THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C194/2016

In the matter between:

BETAFENCE SOUTH AFRICA (PTY) LTD **Applicant**

And

NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA **First Respondent**

THE INDIVIDUAL EMPLOYEES LISTED IN ANNEXURE 'A' TO THE NOTICE OF MOTION **Second to Further Respondents**

Delivered: 15 September 2016

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

[1] By agreement between the parties, an order was issued by Rabkin-Naicker J on 12 April 2016 in terms of which the strike action embarked upon by the Second to Further Respondents (The Employees) on 7 April 2016 was suspended with immediate effect. The Employees were to return to work on 13 April 2016. The matter was postponed to 22 April 2016, and a time table was also agreed upon in regards to the filing of answering and replying papers.

[2] Despite the order, the Employees did not suspend the strike. The matter again came before Rabkin-Naicker J on 15 April 2016 and an order was issued in the following terms;

1. *'A rule nisi is hereby issued pending the return date of 19 April 2016 at 10h.00 calling upon the respondents to show cause why an order should not be made in the following terms;*
2. *The Second to Further Respondents are in contempt of the order of this court dated 12 April 2016.*
3. *The Second to Further Respondents are hereby interdicted from encouraging (engaging) in any unlawful or violent action in contempt of the order dated 12 April 2016.*
4. *The Second to Further Respondents are hereby interdicted and restraint from embarking on any strike action in contempt of the order of this court dated 12 April 2016.*
5. *The First Respondent is ordered to take all reasonable steps to ensure that its members whose names appear on annexure 'A' comply with the orders in clause 3 and 4 above.*
6. *Paragraphs 3, 4 and 5 above operate with immediate effect pending the outcome of the matter on the return date.*
7. *The return date of both this order and other and the rule nisi issued on 12 of April 20, is 19 April 2016'*

[3] On 19 April 2016, Van Niekerk J extended the *rule nisi* issued on 12 and 15 April 2016 to 25 May 2016, and further directed the respondents to show cause why they should not be held in contempt of court for failing to comply with the court order of 12 April 2016.

The background to the strike:

[4] The Applicant is in the business of manufacturing and supplying universal perimeter fencing. The First Respondent (NUMSA) and the Applicant are signatory to the Metal and Engineering Industries Bargaining Council (MEIBC) Main and Settlement Agreements entered into on 29 July 2014, which regulate the terms and conditions of employment within the metals and engineering sector. The Main Agreement was also extended to non-parties on 24 of December 2014.

[5] During December 2014 the Applicant received correspondence from the Employees titled *"Plant Level Matters of Transformation that are not in the Main Agreement (Matters of mutual interests)"*. The correspondence also listed a number of demands which the Employees required that the Applicant address at plant level. These included housing allowance, funeral benefits, medical aid, financial assistance, and production bonus.

[6] The Applicant in its response on 15 January 2015 indicated that it was not prepared to engage in plant level negotiations with regards to the demands made. Its main contention was that these demands related to issues that were regulated and covered by the Main and Settlement Agreements concluded on 29 July 2014. On 11 March 2015 NUMSA on behalf of the Employees referred a dispute to the MEIBC. The matter was then set down for conciliation on 9 April 2015. At those proceedings the Applicant raised a preliminary point

pertaining to the jurisdiction of the MEIBC, based on the provisions of clause 20 of the Settlement Agreement.

[7] The conciliating commissioner in a ruling dated 20 April 2015 directed that the dispute be referred to arbitration for the determination of the jurisdictional point, and in the same ruling indicated that a certificate of non-resolution was issued. A dispute was then referred for arbitration and was heard on 4 November 2015. The MEIBC Arbitrator issued a ruling to the effect that mutual interest dispute could not be arbitrated but must be conciliated in terms of the provisions of section 135 (1) of the LRA. The Arbitrator concluded that the MEIBC did not have jurisdiction to arbitrate the matter. On 29 February 2016, NUMSA referred another dispute to the CCMA for arbitration. As at the hearing of this application, that matter was still pending before the CCMA.

[8] On 6 April 2016, one of the individual respondents sent an e-mail on behalf of the Employees to the Applicant's HRM to meet with the Employees at the Applicant's reception at 07h00 the next morning to receive a list of their demands. On 7 April 2016, the Employees failed to report for duty and started a picket outside the office park. An ultimatum was issued at about 07h25 imploring the Employees to return to work. Despite the involvement of a NUMSA official and the Applicant's Human Resources Manager, the Employees refused to report for duty. A second ultimatum issued on 15h00 failed to persuade the Employees to return to work. This had led to an urgent application being launched on 12 April 2016, which had resulted in the order as agreed upon before Rabkin-Naicker J.

[9] The Applicant's case is that the strike embarked upon by the Employees is unprotected for failure to comply with the provisions of section 64 (1) (b) of the LRA, and further that the provisions of section 65 (3) (a) (i) of the LRA precluded a party from embarking on strike action where they parties are bound by a collective agreement which regulates the issues in dispute. In respect of the last ground, the contention was that the five issues raised in the Employees demands are all dealt with in the MEIBC Settlement Agreement covering the period 1 July 2014 to 30 June 2017, and that in terms of the provisions of Clause 37 of the Main Agreement, the terms and conditions of employment in the industry are negotiated at central level.

[10] The respondents' case is that the *rule nisi* issued on 12 and 15 April 2016 and extended on 25 May 2016 should be discharged on the grounds that (a) all the issues which led to the strike of 7 April 2016 are not regulated by the collective agreement and thus section 65 (3)

(a) of the LRA does not apply; (b) should the court find that not all the issues raised by the respondents are regulated by collective agreement, the respondents are entitled to strike over those issues which are not regulated by the collective agreement.

