

SOUTH AFRICA / JUDGMENT

SAMWU obo Members v Kopanong Local Municipality (J 1808/2013) [2013] ZALCJHB 247; (2014) 35 ILJ 1378 (LC) (30 August 2013)

[2013] ZALCJHB 247

COURT

Labour Court Johannesburg

BEFORE

Snyman

CASE / FILE NUMBER

J 1808/2013

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REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case no: J 1808 / 2013

In the matter between:

SAMWU obo MEMBERSApplicant

and

KOPANONG LOCAL MUNICIPALITYRespondent

Heard: 27 August 2013

Delivered: 30 August 2013

Summary: Interdict application – principles stated – application of principles to matter – issue of clear right and alternative remedy

Jurisdiction – Labour Court does have jurisdiction to consider urgent application to ensure compliance with policy regulations – issue is whether it is competent for the Labour Court to do so – exceptional and compelling reasons required

Employment policy – whether conduct of employer relating to policy unlawful – provisions of policy as it stands determinative as to whether conduct unlawful – cannot rely on general right to fairness under Constitution

Alternative remedy – this process must be followed – departure from process should only be entertained in exceptional circumstances

Prejudice – real prejudice must be shown to justify relief – no real prejudice shown

Interdict – no clear right and prejudice shown and existence of proper alternative remedy – application dismissed

SNYMAN, AJ

Introduction

[1] This matter came before me as an urgent application brought by the applicant in terms of which the applicant sought to interdict and restrain the respondent from appointing candidates the respondent interviewed for the positions of field workers at Trompsburg. The applicant also sought an order that the respondent withdraw the recommendations the respondent had already made for such positions in Trompsburg, and that the respondent be ordered to re-advertise the positions in line with the human resource management policy. The applicant finally seeks an order affording the applicant observer status in any interview carried out for these positions. The applicant is seeking final relief in respect of the above orders sought.

[2] As these are motion proceedings, in which final relief is sought, the principles as to the resolution of any factual disputes between the parties in such proceedings was enunciated in the now regularly quoted judgment of *Plascon Evans Paints v Van Riebeeck Paints*.¹ In *Thebe Ya Bophelo Healthcare Administrators (Pty) Ltd and Others v National Bargaining Council for the Road Freight Industry and Another*² this test was most aptly described, where the Court said: ‘The applicants seek final relief in motion proceedings. Insofar as the disputes of fact are concerned, the time-honoured rules are to be followed. These are that where an applicant in motion proceedings seeks final relief, and there is no referral to oral

evidence, it is the facts as stated by the respondent together with the admitted or undenied facts in the applicants' founding affidavit which provide the factual basis for the determination, unless the dispute is not real or genuine or the denials in the respondent's version are bald or uncreditworthy, or the respondent's version raises such obviously fictitious disputes of fact, or is palpably implausible, or far-fetched or so clearly untenable that the court is justified in rejecting that version on the basis that it obviously stands to be rejected.’

[3] When it comes to the disputed facts in this matter, I intend to determine this matter on the basis of the admitted (common cause) facts as ascertained from the founding affidavit, the answering affidavit and the replying affidavit, and as far as the disputed facts are concerned, on what is stated in the first respondent's answering affidavit. On this basis, I will set out the background facts hereunder.

[4] As this matter also concerns the granting of final relief, the applicant must satisfy three essential requirements, being: (a) a clear right; (b) an injury actually

committed or reasonably apprehended; and (c) the absence of any other satisfactory remedy.³

These requirements must all be shown by the applicant to exist for the applicant to be entitled to relief, and will be determined hereunder in this judgment, applying the proper factual matrix arrived at by using the Plascon Evans test enunciated above.

Background facts

[5] The respondent is a municipality in terms of the Municipal Structures Act. The applicant is a recognized trade union in the respondent. The applicant brings these proceedings on behalf of its members employed by the respondent. The respondent has nine towns falling under its municipal jurisdiction.

