

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN

CASE NO. J509/06

In the matter between:-

SECURITY SERVICES EMPLOYERS
ORGANIZATION (SSEO)

1ST APPLICANT

SOUTH AFRICAN NATION SECURITY
EMPLOYERS ASSOCIATION (SANSEA)

SAIDSA

SECURITY INDUSTRY ASSOCIATION
OF SOUTH AFRICA

AND

SOUTH AFRICAN TRANSPORT ALLIED
WORKERS UNION (SATAWU)

1ST RESPONDENT

THOSE PERSONS WHOSE NAMES ARE
LISTED IN ANNEXURE "A" TO THE
NOTICE OF MOTION

2ND RESPONDENT

JUDGMENT

MOKGOATLHENG AJ

INTRODUCTION

The Applicant argues that there is absolutely nothing indicating that any positive action had been taken by the Respondent to ensure that the terms of order are brought to the attention of its officials and members given the

exceptional circumstance and that several persons have already lost their lives that there was an extra burden----- on the Respondent to ensure that the terms and the orders are complied with. There was the reason predicting the Applicant for variation of the order.

[1] The Applicant applied for the joinder of certain individuals contending that the joinder was justified on the basis ----- those individuals charged with ensuring ----- best place to ensure that the terms of the order were properly disseminated and implemented. These persons have a substantial interest in these proceedings because they will be the ones cited in an contempt application.

Principles applied and the court does the best it can with the material available to it.

[2] W ----- argued that the matter was postponed to today as an opposed matter and the question of costs was left for today, that if parties settle part of the case the remaining part that is costs is still left for argument in the opposed roll.

See Joubert, Owens Van Niekerk_____

[2] the Applicants instituted proceedings against the ----- under case number 453/06 on the 24th of March 2006 obtained an order in the following terms

[] on the 26th of April 2006 the Applicants under case no. 453/06 the - ----- an order varying the Rule nisi issued on the 24th March 2006. The following terms

1.1

Is not part of the settlement agreement, its members remain on str-----

- [1] Pursuant to a protected strike by the First Applicant, the Applicant on the 24th of March 2006 instituted proceedings under case no. J 453/06 against the First Respondent and further Respondents for an order,
- (a) interdicting their members from harassing and / or
 - (b) intimidating non striking and replacement employees of the Applicants members and others -----relief
- [2] On the 24th of March 2006 a *rule nisi* was granted returnable on the 19th of April 2006
- [3] The First and Further Respondents did not file an answering affidavit in opposition to the applicant.

- [4] On the 5th of April 2006 the Applicants instituted an application (the main application) against the Second Respondents under case no. J 509/06 for an order;
- (a) interdicting and restraining the Second to Further Respondents from intimidating, harassing and/ or assaulting non striking employees of members of the Applicants for the duration of the strike and other -----
----- relief. Costs were reserved.
- [5] A *rule nisi* was granted returnable on the 19th of April 2006.
- [6] On the 19th of April 2006 both cases were adjourned at the request of the Applicant therein to the 3rd of May 2006 and the *rule nisi* embodied in both matters were extended to that date.
- [7] The Applicants alleges reason for seeking these orders was to enable them to launch interlocutory proceedings *inter alia* for the,
- (a) joinder of additional further Respondents in both cases, and
 - (b) the variation of the orders, on the 26th of April 2006.
- [8] On the 26th of April 2006, at the hearing of the interlocutory proceedings, the Respondents opposed the granting of the relief sought by the Applicants therein.
- [9] The Respondents did not file any substantive answering affidavit opposing the relief sought; they opposed and argued the matter on the Applicants' papers.

[10] Having heard argument in the interlocutory proceedings, the court granted variations of its previous orders. Each party was ordered to -----its own costs.

[11] The return date of the rule nisi embodied in the two varied orders were extended, until the 26th of July 2006.

THE RELIEF SOUGHT

[12] The Applicants seek the costs of the application and contends that they have put up a considerable body of evidence which justified the granting of the relief sought.

[13] The Applicants contend that the First and further Respondents' response to the allegations that they were neither in a position to bring an end to the violence, nor to ensure or frustrate compliance with the orders granted by this Honourable Court.

[14] The Applicant contends that the Respondents have not factually substantiated what they categorise as a general, bald and vague allegation.

[15] The Applicants contend that the Respondents were obliged to proffer reasons why they have failed to factually substantiate this allegation.

[16] The Applicants submit that the allegation is far fetched and clearly untenable and can safely be rejected on the papers because the purported dispute of fact not real, genuine or *bona fide*.

THE PRINCIPLES REGARDING COSTS

[17] The Labour Court derives its power to grant costs orders from the provisions of section 158 (1) (a) (vii) read with Section 162 of “the Act”.

