

REPORTABLE

IN THE LABOUR COURT OF SOUTH AFRICA **HELD AT CAPE TOWN**

CASE NO: C491/04

In the matter between:

WORKERS' UNION OF SOUTH AFRICA **Appellant**

and

JOHAN CROUSE N.O. First Respondent

THE DEPARTMENT OF LABOUR Second Respondent

JUDGMENT

MURPHY, AJ

1. This is an appeal in terms of Section 111(3) of the Labour Relations Act 66 of 1995 ("LRA"), against the decision of the first respondent, the Registrar of Labour Relations ("the registrar"), refusing to register the appellant in terms of Sections 95 and 96 of the LRA.

2. Section 95 of the LRA permits a trade union to apply to for registration of a trade union. Section 95(1) provides that any trade union may apply for registration if it has adopted a name that does not closely resemble the name or shortened form of the name of another trade union, it has adopted a constitution that meets the requirements of the LRA, it has

an address in the Republic and it is independent. Section 95(2) provides that a trade union is independent if it is not under the direct or indirect control of any employer or employer's organization; and it is free of any interference or influence of any kind from any employer or employer's organization. Sections 95(5) and (6) set out the requirements for the trade union's constitution. Section 95(7) provides that the registrar must not register a trade union or an employer's organization unless the registrar is satisfied that the applicant is a genuine trade union or a genuine employers' organization. Section 95(8) provides that the Minister, in consultation with NEDLAC, may by notice in the Government Gazette publish guidelines to be applied by the registrar in determining whether an applicant is a genuine trade union or a genuine employers' organization.

3. Section 96 sets out the *pro forma* requirements for registration and obliges a trade union to apply for registration by submitting to the registrar on the prescribed form that must be properly completed, a copy of its constitution and any other information that may assist the registrar to determine whether or not trade union meets the requirements for registration. The registrar may require further information in support of the application. Section 96(3) provides that the registrar must consider the application and any further information provided by the applicant and if he or she is satisfied that the applicant meets the requirements for registration must register the applicant by entering the applicant's name on the register of trade unions. Section 96(4) provides that if the registrar is not satisfied that the applicant meets the requirements for registration, the registrar must send the applicant a written notice of the decision and the reasons for that decision and in that notice must inform the applicant that it has 30 days from the date of the notice to meet those requirement. If within that 30 day period the applicant meets the requirements for registration, the

registrar must register the applicant by entering the applicant's name in the appropriate register (Section 96(5)). If, within that 30-day period, an applicant has attempted to meet the requirements for registration but the registrar concludes that the applicant has failed to do so, the registrar must refuse to register the applicant and notify the applicant in writing of that decision. (Section 96(6)).

4. The appellant was formed as the result of an initiative by workers employed at the Atlantis Forge plant in Atlantis, Western Cape. In October 2003 an internal meeting was held where it was decided to form the union. Those present elected an interim executive committee which was given a mandate to investigate the requirements for the union's establishment and registration in terms of the Act, and to look into a drafting of the constitution.
5. The union's application for registration, together with its draft constitution, was delivered to the registrar on 18 March 2004.
6. The initiative to establish the union arose during 2002 when some former members of the union recognized at Atlantis Forge, NUMSA, came to the conclusion that their interests were not being adequately served and that there was a lack of faith in the ability of the union organizers to represent the workers. As stated, the decision to form the union was taken at a general meeting of employees at Atlantis Forge, which elected an interim executive. The members of the interim executive committee were Randall Muller, Kenneth Booysen, Neade Scott, Gershwin Stevens, Dalton Braaf and David Willemse. Of these members all but Braaf and Willemse were employed. Their involvement in the formation of the union was due to their experience in trade union organization and their previous positions as shop stewards. The workers who formed the union were of the view that as full time

employees they would not have the capacity or time to run the day-to-day activities of the union, and that Braaf and Willemse could thus play a useful role. The fact that these two men were unemployed, as a consequence of their dismissal by Atlantis Forge, has assumed some significance in the dispute regarding the registration of the union.