[6] All issues of human resources in the respondent is regulated by the Respondent's Human Resource Management Policy ("the policy"). Of relevance to this matter, the recruitment and appointment of employees into vacant positions at the respondent, are governed by and determined by the policy. In terms of the policy, where employees or prospective employees are short listed for a position, they are interviewed. In terms of clause 11.2.8 of the policy, the municipal manager, or the department head, as the case may be, must allow the applicant to designate a representative to attend the interview as an observer.

[7] The issue giving rise to this matter arose in February 2013. On 6 February 2013, the community in some of the towns resorting under the respondent embarked upon protest action, complaining that there was poverty and unemployment in the area of the respondent's jurisdiction and the respondent was doing nothing to alleviate this. According to the respondent, it is responsible to the community, and as a result, the respondent decided to create positions in the respondent in an attempt to alleviate the unemployment rate. These positions were all entry level positions. The positions were in fact created in six towns, being Trompsburg, Edenburg, Jagerfontein, Bethulie, Springfontein and Gariep Dam.

[8] The applicant has made reference in the founding affidavit to other allegedly improperly advertised positions and interviews, but considering that the notice of motion only applies to the field worker positions in Trompsburg, I will confine my consideration of the fact in this matter only to the posts created in Trompsburg and the proceedings in Trompsburg. The posts in Trompsburg were advertised both internally in the respondent and externally in the local newspapers. Anyone was free to apply for these positions, which included existing employees of the respondent, and thus also members of the applicant.

- [9] The positions were advertised on 3 May 2013, with closing date for applications being 22 May 2013. The interviews for the field worker positions in Trompsburg were held on 29 July 2013. The applicant was not given prior notice of these interviews.
- [10] In the interviews of 29 July 2013, one Mamosa Manka (“Manka”), union member of the applicant, was present in the interviews as an observer from the union. The respondent has provided the interview report of these interviews as part of its answering affidavit, which records that Manka is in fact part of the interview panel as the union representative in the interviews, and there is also an attendance register signed by Manka. It is common cause that Manka is not one of the applicant’s shop stewards in Trompsburg, as Mr Tseoua and Ms Mangatane are. The respondent has stated that it was intent on inviting Ms Mangatane to the interviews but she could not be found, and Mr Tseoua was attending to a matter in the bargaining council in Bloemfontein.
- [11] The respondent has also pointed out that the deponent to the confirmatory affidavit to the applicant founding affidavit, being one Cannon May, is the shop steward at Edenburg and that he was invited to attend the interviews in Edenburg, but he refused, compelling the respondent to invite another union member to attend, being one Lerato Leeuw, who obliged. Cannon May is also not in a position to comment on what happened in Trompsburg.
- [12] The policy also deals with how positions should be advertised. It is recorded that vacancies shall inter alia be advertised as follows: (1) permanent elementary occupations – internally ; (2) entry and middle level occupations – internally and local newspapers of record. According to the applicant, this policy was infringed because the positions were advertised in the local newspapers. It is correct that the positions were indeed advertised in the local newspapers. Significantly however, the applicant does not say in the founding affidavit that the positions were not also internally advertised, and no issue was raised about any lack of internal advertising.
- [13] The crisp issue that arises with regard to the advertising of the positions is only related to the fact that the positions were externally advertised. This boils down simply to the interpretation as to what kind of positions the field worker positions were. The respondent was adamant in its answering affidavit that the field worker positions were what was called entry level occupations in respect of which the policy permitted external advertisements. The applicant contended that the positions were permanent elementary positions in respect of which the policy only permitted internal advertisements.
- [14] No actual appointments in this matter have as yet been made, but interviews have been concluded.

- [15] In a nutshell, the case of the applicant is that the above conduct of the respondent contravened the policy because of the external newspaper advertisements, and that the respondent further breached the policy by not inviting the applicant to the interviews and excluding it from the interviews. The applicant wants all that has happened in Trompsburg with regard to the advertising and interview of the mentioned positions to be reversed and the process started afresh.