[18] In terms of section 162, “the Labour Court may make an order for the payment of costs, according to the requirements of the law and fairness”. Zondo AJ (as he then was) **called Guard security Services (Pty) Ltd v Transport and General Workers union and others (1997) 18 ILJ 380 (LC)**,

“in considering the meaning of section 162, remarked that the legislator intended that the court should give equal weight to both the requirements of the law and those of fairness, he postulated the following enquiry,

Having regard to all the relevant factors in this matter would it accord with the requirements of law and fairness to make an order of costs, and if it would, what costs order should be made? If the answer is that it would not accord with the requirements of the law and fairness to make a cost order then this court should not make any costs orders”

In the case of NUM v East Rand -----co Ltd 1992 (1) SA 700 (A), 1991 12 ILJ 1221, Goldstein JA in considering the requirements of law and fairness with regard to the issue of costs, he----- the following approach,

(a) the provision that the requirements of the law and fairness to be taken into account is consistent with the role of the industrial court as one in which both law and fairness are to be applied,

(b) the general rule of our law that in the absence of special circumstances costs follow the event is a relevant consideration, however it will yield where considerations of fairness require it.

(c) Proceedings in the industrial court may not frequently be part of the conciliation process. This is a role which is design----- given to it.

(d) Frequently the parties before the industrial court will have an on going relationship that will survive after the dispute has been resolved in court. A cost order especially where the dispute has been a bona fide one may damage that relationship and thereby detrimentally affect industrial peace and the conciliation process.

(e) The conduct of the parties is obviously relevant especially when considerations of fairness are concerned.

[19] In applying these legal principles, I am entitled to consider all the relevant circumstances surrounding this matter.

[20] In my view there is no rule of public policy or law which precludes the granting of costs if a Rule nisi is discharged and not confirmed.

[21] The *rule nisi* pertinently directed the Respondents' office bearers, officials and shop stewards of the Respondents to call upon their members

(a) to desist from harassing and or intimidating non striking and replacement employees of the Applicants' members

(b) to desist from engaging in any acts of violence or other unlawful conduct.

[22] The Applicants predicating their averments founding affidavit have not been assailed by the Respondents, they remain undisputed.

[23] The *rule nisi* granted on the 24th of March 2006 in respect of case no J 453/06 was not opposed. The order sought by the Applicants in paragraph 1.4 is **conched** in the following terms "*ordering such respondents who opposes this application to pay the costs of this application, jointly and severally the one paying the other to be absolved*"

- [24] The *rule nisi* was extended by consent whilst the parties attempted to settle the protected strike. The settlement negotiations were protracted and involved most if not all the trade unions in the security sector, most if not all employer organisations.
- [25] The applications for the variation of the *rule nisi* were not opposed; in fact the Respondents cooperated in the need to accede to the variation in order to properly give effect to this court's order.
- [26] The conduct of the Respondents cannot be adjudged to have been obstructive in the applications of the *rule nisi*.
- [27] It might be properly contended that the Respondents' individual members made themselves guilty of unlawful conduct, but there is however no cogent evidence that the Respondents' officials incited their respective members to commit unlawful acts or that they ordered and abetted their individual members' unlawful conduct in any event.
- [28] The Applicants and Respondents are fated to continue their relationship because of the vagaries of their employment relationship; this in my view is an important factor in determining the allocation of costs.
- [29] The Respondents' individual members who were responsible for committing unlawful acts were not positively identified in any event if any of the perpetrators of unlawful conduct were subsequently identified the Applicants have disciplinary

mechanisms as a remedy to eschew the contentions that their alleged misconduct is condoned.

[30] In the premises in exercising my discretion, I am of the view that the paramount of the continuation of the relationship between the parties m--- against making a costs order against the Respondents.

The following order is made.

1. There is no order as to costs
2. The persons whose names are listed below are to be committed to prison for a period of 90 days which is wholly suspended for a period of 5 years on condition that the second and additional respondents are not found in contempt of this court order.

Bheki Ndimma

Bohlale Joshua Koloji

George Mozanakele Doporo

Nomsisi Jane Saul

Mamakala Lucas Leeuw

Jacob Tinki Moeketsi

Tefo Luca Movobane

Ngaka Isaia Mekhoe

Poloko Junior Oliphant

Seuntjie France Malakanye

Jan Cane Mmusi

THE LEGAL PRINCIPLES APPLICABLE TO CONTEMPT PROCEEDINGS

The object of contempt of court proceedings is to compel compliance with the court order in order to vindicate the Court honour resulting from the disregard of its order.

A court will only grant a contempt order when the Respondent's default is wilful and *mala fide*.

Pursuant the case of desist from their unlawful conduct in pursuance of the protected strike, the *rule nisi* were discharged on the 26th of July 2006.

It is common cause that the strike ended on the 26th of June 2006, a month before the institution of the application for the contempt of court application.

In *Fakie NOV CC 11 Systems (Pty) Ltd 2006 (4) SA 326 (SCA) at 338F-339A*, an Applicant has to show that

- (a) the order was granted against the Respondent,
- (b) the order has been served or has come to the attention of the Respondent,
- (c) the Respondent has failed to comply with the order,
- (d) the Respondent acted wilfully and *mala fide*.

The *accused* to avoid ----- no longer bears a legal burden to disprove wilfulness and *mala fide* on a balance of probability.

If there is a reasonable doubt about the existence of any one of these **five** **elements**, a court should refuse the order for committal sought

It is trite that the rule nisi in both cases were granted to order the respondents members to.....

MOKGOATLHENG A.J.

Acting Judge of the Labour Court of South Africa

DATE OF HEARING :

DATE OF JUDGMENT :

FOR APPLICANT :

FOR RESPONDENT :