Evaluation:

[11] Two main issues are to be determined on the return date. The first is whether the strike embarked by the Employees on 7 April 2016 was unprotected on the grounds as alleged by the Applicant. The second issue is whether the Employees are in contempt of court for not complying with the court order of 12 of April 2016. The Applicant, as correctly pointed out on behalf of the respondents, must satisfy the relevant requirements for it to be granted the relief it seeks. These are (a) a clear right, (b) an injury actually committed or reasonably apprehended, (c) the absence of an alternative satisfactory remedy[1]. In *Polyoak (Pty) Ltd v Chemical Workers Industrial Union & others*[2], it was further held in regards to matters before the court on the return day that;

> *"It is trite that on the return day, the court must be satisfied that a proper case has been made out for each facet of the relief sought. Where the original papers fail to do this – because the allegations are either incomplete or strictly speaking inadmissible – the applicant should supplement them so that their deficiencies are remedied before application is made for confirmation of the rule"*

Alleged non-compliance with the provisions of section 64 of the LRA:

[12] The Applicant's main contention was that strike was unprotected as the MEIBC did not issue a certificate of outcome as contemplated in section 64 (1) (a) (i) of the LRA. It was common cause that NUMSA had requested conciliation on 11 March 2015. The MEIBC Conciliating Commissioner issued a ruling on 20 April 2015 in terms of which a certificate of outcome was issued, and NUMSA was afforded an opportunity to refer the dispute for arbitration for the purposes of determining the jurisdiction of the MEIBC. The matter having been referred for arbitration, another MEIBC Commissioner then made a finding that the matter was erroneously set down for arbitration; that no certificate of outcome was issued;

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[1] See Newcastle Local Municipality v SAMWU and Others (D448/2014) [2014] ZALCD 36 (12 August 2014) at para [20], where it was held that;

> *"The central question in the current matter is whether the proposed strike by the first respondent and its members would be protected or unprotected. If the strike is found to be unprotected, then it would follow that the applicant would have no alternative remedy other than the granting of an interdict. In addition, to allow an unprotected strike to occur would certainly cause the applicant harm. The consequence therefore is that once the strike is found to be unprotected in casu, the requirements for the granting of a final order will be satisfied. However, and if the proposed strike is found to be protected, then the applicant will fail to show the existence of a clear right and the interim order would have to be discharged."*

[2] (1999) 20 ILJ 329 (LC) at 395 para B

and that a matter of mutual interest could not be arbitrated and therefore the Council lacked jurisdiction to arbitrate the matter.

[13] The respondents' position is that it was not correct that a certificate of outcome had not been issued, as the Conciliating Commissioner in her ruling had also indicated that a certificate of outcome was issued. It was submitted that the fact that the conciliating commissioner chose to defer the issue of the jurisdiction of the MEIBC to arbitration was irrelevant, and that to the extent that the issue referred to conciliation pertained to a matter of mutual interest, the respondents acted within their rights in embarking on the strike action.

[14] The right to strike is entrenched in section 23(2)(c) of our Constitution. There can be no doubt in this case that the conduct of the Employees on 7 April 2016 constituted a 'strike' as defined in section 213 of the LRA[3]. The provisions of section 64(1) of the LRA[4] are peremptory and regulates the circumstances under which a protected industrial action may take place.

[15] Within the context of alleged unfair dismissal disputes, it has always been held in this Court and by the Labour Appeal Court that the right to refer disputes for arbitration simply accrues upon a mere referral of that dispute for conciliation; or the expiry of a period of 30 days from when the dispute was referred to the CCMA or bargaining council and such dispute still remains unresolved, or that it is of no consequence whether a certificate of failure to settle has been issued or not[5]. The logic in this approach is that to the extent that in all cases of

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[3] ***"strike"*** *means the partial or complete concerted refusal to work, or the retardation of obstruction of work, by persons who are of have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to —work in this definition includes overtime work, whether it is voluntary or compulsory;*

[4] Which provides that:

"(1) Every employee has the right to strike and every employer has recourse to lock-out if—

(a) the issue in dispute has been referred to a council or to the Commission as required by this Act, and—

(i) a certificate stating that the dispute remains unresolved has been issued; or

(ii) a period of 30 days, or any extension of that period agreed to between the parties to the dispute, has elapsed since the referral was received by the council or the Commission."

(b) in the case of a proposed strike, at least 48 hours' notice of the commencement of the strike, in writing, has been given to the employer, unless-

(i) the issue in dispute relates to a collective agreement to be concluded in a council, in which case, notice must have been given to that council; or

(ii) the employer is a member of an employers' organisation that is a party to the dispute, in which case, notice must have been given to that employers' organisation; or…"

[5] See also Swissport (SA) (Pty) Ltd v SA Transport and Allied Workers Union and Others (2011) 32 ILJ 1256 (LC) at para 13; and also South African Municipal Workers Union obo Manentza v Ngwathe Local Municipality and Others (2015) 36 ILJ 2581 (LAC) at para [39] where the LAC held that;

'Thus, unlike under s136 of the LRA, the issue of a certificate of non-resolution does not found the right of referral to arbitration or adjudication under s191(5) of the LRA, as the subsection confers this right upon the lapsing of the 30- day period contemplated in the subsection regardless of whether conciliation actually takes place or a certificate of non-

an alleged unfair dismissal it is the employee that refers a dispute, it would not make sense to insist on an actual conciliation of the dispute, as the employer party may show little or no interest in that process. Waiting for a non-willing party to come to the conciliation process would not in any manner assist in the expeditious resolution of disputes.

[16] Within the context of mutual interest disputes, it was similarly held in *City of Johannesburg Metropolitan Municipality and Another v SAMWU and Others (Johannesburg Metropolitan Municipality*[6] that;

> *'[I]t is not necessary under the LRA for a conciliation hearing actually to take place before a strike can be protected. In terms of section 64(1)(a) of the LRA, it is sufficient if 30 days have lapsed since the referral of the dispute. In other words, the commissioner's ruling affected only the convening of the conciliation process; it says no more than that the bargaining council did not have the jurisdiction to conciliate the dispute. Since a conciliation meeting is not a precondition for a strike to be protected (because it is sufficient that 30 days have elapsed after the date of referral), the commissioner's ruling is not a relevant factor.'*

[17] It is doubted that the above approach is still sound in the light of the decision of the Constitutional Court in *Transport and Allied Workers Union of South Africa v PUTCO Limited,*[7] were that Court had occasion to clarify the provisions of section 64 (1) of the LRA in the following terms;

> *"The dictates of section 64(1)(a) are clear. No industrial action can be undertaken until there has been an attempt at conciliation. This provision also makes pertinent that an "issue in dispute" arises prior to a matter being referred for conciliation. Only once a dispute has arisen can it be referred to a bargaining council for conciliation. Moreover, industrial action can only be taken in the event that an attempt at conciliation fails, either because a certificate by the bargaining council states that the issue in dispute remains unresolved, or because a period of 30 days, or any extension of that period agreed to between the parties to the dispute, has elapsed since the referral was received by the bargaining council. Referral to conciliation is not merely a perfunctory procedural step that has to be complied with in order to obtain a licence to lock out or to embark on a strike. The object of section 64(1)(a) is to bring together the parties at the negotiations, and encourage them to seek solutions to issues of mutual concern, thereby reinforcing a collective bargaining culture".*

And,

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resolution is issued by the CCMA or the bargaining council concerned. It follows that neither the holding of an actual conciliation nor the issue of a certificate of non-resolution by the CCMA or the bargaining council concerned, is a prerequisite for purposes of referring an unfair dismissal or unfair labour practice dispute to arbitration or adjudication in terms of s191(5)(a) and (b) of the LRA, where there has been a lapse of 30 days from the date on which the CCMA or bargaining council received the referral and the dispute remains unresolved.'