Urgency and jurisdiction

- [16] The central issue in this matter is whether or not the respondent complied with the policy, and pursuant to that, whether it acted lawfully. The applicant has also contended that the respondent has infringed its members' rights to a fair labour practice in terms of the Constitution. The Labour Court has jurisdiction to entertain such proceedings on an urgent basis, but this is subject to conditions and limitations. The Court in *Gcaba v Minister for Safety and Security and Others*⁴ said that jurisdiction means 'the power or competence of a court to hear and determine an issue between parties'. In the case of the Labour Court, this competence and power is found in Section 158.5 The Court in *Booyesen v Minister of Safety and Security and Others*⁶ specifically dealt with these powers and held that '... the Labour Court has jurisdiction to interdict any unfair conduct including disciplinary action. However such an intervention should be exercised in exceptional cases. It is not appropriate to set out the test. It should be left to the discretion of the Labour Court to exercise such powers having regard to the facts of each case. Among the factors to be considered would in my view be whether failure to intervene would lead to grave injustice or whether justice might be attained by other means. The list is not exhaustive.' In *Member of the Executive Council for Education, North West Provincial Government v Gradwell*⁷ the Court confirmed the jurisdiction of the Labour Court to entertain such kind of urgent applications but said that it should only be entertained 'in extraordinary or compellingly urgent circumstances'.⁸
- [17] Dealing with urgency, the Court in *Jiba v Minister: Department of Justice and Constitutional Development and Others*⁹ held: 'Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self created when seeking a deviation from the rules.' I accept that this matter complies with the requirements to establish urgency. In any event, and in the argument submitted by both parties before me, the issue of urgency was not really placed in contention, despite being raised by the respondent in the answering affidavit. I accept that it was the conduct of the interviews on 29 July 2013 that formed the catalyst for the proceedings and issue of urgent conduct must be considered from that date. The applicant has explained that following this date, it only became aware of the interviews on 8 August 2013, and immediately sent a letter of demand to the respondent to reverse the process. When the respondent did not comply with the demand, the applicant consulted with its attorneys on 12 and 13 August 2013 in order to prepare the application. The

application was then filed on 16 August 2013. I accept that this is prompt action. I further point out that both parties have had the opportunity to fully state their respective cases in the pleadings, and it is in the interest of justice that this issue now be finally determined. I thus conclude that there are proper grounds to determine this matter as one of urgency.¹⁰

The issue of a clear right

[18] The applicant has the onus to show that it has a clear right to the relief sought. The applicant has based its case on the Constitutional right to a fair labour practice and unlawful conduct by the respondent in breach of the policy. I will accept for the purposes of the determination of this matter that the provisions of the policy forms part of the terms and conditions of employment of the applicant's members.

[19] Dealing firstly with the issue raised by the applicant of a general right to a fair labour practice that has allegedly been infringed by the respondent, it has now authoritatively been determined that there is no such implied right to fairness can be incorporated into contractual employment terms such as the policy in this case. In *SA Maritime Safety Authority v McKenzie*¹¹ the Court said the following:¹²

‘... If what is incorporated is simply a general right not to be subjected to unfair labour practices, without the incorporation of the accompanying statutory provisions, of which the definition is the most important, then the incorporation goes further than the statute from which it is derived. That is logically impermissible when we are dealing with incorporation by implication. If what is incorporated is limited to the statutory notion of an unfair labour practice, with all its limitations, then incorporation serves no purpose as the employee will gain no advantage from it. That is a powerful indication that no such incorporation is intended.’

The Court went further and said the following:¹³

‘... I would add to it that there is the further bar in South Africa that the legislation in question has been enacted in order to give effect to a constitutionally protected right and therefore the courts must be astute not to allow the legislative expression of the constitutional right to be circumvented by way of the side-wind of an implied term in contracts of employment. I am also fortified in that conclusion by the fact that it reflects an approach adopted in a number of other jurisdictions. In addition the Constitutional Court has already highlighted the fact that there is no need to imply such provisions into contracts of employment because the LRA already includes the protection that is necessary.’

The Court then concluded:¹⁴

‘... insofar as employees who are subject to and protected by the LRA are concerned, their contracts are not subject to an implied term that they will not be unfairly dismissed or subjected to unfair labour practices. Those are statutory rights for which statutory remedies have been provided together with statutory mechanisms for resolving disputes in regard to those rights. The present is yet another case in which there is an attempt to circumvent those rights and to obtain, by reference to, but not in reliance upon, the provisions of the LRA an advantage that it does not

confer.’

