

SOUTH AFRICA / JUDGMENT

Raymond Mhlaba Local Municipality v Unemployed Workers Union (UNEWU) and Others (172/2017) [2017] ZAECGHC 66 (1 June 2017) [2017] ZAECGHC 66

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Beshe

CASE / FILE NUMBER

172/2017

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, GRAHAMSTOWN)

CASE

NO.: 172/2017

In

the matter between:

RAYMOND
MHLABA LOCAL
MUNICIPALITY
Applicant
And
UNEMPLOYED WORKERS UNION
(UNEWU) First
Respondent
SIWA
SILATSHA Second
Respondent
THANDUXOLO
CAFU Third
Respondent
ASANDA
MHLAWULI Fourth
Respondent
LUKHANYO
KWINANA Fifth

Respondent
SIVUYILE
ZINDLU Sixth
Respondent
ANDILE
TONI Seventh
Respondent
NOXOLO
PLATJIE Eighth
Respondent
SKOTI
BABALWA Ninth
Respondent
BULELWA
DYONGO Tenth
Respondent
MRS
JACK Eleventh
Respondent
NOMONDE
NQONTSI Twelfth
Respondent
MANDLA
NGECE Thirteenth
Respondent

JUDGMENT

BESHE J:

[1] 20 April 2017 was the return date, as extended of a rule nisi that was issued by Plasket J on the 19 January 2017. The terms of the order were inter alia the following:

THAT a rule nisi be issued calling upon the Respondents to show cause on 23rd of February 2017 at 10h00 why the following order should not be made final:

1.1 Interdicting and restraining the Respondents and persons under their control from unlawfully taking or attempting to take any action that obstructs or frustrates the effective rendering of municipal services by the Applicant, all decision-making processes of the Applicant, or the ability of the Applicant's employees to do their work, and members of the general public from consulting the Applicant or attending at its offices, such action to include, but not be limited, to the following actions:

1.1.1 entering or occupying any of the applicant's properties or buildings in Adelaide including inter alia the town hall and council chambers in Adelaide other than for the transaction of normal business that requires the attendance in the buildings (including the attendance of general business, and transactions);

1.1.2 interrupting or disrupting any of the Applicant's employees from continuing with their normal business activity and assaulting or threatening to assault members of the Applicant's staff or security officials in the employ of the Applicant;

1.1.3 destroying, damaging, in any way, or defacing any of the Applicant's property;

1.1.4 erecting any form of barricade, preventing access to any roads, buildings or transport on the Applicant's property;

1.1.5 carrying any weapons, including, but not limited to sticks and projectiles;

1.1.6 participating in, or inciting others to participate in, violent protest;

1.1.7 inciting violence;

1.1.8 intimidating any person on the Applicant's properties or seeking to access the Applicant's properties.

1.1.9 seeking to persuade or coerce any person, using intimidation, duress or threats, from discontinuing their work (in the case of any of the Applicant's employees or contractors) or pursuing any other unlawful activities.

2. THAT paragraph 1.1 above shall operate as an interim interdict with immediate effect until the final determination of this matter.

[2] Mr Cole for the applicants moved for the confirmation of the rule. Ms Henderson for the respondents on the other hand argued in favour of the discharge of the rule.

[3] The application is founded on the following allegations:

A group of ± 150 unemployed persons amongst whom were second to thirteenth respondent, acting under the auspices of first respondent engaged in a protest action against the latter's offices. The source of respondents' complaint was the employment on contract basis of five cleaners. The five were employed through what is known as the Expanded Public Works Program (EPWP). A Government program meant to create employment for the poor. Local government structures receive funds from Public Works Department and are tasked with administering same for the benefit of the poor. Likewise, applicant, being the Raymond Mhlaba Local Municipality, has, in respect of the people of Adelaide, been involved in the identification of employees for EPWP positions since 2004. This they do in accordance with the EPWP recruitment guidelines.

[4] First respondent has since the year 2006 been part of the process in that they represented unemployed workers and assisted the applicant in various other programs.

[5] On or about 1 December 2016 five persons were appointed as cleaners in Adelaide after being nominated by a ward councillor for the project Mr Mjakuca.