[6] [2011] 7 BLLR 663 LC at para [15]

[7] (2016) 37 ILJ 1091 (CC) at para [45] and [46]

> *"This Court has previously recognised that the right to "collective bargaining between the employer and . . . [employees] is key to a fair industrial relations environment". The LRA is concerned with the power imbalance between the employer and employees. It sanctions the use of power by employers and employees, but only as a last resort, and only after the issue in dispute between the parties has been referred for conciliation. Collective bargaining therefore implies that each employer-party and employee-party has the right to exercise economic power against the other once the issue in dispute has been referred for conciliation, and only if that process fails in one of the manners described above."* (Authorities omitted)

[18] As I understand the above principle, it is not sufficient, especially within the context of mutual interest disputes, to simply refer such disputes, demand a certificate of outcome at conciliation, or wait for the thirty days to expire after the referral. A premium is placed on the conciliation process or at least an attempt at conciliating the dispute between the parties, with a view of encouraging them through the assistance of a conciliator to find a solution to their dispute. This interpretation of the provisions of section 64 (1) of the LRA is also in line with the primary objects and overall purpose the LRA[8].

[19] Thus to the extent that the provisions of section 64 (1) (a) of the LRA do not specifically state that conciliation or an attempt at conciliation *must* be made before parties embark on industrial action, or before a certificate of outcome can be issued, those provisions ought to be interpreted in accordance with those of section 3 (a) of the LRA[9]. Effectively then, the conciliation process within the context of mutual interest disputes should not be seen as a mere obligatory charade and a licence to industrial action. The CCMA or Bargaining Councils were not meant to be mere vending machines expected to dispense of certificates

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[8] Section 1, which reads:

"The purpose of this Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act which are—

(a) to give effect to and regulate the fundamental rights conferred by section 27 of the Constitution;

(b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation;

(c) to provide a framework within which employees and their trade unions, employers and employers' organisations can—

(i) collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest; and

(ii) formulate industrial policy; and

(d) to promote—

(i) orderly collective bargaining;

(ii) collective bargaining at sectoral level;

(iii) employee participation in decision-making in the workplace; and

(iv) the effective resolution of labour disputes."

[9] Which provides:

"**Interpretation of this Act**

Any person applying this Act must interpret its provisions-

(a) To give effect to its primary objects

(b) ……

(c) ……."

of outcome on demand. The parties prior to embarking on any form of industrial action, must have through the assistance of conciliators/mediators, embarked on a genuine process of conciliation, or at the very least, made some concerted effort in that regard[10]. To the extent that the other party to the dispute may show scant regard to that process by either frustrating it or refusing to participate in it at all, the provisions of section 64 (1) (a) (ii) would then take effect.

[20] In this case, it is accepted that a dispute was referred to the MEIBC for conciliation. At the conciliation stage, no attempt was made to conciliate the dispute, and part of the reason was that the employer (Applicant in this application) had raised a preliminary point. The Conciliator in reliance on *EOH Abantu (Pty) Ltd v CCMA & others*[11] had declined to determine the jurisdictional issue, but had nevertheless continued to 'issue a certificate of outcome', even though a physical certificate of outcome within the meaning of section 135 (5) of the LRA was not issued. The Conciliator also in the ruling afforded the respondents to refer the determination of the jurisdictional point for arbitration. It did not assist the parties either that the Arbitrator seized of the matter had washed his hands off it by declining to deal with it on the grounds that the MEIBC did not have jurisdiction to arbitrate it as it pertained to matters of mutual interests. What can however be accepted is that indeed the dispute was referred for conciliation as required under section 64 (1) (a) of the LRA.

[21] The issuing of a certificate of outcome is an administrative action performed in terms of section 135 (5) of the LRA[12]. In this case however, and as already stated, there is nothing to suggest that a certificate of outcome was physically issued within the meaning of section 135 of the LRA. As to whether this omission makes the strike unprotected is rebutted by the principle that a certificate of outcome is merely a document that evinces that a dispute was referred for conciliation and could not be resolved[13]. As I understand the principle, the issuing of the certificate does not confer a right to strike beyond the observance of other requirements within the meaning of section 64 (1) of the LRA. Thus the right to strike accrues to the employees upon attempts at conciliation in line with the Constitutional Court

[10] See also City of Johannesburg Metropolitan Municipality v SAMWU J2236/07.

[11] [2010] 2 BLLR 172 (LC)

[12] Which provides that;

'When conciliation has failed, or at the end of the 30-day period or any further period agreed between the parties−

(a) the commissioner must issue a certificate stating whether or not the dispute has been resolved;

(b) the Commission must serve a copy of that certificate on each party to the dispute or the person who represented a party in the conciliation proceedings; and

(c) the commissioner must file the original of that certificate with the Commission.'

[13] See Bombardier Transportation (Pty) Ltd v Mtiya N.O and Others [2010] 8 BLLR 840 (LC); NUMSA v Driveline Technologies (Pty) Ltd & another [2000] 1 BLLR 29 (LAC), and Seeff Residential Properties v Mbhele NO & others [2006] 27 ILJ 1940 (LC)

principles set out above, and/or the lapse of the 30-day period contemplated in section 64(1) (a) (ii) of the LRA[14].

[22] A further ground upon which it was contended that the strike was unprotected was that no strike notice was served on it by the respondents as contemplated in section 64 (1) (b) of the LRA. The respondents raised an objection in regards to this ground being relied upon as it was raised for the first time in an affidavit filed on 23 May 2016, some two days prior to the hearing of this matter. It was submitted that the decision to defend the matter was informed by the grounds on which it was initially contended that the strike was unprotected, and that two days prior to the hearing, the respondents were unaware that there were further grounds to be relied upon as to the reason the strike was unprotected.

