



IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: CA 20/2015

In the matter between:

INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION

Appellant

(IMATU)

and

MUNICIPAL AND ALLIED TRADE UNION OF SOUTH

AFRICA (MATUSA)

First Respondent

CROUSE N.O.

REGISTRAR OF LABOUR RELATIONS

Second Respondent

Heard: 10 November 2016

Delivered: 22 March 2017

Summary: MATUSA appealed the decision of the Registrar of Labour Relations, to register it as a trade union in terms of section 95 and 96 of LRA. IMATU was joined as a respondent in the appeal before the Labour Court on the basis of its interest in a determination as to whether the name offended the provisions of s 95(4). The Labour Court upheld the appeal, set aside the second respondent's refusal and ordered the registration of MATUSA by the Registrar within 14 days. On appeal to this Court, decision of Labour Court upheld. Appeal dismissed with costs.

Coram: Coppin JA, Savage et Phatshoane AJJA

JUDGMENT

SAVAGE AJA

Introduction

- [1] This appeal concerns the decision taken by the Registrar of Labour Relations on 25 March 2015 to refuse an application by the Municipal and Allied Trade Union of South Africa (MATUSA) for registration as a trade union in terms of sections 95 and 96 of the Labour Relations Act 66 of 1995 (the LRA) on the grounds that it had not satisfied the requirements of the LRA and was not a genuine trade union.
- [2] In terms of s 111(3), MATUSA appealed the Registrar's refusal to register it to the Labour Court. The Independent Municipal and Allied Trade Union (IMATU) was joined as a respondent in that appeal, having objected to MATUSA's registration on the basis of its close similarities with IMATU's names. The Labour Court (Steenkamp J) found MATUSA to be a genuine trade union, set aside the Registrar's decision to refuse registration and ordered that MATUSA be registered within 14 days. IMATU now appeals against that judgment.
- [3] At the outset of the hearing of this appeal and with no opposition raised, condonation was granted for the late filing, by three days, of the notice of appeal on the basis that the appellant had been unaware that leave to appeal had been granted.

Background

- [4] IMATU was established on 8 March 1996 as a successor to trade unions active primarily in the local government sector, some of which had existed since the early part of the previous century. It operates with a membership of approximately 79 500 employees throughout South Africa to protect the rights of workers in the local government sector. Other registered trade unions in the same sector currently include the South African Municipal Workers Union

(SAMWU), the National Associated Municipal Trade Union (NAMTU), registered on 23 January 2012, and the Democratic Municipal and Allied Workers Union of South Africa (DEMAWUSA), registered on 22 January 2016.

[5] MATUSA was launched by disenchanted members of SAMWU in the Western Cape and applied to be registered as a trade union in January 2015. The Registrar gave MATUSA 30 days to meet the requirements for registration after its application was found to fall short of the requirements of the LRA. The Registrar also held that its name “*has elements that resembles that of other trade union (sic) and as such is not acceptable*”. On 10 February 2015, IMATU lodged an objection to MATUSA’s name with the Registrar on the grounds that it possessed close similarities to IMATU’s name.

[6] MATUSA responded to certain of the issues raised by the Registrar concerning its application for registration but did not undertake to change its name. On 25 March 2015, the Registrar refused MATUSA’s application for registration stating that:

‘...The application was perused and found not acceptable for approval.

You are accordingly advised that the applicant is not a genuine trade union as envisaged by the [Labour Relations] Act and was established by individuals for their own personal benefit. The applicant failed to satisfy registration requirements of the Act.’

[7] Aggrieved by the Registrar’s decision, MATUSA appealed to the Labour Court as contemplated in section 111(3) of the LRA.

Applicable statutory provisions

[8] Section 95(1) of the LRA permits any trade union to apply to the Registrar –

‘...for registration if-

(a) *it has adopted a name that meets the requirements of subsection (4);*

(b) *it has adopted a constitution that meets the requirements of subsections (5) and (6);*

(c) *it has an address in the Republic; and*

(d) *it is independent.'*

[9] In terms of s95(4):

'Any trade union or employers' organisation that intends to register may not have a name or shortened form of the name that so closely resembles the name or shortened form of the name of another trade union or employers' organisation that it is likely to mislead or cause confusion.'