7. The intention when forming the union was that the structures originally put in place would be of an interim nature. It was the understanding of the members that the union would operate in terms of its draft constitution and that it would have the opportunity to increase its membership once the registrar had registered it. This is also the advice the workers received from their attorneys. Members of the interim executive pursued the various tasks associated with bringing the union into existence and seeking registration. Employees employed by other organizations in the region have expressed interest in joining the union. The second general meeting supported a proposal that the union should be cross-sectorial in its scope. At the time they filed the registration application they were of the opinion that they had a potential membership of some 2000 to 3000 employees.
8. Besides not pursuing an active recruitment strategy, the promoters of the union did not open a bank account in the name of the union believing that this would only be appropriate once they had succeeded in obtaining registration.
9. As stated, the application for registration was delivered to the registrar on 18 March 2004. Thereafter, on 01 April 2004, officials of the registrar inspected the offices of the union. On the advice of these officials, the union opened a bank account and continued to make attempts to organize despite the limitations arising as a result of its non-registration. In particular, certain employers were unwilling to

extend to it organizational rights until such time as it obtained registration. The officials also advised the union that the individuals who were unemployed and assisting the voluntary capacity, should not serve as office bearers on its interim structures.

10. On 12 July 2004 the registrar refused to register the union. The letter refusing registration reads as follows:

I acknowledge receipt of your letter dated 13 April 2004 and have to advise that the union's application for registration has been perused and found not acceptable for approval and I base my decision on the following grounds:

- The union is not a genuine organization as envisaged by the Act.
- The union is not functioning in terms of its constitution.
- The trade union was established for financial gain and to circumvent the provisions of the Act.

Consequently you are advised that the application for registration is refused with effect from 12 July 2004.

11. Somewhat surprisingly, the registrar appears to have reached his decision without any regard to section 96(4) which requires that if the registrar is not satisfied that an applicant meets the requirements for registration that he should allow the applicant 30 days during which the applicant may meet the requirements for registration. On 22 July 2004 the appellant's attorneys wrote to the registrar pointing out that his decision did not comply with section 96(4)(a) and (b). They accordingly requested the registrar to furnish them with reasons and to be afforded the opportunity of the statutory 30 day period in order to rectify any non-compliance.

12 On 16 August 2004, the registrar addressed a letter to the appellant's attorneys in which he gave his reasons for his decision, which he stated

explicitly was final. His principal reasons were that the union is not a genuine one as envisaged by the Act, that it was established for the gain of individuals and to circumvent the provisions of the Act; and that the union was not functioning in terms of its constitution. The letter reads as follows:

I refer to your facsimile letters dated 22 July 2004 and 4 August 2004 respectively and have to inform you that the decision of the Registrar is final and cannot be reconsidered. The only route to follow is provided for in section 111 of the Act (Appeals from the Registrar's decision).

The reasons for refusing registration of the above-mentioned trade union are:

- The trade union is not a genuine organization as envisaged by the Act.
- The trade union was established for gain of individuals and to circumvent the provisions of the Act.
- The union is not functioning in terms of its constitution.

In arriving at the above decision, I relied on the guidelines issued by the Minister of Labour in terms of section 95(8) of the Act and the following facts regarding the application:

- The trade union is not a genuine organization as envisaged by the Act

Trade union as per definition of the Act means "An association of employees whose principal purpose is to regulate relations between employees and employers, including any employers' organization".

From the information at hand, the formation of this union and the subsequent operation thereof, did not involve employees associating together, but was initiated by the President Mr. Dalton Braaf and the General Secretary, Mr. David Willemse after they were dismissed from their respective employment. This means that unemployed persons established the union. Mr. Braaf claims to be self-employed and the conclusion was that the formation of the union did not involve "employees" as defined in section 213 of the Act. The democratic principles on which a union is based did not apply and it cannot be argued that workers established this union.

