IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

NOT REPORTABLE

CASE NO: J109/09

2009-01-23

In the matter between

TAWUSA & ALLIANCE COMPRISING OF STEMCWU **Applicant**

And

ANGLO PLATINUM LIMITED **Respondent**

J U D G M E N T

VAN NIEKERK J

This is an application brought as a matter of urgency in which the applicant seek an order to interdict the respondent from cancelling the current ER policy, a collective agreement, pending the finalisation of disputes declared about the interpretation and application of the same ER policy in relation to the cancellation and withdrawal of organisational rights.

The applicants are the Togetherness Amalgamated Workers Union of South Africa (TAWUSA) and an alliance comprising various trade unions that have members in the employ of the respondent.

In 2002, the respondent concluded a recognition agreement with the applicants. In November 2006 the respondent took a decision to review the terms of that agreement *inter alia* to revisit the question of thresholds that would apply in relation to recognition for bargaining and other associated purposes.

On 1 November 2008, the respondent gave written notice terminating the collective agreement. The agreement would terminate in accordance with that notice the following week, on 31 January 2009.

In September 2008, the applicants referred a dispute to the CCMA. The dispute was categorised as one concerning the interpretation and application of a collective agreement. In essence, the relief sought by the applicants was to prevent the respondent from terminating the agreement on the basis that the agreement itself contained no cancellation clause.

During the hearing of this application, an arbitration award by Commissioner Shear was made available to the court. Commissioner Shear dismissed the applicant's case on the basis, it would seem, that what was requested by the applicants in those proceedings

was not an interpretation of the collective agreement at issue rather than a ruling that would prevent the respondent from cancelling it.

Further disputes were declared by the applicants during the course of January 2009. These appear to concern primarily the consequences of any termination of the collective agreement, and remain pending in the CCMA.

In order to succeed in these proceedings, the applicants must establish that the application is urgent, that they have a clear right to the relief they seek, that no other alternative remedy is available to them and that they will suffer irreparable harm if the relief sought is not granted.

I turn first to the matter of a clear right. Section 23(4) of the Labour Relations Act provides that a party to a collective agreement that is concluded for an indefinite period may terminate that agreement by giving reasonable notice. The respondent is, in terms of that provision, entitled to invoke the right to give reasonable notice which, in my view, it did; three months notice is not unreasonable to terminate the collective **agreement, that** is the subject of these proceedings.

The applicants' contentions before the CCMA do not concern the unreasonableness of the notice of termination given; rather, they contend that the respondent is not entitled to cancel the agreement at all and that certain consequences that will flow from that cancellation will have the

effect of prejudicing their members' rights.

At this point, I mention that the applicants are minority unions who, it would appear from the papers, will not meet the new thresholds fixed by the respondent. Two majority unions, the NUM and UWUSA (neither of which was cited as a respondent in these proceedings) will be unaffected by the new terms that the respondent seeks to implement and, it would appear, will continue to be recognised and enjoy the rights that flow from recognition.

10

The respondent alleges (and this is not denied by the applicants) that the majority unions have agreed to the new terms and that a formal collective agreement will be concluded with them in due course.

The relief that the applicants seek, as I have indicated, is in effect an interdict preventing the respondent from cancelling the collective agreement, pending the outcome of the remaining disputes before the CCMA. To grant this relief would, in my view, amount to compelling the respondent to continue in a collective bargaining relationship to which it

20no longer wishes to be a party.

The applicants have, in these circumstances no right to the relief that they seek, nor is it competent for this court to grant it. In this regard I would refer to a judgment of this court, *National Police Services Union & Others v National Negotiating Forum & Others*, (1999) 20 ILJ 1081 (LC) in which

the court was similarly faced with an application by a minority union challenging the introduction of thresholds into a collective bargaining relationship that would have the effect of derecognising the applicant and terminating rights to check off that it previously enjoyed.

In that matter the court said the following:

> *"All of these submissions [concerning the consequences of a withdrawal of check off facility] overlook an important policy consideration that underlies the LRA. The LRA adopts an unashamedly voluntrist approach – it does not prescribe to parties who they should bargain with, what they should bargain about or whether they should bargain at all. In this regime the courts have no right to intervene and influence collectively bargained outcomes.*
>
> *Those outcomes must depend on the relative power of each party to the bargaining process. That power is underpinned by the organisational rights conferred by Part A of Chapter 3 of the Act and the right to collective action confirmed by Chapter 5.*
>
> *To set aside the derecognition of a union and to grant an order, even on an interim basis, that the union remains recognised in terms of the collective agreement constituted by the regulations, would be an unwarranted interference in a collective*

bargaining relationship".

The principle upheld in that case is particularly apposite in the present instance. The applicants have rights under Chapter 5 of the Act, and they have rights under the organisational rights provisions contained in Chapter 2 of the LRA which they are entitled to claim in the absence of an agreement with the respondent.

In any event, in these proceedings, the applicants' failure to join the NUM and UWUSA is, in my view, fatal. Those unions obviously are interested parties to these proceedings, since they too would continue to be bound by collective agreement, the life of which would extend beyond 31 January 2009, pending the final resolution of the disputes that the applicants have referred to the CCMA.

Finally, the applicants have an alternative remedy, one that they have already invoked i.e. a referral to the CCMA, and there is no reason in law for the status quo to be maintained pending the outcome of those proceedings.

For all of those reasons, I make the following order:

The application is dismissed with costs.

ANDRE VAN NIEKERK

JUDGE OF THE LABOUR COURT

Date of hearing: 23 January 2009

Date of Judgment: 23 January 2009

Appearances:

For the applicants S S Morwane (Union Official)

For the respondent Mr F Malan from Edward Nathan Sonnenbergs Inc