

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)

CASE NUMBER: J48/97

In the matter between

MARBLE HALL SPAR

Applicant

and

SOUTH AFRICAN CHEMICAL WORKERS UNION

First Respondent

CHARMAINE MALULEKA

Second Respondent

JOHANNA MASEHLA

Third Respondent

SANDRA MADOGUANE

Fourth Respondent

ANGELINA MABIBANE

Fifth Respondent

OTHERS

Sixth Respondent

REASONS FOR JUDGMENT

MLAMBO AJ:

This is an urgent application in terms of which the Applicant seeks interim relief against the Respondents . The First Respondent is the South African Chemical Workers Union and the Second to Fifth Respondents are all former employees of the Applicant having been dismissed , I assume, before the events

set out in the Affidavit of the Applicant took place. They are all members of the First Respondent . The Applicant also makes reference to a Sixth Respondent or Respondents but does not specify who these are save to state that they are all unidentified members of the community . The Applicant is Marble Hall Spar , conducting business as a retail supermarket at 108 Main Road , Marble Hall.

The Applicant seeks an order, the effect of which is to interdict conduct which has been engaged on by the Second to Fifth Respondents, who as already stated, are members of the First Respondent.

The facts as alleged by the Applicant are that the Second to Fifth Respondents commenced an unprotected strike and a consumer boycott on 4 March 1997 without any notice. In describing such strike action the Applicant alleged that it took the form of picketing , the obstruction entrances to its premises , the prevention of deliveries to and from its premises , the hampering of the Applicant in the conduct of its business as well as the verbal abuse of potential customers , employees and its management.

Furthermore the Applicant alleged that the Respondents had called upon members of the community to join them in this conduct . Presumably the reference to the Sixth Respondent or Respondents refers to such members of the community who were called upon to join in this conduct.

These are the only allegations made by the Applicant in support of its contention that the conduct engaged upon by at least the Second to Fifth Respondents amounted to an unprotected strike. The other allegations made in the founding affidavit do not take the matter any further regarding the unprotected strike action contention .

During argument Ms Huyser who appeared on behalf of the Applicant was also unable to take the matter any further than what I have just described. I therefore have to decide whether the conduct described by the Applicant in the founding affidavit amounts to strike action as defined in the Act.

I must just say at this stage that the founding affidavit on which the Applicant relied was one of the most appalling pieces of draftmanship I have ever come across. This affidavit failed to address crucial issues which appear to be at stake . There was no chronological order of the material facts which would give any person opposing the application sufficient particularity to reply thereto . Also lacking was an exposition of the legal issues that arise from the material facts which would also enable any party called upon to reply thereto, to do so. Notwithstanding these defects, I proceed to assess the issues raised and to decide them.

Section 213 of the Act defines a strike as:-

“ the partial or complete concerted refusal to work or the retardation of or obstruction of work by persons who are or have been employed by the same employer or by different employers for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employees and every reference to work in this definition includes overtime work , whether it is voluntary or compulsory.”

Whilst it appears that the Second to Fifth Respondents, at least , are engaged in some conduct , I am not persuaded that the conduct described by the Applicant in its founding affidavit qualifies it as strike action as defined in the Act. There can be no question of a complete or partial withdrawal of labour as the Second to Fifth Respondents are dismissed employees.No allegation was made, impliedly or explicitly, that a demand of any nature was communicated to the Applicant by the Second to Fifth Respondents and that should such demand not be complied with, they would continue with their “strike”.

Whilst it is correct that strike action can embarked upon by former employees, I am not persuaded that *in casu* the conduct of the Second to Fifth Respondents amounts to a strike. It appears that the First Respondent had, in anyway, referred for conciliation to the Commission for Conciliation Mediation and Arbitration an unfair dismissal dispute relating to the dismissal of the Second to the Fifth Respondents . There can be no doubt therefore, in my mind that this is one direct indication in which the Second to Fifth Respondents at least , have dealt with their dispute with the Applicant and how they wish to see it resolved. What the Applicant seeks to achieve is to label any conduct whatsoever as strike action as long as it is conduct engaged upon by people who are in dispute . I cannot align myself with such thinking . I am of the view that the conduct described by the Applicant in its founding affidavit is conduct that usually accompanies picketing .

