

IN THE LABOUR COURT OF SOUTH AFRICA
(CAPE TOWN)

CASE NUMBER:

C972/2015

5 DATE:

18 MARCH 2016

In the matter between:

PARLIAMENT of the

REPUBLIC OF SOUTH AFRICA

Applicant

and

10 **NEHAWU**

Respondent

J U D G M E N T

STEENKAMP, J:

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This is the return day of a *rule nisi* that was initially granted by Nkutha-Nkontwana, AJ on 11 November 2015. The rule was subsequently extended by Rabkin-Naicker, J on three occasions, that is on 27 November 2015, 4 December 2015; and 29 January 2016. The applicant is the Parliament of the Republic of South Africa and the respondent is the trade union Nehawu. Both parties have filed founding, answering and replying affidavits and the matter comes before court today as a final return day in which Parliament is asking for the *rule nisi* to be confirmed. Nehawu opposes it.

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It is common cause that Nehawu embarked on an unprotected strike in November 2015. It is also common cause that Parliament is an essential service and that Nehawu was not
5 allowed to call its members out on strike. It is further common cause that the rule *nisi* issued on 11 November operated as an interim interdict pending the return day; that it declared the strike and protest action of Nehawu and its members to be unlawful; and that it interdicted Nehawu and its members from
10 participating in the strike or from entering and occupying the Parliamentary buildings and meeting chambers of Parliament.

Despite that, Nehawu disregarded the interdict and continued with the strike action for almost a month until 7 December
15 2015. It is against that background of disregard for the interdict issued by Nkutha-Nkontwana, AJ that the matter now comes before court. On the law relating to unprotected strikes, there is no argument to be made out that the interdict should not be confirmed, given that it is a common cause issue
20 that it is an unprotected strike; that Parliament is an essential service; and that the union defied the interim court order.

The only real issue for determination is whether the matter is not now moot, seeing as an agreement was reached on 7
25 December 2015 whereby the strike was called off and the
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union's members agreed to return to work. Against that argument, eloquently made by Mr *Thembe* for the union, Ms *Golden* drew the Court's attention to the evidence before Court in both the founding and the replying affidavit that, despite
5 that agreement, the issues giving rise to the strike remain unresolved.

The deponent to the replying affidavit, Ms Penelope Tyawa, the Deputy Secretary of Parliament, states that the issue of
10 performance bonuses has still not been resolved. It is a live and ongoing dispute which emanates from the unprotected strike in November 2015 and which gave rise to the strike.

Against that background, she expresses the fear that harm may still be caused by Nehawu repeating its unlawful actions
15 unless the interim interdict is made final. She further points out that Nehawu launched an urgent application in this Court a week ago on 11 March 2016, on extremely short notice, seeking to interdict Parliament from deducting money from its members' salaries, despite the agreement that it had reached
20 on the "no work, no pay" principle. That as well, points to the fact that the issues between the parties are not unresolved.

Ms *Golden* argued that, because of that, there remains a fear and a likelihood of further harm caused by similar unlawful
25 actions by the union and its members, should the rule not be

confirmed. I am persuaded that that fear is real, given the history of this matter and the previous conduct of the union in the face of an interim interdict issued out of this Court.

5 It follows that the rule *nisi* should be made final. However, I do not agree with the first part of the order that declares the strike “unlawful”. The right to strike is protected in the Constitution. But it is regulated by national legislation in the form of the Labour Relations Act. The strike is unprotected but
10 not necessarily unlawful. I intend to amend the first part of the final order accordingly.

The only issue remaining is that of costs. This Court may take into account that prescripts of both law and fairness. In law,
15 costs should follow the result. In fairness, I do take into account that there is an ongoing relationship between Parliament and Nehawu. However, as the Secretary of Parliament and Ms *Golden* both point out, the union has, firstly, expressed its own view that it need not adhere to the
20 dispute resolution procedure in a recognition agreement in place between the parties. The deponent in its answering affidavit, Mr Mocumi, the Chairperson of the Parliamentary branch of Nehawu, says that the union is under no obligation to invoke this procedure. Furthermore, the union has acted
25 contemptuously towards the applicant, the laws of the Republic

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and towards this Court by disregarding the terms of the order issued by Nkutha-Nkontwana, AJ on 11 November and subsequently extended. Parliament -- and therefore the taxpayers of South Africa -- cannot be expected to incur the
5 costs of having brought the union to Court and having appeared in Court on five occasions in circumstances where the union has chosen not to adhere to the laws of this country, more specifically the Labour Relations Act.

In those circumstances, in law and fairness, the respondent
10 should pay the applicant's costs.

A final order is therefore granted in the following terms:

1. It is declared that the strike and protest action of the respondent, NEHAWU, and its members is unprotected.
- 15 2. The respondent and its members are interdicted from calling upon, inciting or encouraging their members who are employed by Parliament of the Republic of South Africa, the applicant, to strike or picket within the precincts of Parliament.
- 20 3. The respondent and its members are interdicted from entering and occupying the Parliamentary buildings and meeting chambers of the applicant, including the National Assembly and Old National Assembly Chambers.
4. The respondent and its members are interdicted from
25 disrupting Parliamentary Portfolio Committee meetings

and other sittings of Parliament.

5. The respondent and its members are interdicted from intimidating, harassing or assaulting officials, employees and visitors of the applicant on its premises and the parliamentary precinct.

6. The respondent and its members are interdicted from damaging or destroying property of the applicant.

7. The respondent is ordered to pay the applicant's costs.

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STEENKAMP, J

APPEARANCES

APPLICANT: Ms T Golden

Instructed by the state attorney.

RESPONDENT: Mr T Thembe (union official).