[23] A further submission made on behalf of the respondents was to the effect that, the additional grounds or new issues relied upon in the replying affidavit should be struck off, and to the extent that the court may be inclined to consider the new grounds raised in the reply, it was submitted that the Applicant ought to be penalised with a cost order taking into account how it had conducted itself in the matter.

[24] It is trite as correctly pointed out on behalf of the respondents, that an applicant is required to make out its case in a founding affidavit, and cannot raise new matters in its replying affidavit[15]. It was nevertheless acknowledged on behalf of the respondents that this rule is not inflexible[16], and the court may exercise its discretion as to whether to allow the new material or not. To the extent that the issue of strike notice is an issue of law within the requirements of section 64 (1) (b) of the LRA, and further to the extent that the respondents insist that their strike action was protected, it would be remiss of the Court not to exercise its discretion accordingly, and to consider whether in fact a proper strike notice was issued

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[14] See Gillet Exhaust Technology (Pty) Ltd t/a Tennaco v NUMSA on behalf of Members and Another (2010) 31 ILJ 2552 (LAC) at para [17], where it was held that;

> *'Finally, while the appellant is entitled to an order declaring that the respondent's members are not entitled to embark upon a strike in respect of their demand for 'transport subsidy/allowance', the appellant's prayer for the setting aside of the certificate of non-resolution of the dispute is misconceived. I say this because whether the certificate of non-resolution is valid or not, in this case this did not affect the legality of the strike the employees may have been planning to embark upon. This is so because in terms of s 64(1)(a)(i) and (ii) of the Act a strike will be a protected strike even if there is no certificate of non-resolution of the dispute provided that a period of 30 days from the date of the referral of the dispute to conciliation has lapsed and all the other requirements of s 64 of the Act have been complied with.'*

[15] In reference to Betlane v Shelly Court CC (2011) (1) SA 388 (CC). See also Rule 7 (5) (b) of the Rules of this Court which provide that:

> "The replying affidavit must address only those issues raised in the answering affidavit and may not introduce new issues of fact or of law".

[16] See Shephard v Tuckers Land and Development Corporation (Pty) Ltd 1978 (1) SA 173(W) at 177, where it was held that;

> *"This is not however an absolute rule. It is not the law of the Medes and Persians. The court has a discretion to allow new matter to remain in a replying affidavit, giving the respondent the opportunity to deal with it in a second set of answering affidavits."*

or not[17]. Whether a strike is protected or not cannot be determined on one or other aspect of the provisions of section 64 (1) of the LRA. These provisions are a complete package and should be considered as such.

[25] It has been held that the strike notice should be sufficiently clear to articulate the union's demands and to place the employer in a position where it can take an informed decision to resist or accede to those demands. A strike notice serves an important purpose in that it is aimed at warning the employer about the impending strike so that an employer may decide to prevent the strike and to take other steps to protect the business when the strike starts. A notice that does not indicate when exactly, or on which day the strike would commence, or what the demands are is clearly defective[18].

[26] In this case, an e-mail, which purports to be a strike notice was sent to the Applicant's Gustav Bothma and Bianca Garcia on 6 April 2016. The e-mail reads as follows[19];

> *'To whom it may concern*
>
> *You are here-by advise to come and receive and sign the demands document at 09h00, Betafence reception area.* (Sic)
>
> *It is clear that after all legal processes is been exhausted you as the employer including council's are failing us as workers. We are tired of working for profit only. We want to be put first before profits etc.* (Sic)
>
> *With all do of respect we commit ourselves to peace and harmony. And you are advised to meet our demands by receiving it for us to negotiate at the plant level.* (Sic)
>
> *We trust that you will comply and avoid unnecessary delays and tactic*. (Sic)
>
> *Respectfully yours*
>
> *Shop stewards abo Members"* (Sic)

[27] The above e-mail cannot by any stretch of imagination be construed as a proper strike notice. It does not indicate what the demands of the employees are, nor does it indicate

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[17] See CUSA v Tao Ying Metal Industries and Others 2009 (2) SA 204 (CC); 2009 (1) BCLR 1(CC) at para [68], where it was held that;

> *"Where a point of law is apparent on the papers, but the common approach of the parties proceeds on a wrong perception of what the law is, a court is not only entitled, but is in fact also obliged, mero motu, to raise the point of law and require the parties to deal therewith. Otherwise, the result would be a decision premised on an incorrect application of the law. That would infringe the principle of legality. Accordingly, the Supreme Court of Appeal was entitled mero motu to raise the issue of the Commissioner's jurisdiction and to require argument thereon."*

[18] See Ceramic Industries Ltd t/a Better Sanitary Ware v National Construction Building and Allied Workers Union (1997) 18 ILJ 671 (LAC); SA Airways (Pty) Ltd v SATAWU [2010] 3 BLLR 321 (LC) at paragraphs [26] to [27]; and Metsimaholo Local Municipality v South African Municipal Workers Union (JA123/2014) ZALAC [2016].

[19] Annexure 'GJB10' – Consolidated Index

when the strike is to commence[20]. Furthermore, the fact that the e-mail was sent to the recipients on 6 April 2016 at 10h16 when the strike action commenced at 07h00 the following morning can hardly be construed as being in compliance with the required 48 hours' notice. It therefore follows that it cannot be said in this case that the e-mail in question constitutes a 'strike notice', nor can it be said that it was properly served on the Applicant for the purposes of compliance with section 64 (1) (b) of the LRA. Accordingly, on this ground alone, the strike in question was not protected. To however dispose of the matter on this basis alone will not assist in ending the dispute between the parties, and to this end, I propose to deal with other grounds raised on behalf of the Applicant.

Is the strike action unprotected by virtue of the provisions of section 65 (3) (a) (i) of the LRA[21]?

[28] The provisions of section 65 (3) (a) (i) of the LRA as Davies JA pointed out in *Vodacom (Pty) Ltd v CWU*[22] sets out limitations on the right to strike or recourse to lockout which have to be read together with those of section 64. Thus, it is of no consequence that there has been compliance with the provisions of section 64, as the right to strike, such that if it reaches one of the limitations in terms of section 65, becomes unprotected, notwithstanding compliance with procedures under section 64[23].

