted. It is once again evident that there is no real or concrete response to the material allegations made by the Applicant and there is no reason for this Court not to accept the Applicant's version. The individual respondents have been sufficiently linked to conduct relating to the unlawful gathering at the Applicant's main entrance.

23 September 2022

[53] The Applicant's Divisional Head: Human Resources, Ms Baloyi, drafted letters to the SAMWU members who allegedly participated in unlawful activities on 20 September 2022 and they were invited to submit reasons as to why they should not be suspended. None of the individual respondents responded to the letters. The letters were signed by Mr Maluleka.

[54] The Respondents' response to this is that the notices to suspend were unlawful as they were issued by Mr Maluleka, whose appointment was set aside.

[55] In my view, the issuing of notices to suspend and the lawfulness of such notices, are not relevant for the purposes of this application and have no bearing on the issues to be decided by this Court.

25 September 2022

[56] On 25 September 2022, Mr Maluleka received a copy of a letter by Mr L S Mashamaite (Seventh Respondent), the branch secretary of SAMWU, intended for SAMWU members and employees of the Applicant.

[57] The Applicant's version is that the letter invited SAMWU members and employees to take the law into their own hands in respect of Mr Maluleka, instead of following legitimate procedures to deal with the issue. As a result of the threat contained in the aforementioned letter, Mr Maluleka phoned the station commander of the Mokopane police station and required the assistance of the SAPS, to assist the Applicant should the threat contained in the letter be executed.

[58] The Respondents denied that the letter was authored by Mr Mashamaite, disputed that Mr Mashamaite or Chepana ever owned an iPhone and submitted that the document was an engineered document.

[59] In my view, it is prudent to set out the content of the letter. The letter reads as follows:

'As you're aware that we were not happy about the appointment of Maluleke as municipal manager, we were later absolved by the High Court which declared both panel, shortlistings and appointment as unconstitutional.

We however saw the purported municipal manager being in contempt of the court by continually coming to work regardless of him not having a Loco standi to be Mogalakwena municipal (sic).

Samwu in Mogalakwena local took decision that the said municipal manager should be barred from entering the institution, since it's clear that his continued stay in the institution, municipality will suffer irreparable harm.

On Tuesday the 20th September 2022, the aforementioned person wanted to preside over EXCO meetings, regardless of the existing Court ruling against him, Samwu members decided to get into the meeting to remove him, as a result EXCO meeting did not proceed as well as the council which was scheduled to take place on the said date at 13h00, police were called by the mayor to intervene, they were given a court ruling against Mr Maluleke which they acknowledged.

Surprisingly at around 17h30, the police then started to shoot SAMWU members with rubber bullets in an endeavour to force an unlawful council to proceed.

Our worry with the said council is that they resolved to outsource fleet which is a core function of the municipality as well as outsourcing IT division, they further resolved to take all municipal grants to be managed by Waterberg district municipality

Our view is that in accordance any issue pertaining changes in the workplace, requires that there be an LLF meeting first before the matter could be taken to council, of which the opposite is correct in this regard.

The prejudice that which SAMWU members will suffer if such decisions are taken without following due process is that workers whom were executing day to day responsibilities on the outsourced functions will be redundant, the removal of municipal grants will negatively impact Mogalakwena municipal grading.

It is against this ground that we request your wisdom and divine intervention.

Kind Regards

LL Chepana

SAMWU MLM Chairperson’.

[60] It is evident from the content of the letter that it accords to a large extent and is indeed reconcilable with the Respondents’ version as recorded in paragraphs 16, 19 and 20 of the answering affidavit. There is no reason to accept that the document is ‘engineered’ as it accords with the Respondents’ own version of events.

[61] However, the Applicant’s version that the letter is an invitation to SAMWU members and employees to take the law into their own hands in respect of Mr Maluleka and that it contains a threat, is not one this Court is prepared to accept.

[62] In my view, there is no threat made in the letter and the letter per se is not a reason to grant an interdict, even if I were to accept that the letter was authored by the individual respondents.

27 September 2022

[63] On 27 September 2022, the individual respondents did not report for work. The Applicant instructed its attorneys to proceed with an urgent application to this Court to interdict the individual respondents from participating in unlawful activities.

28 September 2022

[64] The urgent application was filed on 28 September 2022 and enrolled for urgent hearing on 29 September 2022.

[65] The Applicant filed a supplementary affidavit to set out further disruptive events which occurred, since the filing of the application.

