

SOUTH AFRICA / JUDGMENT

Public and Allied Workers Union of South Africa v George and Others (14292/2008) [2008] ZAWCHC 261 (5 September 2008) [2008] ZAWCHC 261

COURT

Western Cape High Court, Cape Town

BEFORE

Fourie

CASE / FILE NUMBER

14292/2008

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IN THE HIGH COURT OF SOUTH
AFRICA

(CAPE OF GOOD HOPE PROVINCIAL

DIVISIONS)CASE NO: 14292/2008DATE: 5

SEPTEMBER 2008In the
matter between:THE PUBLIC AND ALLIED WORKERS
UNION OF SOUTH AFRICA APPLICANT
and

1. WESLEY GEORGE 1st RESPONDENT
2. ALLISTAIR CHARLES 2nd RESPONDENT
3. BART SIMMERS 3rd RESPONDENT
4. V B VUSO 4th RESPONDENT

JUDGMENT

FOURIE, J:

This application has been brought as a matter of urgency by The Public and Allied Workers Union of South Africa, to which I will hereinafter refer as "the Union", seeking interim interdictory relief against three members of its National Executive Committee.

I have come to a firm conclusion as to the order which I should make and in view of the fact that I am sitting in Third Division and there is still another matter that I have to hear, I intend only briefly stating my reasons for the order that I intend to make.

The Union is a legal person and its rights and powers are as set out in its constitution. It can only act through its structures as defined in terms of the constitution. In my view those persons purporting to act on behalf of the Union have failed to establish that they have been duly authorised to bring this application. There is no resolution on the papers before me to show that the Union has validly authorised the bringing of this application. There is also no valid resolution authorising the deponents to the founding affidavits to bring the application. In addition, even if there were such resolutions, it does not appear that the Union, and in particular its National Executive Council, took a legally binding decision to suspend the three respondents and to bring these proceedings. The reason for this is that in terms of the constitution, the NEC consists of 11 members, i.e. the president, the vice-president and nine provincial representatives, and a quorum for any decision taken by the NEC is, in terms of clause 19.5.1 of the constitution, 50% plus one, which would in the circumstances be at least six NEC members. It is clear from the founding papers that only five members of the NEC were present when it resolved to suspend respondents and to take steps against them.

It therefore follows, in view of the provisions of the constitution, that any such decision taken by these persons would have been without any force or effect.

In the circumstances the application cannot succeed and therefore I am not inclined to postpone the matter for further hearing in due course. It also follows that interim relief ought not to be granted.

En the result, the application is DISMISSED and the deponents to the founding affidavits are ordered to pay respondents' costs.

FOURIE, J

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