IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT BRAAMFONTEIN)

CASE NUMBER: J1521/07

In the matter between

INDEPENDENT MUNICIPAL AND	
ALLIED TRADE UNION	**First Applicant**
JL ALBERTS	**Second Applicant**
JA EHRICH	**Third Applicant**

And

CITY OF TSHWANE METROPOLITAN	
MUNICIPALITY	**First Respondent**
THE SOUTH AFRICAN LOCAL GOVERNMENT	
ASSOCIATION	**Second Respondent**
THE SOUTH AFRICAN MUNICIPAL	
WORKERS' UNION	**Third Respondent**
THE SOUTH AFRICAN LOCAL GOVERNMENT	
BARGAINING COUNCIL	**Fourth Respondent**

APPLIATION FOR LEAVE TO APPEAL

BASSON, J

[1] On 25 July 2007, this Court made the following order:

> ***"ORDER***
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> *In the event the following order is made:*
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> *1. The first respondent is compelled to comply with the provisions of the settlement agreement (including clause 2.4 thereof) in the matter between the Independent Municipal and Allied Trade Union and the South African Municipal Workers' Union and the South African Local Government Association before the South African Local Government Bargaining Council under case number HQ070502 dated 21 February 2006 (hereafter referred to as the "settlement agreement") and the subsequent award by Adv RG Lagrange dated 22 February 2006 (as certified by a national senior commissioner of the CCMA on 8 June 2006) under the aforementioned case number (hereinafter referred to as "the award") pending the outcome of the application in the*

matter between the City of Johannesburg Metropolitan Municipality a.o. v Independent Municipal and Allied Trade Workers Union a.o before the Labour Court under case number J1232/06 (hereinafter referred to as "the application").

2. *The first respondent is directed to reinstate the second and third applicant retrospectively in their posts which they had occupied immediately prior to the termination of their employment on the terms and conditions provided for in clause 2.4 of the settlement agreement and the award pending the outcome of the aforementioned application.*
3. *The second respondent is compelled to comply with the provisions of the settlement agreement and the award pending the outcome of the aforementioned application.*
4. *The first and second respondents pay the costs of this application jointly and severally the only paying the other to be absolved."*

[2] The Applicants appealed against the whole of the judgment delivered on 25 July 2007 and submitted that there are reasonable prospects that another Court can make findings and an order different from that made by this Court. The grounds for leave to appeal are set out in the Notice of Application for Leave to Appeal.

[3] Lengthy arguments were submitted on behalf of the Respondents as to why this Court should grant leave to appeal. On behalf of the Applicants it was crisply submitted that, because the order granted by this Court was clearly not a final order, the order is not appealable. The Respondents have, however, not addressed the question as to whether or not the order granted by this Court is in fact and in law appealable.

[4] Although the order, as quoted above, appears to support the argument that the order granted by this Court was in the nature of interim relief in the sense that it will operate *pending the outcome of the pending proceedings / litigation* in this Court relating to an award rendered by a Commissioner under the auspices of the South African Local Government Association and certified by the Commissioner for Conciliation, Mediation and Arbitration as well as pending litigation in respect of a settlement agreement that is attached to the said award, I am nonetheless of the view that the order is appealable for the following reasons. Firstly, another court may come to a different conclusion in respect of the question whether or not this Court had the necessary jurisdiction to adjudicate the interim relief sought by the Respondent to the extent that the right to such interim relief is sourced from a settlement agreement which has been made an award and which is the subject matter of a pending application before this Court.

Secondly, the effect of the order granted by this Court was to declare the Second and Third Respondents as not being employed as section 57 employees by the First Respondents. In my view, this order amounts to a final order despite the fact that the relief granted is couched in the form of an interim order. I am of the view that there exists a reasonable prospect that another Court may come to a different conclusion in respect of particularly the employment status of the Second and Third Respondent.

[5] In coming to this conclusion the provisions of section 166(1) of the Labour Relations Act[1] which provides for appeals against judgments or orders of the Labour Court was taken into account. This section provides for appeals only against "*final"* orders or judgments. See, for example, the decision of the Labour Appeal Court in *MTN v Knoetze.*[2]. An interlocutory interdict (also referred to as *"simple (or purely) interlocutory orders*)"[3] is an order granted *pendente lite* and has interim effect until the legal proceedings pending between the parties

[1] Act 66 of 1995. This section reads as follows: *"Any party to any proceedings before the Labour Court may apply to the Labour Court for leave to appeal to the Labour Appeal Court against any final judgment or final order of the Labour Court*".