- The union was established for gain of individuals

The argument above also applies to this point as it can only be argued that the motive behind the establishment of the union by the two individuals was for gain. A new application form with an amended Executive Committee that was later submitted to this Office, reflect Mr. Dalton Braaf who, in conjunction with Mr. David Willemse established the union, as the General Secretary whilst Mr Willemse position is that of Treasurer. This happened after it was pointed out to the officials of the union that the office bearers namely Mr. Braaf who is not an employee, could not in terms of the definition of “office bearer” qualify to be the President, he was then positioned as the General Secretary. This is unconstitutional and it was clearly done only to satisfy the registration requirements. Although this was clearly an attempt to remedy the situation the composition of the Executive Committee by moving the names around, the Executive Committee is still not acceptable in light of the involvement of the people who established the organization.

- The organization is not functioning in terms of its constitution.

The organization is not functioning as yet and has only potential members who are willing to join the union after it is registered. Only the “Steering Committee” is active. The constitution that was submitted for approval does not make provision for a steering committee. The organization has to function according to its constitution even if its not registered and upon application for registration, must prove that it is operational in terms of the constitution.

In respect of your request in paragraph 5 of your letter dated 22 July 2004, I have to inform you that the report compiled by the Department’s Officials who did the verification at your client’s Offices, is an internal document only. The Registrar has taken his decision on all the fact to his disposal and it is not clear how this report will contribute in solving your problem.

The reasons outlined above should be regarded as the most important factors in determining whether any further action should be taken on your client’s behalf concerning the application. It is my contention that the status of this trade union cannot be remedied to be deemed a trade union as envisaged by the Act.

12. It is against this decision that the appellants appeal in terms of section 111. The provision provides that any person who is aggrieved by a decision of the registrar may appeal to the Labour Court against that

decision within 60 days of the date of the registrar's decision; or if written reasons for the decision are demanded, the date of those reasons. The appeal is one in the wide sense, and may involve a complete rehearing and adjudication on the merits with or without additional evidence or information - *Tickley & Others v Johannes NO & Others* 1963(2) SA 588 (T). In accordance with the general powers in section 158 of the LRA this court may set aside and correct a decision on appeal by ordering the performance of any particular act which will remedy any wrong decision.

13. On appeal the appellant has submitted that the registrar has come to his conclusions on the basis of a fundamental misreading of the statute and the guidelines enacted in terms of Section 95(8) of the LRA, and a misapprehension as to the basis on which he exercises his powers.
14. The registrar counters the appellants appeal by submitting that he is not entitled to register a trade union unless he is satisfied that it is a genuine trade union. He is not satisfied that the appellant is a genuine trade union because its formation was not initiated, formed and managed by employees in order to regulate their relations with employers and because the appellant does not function or operate as a trade union, at all, or in accordance with its own constitution. In his opposing affidavit the registrar was most influenced by his view that the appellant was not formed by employees associating together for the purposes of regulating relations between employees and employers. In particular he believed the union had been initiated and formed by self-employed or unemployed individuals. The information at his disposal indicated that the appellant's President was Mr. Dalton Braaf and the General Secretary was David Willemse. These persons were not employees as required by the LRA, as he understood it.

15. Further in his opposing affidavit, the registrar indicated that he considered it undesirable and against good public policy to allow the proliferation of trade unions formed against the background of personal interests, as in this case, and to pursue personal vendettas. It was clear to him that the formation of the appellant was to undermine an existing trade union structure (NUMSA) to which the founders of the appellant had originally belonged.

16. On the question of the appellant not functioning as a trade union, the registrar stated that the appellant before obtaining the registration must function on registered trade union. As he sees it, this means that the appellant must demonstrate, amongst other things, that it operates in terms of its own constitution, has a significant membership and subscriptions, infrastructure, bank account and keeps its minutes and books in accordance with its constitution and the law. The required registration, in the view of the registrar, does not establish a trade union, but recognizes an established trade union and grants its organizational rights. Before then, the appellant for registration must demonstrate that it commands the institutional and infrastructural capacity to exercise organizational rights in the field of its choice. In the registrar's view, the appellant lacks these attributes. He goes further and says, that operating like a trade union means that the appellant must clearly demonstrate the financial, institutional and infrastructural capacity to negotiate on behalf of its members.

