THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

NOT REPORTABLE

Case no: C650/16

In the matter between:

In re: Costs:

Y & L Fishing Enterprises (PTY) LTD	**Applicant**
and	
GENERAL INDUSTRIES WORKERS' UNION OF SOUTH AFRICA (GIWUSA)	First Respondent
MICHAEL HELU	Second Respondent
ELLIOT MKWELA	Third Respondent
A FANAPHI	Fourth Respondent
DUNISWA VUNGUVUNGU	Fifth Respondent
EDWIN KAMBADZA	Sixth Respondent
LWADISILE GCINISISU	Seventh Respondent
THOBELANI MKUNJANA	Eighth Respondent
MAWANDE NOHESI	Ninth Respondent

CHUMISA MBOVANE	Tenth Respondent
SITHEMBILE NKUMENI	Eleventh Respondent
BABALWA BALFOUR	Twelfth Respondent
SIYA MAZOLWANA	Thirteenth Respondent
M. NYELESHE	Fourteenth Respondent
N. QWELE	Fifteenth Respondent
T. NYIKILA	Sixteenth Respondent

Heard: 4 November 2016

Delivered: 3 February 2017

Summary:

JUDGMENT

RABKIN-NAICKER J

[1] On the 4 November I confirmed a *rule nisi* issued by Steenkamp J on 28 September 2016 interdicting unlawful action by the respondents in pursuance of a protected strike. I reserved judgment regarding the costs of the interdictory relief as well as judgment on the return day of a contempt application in this matter brought by the applicant on the 7 October 2016.

Interdictory Relief

[2] In as far as the costs sought for the urgent application in respect of the interdict. It was submitted by Counsel for the applicant that given that the union did not oppose the interdictory relief sought by the applicant, it should pay the costs.

[3] It is useful to remind ourselves of the principles which still govern costs orders in this court which were set out in National Union of Mineworkers v East Rand Gold and Uranium Co Ltd [1] per Goldstone JA :

> "1. The provision that 'the requirements of the law and fairness' are 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.
>
> 2. 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.
>
> 3. Proceedings in the industrial court may not infrequently be a part of the conciliation process. That is a role which is designedly given to it. Parties, and particularly individual employees, should not be discouraged from approaching the industrial court in such circumstances. Orders for costs may have such a result and consideration should be given to avoiding it, especially where there is a genuine dispute and the approach to the court was not unreasonable. With regard to unfair labour practices, the following passage from the judgment in the Chamber of Mines case supra at 77G-I commends itself to me:
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> 'In this regard public policy demands that the industrial court takes into account considerations such as the fact that justice may be denied to parties (especially individual applicant employees) who cannot afford to run the risk of having to pay the other side's costs. The industrial court should be easily accessible to litigants who suffer the effects of unfair labour practices, after all, every man or woman has the right to bring his or her complaints or alleged wrongs before the court and should not be penalised unnecessarily even if the litigant is misguided in bringing his or her application for relief, provided the litigant is bona fide. . . .'
>
> 4. Frequently the parties before the industrial court will have an ongoing relationship that will survive after the dispute has been resolved by the court. A costs 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.
>
> 5. The conduct of the respective parties is obviously relevant, especially when considerations of fairness are concerned.
>
> The aforegoing considerations are in no way intended to be a numerus clausus. A very wide discretion is given by the Act to the three courts with regard to the exercise of their powers and no less in respect of orders for costs. Such a discretion must be exercised with proper regard to all of the facts and circumstances of each case."

[1] 1992 (1) SA 700 (A) at p.739

[4] In this matter I take cognisance of the on-going relationship between the parties. Further the interdictory application was unopposed, and I do not intend to order costs in this matter.

The Contempt of Court Application

[5] The order granted by Steenkamp J on the 28 September 2016 interdicted the following as follows:

> 2.1.1 Assaulting, intimidating, or threatening the Applicant's employees, or destroying or damaging, or threatening to do so, any property belonging to the employees or the Applicant.
>
> 2.1.2 Barricading in any manner whatsoever the entry and exit to the Applicant's premises, or in any other manner preventing vehicles from entering and exiting the premises.
>
> 2.1.3 Encouraging or coercing any of the Applicant's employees, or the First Respondent's members, in participating in any form of unlawful action as set out in paragraphs 2.1.1 to 2.1.2 above."

[6] The applicant avers that the Order was served by the Applicant's attorney by fax on the First Respondent, the union, and was served on the striking employees in terms of paragraph 6 of the Order by the Sheriff on 28 September 2016, including on 10 copies on the employees who were at the main gate at the time of service. The deponent to the founding affidavit states that "To the best of my knowledge and belief these included all the striking employees cited as Respondents hereto."

[7] The respondents did not dispute service in the answering papers. The disputed facts in the application are in respect of striking workers blockading entrance to the premises by sitting down in front of the gate and 'hindering and interfering' with persons wishing to enter and exit the premises. While the union regards its member's actions as 'trying to persuade' a customer from entering the premises, the applicant refers to the union member's actions as 'intimidation'.

[8] It is troubling that neither of the parties approached the CCMA in order to establish picking rules, more especially after the rule nisi was granted. unfortunately the rule

nisi did not specify any distance beyond which the respondents should not picket. Utilising the CCMA procedures not only promotes orderly collective bargaining but also lessens the potential costs involved in litigation. It allows for the exercise of employees' right to picket in support of their demands, while providing for protection for employers from unlawful actions.

[9] Given the photographs produced by the applicant showing that some of the respondents surrounding a vehicle had knobkerries in their hands, it is accepted that intimidation occurred. There was contempt of the order by Steenkamp J. I am of the view that a declaration to that effect, on the balance of probabilities, suffices on the particular facts of this case. Despite the ongoing relationship between the parties, where a court order is disregarded as it was in this case, it is appropriate that the Court shows its displeasure by means of a costs order.

[10] In all the premises, I make the following order:

Order

1. There is no order as to costs in respect of the application for interdictory relief.
2. The respondents are declared to be in contempt of the court order of Steenkamp J granted on the 28 September 2016.
3. Costs of the contempt application are to be paid by the First Respondent and the individual respondents in the contempt application, jointly and severally, the one paying the other to be absolved.

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H. Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicant: LW Ackermann instructed by Lionel Murray Schwormstedt & Louw

Respondents: Union Official

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