I am therefore persuaded that, at most , the conduct engaged upon by the Second to Fifth Respondents amounts to the obstruction of entrances to and exits to the Applicant's premises , the prevention of deliveries to and from such premises as well as the verbal abuse of potential customers ,the Applicant's employees and its management. I am persuaded that such conduct has the effect of hampering the Applicant from conducting its business.

I raised my concerns with Ms Huyser that the founding affidavit did not sufficiently deal with the question of urgency and in this regard, I requested her to address me fully on the issue. In her argument that the matter was sufficiently urgent to warrant attention by this Court , Ms Huyser referred me to paragraph 10 of the founding affidavit in which it is alleged that the Applicant was suffering irreparable financial loss which was a direct consequence of the conduct engaged upon by the Respondents . I was also referred to the Applicant 's turnover figures from the 24th of February 1997 up to the 6th of March 1997. These figures are instructive in the sense that they

inform me that from the 24th of February 1997 up to the 3rd of March 1997 , the Applicant 's turnover figures were very high and that from the 4th March 1997 there was a dramatic drop. The 4th of March is the date on which it is alleged that the Respondents commenced with their conduct.

I am persuaded that the Applicant has suffered serious financial losses and that should the Respondents not be restrained, the Applicant will continue to suffer such loss.

Therefore despite my reservations which are articulated above and during argument that the affidavit does not , make out a convincing case for urgency, I am however satisfied that this matter is urgent.

During argument I requested Ms Huyser to address me on the issue of representation as she alleged that she was an office bearer of an employer 's organisation. I was referred to a document appearing on page 35 of the paginated bundle which purports to be a constitution of an employer 's organisation. It appears that the employer 's organisation from which Ms Huyser comes from has in fact made application to the Commission for Conciliation, Mediation and Arbitration for purposes of registration in terms of Section 95 and 96. I perused the document and on the face of it, could find nothing that suggested that Gouws & Associate' s Employer's Organisation , as it is styled , is not an employer's organisation. Furthermore as it is not a prerequisite that any employer's organisation must be registered for it to enjoy audience in this Court I allowed Ms Huyser to appear and represent the Applicant.

Therefore after considering all the facts set out above I made the following order:

1. That a Rule Nisi does hereby issue calling upon the first to Fifth Respondents to show

cause on the 24 March 1997 at 10H00 or soon thereafter as the parties may be heard ,why an order should not be made in the following terms:

1.1 Interdicting the Respondents from preventing the Applicant's vehicles or any other vehicles from entering or leaving the Applicant's premises situated at 108 Main Road , Marble Hall;

1.2 Interdicting the Respondents from obstructing the Applicant's customers and employees;

1.3 Ordering that the provisions of paragraph 1.1 and 1.2 shall operate pending a final order being made on the return date of the Rule Nisi as aforesaid;

1.4 Ordering that the return date of this order may be anticipated by any party on 24 hours notice to the other parties;

1.5 No order is made as to costs as none has been requested;

2. Directing that service of this order be effected as follows:

2.1 Upon the first Respondent's office by a person nominated by the Applicant by delivering a copy of this interim order to the first Respondent's office situated at 14th floor , Longsbank Building , 187 Bree Street Johannesburg;

2.2 Upon the Second to Fifth Respondents by the terms being read by a person nominated by the Applicant during normal working hours to so many of them as are present at the premises at the time and by providing in so far as it may be possible the Second to Fifth Respondents with a copy of the Court Order .

Dated at Johannesburg on this the 19th day of March 1997.

Mlambo A.J