- [6] On the 11 January 2017 the respondents approached Mjakuca to complain about the five appointments. Not being satisfied with Mjakuca's response, their second port of call was the Mayor of first applicant. The Mayor suggested they put their complaint in writing and address same to applicant's Manager (Municipal Manager).
- [7] On the 16 January 2017 at 10h00 the respondents who were part of a group of about ± 150 people walked into the town hall where Mjakuca and other employees were attending a meeting. The respondents were protesting and singing songs. They chased Mjakuca and other employees who were part of the meeting out of the town hall.
- [8] The group later moved to applicant's council chambers where applicant's administrative have their offices. The group of protestors comprising of the respondents entered the council chambers forcing everyone to leave the building.
- [9] Mjakuca arranged meetings with the respondents in a bid to resolve the impasse.
- [10] On the 17 January 2017 respondents as part of a group of ± 150 persons once again interrupted a meeting Mjakuca was holding with other persons. They were demanding that the contracts of the five employees be cancelled. Respondents protested by singing and dancing. After leaving the town hall and after security guards had locked the offices therein, respondents sat in a circle outside the town hall.
- [11] On the 18 January 2017, the respondents arrived at the town hall at ± 8h00. Mjakuca received a report that employees of the applicant have been locked in by the respondents and their group. Employees feared for their lives. Help from South African Police Service was enlisted. Later applicant's employees were freed with the help of Public Order Police Unit from Cradock.
- [12] It is alleged on behalf of the applicant that respondents dumped rubbish at the council chambers.
- [13] Applicant resorted to instituting these proceedings as the actions of the respondents had the effect of shutting down applicant's
- offices which in turn resulted in severe prejudice and detriment to applicant's employees, the general public and the running of normal municipal business.
- [14] The Municipal Manager of the applicant expresses fear that respondents will carry on with their unlawful activities if not
- restrained from doing so.
- [15] According to the applicant there is no other satisfactory legal remedy that can assist the applicant to restore law and order at its premises. So that they can carry on dispensing services to their residents.
- [16] Applicant conducts its business from the following properties:

Town Hall in Market Square;

Council Chambers in Market Square;

Budget and Treasury offices, Market Square;

Municipal Depot at Buitekant Street.

[17] Before I deal with respondents' opposition, I must point out that the only part of the rule that is resisted is subparagraph 2.1.1 thereof. This the respondents made clear in an item of correspondence addressed to the applicant / those who represent applicant marked "with prejudice" dated 21 February 2017.

[18] Subparagraph 2.1.1 is in the following terms:

"2.1.1 entering or occupying any of applicant's properties or buildings in Adelaide including inter alia the town hall and council chambers in Adelaide other than for the transaction of normal business that requires the attendance in the buildings (including attendance of general business and transactions)."

[19] Respondents admit that they did participate in protest which caused minor disruption to applicant's business. They however deny that such disruption was unlawful.

[20] In opposing the application, respondents take issue with inter alia, the time that first respondent is said to have come into existence. They also take issue with the alleged existence of EPWP clear recruitment guidelines. They deny that Mjakuca was entitled to appoint the workers in question. I however do not think that the abovementioned factors go to the heart of this application. Save that they serve to underpin the existence of a disagreement between applicant and the respondents about the employment of the five persons.

[21] Respondents admit protesting and singing when they entered the town hall. But they deny they chased anyone away. They admit occupying the town hall. They deny intimidating anyone. They contend that Mjakuca called an end to the meeting on his own volition. They deny that they forced anyone from the Council Chambers but admit they went there. Respondents deny that on 18 January 2017 they locked anyone inside the town hall, admitting only to occupying the building. They admit that Public Order Police Unit members arrived at the town hall but had no one to free from locked offices because there were no locks to break. At that stage they were sitting under trees outside the town hall. They confirm that their intention was to continue confronting Mjakuca until they got clarity regarding what they considered "irregular appointment of persons for political gain".[1]

[22] At paragraph 41 respondents state that they do not deny that they will continue demonstrating and protesting the appointment of workers for political gain but state that the protest will continue to be peaceful.