[29] It was correctly pointed out on behalf of the respondents that an issue is regulated by means of a substantive rule or if a process for resolving the issue has been created[24]. In this case, the Main Agreement determines wages and conditions of employment for

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[20] See South African Transport and Allied Workers Union (SATAWU) and others v Moloto NO and another [2012]12 BLLR 1193 (CC) at para [91]

[21] Which provides;

> 65. **Limitations on right to strike or recourse to lock-out**
>
> "(3) Subject to a collective agreement, no person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or lock-out-
>
> (a) if that person is bound by-
>
> (i) any arbitration award or collective agreement that regulates the issue in dispute; or…"

[22] [2010] 8 BLLR 836 (LAC)

[23] At para [10]

[24] In reference to Fidelity Guards v PTWU [1997] 11 BLLR 1425 (LC) at 1433. See also Komatsu Southern Africa (Pty) Ltd v National Union of Metal Workers of South Africa and Others (J 1437/2013) [2013] ZALCJHB 298 (17 September 2013) at para [35] where it was held that;

> *"The judgment in Fidelity Guards was approved of in Air Chefs (Pty) Ltd v SA Transport and Allied Workers Union and Others where the Court said: 'In summary, the learned judge concluded that an issue is regulated if it is contained in a substantive rule, or if the process for dealing with the issue is set out in the regulating agreement. In this case, the parties did agree on a process regulated by a procedure.' A further reference is made to the judgment in ADT Security (Pty) Ltd v SA Transport and Allied Workers Union and Another where it was held also with specific reference to Section 65(3)(a) that 'the prohibition against a strike action where there is a binding collective agreement is not limited to substantive issue/s in dispute but includes the procedure laid out in the collective agreement."*

employees in the industry for the duration of the three-year period, and prescribes that all collective bargaining on wages and conditions of employment for employees in the industry shall only be conducted at centralised level under the auspices of the MEIBC. This approach is captured in clause 37 of the Main Agreement which provides that;

> *'(1) Subject to sub clause (2) –*
>
> *(a) the Bargaining Council shall be the sole forum for negotiating matters contained in the Main Agreement.*
> *(b) During the currency of the Agreement, no matter contained in the agreement may be an issue in dispute for the purpose of a strike or lock-out or any conduct in contemplation of a strike or lock-out.*
> *(c) Any provision in a collective agreement binding on an employer and employees covered by the Council, other than a collective agreement concluded by the Council, that requires an employer or a trade union to bargain collectively in respect of any matter contained in the Main Agreement, is of no force and effect.'*

[30] In addition to the provisions of the Main Agreement, the *'Metal Industry Settlement Agreement: 1 July 2014 to 30 June 2017'*, deals with other issues including Labour Brokers, maternity leave benefits, small businesses, exemptions, demarcations, non-payment of retirement contributions, injury on duty and disability etc. Some of those issues are referred to the MANCO or the STANCO for further consideration or submission of reports.

[31] The issue in this case is whether the collective agreements preclude the respondents from having their demands negotiated at plant level, it being the Applicant's case that those demands are regulated in that there is a substantive rule dealing with each demand as contained in those agreements, or that some or all of the issues had been referred to some other forum for resolution. The Applicant's further contentions were that it engaged in centralised bargaining with the respondents and this was done through negotiations which are held every three years. To that end, it did not engage in plant level bargaining over any of those issues which are subject of bargaining at central level under the auspices of the MEIBC. It was further contended that in the light of the clauses 19[25] and 20[26] of the

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[25] Which provides
'Section 37:
The Parties agree that subject to the full and final settlement clause hereunder, section 37 remains unchanged'

[26] Which provides;
'Full and Final Settlement:

The 1 July 2014 to 30 June 2017 MEIBC settlement agreement amends existing terms and conditions of employment, of all employees covered by the main agreement, and is in full and final settlement of wages and conditions of employment for the period of the agreement.

Conditions of employment that are not amended by this agreement shall continue to apply.

Settlement Agreement read together with section 37 of the Main Agreement, plant level bargaining in the industry was outlawed, and thus the strike action by the respondents was unprotected.

[32] To the extent that clause 37 of the Main Agreement is relied on by the Applicant, it can be accepted that it in effect, establishes the MEIBC as 'the sole forum for negotiating matters *contained in the Main Agreement'*[27]. In *Vanachem Vanadium*, Van Niekerk J further held that;

> *"La grange J in CBI Electrical African Cables (Pty) Ltd v NUMSA & others (J336/14) recently held that the exclusivity of central bargaining reflected in clause 37 (1) extends only to those matters contained in the main agreement; it is not a general prohibition against collective bargaining at that level, nor is it a bar to union demands to negotiate matters not contained in the main agreement at plant level. What matters is whether the demand in question is sufficiently closely related to an issue regulated by the main agreement to preclude plant level bargaining over it. In other words, the main agreement does not provide that the bargaining council is a single forum for bargaining all matters affecting terms and conditions of employment – the exclusivity of bargaining at central level is specifically limited to those matters "contained in the main agreement".* [28]

[33] The issue in this case is whether the respondents' demands are matters that are contained in the main agreement, and if not, whether these demands are sufficiently closely related to the issues regulated by the main agreement to prohibit plant level bargaining over them. That issue has to be determined within the understanding that Employees may embark upon strike action over a demand made at plant level, where a collective agreement in place has not expressly prohibited strike action in relation to that particular demand. This approach to the interpretation of section 37 cannot in my view be deemed to be intrusive of the right to strike, nor can it be said to grant employees more bargaining rights outside the scope, and contrary to spirit and purport of collective agreements which are inherently binding.

It is agreed that the above provision will not affect existing company-level agreements. Furthermore, in the case of existing company-level agreements, only party trade unions registered with the bargaining council will be entitled to engage with employers at company level.