[2] [2006] JOL 16372 (LAC) at paragraph [32] and [34].

[3] See: *UDV Bank Ltd v Seacat Leasing & Finance Co (Pty) Ltd & Another* 1997 (4) SA 682 (T) at 690C – E.

have been finalized:[4] "*Its effect is to "freeze" the position until the court decides where the right lies, at which point it ceases to operate*." [5] A simple or pure interlocutory order must be distinguished from interlocutory orders that have a final and definite effect. *In casu* although the effect of the order is not to dispose of the main application, its effect is to freeze the position (namely the continued employment of the Second and Third Respondent) until this Court decides where the right lies at which point it will cease to operate. However, in respect of the employment status of the Second and Third Respondents, the order disposes of that that question[6] (namely the employment status of the Respondents).[7] See also, *inter alia*, *Pretoria*

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[4] See *Winkelbauer and Winkelbauer t/a Eric's Pizzeria v Minister of Economic Affairs and Technology* 1995 (2) SA 579 (T) at 574A – B.

[5] Erasmus Superior Court Practice At E8-3.

[6] A matter will be disposed of in the following circumstances: Zweni v Minister of Law and Order 1993 (1) SA 523 (A) at 532J-533B: *'A "judgment or order" is a decision which, as a general principle, has three attributes, fir€st, the decision must be final in effect and not susceptible of alteration by the Court of first instance; second, it must be definitive of the rights of the parties; and, third, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings. . . . The second is the same as the oft-stated requirement that a decision, in order to qualify as a judgment, or order, must grant definite and distinct relief. . . ."* In respect of interim interdicts, the Court confirmed the principle that an interlocutory interdict is not appealable (at 359 – 360): *"There may also be a difference in the finality of the decision. Thus, as stated above, the refusal of an interim interdict is final. It cannot be reversed on the same facts (I disregard the possibility, discussed above, of a refusal on some technical ground). The same may not be true of the grant of an interim interdict. It may be open to the unsuccessful respondent to approach the Court for an amelioration or setting aside of an interdict, even if the only new circumstance is the practical experience of its operation. And, apart from the theoretical differences between the grant and the refusal of an interdict, there is also the practical one, discussed in Cronshaw's case at 12-15, that an appeal against the grant of a temporary interdict would often be inconsistent with the very purpose of this remedy. See also Davis v Press & Co (supra at 119 (Fagan J)). It is, however, not necessary to pursue this matter any further. The appealability of the grant of an interim interdict does not arise directly for decision in this matter and is in any event concluded by authority*".

[7] See *Pretoria Garrison Institutes v Danish Variety Products (Pty) Ltd* 1948 (1) SA 839 (A) at 870 that '*. . . a preparatory or procedural order is a simple interlocutory order and therefore not appealable unless it is such as to "dispose of any issue or any F portion of the issue in the main*

Garrison institutes v Danish Variety Products (Pty), Limited;[8]*South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty)* Ltd;[9] *South African Druggists Ltd v Beecham Group plc;* [10] *Elida Gibbs (Pty Ltd v Colgate Palmolive (Pty) Ltd (2)*[11] *Zweni v Minister of Law and Order*[12]*;* and *Cronshaw And Another v Coin Security Group (Pty Ltd*.[13]

[6] In light of the above, following order is made:

The application for leave the appeal is granted.

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BASSON, J

29 NOVEMBER 2007

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action or suit", or, which amounts, I think, to the same thing, unless it "irreparably anticipates or precludes some of the relief which would or might be given at the hearing" '

[8] 1948 (1) SA 839 (A) at a69 - 870: "*From the judgments of WESSELS and CURLEWIS, JJ.A., the principle emerges that a preparatory or procedural order is a simple interlocutory order and therefore not appealable unless it is such as to 'dispose of any issue or any portion of the issue in the main action or suit' or, which amounts, I think, to the same thing, unless it 'irreparably anticipates or precludes some of the relief which would or might be given at the hearing*'."

[9] 1977 (3) SA 534 (A) at 550. "*At common law a purely interlocutory order may be corrected, altered or set aside by the Judge who granted it at any time before final judgment; whereas an order which has final and definitive effect, even though it may be interlocutory in the wide sense, is res judicata."*

[10] 1987 (4) SA 876 (T).

[11] 1988 (2) SA 360 (W) at 363.

[12] 1993 (1) SA 523 (A).

[13] 1996 (3) SA 686 (A).