[20] I am bound by the above reasoning in McKenzie, and I respectfully agree with the same.¹⁵ The applicant thus cannot rely on a general constitutional right to fair labour practices, to be implied or read into the policy, in order to substantiate its right to relief in this matter.

[21] The applicant also cannot base its right to relief directly on the general right to a fair labour practice as found in Section 23(1) of the Constitution.¹⁶ Direct reliance on the fundamental rights as contained in the Constitution is impermissible when the right in issue is regulated by legislation, as is actually the case with the LRA, which directly regulates the right to fair labour practices. In SANDU v Minister of Defence and Others¹⁷ the Court held that ‘... where legislation is enacted to give effect to a constitutional right, a litigant may not bypass that legislation and rely directly

on the Constitution without challenging that legislation as falling short of the constitutional standard’. The applicant has sought to do exactly what the above reasoning prohibits, in that the applicant seeks to rely, in its founding

affidavit, directly on the provisions of Section 23(1) of the Constitution to establish its right to relief. The applicant is prohibited in law from doing so, and thus cannot directly rely on the fundamental right to a fair labour practice in the Constitution to establish its right to relief in this case.

[22] This then leaves only the provisions of the LRA itself. The statutory regulation of the Constitutional right to fair labour practices which is regulated by the LRA must be accepted and determined with all the limitations of such right as provided for and defined in that statute. The LRA has specifically defined what constitutes an unfair labour practice. In Section 186(2)(a) it is recorded that an unfair labour practice means ‘any unfair act or omission that arises between an employer and an employee involving- (a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee’¹⁸ The question then is whether the conduct of the respondent complained of, being the exclusion of the applicant from the interview process and the incorrect advertising of the vacancies, could resort under this definition. In my view, it cannot. The fact is that there is no evidence that any one of the applicant’s members actually applied for any of the advertised positions or even intended to apply for such positions. There is no evidence that these provisions would be a promotion for any of the applicant’s members, and in my view, this would be unlikely, considering that these were entry level positions. The accepted evidence was that anyone, including the applicant’s members, could apply for the positions if they wanted. Finally in this regard, the positions were specifically created as new positions for the purposes of alleviating unemployment pursuant to demands from the community, which in essence would thus not affect the applicant’s members in any way as they are existing employees of the respondent. The applicant thus cannot rely on the unfair labour practice jurisdiction in the LRA to

substantiate its right to relief in this matter.

- [23] The applicant has also raised a contention about ulterior motives or mala fides on the part of the respondent. Considering the fact that the applicant cannot substantiate its right to relief in fairness, as the issues in dispute in this matter are not contemplated by the unfair labour practice jurisdiction of the LRA, I do not believe these allegations have any relevance to this matter. In any event, and as the respondent correctly points out in its answering affidavit, these allegations are bold and unsubstantiated allegations and amount to nothing more than speculation. In terms of the application of the Plascon Evans test referred to, I also have to accept the respondent's denial that ulterior motives or mala fides exist. In *Kroukam v SA Airlink (Pty) Ltd*¹⁹ it was held that: 'In my view a court should be slow to infer that the reason why an employer has brought disciplinary charges against an employee or the reason why an employer has dismissed an employee is or are illegitimate reason(s) unless there is sufficient evidence

to justify such a conclusion. A court should be even slower to come to that conclusion in a case where it does seem that the employer may have had a basis to bring disciplinary charges against an employee even if the court would not have done the same had it been in the employer's shoes. ...' The same ratio finds application in this instance and in exercising the circumspection urged by the Court in *Kroukam*, I conclude that there are no ulterior motives or mala fides on the part of the respondent in this instance.

- [24] Considering the above, all the applicant can therefore rely on to substantiate its right to relief is that the conduct of the respondent complained of was unlawful. In determining what is lawful, the application of principles of fairness is irrelevant. An issue is either lawful, or not. Whether or not the respondent's conduct is lawful cannot be determined by application of principles of fairness or fair labour practices. In determining this issue, the Court should only consider what is specifically contained and prescribed in the policy, as it stands, and as it reads. The reason for this is that the lawfulness of the conduct of the respondent is founded on the principle that the respondent, as employer, must comply with its own rules as it has defined them.