17. While it seems to me that the registrar was motivated by *bona fide* considerations and his understanding of the public interest, he may indeed have misconstrued his authority and introduced criteria and requirements which the statute does not sanction. Sections 95 and 96 of the LRA specifically restrict the registrar's powers. In the period between 1996 and 2002 the function of the registrar was restricted to

determining whether the trade union had adopted a name that meets the requirements of the Act, whether it had adopted a constitution that was in compliance with sections 95(5) and (6), whether it had an address in the Republic and whether it was independent. If those requirements were met, the registrar was obliged to register the trade union. If not, the registrar was obliged to give the union an opportunity to remedy the defect within 30 days. In the present matter, the registrar has not objected to the name of the union or the terms of its constitution, nor has he raised any issue about its independence. Rather, we have seen, he claims that it is not a genuine trade union, that it was established for the gain of individuals and that it was not functioning in terms of its constitution.

18. After the amendments to the LRA in 2002, the registrar was given the additional authority in terms of section 95(7) not to register any trade union unless he was satisfied that the applicant is a genuine trade union.

19. The Act provides no definition of the term “genuine”, but such meaning can be gleaned from the guidelines issued in terms of section 95(8) in GNR14 or 6 in Government Gazette 25515 of 10 October 2003. Clause 1 of the guidelines sets out their purpose as follows:

This document contains guidelines published by the Minister of Labour, in consultation with NEDLAC, that are to be applied by the Registrar of Labour Relations in determining whether an applicant for registration in terms of the Labour Relations Act is a genuine trade union or a genuine employer's organization. In terms of section 95(7) of the Labour Relations Act, the Registrar may only register a trade union or an employers organization if the Registrar is satisfied that it is a genuine trade union or a genuine employer's organization. In addition, in terms of section 106(2A) of the Labour Relations Act, the Registrar may cancel the registration of a trade union or an employer's organization that is not, or has ceased to function as, a genuine trade union or employer's organization, as the case may be.

20. The guidelines clearly indicate that when determining whether an organization is genuine, the registrar must make a distinction between an applicant for registration and an existing organization in respect of which the registrar is determining whether to cancel registration in terms of section 106(2A). Clause 3 of the guidelines intimates that a less onerous requirement applies in respect of applicants for registration, as compared to existing trade unions who are under investigation for the purpose of withdrawing registration. Clause 3 provides as follows:

In order to determine whether an organization is genuine, it will be necessary for the registrar to examine the actual operation of the organization. In the case of an applicant, particular attention will have to be paid to the manner of which the organization was established and formed. In the case of an existing organization, attention will have to be paid to the actual activities and functioning. In evaluating whether a trade union or the employer's organization is genuine, the registrar must take into account all relevant factors.

21. The distinction is rational given the fact that an unregistered trade union seeking registration is limited as to the activities it can undertake on behalf of its members. Therefore it makes sense to limit the determination to paying attention to the manner in which the organization was established and formed and without having regard to the actual activities and functioning. While registration is not a *sine qua non* for the separate juristic personality of either a trade union or an employer's organization, it is clearly of fundamental importance. Registered trade unions enjoy organizational rights, the ability to enter into binding and enforceable collective agreements, agency shop agreements, closed shop agreements, the ability to establish bargaining councils and to negotiate at such bargaining councils, the establishment of statutory councils, the ability to pursue disputes regarding demarcation between sectors and areas, the right to engage in strikes and recourse to lock outs, the right to refer and appear on behalf of members at conciliation and arbitration proceedings before the CCMA and at the Labour Court. Hence, registration is critical to a trade union's viability and efficacy - *National Employer's Forum v Minister of Labour & Others* (2003) 24 ILJ 954 (LC).

