

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO:

19386/2008

DATE:

21 NOVEMBER 2008

5 In the matter between:

LUYANDA NEMA

APPLICANT

and

NATIONAL EDUCATION, HEALTH &

RESPONDENT

ALLIED WORKERS UNION

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J U D G M E N T

DAVIS, J:

15 [1] This is an urgent application that has been brought by a
group of shop stewards represented by Luyanda Nema.
They are shop stewards of the respondent union, that is
the National Education, Health and Allied Workers Union,
("NEHAWU").

20 [2] The basis of the relief sought is for an interim interdict
uplifting the allegedly unconstitutional suspension of
regional officer-bearers from the iKapa Metropole region
and, furthermore, to declare the Provincial Congress of
Respondent which is scheduled to take place on 23 and
24 November 2008 to be invalid, both because it is in

breach of the constitution and of the NEHAWU constitution (clause 46). Furthermore, relief is sought that the congress be rescheduled and that further resolutions of the regional executive committee meeting on 27 May 2008 be upheld.

[3] The applicants have appeared in person. Respondent is represented by counsel. He informed me, quite properly, that his clients have only received these documents at 15:22 as at yesterday. He has not been in a position to consult clients and first asked that the matter stand down until 2 o'clock. The difficulty is that, within two and a half hours, it is hardly likely that counsel is going to be able to consult with his clients and ensure the deposition of an adequate affidavit and then provide the applicants with an opportunity to answer, if necessary.

[4] Initially, consideration was given by this Court that perhaps the matter could stand down until later today for hearing by this Court or tomorrow to be heard by the duty judge. I am anxious not to slam the door on applicants who come to this Court for relief. Clearly, when one examines the affidavit deposed to on behalf of the applicants together with the attachments which include minutes of the meeting on 27 May and a memorandum on 23 September 2008 dealing with an urgent request for

immediate intervention on the state of the respondent in the Western Cape, it is clear that there are serious allegations of severe problems with the union. By their very nature, unions are a central arm of the democratic component of South African society and have played a hugely significant and proud role in ensuring that our society has attained the state of democracy in 1994 and on which journey the country now proceeds.

[5] Accordingly, dedicated applicants who are part of such a union are entitled (1) to be heard and (2) to come to court to hold their union accountable to democratic principles. I also have to balance the interests of the respondent, namely to reply to allegations that have been made and to ensure that after careful consideration of any evidence, that a proper order be granted. The order which has been sought to stay the congress has been launched but two days ago. It is correct that the difficulties relating to the congress have been circulating for a couple of months, if the papers are any guide thereto.

[6] Interim relief is only granted, where, in effect, there is no alternative remedy which is available. It is precisely because there is an obvious alternative remedy which is prefigured in the very notice of motion that I am

constrained to follow the following course of action. The applicants, in effect, want certain office-bearers to be brought back within the framework of the respondent and therefore for their allegedly unconstitutional suspension to be uplifted. They ask for a declaration that the congress is invalid because it is in conflict with both the provisions of the Constitution and respondent's own constitution.

[7] These are questions that do not have to be decided today or tomorrow or before the congress. The respondent runs the risk of conducting its congress in such a way that the applicants can come back to this court and argue on proper evidence, duly supplemented papers, to show that any resolution at that congress is invalid, of no force and effect, that any suspension is invalid and of no force and effect. When one is dealing with issues of this importance, it seems to me to be imprudent to charge into granting of relief on the basis of a case which is not substantiated, nor when one has not had the opportunity of hearing respondent.

[8] Accordingly, I am not going to dismiss this application I am going to postpone the application and am going to order that the applicants are entitled to come back to this Court on papers duly supplemented if they wish for the

same relief that they have asked for, that is it in terms that everybody in this court will understand, that the applicant is free to approach this Court on its papers and further papers for relief which would include the upliftment of a unconstitutional suspension of regional office-bearers and a declaration that the congress which may take place be declared invalid. In effect, what that means is respondent runs the risk of running its congress knowing full well that such an application looms over the congress. There is no order as to costs.

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DAVIS, J

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