- [25] The above being said, this then brings me to the actual provisions of the policy. It records that the respondent must allow a trade union to designate a representative to attend and observe interviews. The contentions raised by the applicant seem to go far beyond this. The applicant, if proper regard is had to the founding affidavit, seems to suggest that it should be consulted about the interviews, the short listing and the advertising of positions. If this is the case of the applicant, there is no justification or substantiation for it in the policy. The policy does not provide for this, or prescribe it. The applicant can thus assert no such right. Considering this provision in the policy, the simple question is whether the respondent prevented the applicant, by way of a representative, to attend and observe interviews. If that is the case, the respondent has not complied with the policy and its conduct is unlawful.

- [26] On the facts of this matter, it is my view that the respondent never prevented the applicant from attending and observing interviews by way of a representative. In fact, and on the applicant's own version, there was never a case that the respondent specifically prescribed that union representatives may not attend interviews or that the applicant may not elect a representative. The applicant's case is really something else, being that it should actually be consulted about and invited to interviews (by way of prior notice), and these interviews must be attended by shop stewards. Once again, the policy does not provide substantiation for such a case. There is nothing in the policy requiring the respondent to consult with the applicant about interviews or give it prior notice of interviews. There is equally no prescription that the representative needs to be a shop steward. The policy stipulates that the union can designate any representative. All that the policy provides for, in essence, is that the union must be given an opportunity to have a representative attend and observe the interviews. If this happened, there is compliance with the policy.
- [27] It is clear from the evidence in this matter that a representative from the union did attend the Trompsburg interviews as an observer. How this may have come about is not important. The fact is that for a union representative to have attended the interviews as an observer must mean, as a logical consequence, that the applicant was afforded the very opportunity as stipulated by the policy. In its replying affidavit the applicant does not even dispute that Manka attended the interviews as representative of the applicant. All the applicant says is that a shop steward was in fact available to have attended and was not invited. As I have said, this is not what the policy prescribes, and thus there is no legitimate basis for the complaints of the applicant in this regard. I am satisfied that the respondent has complied with the policy insofar as it concerns the issue of a union representative at the Trompsburg interviews. The applicant has in my view made out no case of unlawfulness in this respect, on the part of the respondent.
- [28] The next issue to consider is the issue of advertisements. In this regard, and at the core of the dispute, is the nature of the positions advertised. The applicant has contended that the nature of the positions prohibits external advertising of the positions, whilst the respondent contends these are not the kind of positions the applicant considers them to be. I have set out the provisions of the policy with regard to this issue. The fact of the matter is that the respondent regarded these positions as entry level positions which in terms of the policy allows for external advertising of the positions. The respondent's case in this regard, applying the Plascon Evans principles, must be accepted. In any event, and on the probabilities, the respondent's views that the positions are entry level positions contemplated by the policy which allows for external advertising is further supported by the probabilities, especially considering how the positions came about. The fact is that the positions referred to were newly created positions specifically created by the respondent to try and alleviate unemployment following community protest. To then advertise such newly created positions internally only serves no point whatsoever. The internal advertisements would only reach existing employees. How, by any stretch of the imagination, can internal advertising only achieve the objective of alleviating unemployment by inviting application

for entry level employment from unemployed community members, being the very object of the exercise?. The respondent's contention that these are entry level positions as defined in the policy which permits external advertising is entirely sustainable, and accepted. The applicant has thus equally made out no case for the breach of the policy in this respect.

- [29] Therefore, and based on all of the above, the applicant has failed to make out a case that the conduct of the respondent was in breach of the policy and thus unlawful. The applicant has thus failed to establish a clear right in support of the relief sought by it.