Furthermore, it is agreed that the future of industry collective bargaining and the effectiveness of Section 37, as set out in ***Annexure E,*** *will during the currency of this agreement be discussed in the Industry Policy Forum'*

[27] Vanachem Vanadium Products (Pty) Ltd v National Union of Metalworkers of SA and Others (2014) 35 ILJ 3241 (LC)

[28] At para [3]

Housing allowance:

[34] The respondents' demand is for a compulsory R2000.00 per month housing allowance. The Applicant relies on clause 15 of the Settlement Agreement for the contention that the issue is accordingly regulated. Clause 15 provides that;

> *'Housing*
>
> *It is agreed that the matter of housing will be referred to the Bargaining Council Management Committee (MANCO).*
>
> *The MANCO will appoint a sub-committee to engage with MIBFA to consider a possible amendment to the rules of the Fund to permit employees access funds against their savings in order to qualify for a housing bond. It is noted that currently this facility is limited to the borrowing of funds for renovation, alteration and/or extension of existing homes'*

[35] Arguments advanced on behalf of the respondents are to the effect that the above clause does not set a substantive rule in respect of housing allowance, and that the clause was silent on the issue. It was further submitted that the issue entailed a cost to the employer, and that it was a separate and distinct one from the one that clause 15 dealt with, which was that of considering allowing employees to access their own funds in the custody of MIBFA. To this end, it was submitted that the allowance that the employees demanded was a benefit which would be a cost to the employer, and that the Main Agreement, to the extent that its section 37 was relied upon, only dealt with allowances pertaining to 'subsistence', 'abnormally dirty work', 'height 'and 'acting allowances'.

[36] 'Housing' and 'Housing Allowance' cannot for the purposes of clause 15 be construed as one and the same thing. As correctly pointed out on behalf of the respondents, clause 15 merely refers the issue of 'housing' to the MANCO, which in turn would appoint a sub-committee to engage with MIBFA for the purposes of considering a possible amendment to the rules of the fund to permit employees to access those funds against their saving. The issues to be referred to MANCO as per clause 15 merely pertains to engagements with MIBFA with the possibility of amending its fund rules to permit employees to access funds against their savings, and to the extent that the engagements may bear fruit, there would be no additional costs to the Applicant over and above what it had already paid towards those funds.

[37] 'Housing allowance' on the other hand is a separate issue which has separate costs implications for the Applicant. The issue of 'housing' and 'housing allowance' might be related. However, to the extent that there is nothing in the Main or Settlement Agreements

that expressly makes reference to 'housing allowance', it cannot be said that the two are closely or sufficiently related for the purposes of the demand being impermissible for negotiation at plant level[29]. If this was the case, any issue surrounding housing allowance would have been expressly provided for in clause 16 (2) of the Main Agreement (Allowances).

Funeral benefits:

[38] The respondents' demand is for R18 000.00 funeral cover for up to 12 people and platinum plan cover at a cost of R270.00 per month. The Applicant's response is that the demand for funeral benefits is covered by the Industry Fund (IPF), to which all of the individual respondents belong. The respondents conceded that MIBFA handles the benefits of employees falling under the MEIBC, and makes provision for a funeral benefit of R5000.00 for the member, which is payable to the surviving spouse.

[39] The demand is for a more superior and extended funeral cover, and the issue as correctly pointed out on behalf of the Applicant was previously dealt with by La Grange J in *CBI Electrical Cables: African Cables (Pty)Ltd*, who had held that clause 8 (4) of the Sick Pay Fund Agreement prescribed funeral benefits payable to fund members. Furthermore, the respondents did not pursue this demand with any conviction, and to the extent that it was found that the issue was indeed regulated, the demand was to be abandoned.

Medical aid:

[40] The parties are in agreement that in terms of paragraph 12 of the Settlement Agreement, the issue of medical aid was to be referred to the Industry Policy Forum, and was to be dealt with within a period of 12 months of the conclusion of negotiations. To the extent that there were existing medical aid arrangements, these were to remain in place.

[41] The respondents however contend that the negotiations were concluded in July 2014 and that the 12 months had expired. It was further submitted that even though the demand was tabled prior to the expiry of the 12 months' period, the respondents only embarked on strike action on 7 April 2016, and by virtue of the provisions of paragraph 22[30] of the Settlement Agreement, the parties had reserved their rights.

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[29] See also CBI Electric: African Cables - A Division of ATC (Pty) Ltd v NUMSA. CASE NO J 818/14 at para [7]

[30] Which provide:

> *'22. It is agreed that in relation to matters referred to various Bargaining Council Forums for further deliberation, the parties reserve their rights in relation to the Bargaining Council's Constitution and the Bargaining Council's Dispute Resolution Policy'*

[42] The negotiations were concluded on 29 July 2014, and the initial demands were made in December 2014. These were followed up with a referral to the MEIBC on 11 March 2015. It is apparent from the documents before the court that at the time of the referral, or when a certificate of outcome was ostensibly issued by the Conciliator on 20 April 2015, the 12 months' period had not expired. Thus the issue of medical aid was at the time, regulated in terms of a process that had been created to resolve it. For all intents and purposes, the referral of the issue for conciliation was clearly pre-mature as it still fell within the confines of the collective agreement. The 'certificate of outcome' at the time that it was issued, or the expiry of the 30 days also fell within the 12-month period. It therefore follows that paragraph 22 of the settlement Agreement cannot come to the assistance of the respondents, and thus they were not entitled to embark on any form of industrial action in respect of the demand surrounding medical aid.

Financial assistance:

[43] The Employees demand interest free loans. The Applicant's response was that this demand was covered in the Settlement Agreement, as statutory wage increases were guaranteed for the next two years, and further that the right to the demand was limited by the Settlement Agreement as it was a condition of employment.

[44] The respondents' view is that the wage increases have nothing to do with interest free loans, and that the fact that a meeting was held between the parties on 18 April 2016 where the Applicant had entertained this request demonstrates that the demand was not dealt with in the agreements. To this end, it was averred in the answering affidavit, that currently, loans were extended to employees at the discretion of the Applicant, and that at the meeting in question, the parties had agreed to a structured system of extending loans to all employees, and that an agreement on the issue has already been reduced to writing, but has not been signed. In a further replying affidavit, the Applicant however denied having an interest free loan scheme in place, and contended that what it has is a discretionary salary advance scheme, whereby employees can approach management to access such a scheme.

[45] Significant however with this demand is whether in line with the principles set out in *CBI Electrical African Cables (Pty) Ltd v NUMSA & others,* it is not sufficiently closely related to an issue (wage increases) regulated by the main agreement to preclude plant level bargaining over it. It is accepted that in general, the courts will look at the substance of a dispute rather than the form in which it was presented to determine whether it concerns a matter of mutual that the Employees can strike over. Equally so, the Court should look at

the substance of the demand to determine whether, to the extent that it is alleged that the issues are covered in an agreement, a strike over that demand is impermissible.