22. Turning first to the registrar's third reason for refusing registration, it appears that his view that the union was not functioning in terms of its constitution amounts to a consideration of its actual activities and functioning which would be appropriate when deciding whether to withdraw registration already granted, but is inappropriate when

applied to a trade union seeking registration. Given that generally it is unlikely that an unregistered trade union will be in a position to secure organizational rights, at least until it obtains registration, it is rational that an as yet an unregistered union should not be barred from registration on the ground that it is not fully operational in terms of its constitution. In practice such a requirement would be an effective bar to the registration to all new trade unions. Therefore, the refusal to grant registration on this ground cannot be correct.

23. The registrar's principal reason for refusing registration seems to be his conviction that the union was not a genuine union. Counsel for the registrar extrapolated on his reasoning in argument. He maintained that the right to form or belong to a trade union in South Africa is enshrined in section 23(2) of the Constitution which provides that every worker has the right to form and join a trade union and to participate in its activities and programs. Accordingly, he submitted, only a worker is entitled to participate in the formation of a trade union. In other words, the beneficiaries of the constitutional rights are workers or employees and this means that only workers or employees are entitled and can exercise the constitutional right to form a trade union. The appellant was not formed by employees or workers, so he claimed, because of the central role in the formation of it played by Braaf and Willemse. Braaf was self-employed and Willemse unemployed.

24. I cannot accept this argument. Section 213 of the LRA provides that a trade union means "an association of employees whose principal purpose is to regulate relations between employees and employers, including employer organizations". The fact that Braaf and Willemse, who admittedly were not employees, played a central role in the formation of the organization did not *per se* render the organization not an association of employees. The documentary evidence reveals that

the union was indeed formed by a group of employees at a general meeting exercising their right to freedom of association. Moreover, a constitution was drafted and adopted with the view to registration of the union and thereafter the executive committee and office bearers were elected. The union is also seeking to recruit members who are in employment and is doing its level best to function albeit subject to restrictions by virtue of its non-registration.

25. The fact that assistance was given to the employees by former colleagues who were unemployed or self-employed, cannot pose a bar to registration. Many trade unions in South Africa have been brought into existence at the instance of persons who were not employees, but who were social activists, academics or politically motivated individuals. As many will recall, the Federation of South African Trade Unions (FOSATU), the predecessor of the country's biggest existing federation COSATU, is but one example. To impose a requirement that associations can only be formed by those who qualify for membership of them would be an unnecessarily restrictive limitation upon the freedom of association. There is no requirement in the common law for instance that an association for the blind should be formed only by blind persons. Philanthropists concerned about the welfare of the blind should indeed be encouraged by the law to assist in the formation of such an organization. By the same token, I do not see anything in the constitution, the LRA or the common law which would justify such a restriction on the formation of trade unions. Indeed, the distinction drawn between an office bearer and an official in the LRA contemplates individuals who are not in the employment of other persons playing a key role in the activities of a trade union as officials. The fact that self-employed and unemployed persons facilitated the formation of the association of employees, does not render that association of employees not a genuine trade union.

26. Moreover, the registrar's powers under section 95(7) should be construed as including a reference to the mischief which the 2002 amendment sought to address. It is well known that the amendments effected to section 95 and 106 of the LRA in respect of registration and de-registration of trade unions on the grounds of genuineness, sought to deal with a clearly defined mischief which was set out in the explanatory memorandum to the Bill in the following terms:

Since the enactment of the 1995 Labour Relations Act there has been a significant increase in the number of trade unions and employers' organizations. A significant number of these are no more than disguised labour consultancies that have registered for the sole purpose of gaining appearance rights at the CCMA and Labour Court.

It has also come to the attention of the Department that a number of these 'trade unions' adopt coercive practices that are indicative of the fact that they are not genuine trade unions:

- (a) the trade unions coerce members to sign agreements which entitle the union to all benefits due to the member by the employer upon death of the member;
- (b) if the trade union acts on behalf of a 'member' in a claim, excessive or disproportionate, the full amount of any payment received is not paid over to the member and often a service fee is charged;
- (c) some unions require up to six months notice of resignation from members and levy heavy resignation fees on members.