The issue of prejudice and alternative remedy

- [30] I have a further concern with the application of the applicant. The fact is that the application is brought, so to speak, in the air. What I mean by this is that there is no case or evidence of the applicant's members actually being prejudiced by the conduct of the respondent, as it exists. I have referred to this issue above as well. In my view, and for the applicant to succeed in an application such as the current application, the applicant would have to show that there was actual prejudice suffered by its members. For example, the applicant would have to show that one of its identified members wanted to apply for the position, but because of the respondent's conduct relating to advertising the positions, was deprived of the opportunity to do so. In this case, there is no evidence that the applicant's members were even interested or wanted to apply for the positions.

Considering the nature and level of the positions, and the purposes for which they were created, it is in my view unlikely that this would have been the case in any event. The applicant has this shown no real prejudice which would justify the granting of relief.

- [31] I am not saying that the respondent should disregard the provisions of the policy. What I am saying is that for the applicant to be entitled to the relief applied for in this kind of application, and considering the legal prescriptions applicable to the obtaining of relief, the applicant must prove certain things, one of which is prejudice. This the applicant did not do.
- [32] In this context, I then turn to the issue of the alternative remedy. If the respondent is acting contrary to the provisions of its own rules in the circumstances as envisaged by this matter, and as a matter of principle, the applicant can approach the Labour Court in the normal course for an order directing the respondent to comply with its own rules. The power of the Labour Court to entertain these kinds of cases can be found in Section 158(1)(a) which reads 'The Labour Court may - (a) make any appropriate order, including- (iii) an order directing the performance of any particular act which order, when implemented, will remedy a wrong and give effect to the primary objects of this Act; (iv) a declaratory order' These proceedings can be brought on motion, or depending on possible contemplated factual disputes, trial proceedings.²⁰ In these proceedings, brought in the normal course as prescribed by the Court Rules, the applicant would not have to show prejudice. All it would have to show is non compliance with the policy, and the Labour Court can then direct compliance. By however seeking urgent relief in what is tantamount to interdict proceedings, prejudice must be shown.

[33] There was no need to have approached the Labour Court on an urgent basis in this matter. The applicant could have obtained the relief it wanted in the normal course. What the applicant is really saying is that the respondent did not comply with the policy and the applicant wants compliance. This compliance should be procured, and in the absence of extraordinary circumstances or compelling considerations of urgency, in the normal course. The fact is that any order securing compliance can be coupled with a restoration of the status quo ante. The applicant has made out no case of extraordinary circumstances or compelling considerations of urgency. The applicant should have utilized its alternative remedy of approaching the Labour Court to secure compliance with the policy in the normal course. I fully align myself with the following statements made by the Court in *Mosiane v Tlokwe City Council*, 21 which statements in my view with appropriate adjustments in context, find equal application to the current matter:

‘A worrying trend is developing in this court in the last year or so where this court's roll is clogged with urgent applications. Some applicants approach this court on an urgent basis either to interdict disciplinary hearings from taking place, or to have their dismissals declared invalid and seek reinstatement orders. In most of such applications, the applicants are persons of means who have occupied top positions at their places of employment. They can afford top lawyers who will approach this court with fanciful arguments about why this court should grant them relief on an urgent basis. An impression is therefore given that some employees are more equal than others and if they can afford top lawyers and raise fanciful arguments, this court will grant them relief on an urgent basis.

All employees are equal before the law and no exception should be made when considering such matters. Most employees who occupy much lower positions at their places of employment who either get suspended or dismissed, follow the procedures laid down in the Labour Relations Act 66 of 1995 (the Act). They will also refer their disputes to the CCMA or to the relevant bargaining councils and then approach this court for the necessary relief.’

My point is simply – urgent applications should not be the norm as they seem to have become. Such applications should be the exception.

[34] In the light of the above, the applicant's application in the current matter must fail as well. The applicant has a proper alternative remedy to protect its interests and that of its members in this matter. The applicant has not shown any real prejudice to exist.

[35] This then only leaves the issue of costs. Despite the parties having an ongoing relationship, the applicant has elected to approach the Labour Court on an urgent basis when it must have been clear there was no basis for doing so. The applicant was legally assisted from the outset. There is simply no reason why costs should not follow the result in this matter.

Order

[36] I accordingly make the following order:

The applicant's application is dismissed with costs.

