IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO:J 248/99

In the matter between:

A DHLAMINI AND 27 OTHERS Applicant

and

FILTA-MATIX (PTY) LTD Respondent

JUDGMENT

BASSON, J:

[1] The respondent in this matter, Filta-Matix (Pty) Ltd, prays for a costs order against the applicants in this matter, Andries Dhlamini and 27 others, on the basis that their urgent application (withdrawn earlier today) was misconcieved and fatally defective.

[2] It is clear that the application was brought on the understanding that the applicants were being unlawfully locked-out by the respondent and that this formed the essence of the relief claimed in terms of the notice of motion (although other

forms of relief that is clearly not applicable or not suitable was also prayed for). Had there been an unlawful lock-out, the applicants could have claimed relief in terms of section 68 of the Labour Relations Act 66 of 1995 ("the Act").

[3] It is clear that the applicants were initially under the impression that the actions of the respondent constituted an unlawful lock-out. However, the facts, as it appears from the respondent's answering affidavit, show that they were, in fact, dismissed and were not being locked-out.

[4] When I consider whether to grant an order as to costs in terms of section 162 of the Act, in the interests also of fairness, the question is, first, whether the application was misconceived or frivolous based on the facts known to the applicants at the time when the application was lodged and, second, if the respondent incurred costs as a result thereof.

[5] It would appear from the papers before the court that the applicants were informed by the respondent on 18 January 1999, when they reported for duty, that they had been dismissed and that letters in this regard had been sent to them by registered post. The allegation

is also made that copies of the letters were offered to them.

[6] However, I am not persuaded that the representative of the applicants, the

Consolidated General Industries Workers Union of South Africa, who acted on their behalf and was also instrumental in compiling the application before the court, in acting on their behalf did so with the full knowledge of these facts. I say this because of a letter contained at page 22 of the documents before the Court.

[7] This is a letter dated 18 January 1999 and it appears to be common cause that it was received by the respondent **before** the respondent compiled its answering affidavit in this matter.

[8] This letter is dated the 18 January 1999, that is, the day on which the applicants were allegedly informed that they were dismissed:

"Re lock-out to our members

We are very much concerned about your actions against our members in your establishment since last year immediately after joining the union. Your attitude towards our union is totally unacceptable to us we have received a report that **you have locked-out our members** out of your premises after they returned from leave today and you told them that their jobs have been taken over by new employees. **What does this actually mean?** Bear in mind that **this is regarded by myself as an unprotected lock-out** and we shall apply to the Labour Court for an **interdict. We expect for your answer today, the 18th January 1999** for an **urgent** meeting to address this problem in an amicable way as possible" (emphasis supplied).

[9] It is clear that the union was acting **on behalf** of its members, the applicants before the Court, when writing this letter and when taking the decision whether to bring this application for an interdict. The union sought information as to whether the employees, that is, the applicants, were being locked-out.

[10] In my view, the respondent should have supplied the necessary information to the union as it was now made aware of the fact that an interdict would be sought against it on the basis of an alleged unprotected lock-out. It was namely a very simple task for the respondent to immediately answer this request for information from the union by stating that the applicants were indeed dismissed and that copies of their dismissal letters could be obtained from the respondent.

[11] This crucial information, however, was not supplied to the union as there is no evidence before me that the respondent ever answered this letter by the union. Instead, the respondent chose to wait until it compiled and served its answering affidavit to supply the required information.

[12] It would appear therefore that the contention of Mr Ramogale on behalf of the union today in Court is correct, to the effect that the first time that the union received this information about the dismissals was when the answering affidavit was delivered.

[13] Taking into account this fact I do not regard it as fair to make a costs order either against the union-representative of the applicants before the court or against the applicants individually for the costs incurred by the respondent in opposing this application and in filing an answering affidavit.

[14] In the event, I make no order as to costs.

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BASSON,J

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

ICANTS : MR B RAMOGALE

: Consolidated General Industries Workers Union of South Africa

ONDENT : ADV P KENNEDY

: Nam-Ford Attorneys

: 22 JANUARY 1999

NT : *EX TEMPORE* (edited version)

This judgment is available on the internet at http://www.law.wits.ac.za.