[10] Section 111(1) permits “any person” aggrieved by the decision of the Registrar to request reasons for the decision within 30 days of the Registrar’s written notice of a decision. And, in terms of s 111(3) –

'...(3) Any person who is aggrieved by a decision of the registrar may appeal to the Labour Court against that decision, within 60 days of

(a) *the date of the registrar's decision; or*

(b) *if written reasons for the decision are demanded, the date of those reasons.'*

Judgment of Labour Court

[11] The Labour Court having considered the appeal under s111(3) found that the *onus* was on IMATU to show why MATUSA’s name may lead to confusion. It found further that it was “*most unlikely*” that the acronym MATUSA would be confused with the acronym IMATU given the distinct pronunciation of the names and when IMATU and SAMWU, as the two established unions in the sector, had enjoyed collective bargaining rights for many years. The long form names of MATUSA and IMATU were also found to be distinguishable by the prefix “Independent” in IMATU’s name, an important signifier of it being independent of any affiliation; the descriptive words “municipal” and “trade union”; and the generic words “Allied Trade Union of South Africa”, as also appearing in the names of many other trade unions. The Court noted that the

names of 51 trade unions in South Africa contain the word “allied”, 43 “allied workers”; 59 “South Africa” or “South African”, 130 “union”, 59 “workers’ union” and only two the word “independent”, of which IMATU is one and the appellant is not the other. The Court also had regard to the fact that the logos of the two unions were entirely different.

- [12] The Court concluded that there was no similarity or likelihood of confusion between the two unions, that MATUSA was a genuine trade union and that neither its name nor the acronym of its name, would mislead or cause confusion when compared to that of IMATU. MATUSA’s appeal was accordingly upheld. It was found to be a genuine trade union. The Registrar’s decision refusing to register it was set aside, and the Registrar was ordered to register MATUSA as a trade union within 14 days of the Labour Court’s order.

Issues on appeal

- [13] IMATU appeals against that part of the judgment and order of the Labour Court which deals with whether MATUSA’s long form name and the acronym of its name so closely resembles IMATU’s long form name and the acronym of its name that it is reasonably likely to mislead or cause confusion as contemplated by section 95(4).
- [14] In doing so IMATU relies on its substantial reputation as a trade union within the local government sector and among the broader public, which knows it by its long name and the acronym of its name; the fact that four of the five words in MATUSA’s name, being “*Municipal and Allied Trade Union*” are identical to four of the words in IMATU’s name; that the last four letters in IMATU’s acronym, “*MATU*”, are duplicated in four letters of the acronym “*MATUSA*”; and that the name MATUSA will, therefore, mislead or cause confusion. It is disputed on behalf of IMATU that the words “*Allied Trade Union of South Africa*” are generic or that the word “*municipal*” is merely descriptive.¹ IMATU also takes issue with the name’s dominant message being to identify a “*Municipal and Allied Trade Union*”. And contending that “*Independent*” was

¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints* 1984 (3) SA 623 (A) at 614A-B.

not a signifier peculiar to IMATU's name, given that s 95(1)(d) requires a trade union to be "independent" as intended by section 95(2).

[15] In opposing the appeal, MATUSA contends that the names MATUSA and IMATU, in both long and short form, look and sound sufficiently different with the result that there exists no reasonable room for confusion between them. It contends that the words used in MATUSA's name are not an overly broad description, nor are they misleading or likely to confuse; and there is no reasonable likelihood that the acronym MATUSA may be confused with IMATU. Since IMATU and the SAMWU have retained dominance as the two established unions in the local government sector for decades, with an agency shop agreement for their benefit in place across the sector, their names are distinctive according to counsel for MATUSA.