Snyman AJ

Acting Judge of the Labour Court

APPEARANCES:

APPLICANT: Adv R Venter

Instructed by Maenetja Attorneys

RESPONDENT: Adv B S Mene

Instructed by Smo Seobe Attorneys

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[1984] ZASCA 51; 1984

(3) SA 623 (A) at 634E 635C ; See also Jooste v Staatspresident en Andere 1988

(4) SA 224 (A) at 259C – 263D; National Director of Public Prosecutions v Zuma [2009] ZASCA 1; 2009

(2) SA 277 (SCA) paras 26 – 27 ; Molapo Technology (Pty) Ltd v Schreuder and Others (2002) 23 ILJ 2031 (LAC) para 38 ; Geyser v MEC for Transport, Kwazulu Natal (2001) 22 ILJ 440 (LC) para 32 ; Denel Informatics Staff Association and Another v Denel Informatics (Pty) Ltd (1999) 20 ILJ 137 (LC) para 26

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[1984] ZASCA 51; 1984

(3) SA 623 (A) at 634E 635C ; See also Jooste v Staatspresident en Andere 1988

(4) SA 224 (A) at 259C – 263D; National Director of Public Prosecutions v Zuma [2009] ZASCA 1; 2009

(2) SA 277 (SCA) paras 26 – 27 ; Molapo Technology (Pty) Ltd v Schreuder and Others (2002) 23 ILJ 2031 (LAC) para 38 ; Geyser v MEC for Transport, Kwazulu Natal (2001) 22 ILJ 440 (LC) para 32 ; Denel Informatics Staff Association and Another v Denel Informatics (Pty) Ltd (1999) 20 ILJ 137 (LC) para 26

2 2009

(3) SA 187 (W) para 19

3 Setlogelo v Setlogelo 1914 AD 221 at 227 ; V & A Waterfront Properties (Pty) Ltd and Another v Helicopter & Marine Services (Pty) Ltd and Others 2006

(1) SA 252 (SCA) para 20 ; Royalservice Cleaning (Pty) Ltd v Democratic Union of Security Workers and Others

(2012) 33 ILJ 448 (LC) para 2

3

Setlogelo v Setlogelo 1914 AD 221 at 227 ; V & A Waterfront Properties (Pty) Ltd and Another v Helicopter & Marine Services (Pty) Ltd and Others 2006

(1) SA 252 (SCA) para 20 ; Royalservice Cleaning (Pty) Ltd v Democratic Union of Security Workers and Others

(2012) 33 ILJ 448 (LC) para 2

4(2010) 31 ILJ 296 (CC) at paras 74 – 75

5Section 158(1) reads: ‘(1) The Labour Court may (a) make any appropriate order, including (i) the grant of urgent interim relief (ii) an interdict; (iii) an order directing the performance of any particular act which order, when implemented, will remedy a wrong and give effect to the primary objects of this Act; (iv) a declaratory order’

6(2011) 32 ILJ 112 (LAC) at para 54

7(2012) 33 ILJ 2033 (LAC)

8Id at para 46

9(2010) 31 ILJ 112 (LC) at para 18

10See also Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 (W) ; National Union of Mineworkers v Black Mountain - A Division of Anglo Operations Ltd (2007) 28 ILJ 2796 (LC) at para 12 ; Continuous Oxygen Suppliers (Pty) Ltd t/a Vital Aire v Meintjes and Another (2012) 33 ILJ 629 (LC) at para 21 – 24

11(2010) 31 ILJ 529 (SCA)

12Id at para 27

13Id at para 33

14Id at para 56

15See also Biyase v Sisonke District Municipality and Another

(2012) 33 ILJ 598 (LC) at para 21

16Act 108 of 1996. Section 23(1) reads ‘Everyone has the right to fair labour practices’

17(2007) 28 ILJ 1909 at para 51

18The other provisions of Section 186(2) are clearly not applicable to this matter

19(2005) 26 ILJ 2153 (LAC) at para 86

20See Rules 6 and 7 of the Labour Court Rules

21 (2009) 30 ILJ 2766 (LC) at para 15 – 16

21

(2009) 30 ILJ 2766 (LC) at para 15 – 16

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