

SOUTH AFRICA / JUDGMENT

SAMWU and Others v Mogalakwena Municipality and Others (J 279/2023)

[2023] ZALCJHB 37 (9 March 2023)

[2023] ZALCJHB 37

COURT

Labour Court Johannesburg

BEFORE

Van Niekerk

CASE / FILE NUMBER

J 279/2023

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THE

LABOUR COUR OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

No: J 279/2023

In

the matter between:

SOUTH AFRICAN
MUNICIPAL WORKERS UNION
(SAMWU) OBO 24 MEMBERS
LISTED IN
ANNEXURE
“A”
HERETO Applicants
and
MOGALAKWENA
MUNICIPALITY First
Respondent

MUNICIPAL MANAGER:

MOGALAKWENA
LOCAL
MUNICIPALITY – MR MM MALUKLEKE Second
Respondent
PC
MAAKE ATTORNEYS Third
Respondent

Heard:

06 March 2023

Delivered: 09 March 2023
(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 SAFLI. The date on which the judgment is delivered is deemed to be 09 March 2023.)

JUDGMENT

VAN NIEKERK, J

- [1] The applicants seek an interim order staying a disciplinary hearing pending the outcome of a dispute referred to the bargaining council. The dispute concerns the application and interpretation of a collective agreement.
- [2] The facts are not in dispute. The individual applicants have been charged with misconduct. On 6 February 2023, charges were issued against them, and a disciplinary hearing convened for 1 March 2023. The municipality has appointed the third respondent, firm of attorneys, to represent it in the intended disciplinary hearings. The deponent to the sponsoring affidavit, a director in the firm, states that he signed the disciplinary notices in his capacity as the initiator, and that he formulated the charges included in the charge sheet. The applicants contend that in terms of paragraph 7.7.3 of the applicable collective agreement, the first respondent is excluded from appointing a qualified legal practitioner as a representative during the disciplinary hearing, and that such a representative may be appointed only by the consent of both parties on application to the presiding officer.
- [3] On 24 April 2023, the union referred a dispute to the bargaining council concerning the application and interpretation of the collective agreement. In the referral, the union seeks to have the bargaining council fight that the appointment of the third respondent as the municipality's representative is a breach of the collective agreement.
- [4] In these proceedings, as I have indicated, the applicants seek an interim order interdicting the disciplinary hearing pending the outcome of the dispute referred to the bargaining council.
- [5] The first respondent (the municipality) raises two preliminary points. The first is that the application is not urgent; the second is the failure by the applicants to join the chairperson of the disciplinary hearing.
- [6] I deal first with the issue of urgency. The applicant does not dispute that the application should have been brought 'much sooner'. However, the deponent to the founding affidavit, the union's senior national legal officer, states that the individual applicants consulted with

the union on 8 February 2023. It was not obvious to the union at that point that it was necessary to refer a dispute to the bargaining council. The provincial secretary could not get hold of the applicant's attorney of record and it was decided that the matter should be dealt with internally. It was only on 23 February 2023 that the applicants after the consultation with the applicant's attorney of record in preparation for the hearing, when they were advised that the employer's conduct violated the collective agreement. On 24 February, a set down date was obtained for 3 March 2023. The application was filed on 28 February 2023.

- [7] What the applicant does not disclose in the founding affidavit and what is apparent from a supplementary affidavit is that the disciplinary hearing in fact proceeded before an independent chairperson, Adv Mnomezulu, on 1 March 2023. In the supplementary affidavit, the deponent, Mr. Maake of the third respondent, records that clause 7.7.3 of the collective agreement is subject to the caveat established by clause 7.7.4, which, as I have indicated, confers a discretion on the presiding officer, on application, to allow legal representation. He further avers that an application was indeed made to the presiding officer by the first respondent, in writing, and served on the applicant. Pursuant to the application, the applicant did not file any submissions in opposition to the application. At the hearing, the applicant was represented by a Mr Patrick Aphanie. He acknowledged that the applicant had received the application, and will say that the applicant had not filed any opposition to the application. His attitude was that the application was invalid and that it was not incumbent on the union to respond. The presiding officer then issued directives for the filing of opposing submissions (before 6 March 2023), a reply by the municipality by 7 March 2023, and indicated that his ruling would be delivered on 10 March 2023.

- [8] I fail to appreciate how in the circumstances the application can be said to be urgent. The application is premature, brought as it was in circumstances where the presiding officer's decision on the issue of legal representation remains pending. To the

extent that the applicant's attorney submitted that the invalidity of the municipality's actions commenced when Mr

Maake was appointed to draft charge sheets and that the court to intervene on an urgent basis in relation to that invalidity, I failed to appreciate how this advances the applicant's case on the matter of urgency. The presiding officer has undertaken to make a ruling on 10 March 2023. The parties will no doubt assess their legal positions after the ruling is issued and exercise whatever rights they may have. In short, the premature nature of the application, brought as it was in circumstances where a ruling affecting the legal issues raised in the application remains pending before a presiding officer appointed in terms of the collective agreement, has the consequence that there cannot be any urgency to the matter. The application thus stands to be struck from the roll.

- [9] In view of my finding, it is not necessary for me to consider that the deponent makes much of the fact that the union was required to wait for its current attorney of record to be available, and the founding affidavit contains a long litany of other matters in which the attorney was involved. The first respondent's point relating to the applicants' failure to join the chairperson of the proceedings as a party to these proceedings.
- [10] Finally, for the purposes of section 162, the requirements of the law and fairness are best satisfied by an order for costs made against the applicant union. As I have indicated, the applicant failed to make full disclosure in the founding affidavit of all of the relevant facts. In urgent proceedings, it is incumbent on an applicant to take the court into its confidence and to disclose

all facts, even those which may serve to militate against the granting of relief. The applicant failed to do so and as a mark of

the court's displeasure, I intend to order that the applicant pay the costs of the application on the ordinary scale.

I make the following order:

1. The application is struck from the roll for lack of urgency, with costs.

André van Niekerk

Judge of the Labour Court of South Africa

Appearances:

For the applicant: P

Ndou, Ndou Attorneys Inc

For the respondent: Adv ESJ Van Graan SC

Instructed by: Popela

Maahe Attorneys

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Prepared on 14 October 2026 · Esheria