[46] For the purposes of this dispute, I am prepared to accept that the demand for financial assistance has the objective of enhancing and improving the terms and conditions of employment of the Employees, and that there are costs implications for the Applicant if the demand is acceded to. Contrary to the respondents' contentions, it is thus irrelevant whether such costs are recoverable or not. In fact, the extent that it would have been expected of the Applicant to grant interest free loans, it is apparent that the demand if acceded to, would result in financial implications for the Applicant in any event. The granting of interest free loans can however not be equated with a wage increase as the Applicant sought to suggest. A wage increase, once agreed to, entails a cost that is not recoverable for the employer, whilst an interest free loan if agreed to, is merely a facility available to employees as and when they need it, and is recoverable. In my view, even though this facility if ultimately granted will have the effect of enhancing employees' conditions of employment, it cannot be said that the demand in that regard is sufficiently closely related to a wage increase as regulated by the main agreement to preclude plant level bargaining over it.

Production bonus:

[47] Two provisions in the agreements regulate matters pertaining to productivity and bonus. The first is Annexure D (Productivity Bargaining) of the Main Agreement which cites its objectives as being;

> *'1. Subject to the provisions of clause 37 of the Main Agreement, an employer, his employees, any employee representative body and any trade union representing the affected employees may, by mutual agreement, enter into voluntary negotiations to conclude a productivity agreement with the objective of achieving measurable improvements in productivity performance and work life at company level in terms of the principles and guidelines contained in this Annexure'*

Annexure D then proceeds to set out productivity guidelines which *inter alia*, deals with a variety of issues including agreements on a number of items including bonuses. The guidelines also require that such agreements should be recorded in writing, signed by the parties, and also entail a dispute resolution procedure.

[48] The second is paragraph 15 of the Settlement Agreement which provides that;

> *'<u>Productivity and Flexibility:</u>*

De-coupling the concluding of productivity agreements from the five-grade and wage structure agreement, the introduction of flexible working time arrangements for manufacturing type operations, changing shift patterns, introduction of a swing or fourth shift and production bonuses are referred to the Main Agreement Industry Policy Forum'

[49] In the light of the above provisions, I am in agreement with the submissions made on behalf of the Applicant that the demand for production bonus is covered in the main agreement. However, by virtue of the provisions of Annexure D, the employees are entitled to raise the issue of production bonus at plant level within the guidelines provided. It does not assist the Applicant in its contention that it cannot be compelled to subject itself to a voluntary process of negotiation over these issues. If the issue of the production bonus was raised, and to the extent that the main agreement allowed such negotiations to take place at plant level, whether the Applicant voluntarily or refused to subject itself to a negotiating process is irrelevant for determining the protected nature of the strike action. It further does not assist the Applicant to rely on the provisions of section 37 of the Main Agreement in that as already pointed out, that provision does not impose a blanket ban on plant level bargaining. A prohibition is only in respect of matters or issues specifically contained in the Agreement.

[50] The provisions of paragraph 15 of the Settlement Agreement merely states that the issues mentioned therein are to be referred to IPF. No deadlines however, as with the demand surrounding medical aid, are set as to when it should be expected that these issues should be resolved at the level of the IPF. It was correctly pointed out on behalf of the respondents that to the extent that the parties' rights are reserved in regards to matters referred to various forums in accordance with paragraph 22 of the Settlement Agreement, nothing precluded them from exercising those rights in accordance with the Bargaining Council's Dispute Resolution Policy. To this end, there is no basis for a conclusion to be reached that the Employees could not legitimately raise the demand pertaining to production bonuses.

Contempt of court:

[51] The pre-requisite for making a contempt finding are well known. Thus there must have been a court order in existence; the order must have been properly served on the other parties bound by it, and; there must have been non-compliance with the order[31]. In this case, it was common cause that the Employees did not suspend the strike as per the order of Rabkin-Naicker J on 12 April 2016. It was also conceded on behalf of the Applicant that NUMSA made attempts to have the Employees comply with the court order but to no avail. It was submitted in mitigation on behalf of the Employees that they had reacted in the manner they

[31] Fakie NO v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA)

did out of frustration in view of the disputes having been on-going since December 2014 and with no resolution in sight.

[52] In *Pheko and Others v Ekurhuleni Metropolitan Municipality*[32] Nkabinde J held that;

> *The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it. As the Constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts. It follows from this that disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced"*[33]*.*

Similarly, it was held in *North West Star (Pty)LTD (Under Judicial Management) v Serobatse and another*[34] that;

> *"The correct principle is that, if a court has issued an order against you and you are unhappy with it, you must take that decision to a court higher than the one that issued such order and which has competent appellate or review jurisdiction and seek to have such order set aside. If there is no such court, for example, where there is no appeal or review available against that court or against such order or if the court which issued the order is the court of final jurisdiction in such matters or is the highest court in the land, then you have no choice but must simply comply with the order. A person cannot say: "**I don't like this court order; it is wrong; therefore I will not comply with it."** If we want to deepen our democracy, promote the rule of law, discourage self-help and encourage those who have disputes to take them to the courts of the land and not to seek to resolve them through physical fights or violence, the whole society must frown upon anyone who disobeys an order of court or who, either by word or deed, encourages or incites another or others to disobey an order of Court".*

[53] This Court is approached on a daily basis by both unions and employers on a variety of issues including strike interdicts and dismissals emanating from those strikes. Where strike interdicts are issued and employees find themselves dismissed as a result of participation in those strikes or other conduct related thereto, they are quick to exercise their rights and approach this very Court, sometimes on an urgent basis, to seek their reinstatement and/or other relief. When court orders are issued in their favour, employees would insist, and correctly so, that employers should abide by and comply with those orders. It therefore follows that it would be untenable for this Court to countenance instances where litigants

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[32] 2015 (6) BCLR 711 (CC)
[33] At para [1]
[34] (2005) 26 ILJ 56 (LAC) at para [18]

pick and choose which of its orders should be obeyed, and which should be disregarded with impunity.