- [66] The first event is that Mr Mohubedi (Thirteenth Respondent) and Mr Moloi, who is not part of the individual respondents before this Court, used the Applicant's heavy equipment, such as a grader and TLB to obstruct the main entrance and another entrance to the Applicant's premises, situated in Retief Street. The deponent to the supplementary affidavit, Mr Maluleka, stated that he had received information about this incident from Mr Kekana.
- [67] Mr Kekana, from Vutha Mkonto Security Services and who is in charge of the Applicant's security, deposed to an affidavit wherein he stated that on 28 September 2022 and at around 07:00, a group of SAMWU member employees started to gather around the municipal campus. The normal starting time is 07:30 and he instructed his team to be on alert. After 10 minutes some of the SAMWU member employees went to the library yard, where the municipal machinery is stationed and they drove a grader and a TLB to the two entrances of the municipality and thereby barricaded the premises and refused everyone access. Mr Kekana and his team were unable to get the employees to protest in a calm and peaceful manner and not to obstruct the municipal operations.
- [68] The second event is that the persons mentioned in annexures "E1" – "E23" to the Applicant's founding affidavit, in addition to assisting with the obstruction of the Applicant's entrances, entered the municipal building, threatened and intimidated employees who had reported for duty, with the result that the employees have left the municipal building because they felt unsafe. Mr Maluleka stated that he had received information about this incident from Mr Kekana and the COO, Mr Ngoepe.
- [69] Members of the public, who wanted to pay bills for licence fees, were prevented from making such payments. The members of the public are obstructed to exercise their rights to have access to municipal facilities and the Applicant was deprived from receiving income from bills, licences etcetera.
- [70] The Applicant requested this Court to allow hearsay evidence in this regard, as it would be in the interest of justice to do so.
- [71] The Respondents disputed that the events, as set out by the Applicant, occurred on 28 September 2022 and their version is that the TLB was parked in the intersection on 22 September 2022, when the employees reported for duty. They deny that there was any gathering of employees or any intention to disrupt the operations on 22 September 2022. It is denied that Mr Mokhobedu drove a TLB to block the intersection on 22 September 2022.
- [72] The version presented by the Respondents is contradictory. In the founding affidavit, the Applicant dealt with the events of 22 September 2022 specifically. The Respondents' response to that was that the events referred to by the Applicant indeed took place on 28 September 2022. In its supplementary affidavit, the Applicant dealt with the events of 28 September 2022 specifically, and the Respondents' answer to that relates only to events of 22 September 2022, with a version that on 22 September 2022 the TLB was parked in the intersection.

- [73] Be that as it may, I am not satisfied that the Applicant has presented sufficient evidence to show that it was indeed Mr Mokhobedu who drove a TLB to block the intersection. I am however convinced that, on a conspectus of all the facts, the unlawful conduct and activities occurred between 20 and 28 September
2022. There is no indication that the conduct the Applicant seeks to interdict was to cease, but the facts rather point to a position where the conduct was ongoing.
- [74] It is common cause that the individual respondents were suspended with effect from 30 September 2022.

Conclusion

- [75] The Applicant, as a municipality and part of the sphere of local government, has a duty to provide municipal services to the community and to give members of the public access to its buildings and services. As such, the Applicant has a clear right for members of the public to have free access to municipal buildings and services and for employees, who render those services, to report for duty.
- [76] The Applicant further has a duty to protect its employees, to provide a safe working environment and to provide an environment wherein the safety of employees and members of the public are not threatened by unlawful activities.
- [77] It is evident that the Applicant will suffer irreparable harm if the unlawful conduct at its premises is not interdicted and restrained. The Applicant has no alternative remedy but to approach this Court for relief.
- [78] Considering the facts placed before me, I am satisfied that the Applicant has met the requirements for final interdictory relief and that a case has been made out for a portion of the rule nisi that was granted on 29 September 2022 to be confirmed.

Costs

- [79] The last issue to be decided is the issue of costs.
- [80] Insofar as costs are concerned, this Court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness.
- [81] In *Zungu v Premier of the Province of KwaZulu-Natal and others*,^[12] the CC confirmed that the rule of practice that costs follow the result does not apply in labour matters. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand allowing those parties to bring to this Court cases that should not have been brought to Court in the first place.

[82] This is a case where the Court has to strike a balance, considering the requirements of law and fairness. The generally accepted purpose of awarding costs is to indemnify the successful litigant for the expense he or she has been put through by having been unjustly compelled to initiate or defend litigation. In *Public Servants Association of SA on behalf of Khan v Tsabadi NO and others*,^[13] it was emphasized that:

‘...unless there are sound reasons which dictate a different approach, it is fair that the successful party should be awarded her costs. The successful party has been compelled to engage in litigation and compelled to incur legal costs in doing so. An appropriate award of costs is one method of ensuring that much earnest thought and consideration goes into decisions to litigate in this court, whether as applicant, in launching proceedings or as respondent opposing proceedings.’

[83] Mr van Graan and Mr Ndou submitted that this is a case where a cost order will be justified and they both sought an order for costs.

