

SOUTH AFRICA / JUDGMENT

Provincial Executive Member Committe, South African Democratic Teachers' Union, Eastern Cape and Others v South African Democratic Teachers' Union and Others (462/2014) [2014] ZAECBHC 9 (5 September 2014) [2014] ZAECBHC 9

COURT

Eastern Cape High Court, Bhisho

BEFORE

P.W. Tshiki

CASE / FILE NUMBER

462/2014

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION, BHISHO

NOT REPORTABLE

Case no: 462/2014

Date heard: 1.9.2014

Reasons

available:5.9.2014

In the matter between:

PROVINCIAL EXECUTIVE MEMBER COMMITTEE, SOUTH AFRICAN DEMOCRATIC TEACHERS' UNION, EASTERN CAPE First Applicant LUVU MVULANA Second Applicant MNCEKELELI NDONGENI Third Applicant NTOMBIZANELE BOOI Fourth Applicant KHANYISILE BOYSI Fifth Applicant MANDISA MVOKO Sixth Applicant NOMXOLISI MAKAYI Seventh Applicant THINGAZWA MHLABA Eighth Applicant vs SOUTH AFRICAN DEMOCRATIC TEACHERS' UNION First Respondent THABILE KUNENE Second Respondent FIRST NATIONAL BANK, KING WILLIAM'S TOWN Third Respondent

REASONS

FOR JUDGMENT

TSHIKI J:

A)

INTRODUCTION

- [1] The first applicant is described in the papers as the provincial structure of the first respondent, duly established in terms of the Constitution of the first respondent. One of its duties is, inter alia, to manage and administer the affairs of the South African Democratic Teacher's Union (SADTU) in the Eastern Cape Province.
- [2] The second to eighth applicants are the provincial office bearers of the first applicant occupying positions and performing various tasks according to their portfolios on behalf of and in the interests of the union in the Eastern Cape Province (the province).
- [3] The first respondent is a registered trade union in terms of the laws of the Republic of South Africa. It has a duty, in terms of its constitution, to make a monthly allocation to the bank account of SADTU, Eastern Cape. The monthly amount it allocates and pays for the obligations of Eastern Cape SADTU is a sum of one million four hundred rand (R1 400 000.00).
- [4] The second respondent is a member of the SADTU, Eastern Cape Province, who is described as having been declared as the Provincial Chairperson of the special NEC meeting held in Durban on 22nd July 2014.
- [5] The third respondent is the commercial bank of SADTU, Eastern Cape.
- [6] Applicant herein had filed an application by way of urgency for an order that the first respondent pay a sum of R1 400 000.00 into the bank of the third respondent in performance of its duties and obligations as stated supra.
- [7] In terms of the National Executive Committee (NEC) of the first respondent, the NEC resolved that the Eastern Cape Provincial Office be put under administration with immediate effect. For that reason, the National Office would co-ordinate and manage the affairs of the provincial office together with the leadership of the provincial structure. However, the regions and branches of the Eastern Cape structure are not under administration. The region and branches of the Eastern Cape will continue to receive their allocations.

B)

ISSUES

- [8] For the purpose of this application I need not deal in detail about the problems between the National structure and the Eastern Cape Provincial structure of SADTU. What is in issue is that this application emanates from an order of this Court which was granted against the first respondent on the 14th August 2014 which reads:

“1. The (main) application is postponed to 21st August 2014 at the East London Magistrate’s Court Building at 10h00 or as soon as the matter may be heard.

2. The parties will file their respective heads of argument by not later than 15h00 on 19th August 2014.
 3. The Eastern Cape PEC of SADTU will deliver their list of creditors and amounts to be paid by not later than 10h00 on 15th August 2014.
 4. The NEC of SADTU will pay the total of the amount reflected in the list in paragraphs 3 above by no later than 16h00 on 15th August 2014 provided that the amounts reflected on the list together with the amounts already paid to the creditors of the PEC by the NEC since 22 July 2014 not exceed the amount of R1,4 million. Any amount overpaid to a creditor of the PEC by the NEC will not be taken into account in the above calculation.
 5. Costs are reserved.”
- [9] Although the above order did not say specifically so, it seems to me that the applicant entertained the impression that the payment specified in the order above would continue to be paid even at the end of August 2014 but it was not. For that reason, the applicant felt betrayed hence they filed the application before me.
- [10] The urgency of the application was caused by the fact that some other creditors inclusive of the employees of the provincial structures of the applicant had not received their salaries and/or wages. That some of the service providers inclusive of the landlords had not been paid their rentals and/or monies due to them.
- [11] The papers in this application were served on the respondents but by the afternoon of the 1st September 2014, the respondents had not filed their answering affidavit. Applicants were also of the view that the failure to pay the money in time on the part of the respondents was a deliberate act to frustrate the provincial structure.
- [12] Indeed on the date set for the order the parties’ representatives approached this Court. When the matter was argued Mr Malusi, an attorney, appeared for the applicants and Mr Pitt represented the respondents.
- [13] Mr Pitt proceeded by requesting a postponement of the case to the 4th September 2014, and in the main citing the fact that the respondents’ attorneys are in Johannesburg. Through their counsel, respondents promised to have the money paid direct to the branches as well as the union structures but it transpired that not all the money was paid.
- [14] Mr Malusi argued against the postponement. He indicated that the act of the respondent’s delay is deliberate as he has been told by his clients. He contended that even in respect of the previous application the representatives of the respondents presented an indefensible argument. They could not place any good reasons for their failure to pay the money to the provincial structure.