There are also strong indications that some financial and insurance brokers have become active in the establishment and the affairs of trade unions and employers' organizations in order to market financial or insurance products. In one instance a Magistrate's Court ordered the transfer of a union's assets and all

records (in effect the registration and management) to an insurance broker. This broker then attempted to continue by cloaking its activities under the banner of a union. The status quo was partially restored but only after a lengthy, resource-absorbing and time-consuming process.

The operation of certain labour consultancies that have registered as employers' organizations undermine effective dispute resolution. These organizations tend to recruit their members from small businesses that are inexperienced in respect of labour relation's matters. Once gullible employers have joined, they are frequently faced with exorbitant fees.

This creates a negative impression of the Labour Relations Act and its dispute resolution institutions and undermines the efforts of genuine organizations participating in collective bargaining structures to recruit such employers. This in turn negatively impacts on the participation by certain employers, including small employers in bargaining councils.

The proposed amendments to section 95 are intended to discourage the formation and registration of trade unions and employers' organizations that are not genuine, by introducing a requirement that they be genuine or *bona fide* and giving the registrar of labour relations the power to refuse to register organizations which are not. The Minister will have the power to issue guidelines concerning whether or not a trade union or employers' organization is *bona fide*. Any refusal to register a trade union on these grounds will be subject to appeal to the Labour Court.

The International Labour Organization has expressed the view that this is in keeping with its standards concerning the promotion of collective bargaining and freedom of association.

27. The registrar has produced no evidence which supports any claim that the appellant is involved in any of the activities referred to in the explanatory memorandum.

28. Moreover, it is more than evident in the registrar's opposing papers that he does not see his role as limited to one of preventing the mischief

intended by the amendments, but has assumed to himself an authority and power aimed at halting the proliferation of trade unions in general. He clearly disapproves of the formation of a new union as a result of dissatisfaction by employees with their existing union. These two considerations, in my view, are an evident misdirection resulting in the misapplication of the authority which he has. Under the previous dispensation, the registrar did indeed enjoy some power as a gate keeper for the principle of majoritarianism in terms of an authority vested in him by earlier legislation to refuse registration of unions that are not sufficiently representative. While the principle of majoritarianism remains the favoured policy of our law, it no longer operates to prevent registration. Our law is currently more in line with the prescriptions of the International Labour Organization which permit freer competition among unions by making registration a mere ministerial process, but providing additional benefits and inducements to majority unions in the form of organizational rights, the power to bind minorities through collective agreements, the right to closed shops and so on. Sections 95 and 96 make it clear that the registrar no longer enjoys a majoritarian gate-keeper role at the registration stage.

29. The right to freedom of association must be interpreted generously and the requirements of registration, in so far as they restrict that right, should be interpreted restrictively. The limitations on the right of freedom of association in the section 95(7) are justifiable only to the extent that the term “genuine trade union” is in line with an interpretation giving effect to the policy contained in the memorandum to the Bill. Accordingly, I am in agreement with the appellant that the reasons given by the registrar and the content of his opposing affidavit reveal that he has failed to limit the term “genuine” accordingly and in the result has misconstrued his powers in terms of the LRA.

30. Likewise, the refusal to register the union on the grounds that it was established for the gain of individuals is equally open to criticism. The argument here was that the motive behind the establishment of the union was for the gain of Braaf and Willemse. With regard to Braaf serving as an office bearer, the registrar was correct in his contention that such is not permitted in terms of the LRA. However, once this was brought to the attention of the union the matter was remedied. Both Braaf and Willemse qualified to be employed by the union as officials and there is no bar in that regard. The fact that these two individuals received remuneration for advancing the process of registration also cannot be a bar to registration. Any voluntary association, the union included, is entitled to secure the services of experts and outside individuals to manage its affairs or to seek application for registration. In any event, it is not clear to me on the evidence whether these individual did indeed gain financially. Rather it seems they were mandated to pay fees to experts on behalf of the union who would do the necessary work involved in the registration process. Insofar as there may be some confusion on the part of the registrar, there is also no evidence that the union was established for financial gain (rather than the advancement of its members' interests), and thereby was disqualified, if indeed such constitutes a bar.