[84] In *Tsogo Sun Casinos (Pty) Ltd t/a Montecasino v Future of SA Workers Union and others*^[14] (Tsogo Sun), the employer approached this Court on an urgent basis to obtain an interdict as the individual respondents acted in breach of the picketing agreement. The existence of a continued collective bargaining relationship was found to be irrelevant. The fact that the casino was pursuing an order for costs was an indication that, at least as far as the casino was concerned, a future relationship with the union would not be prejudiced by any order for costs.

[85] In *Royalservice Cleaning (Pty) Ltd v Democratic Union of Security Workers and others*,^[15] the employer approached this Court for an interdict to restrain striking employees from picketing in breach of picketing rules. In respect of the issue of costs the Court held:

‘Although there was some debate about the existence of a relationship between the parties I am of the view that even if there is an on-going relationship, I can see no reason why the applicant should not be entitled to its costs in this matter. If the relationship between the parties is indeed important to the first respondent, then it should be expected that it would do everything possible to ensure that picketing rules are communicated and that any picketing is in terms of those rules.’

[86] In *Security Services Employers’ Organisation and others v SA Transport and Allied Workers Union and others*,^[16] the Court held the view that there was no rule of law or of public policy which precluded the granting of costs where a rule nisi was discharged and not confirmed.

[87] In casu, the unlawful conduct of the individual respondents forced the Applicant to approach this Court for urgent relief.

[88] Even if the Respondents had a legitimate issue or complaint, that did not justify their unlawful conduct. Legitimate complaints can be resolved by following due process and it is not necessary to resort to unlawful conduct.

- [89] There was no argument presented that there is an ongoing relationship and that at this junction, a cost order would damage the relationship even further. The reality is that it was the conduct of the Respondents that damaged the relationship, if such damage exists. The existence of a continued collective bargaining relationship and the potential prejudice a cost order might cause to that relationship is irrelevant in this instance. As per the Tsogo Sun judgment, the fact that the Applicant is pursuing an order for costs against SAMWU and the individual respondents is an indication that, far as the employer is concerned, a future collective bargaining relationship with SAMWU would not be prejudiced by any order for costs.
- [90] Furthermore, the Applicant is a municipality, funded to operate and render services to communities from the pockets of taxpayers. I can see no reason why the taxpayers should be burdened to pay the costs of an application which was necessitated ultimately by the unlawful conduct of the Respondents.
- [91] However, I am mindful of the fact that the Applicant abandoned a portion of the relief initially sought and to the extent that the Respondents were successful to defend a claim in respect of an unlawful strike, it should be reflected in the costs to be awarded.
- [92] Section 162 of the LRA entitles this Court to make an order according to the requirements of the law and fairness. This is a broad discretion, and one that must be exercised judicially. In my view and for the reasons supra, fairness dictates that the Respondents should be liable for a portion of the Applicant's costs.
- [93] In the premises, I make the following order:

Order

1. The rule nisi issued on 29 September 2022 is confirmed as follows:
 - 1.1. The Second to Fourteenth Respondents (individual respondents) are interdicted and restrained from preventing the Applicant's employees and/or officials from performing their duties and responsibilities at the premises of the Applicant;
 - 1.2. The individual respondents are interdicted and restrained from assaulting, threatening to assault or otherwise intimidating the Applicant's employees and/or officials and/or service providers from performing their duties and responsibilities at the premises of the Applicant;
 - 1.3. The First Respondent is directed to take all necessary and possible steps to terminate all irregular and unlawful conduct by the individual respondents.
2. The First to the Fourteenth Respondents are to pay 50% of the Applicant's costs, jointly and severally, the one paying, the other to be absolved.

Connie Prinsloo

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Advocate E van Graan SC

Instructed by:

Popela Maake Inc Attorney

For the First to Fourteenth Respondents:

Mr P Ndou from Ndou Attorneys Inc

[1] Act 66 of 1995, as amended.

[2]

(2022) 43 ILJ 1241 (CC) at para 19.

[3] Ibid at para 30.

[4] (1999) 20 ILJ 392 (LC).

[5] Oak Valley at para 34.

[6] Polyoak at 395H – 396B.

[7] Ibid at 394E-G.

[8] Oak Valley at para 42.

[9] Oak Valley supra at para 44.

[10] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984

(3) SA 623 (A) at 634H-635C, where it was held: ‘It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact... If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6(5)(g) of the Uniform Rules of Court... and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks... Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting

them merely on the papers...’

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[11] Oak Valley supra at para 46.

[12]

(2018) 39 ILJ 523 (CC) at para 24.

[13]

(2012) 33 ILJ 2117 (LC) at para 176.

[14]

(2012) 33 ILJ 998 (LC).

[15]

(2012) 33 ILJ 448 (LC) at para 12.

[16]

(2007) 28 ILJ 1134 (LC).

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