[23] At paragraph 50 they deny that the protests interfered with the work of the applicant “in any meaningful way”. They contend that applicant’s employees could have proceeded with their work despite the occupation of the buildings by the respondents. They suggested that applicant’s employees over-reacted or “reacted in an over dramatic manner” by locking the premises.[2]

[24] In response to respondents’ denial that they have not and do not intend disrupting the applicant in any meaningful way, a letter on first respondent’s letterhead addressed to the Municipal Manager signed by a number of people is attached. The letter is dated 17 January 2017. In order to place the contents of the letter in proper context it will be necessary to reproduce the letter as it is:

Dear Municipal Manager (Raymond Mhlaba Municipality)

This serves to seek your speed intervention regarding the people that was/are to be employed in EPWP by Councillor Sinethemba Mjakuca (he said that the instruction is from the ANC Branch Chairpersons – Tozi France & Tsepo Maseti who are also Community Development Workers here in Adelaide.

This ANC employment is contradicting with the Adelaide employment system; we expect every job arrives in Adelaide to go to doting station especially for general workers hence we are writing this letter stating our dissatisfaction.

We also believe that there is EPWP Coordinator here but she knows nothing about this employment.

We will make sure that the municipality is destabilized not functioning at all until you come to address this matter and proper processes be followed (people must be taken from doting station as the only system that is used to get general workers).

For further details please contact Siwaphiwe Slatsha – 078 354 3611 / Sivuyile Zindlu – 063 222 0553.

Hope this will get your most favourable attention.

[25] In my view this puts paid to respondents’ denial about their activities and intentions regarding their gripe with the applicant.

[26] Whilst it is trite that Section 17 of the Constitution guarantees the right to everyone:

“Peacefully and unarmed, to assemble, to demonstrate, to picket and to present petition.”

As Ms Henderson rightly pointed out, the right to freedom of assembly is fundamental and underpins the spirit of democracy. It is so that protests and demonstrations are a means of resolving disputes without having to take the law into ones hands or resorting to self-help.

[27] Be that as it may, this right as with other constitutionally protected rights, must be exercised such that it does not interfere

with other persons' rights. It was emphasized in *SATAWU v Garvas*[3]that:

"[68] The fact that every right must be exercised with due regard to the rights of others cannot be overemphasised."

[28] By their own admission the respondents disrupted the business of the applicants. Albeit, according to them not in any meaningful way. They also threatened in a letter addressed to the Municipal Manager of the applicant in no uncertain terms.

"to make sure that the municipality is destabilized not functioning at all"

[29] There can be no doubt that if the municipality is "destabilized and not functioning at all" it will not be able to dispense services to the members of the public – its rate payers etc.

[30] Respondents do not deny that they were part of a group of approximately 150 people during the protests which included occupying

the municipal offices. This in itself in my view coupled with admissions by respondents and the contents of the letter they addressed to the Municipal Manager, is an indication that the protests were not peaceful, but were intimidating and confrontational.

[31] There is therefore no merit in my view in respondents' submission that by insisting on the confirmation of prayer 2.1.1 of notice of motion and the granting thereof will have the effect of limiting respondents' right to protest.

[32] I am satisfied that respondents' conduct of storming meetings and occupying and intimidating staff members in keeping with their threat to destabilize and render the municipality non-functional, was unlawful and not protected by Section 17 of the Constitution.

[33] Applicant had sought an order for costs against any person who opposed the application. However in argument before me, Mr Cole, appreciating that an order for costs will be pointless because the respondents are not employed, stated that applicant was no longer insisting on such an order.

[34] In the result the following order will issue:

- (a) Paragraphs 2.1 to 2.1.9 of the rule nisi issued on the 19 July 2017 against the respondents are confirmed.
- (b) There will be no order as to costs.

NG BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant : Adv: SH Cole

Instructed by :

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Date Heard : 20 April 2017

Date Reserved : 20 April 2017

Date Delivered : 1 June 2017

[1] Paragraph 40 of opposing affidavit page 70 to 71 of the papers.

[2] Page 73 of papers.

[3] 2013 (1) SA 83 CC.

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