

SOUTH AFRICA / JUDGMENT

National Transport Movement v Interstate Bus Lines and Another (J292/18) [2021]

ZALCJHB 270 (8 September 2021)

[2021] ZALCJHB 270

COURT

Labour Court Johannesburg

BEFORE

Nkutha-Nkontwana

CASE / FILE NUMBER

J292/18

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

reportable

Case

no: J292/18

In

the matter between:

NATIONAL
TRANSPORT
MOVEMENT Applicant
andINTERSTATE
BUSLINES First
RespondentGILBERT
NOMDZINWA Second
Respondent

Enrolled: 25

August 2021 (decided on paper)

Delivered: This

judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour

Court's website and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 08 September 2021.

Summary: Section 21 dispute pending before CCMA – lis alibi pendens upheld – declaratory relief is inappropriate when there are alternative remedies.

JUDGMENT

NKUTHA-NKONTWANA, J

Introduction

[1] In this application, the applicant seeks, inter alia, an order declaring as unlawful the refusal by the first respondent to effected deductions of trade union subscriptions through a stop order facility from its members who had resigned from the rivalry trade unions (SATAWU and TIRISANO); directing that such deductions be effected in favour of the applicant stop orders be deduction.

[2] In 2015, the applicant, SATAWU and TIRISANO concluded a recognition agreement to regulate their collective bargaining relationship. The agreed threshold for recognition and allocation of organisational rights, i.e. access to workplace, union subscription deduction and election of shop stewards, was set at 25% membership of the total employees within the bargaining unit.

[3] The applicant's membership seemingly fell below the threshold in 2016 and that resulted in the suspension of all its organisational

rights. It referred various disputed to the Commission for Conciliation Mediation and Arbitration (CCMA) which resulted in divergent rulings. The last dispute under case number FSBF5289-17 is pertinent to this application as it relates to organisational rights

in terms of section 21 of the Labour Relations Act[1] LRA).

[4] According to the respondents, that dispute is still pending the outcome of a verification exercise since membership of 76 employees within the bargaining unit is contested. As things stand, there are two rulings by the CCMA Commissioners pertaining to the verification exercise as membership of some of the employees has been referred to balloting. The balloting exercise is also still pending.

[5] Accordingly, the respondents are opposing this application and take two points in limine. First, the lis alibi pendens since the section 21 dispute under case number FSBF5289-17 is still pending before the CCMA. Second, the jurisdictional impugn as the relief sought falls within the jurisdiction of CCMA in terms of section 21 of the LRA.

[6] Both of the respondent's points in limine are well taken. It is trite where two actions are instituted by the same applicant against the same respondents on the same facts, the applicant must exhaust or withdraw the prior proceedings pending before another forum. Absent an undertaking that the applicant will withdraw that CCMA proceedings, lis pendens must be upheld in order to avoid a situation where this Court and the CCMA pronounce on the same issue and risk arriving at conflicting

decisions.[2]

[7] Even if the lis pendens is not upheld, the second hurdle facing the applicant is the jurisdictional impugn. Section 21 dispute falls within the exclusive jurisdiction of the CCMA. As such, this Court cannot clothe itself with the jurisdiction it does not have.

[8] To the extent that the applicant relies on section 158(1)(iii) and (iv) of the LRA, that is equally flawed. It is trite that a declaratory

order is inappropriate when there are alternative remedies.[3] In this instance, the applicant has since availed itself to the alternative remedy in terms of section 21 of the LRA which must be followed to its logical conclusion.

[9] In all the circumstances, the respondents' points in limine are upheld and the applicant's claim stands to be dismissed. The parties did not pursue costs.

[10] In the circumstances, I make the following order.

Order

1. The application is dismissed.
2. There is no order as to costs.

P Nkutha-Nkontwana

Judge of the Labour Court of South Africa

[1] Act 66 of 1995, as amended.

[2] See: *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others* [2013] ZASCA 129; 2013 (6) SA 499 (SCA); [2013] 4 All SA 509 (SCA).

[3] See: *Member of the Executive Council for Education, North West Provincial Government v Gradwell*

(2012) 33 ILJ 2033 (LAC) at para 46.

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Prepared on 12 October 2026 · Esheria