31. For these reasons I am persuaded that the registrar is mistaken in his interpretation and application to the facts before him of the guidelines issued in terms of section 95 of the LRA. Most particularly in that he clearly failed to take important relevant considerations into account and was influenced by irrelevant considerations. His finding that the appellant is not an association of employees by reason that certain of its promoters were unemployed is simply wrong. Likewise, his conclusion that the union was not operational in terms of its constitution and was established for the gain of two individuals is also incorrect and

amount to irrelevant considerations that improperly influenced his exercise of discretion.

32. The question now arises as to what is the appropriate relief to be granted in the circumstances. This court clearly has the power to substitute its decision for that of the registrar where, as in this instance, the registrar has made an incorrect decision. Little purpose will be achieved in sending the matter back to the registrar for reconsideration and this court is in as good a position as the registrar to decide whether registration should be granted. This is particularly so in light of a letter addressed by the registrar to the appellant's attorneys dated 28th September 2004. In it the registrar states:

Please be advised that, despite a formal compliance with these specific and express requirements for registration contained in section 95 of the Act, an applicant for registration must also comply in substance therewith and thus also with the general requirements that the union should be genuine in terms of the guidelines issued in terms of section 95(8) of the Act. Attempts by the same applicants to re-register the union will be futile, as this is not a genuine trade union.

33. The above comment indicates that the registrar's refusal to register the appellant was premised only on the reasons which he put forward and that he was otherwise of the view that there had been compliance with the other requirements of the LRA. In other words, the appellant has met the requirements regarding its name, constitution and independence. As I am persuaded that the union is indeed a genuine trade union, it therefore has met all the requirements for registration and accordingly should be registered.

34. The appellant has also asked for its costs. Normally this court is disinclined to make a costs order in a matter such as this. But this case is somewhat different. The registrar has ridden roughshod over the

appellant's statutory rights bestowed in the terms of section 96(4) of the LRA. The purpose of section 96(4) of the LRA is to ensure that attempts are made to resolve any disputes about registration by other means prior to approaching the court. The provision expects the registrar to give comprehensive reasons, to set out what he considers to be the grounds upon which registration cannot be granted and to afford the applicant for registration an opportunity within 30 days to persuade him otherwise. The registrar's insistence that he knew best and that there was no point in affording those rights was misplaced and lacking in understanding of the purpose of the provision. As it turned out, he was wrong. He should have opened himself to the possibility of being persuaded otherwise. Instead he took the view that he was right and that there was no need to afford the appellant the benefit of its statutory procedural rights in terms of section 96(4) of the LRA. Such an attitude has no place in our constitutional order, especially in a functionary charged with amongst other things overseeing equity in employment relations. Accordingly, in this instance, costs should follow success.

32. In the premises I make the following orders:

32.1 The appeal in terms of section 111 of the Labour Relations Act succeeds.

32.2 The first respondent's decision of 12 July 2004 refusing to register the appellant is hereby set aside.

32.3 The first respondent is ordered to register the appellant as a trade union in terms of section 96 of the Labour Relations Act and to issue a certificate of registration in the appellant's name within 14 days of the day of this order.

32.4 The first and second respondent are ordered to pay the costs of this appeal on a party-party basis, the one paying the other to be absolved.

MURPHY, AJ

Date of hearing: 6 May 2005

Date of judgement: 29 July 2005

**Applicant's legal representative: Adv H Rabkin-Naicker instructed by
Malcolm Lyons & Brivik Inc**

**Respondent's legal representative: Adv T Masuku instructed by the
State Attorney**