[15] After the argument I adjourned with a view to consider my decision. I intended to have a look at the previous records why the respondents refuse to pay.

[16] On reading the submissions by Mr Rautenbach who appeared for the respondents in the initial application for payment of money by the National Structure (NEC) in support of the provincial structure, he conceded that the national body is still responsible for all the creditors inclusive of those of the provincial structure (See page 77 onwards to page 81 of the submissions lines 1-15. In line 5 he says:

“We know that the national structure is absolutely in a position and have stated under oath that they are responsible they are the union they are responsible for any obligations any creditors whatever it will be so to say that a question of four to five weeks for an actual appeal internally that is not a suitable remedy M’Lady, I submit that is a suitable remedy and I submit [interrupted].”

[17] The presiding Judge asked Mr Rautenbach the questions which were answered as follows:

“Court

- But Mr Rautenbach you said that there has to be one must look at this from a practical point of view. Mr Rautenbach
- yes Court
- A week ago the emergency was financial Mr Rautenbach - Well that emergency has to well I submit that emergency has been addressed, there was a Court order made by Your Ladyship

[interrupted] Court - Consent? Mr Rautenbach

- By consent in that respect. Court
- And what will happen with that emergency before the meeting in October? Mr Rautenbach - Well it appears to be no reason [interrupted] Court - Because that Court order only provides for one payment. Mr Rautenbach
- Yes there appears to be and I will take instructions on that but there appears to be no reason or pending the outcome of any appeal or pending the outcome of the investigation whichever comes first that these provisions that that order will still I can see no reason why that order cannot still be extended for purposes of finalization of the matter either through the investigation of the matter in the event of an appeal to the national conference. Mr Rautenbach - ...but I can see nothing wrong in the Court making an order pending the resolution of the dispute in either its own internal investigations or the national conference because this dispute at the end of the day will need a resolution.”

[18] From the encounter between the Court and Mr Rautenbach of the respondents on the 21st August 2014, there is no reason why the respondents could not pay the money into the bank of the applicants or to pay their creditors. It may have been that there are other issues but the financial one does not pose a big problem to the respondents because in any event, they had been supporting the provincial structure so as to be able to meet its obligations. Why

then there has to be a sudden glitch? In my view, the applicant did not necessarily say there has to be money to be paid into its account but that the first respondent can still make payments direct to the creditors of the applicant.

- [19] For that reason, I could not understand why there had to be a postponement of the application the same application that was argued on the 21st August 2014 and was settled by the parties.
- [20] In any event, I could see no reason for the first respondent to delay this urgent issue by way of a refusal to pay the money. They have paid this money throughout the months and years they are obliged to pay. I, therefore, concluded that there was no reason for a postponement of the matter. I was proved correct in any event because I was told that some money had been paid direct to the applicant's creditors with the exception of a sum of R338 083.99 which was due.
- [21] In my ex-tempore- judgment I said the following: "I am in possession of the transcript of the proceedings before Stretch J on the 21st August 2014 when the issue of this money was addressed. It seems to me that there is nothing new in the issue of the money which respondent has to pay to the applicants. On the 21st August 2014 it was also argued before Stretch J as a result of which an order by consent was made. Even at that time it was known that another end of the month would come but nothing has been done by the first applicant about the first applicant's creditors. I refer to those mentioned by Mr Malusi. Respondent should be serious about taking care of its obligations. I do not think that a postponement would result in anything new and for that reason I refuse the application".
- [22] It is for that reason that I refused the application for a postponement. In fact, even the first respondent's act of paying the money shows clearly that they have no reason to refuse or delay the payment of the money.
- [23] I must also add that the Court order I made has an error. I say so, because in paragraph 2 of the Notice of Motion sum of R1 400 000.00 (one million four hundred thousand rand) was mentioned and the wording before amendment read as follows:
- "1. Dispensing with the usual forms and service and hearing this matter on an urgent basis in terms of Rule 6 (12);*
2. That the first respondent pay the monthly financial allocation of R1 400 000.00 (one million four hundred thousand rand) into the first applicant's bank account held with third respondent before, 15h00 on 1st September 2014.
 3. That the first respondent continues paying the monthly financial allocation mentioned above to the first applicant every subsequent month until the main application is finalized.
 4. That the first respondent be ordered to pay costs of this application on an attorney and client scale."

[24] The logistics of the whole order necessitated the amendment of the notice of motion which was made. The resultant order came with words which were never intended by the parties and eventually by the Court. Paragraph 3 was intended to read as follows:

“That the first respondent continues paying the monthly financial allocation of R1 400 000.00 (one million four hundred thousand rand) into every subsequent month until the main application is finalized.”

[25] I see no reason why the order cannot be corrected. However, I will leave it to the parties to approach me at the appropriate time.

[26] The above are my reasons for judgment.

P.W. TSHIKI

JUDGE OF THE HIGH COURT

Counsel for the applicants: Mr Malusi Instructed by: Malusi & Co Attorneys c/o Potelwa and Co
KING WILLIAMS TOWN Ref: Mr Malusi/8263-A Tel: 043-722 9316 Email: admin@malusiec.co.za
Counsel for the 1st and 2nd respondents: Adv Pitt Instructed by: Cheadle Thompson & Haysom c/
o Hutton & Cook KINGS WILLIAMS TOWN Ref: Kalpa Ravala

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECBHC/2014/9.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/provincial-executive-member-committee-south-african-democratic-teachers-union-eastern-cape-and-others-v-south-unknown-topic-aecbhc-2014>

Prepared on 11 October 2026 · Esheria