[54] An observation that needs to be made in this Court is that employees, especially in the face of strike interdicts, routinely disregard the orders of this court for no reason other than that they simply do not like them[35]. This contemptuous approach towards orders of this court is in some or most instances, aggravated and/or encouraged by Unions, their officials and/or shop stewards. In some instances, as in this case, employees refuse to even heed the advice of their union representatives and leaders. In the latter instance, and where unions even confirm in papers before the court that the employees had indeed refused to heed court orders, the invariable conclusion to be reached is that the non-compliance by the employees was indeed both wilful and *mala fide*.

[55] The contention that the Employees' conduct was as a result of being frustrated by the conduct of the Applicant in not finding a resolution to the on-going dispute cannot for all intents and purposes be sustained. No amount of frustration with the employer's alleged conduct can mitigate this level of contempt towards court orders. This level of contempt has reached a point where if unchecked, the rule of law will become meaningless. In the end, anarchy and mayhem, which normally characterises most industrial actions we have witnessed, will become the new normal. This cannot bode well for our constitutional democracy, and only a stern approach by the courts can stop this slippery slope.

[56] It is even more untenable for this court's orders to be disregarded in circumstances where they were issued and obtained by agreement. To the extent that the Employees despite having consented to the order flagrantly disobeyed it, the inference to be drawn is that not only was the Court misled into believing that the Employees would indeed abide by its order, but also, its process was abused. The court must thus also show its displeasure in this regard.

[57] A further issue to be addressed pertains to the conduct of the Employees during the strike. In terms of paragraph 3 of the Rabkin-Naicker J's order of 15 April 2016, the Employees were interdicted from engaging in any unlawful or violent action in contempt of the order dated 12 April 2016. In instances of violent and unlawful conduct normally associated with strikes, one cannot help but be sceptical when unions and/or employees on the other hand contend that their strike action was 'peaceful', 'orderly', 'disciplined', and that the union officials, stewards and marshals were in complete control.

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[35] Pikitup Johannesburg (Pty) Ltd v SAMWU (J2362/15) [2016] ZALCJHB 149 (19 April 2016)

[58] In this case, despite a criminal case having been opened with the SAPS with regards to violence that occurred during the strike, the Employees in their supplementary affidavit denied having engaged in any violent or unlawful conduct. In this regard, the Employees contended that the alleged acts of violence occurred outside of the Applicant's premises and before they had assembled at those premises.

[59] I do not intent to deal with this issue in sufficient detail for the simple reason that there is no evidence to suggest that there had been renewed allegations of violent conduct since the strike was suspended on 19 April 2016. Thus there is no reasonable apprehension that the unlawful conduct alleged by the Employees would continue. It is further correct from the pleadings that no attempt was made by the Applicant to identify the alleged perpetrators of violence. The fact that the strike has since been suspended makes any final order in respect of that aspect of the order moot, and the court is disinclined to confirm interim orders that have become academic[36].

Conclusions:

[60] I am satisfied in this case that the Applicant has established the requirements for the final relief it seeks. Some and not all of the demands raised by the Employees are covered by the collective agreements. Confronted with a similar dispute, the Labour Appeal Court in *Unitrans Fuel & Chemical (Pty) Ltd v TAWUSA*[37] held that the fact that the union could not strike over one issue governed by a collective agreement, did not prevent them from striking over another discrete issue. In this case however, even if any one of the demands contained a discrete issue, the strike action embarked upon by the Employees remains unprotected by virtue of non-compliance with the provisions of section 64 (1) (b) of the LRA. Inasmuch as it is of no consequence that there has been compliance with the provisions of section 64, the right to strike becomes limited by virtue of the provisions of section 65. Equally so, a strike over issues which employees are entitled to demand becomes unprotected when there is non-compliance with the provisions of section 64 of the LRA.

[61] Further to the extent that it was not contested that the Employees were indeed in contempt of the order of this Court issued on 12 April 2016, and further to the extent that they had only pleaded leniency, it follows that the *rule nisi* in this regard ought to be confirmed. In the light of the conclusions reached in regards to the level of contempt displayed by the Employees towards the court order of 12 April 2016, including the fact that they even went

[36] See Potgietersrust Platinum Ltd v Ditsela and Others Case No JA66/12
[37] [2011] 2 BLLR 153 (LAC)

to the extent of refusing to listen to their own leaders, it is my view that an appropriate and heavy penalty should be imposed on them.

[62] In regards to the issue of costs, the provisions of section 162 of the LRA empowers the court to make such an order upon a consideration of the requirements of law and fairness. It has always been said that a cost order should not follow in circumstances where the parties are engaged in a collective bargaining relationship, and where an order for costs has the potential to prejudice that relationship[38]. It is however my view that there are limits to this principle. This is even moreso in circumstances where employees in the face of a court order obtained by consent, wilfully and with *mala fide*s, disobey that order. To the extent that the Applicant was compelled to approach the court again some two days after the original consent order was obtained, the inference to be drawn is that the employees other than being in contempt of that order, paid scant regard to any meaningful relationship they had with the Applicant. Worst still, notwithstanding such a relationship between the parties, it would be remiss of this court not to show its displeasure if its orders are ignored with impunity.

[63] The Applicant however as a member of SEIFSA was represented by an official of that Association in these proceedings. Inasmuch as a cost order would have been appropriate given the circumstances of this case, it is trite that costs in court proceedings, entail legal costs in the strict sense. SEIFSA therefore is not entitled to costs in these proceedings.

Order:

i. The *rule nisi* issued on 15 April 2016 by Rabkin-Naicker J is confirmed only to the extent as specified hereunder;
   (a) The Second to Further Respondents are in contempt of the order of this court dated 12 April 2016.
   (b) The Second to Further Respondents are interdicted and restrained from embarking on any strike action in contempt of the order of this Court dated 12 April 2016
ii. To the extent that the Second to Further Respondents have been found to be in contempt of court for failing to suspend their strike action as per the Court order of 12 April 2016, they are collectively ordered to pay a fine in the amount of R1 000 000.00 (One Million Rands only).

[38] National Union of Mineworkers v East Rand Gold and Uranium Ltd 992 (1) SA 700 (AD)

iii. The order in (ii) above is suspended for a period of 24 months provided the Second to Further Respondents are not found guilty of contempt of any order of this Court.

iv. There is no order as to costs

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Tlhotlhalemaje, J

Judge of the Labour Court of South Africa

APPEARANCES:

On behalf of the Applicant: Mr. Menzi Vilakazi of SEIFSA

On behalf of the Respondents: Ms T Ralehoko of Cheadle Thompson & Haysom Inc