[16] According to MATUSA's counsel, the addition of the suffix of "SA" to "MATU" as opposed to IMATU's "TU", distinguishes MATUSA from IMATU; and although common denominators exist in their long form names, there is no evidence of any confusion having arisen. This, it is submitted, distinguishes the matter from the decision of this Court in *Staff Association for the Motor & Related Industries*.² In any event, to the extent that there may be found to be confusion between the names MATUSA and IMATU, MATUSA tendered its willingness to be registered under a different name.

Evaluation

[17] An appeal in terms of s111(3) may be brought by *any person*,³ including an interested trade union.³ Such an appeal is one in the wide sense of a complete rehearing and adjudication on the merits with, or without, additional evidence or information.⁴ On the basis that the Registrar has no discretion to refuse a trade union's application for registration where the requirements of s95(1)(a) to (d) have been met,⁵ the determination of the matter is ultimately a

² *Staff Association for the Motor and Related Industries v Motor Industries Staff Association and Another (Motor Industries)* (1999) 20 ILJ 2552 (LAC) at para 26.

³ *Motor Industries (supra)* at para 11 and 13.

⁴ *Motor Industries (supra)* at para 26.

⁵ *Motor Industries (supra)* at paras 43 and 44.

value judgment⁶ to be determined on the undisputed facts as a question of law.⁷ As was cautioned in *Motor Industries*,⁸ a preoccupation with decided authorities may obscure the fact that such matters are to be decided on “a simple legal principle and that they depend upon the facts of each particular case”⁹ through the exercise of a wide discretion in light of all relevant considerations.¹⁰

[18] In determining whether the name MATUSA so closely resembles that of IMATU so as to mislead or cause confusion in the manner contemplated in s95(4), the issues as set out by the court in *Motor Industries*, with reference to *Plascon-Evans Paints Ltd v Van Riebeeck Paints*,¹¹ are to be considered with regard to:

1. the names when compared side by side and separately, including their sense, sound and appearance, their distinctive, main or dominant components, and their similarities and differences, without peering too closely in order to find such similarities or differences;¹²
2. the impact and the overall impression created by the names on the average person likely to encounter them, or the notional customer of average intelligence, having proper eyesight and adopting ordinary caution, with due allowance for imperfect recollection and with regard had to the fact that names or marks are remembered by general impressions or by some significant or striking feature and not by a photographic recollection of the whole;¹³

⁶ *Cowbell AG v ICS Holdings Ltd* 2001 (3) SA 941 (SCA) at para 10; *Orange Brand Service v Account Works Software* [2013] ZASCA 158 at [14]; *Motor Industries (supra)* at para 28.

⁷ *Motor Industries (supra)* at para 28; See also *Orange Brand Services v Account Works Software* [2013] ZASCA 158 at para 13; *Media Workers' Association of SA and Others v Press Corporation of SA (Perskor)* 1992 (4) SA 791 (A)

⁸ *Op cit.*

⁹ At para 38. *Orange Brand Service v Account Works Software (supra)* at para 10.

¹⁰ *Tjospomi Boerdery (Pty) Ltd v Drakensberg Bottliers (Pty) Ltd and Another* 1089 (4) SA 31 (T).

¹¹ At 640G - 641E.

¹² *Cowbell AG v ICS Holdings Ltd* 2001 (3) SA 941 (SCA) at para 10; *Adidas AG and Another v Pepkor Retail Ltd* [2013] ZASCA 3 at paras 21 and 22.

¹³ *Plascon-Evans (supra)* at 641C-D.

3. the context in which the names would be encountered and used, considered against the background of relevant surrounding circumstances; and
4. the reasonable likelihood of a substantial number of interested people being misled or confused by the names, whether either for a shorter or longer period of time,¹⁴ in such a manner as induces in their minds an erroneous belief, impression, doubt or uncertainty that the entities identified are the same entity or are connected with one another,¹⁵ with the reputation attached to an established name being a relevant consideration.¹⁶ This requires that if both names “*are to be used together in a normal and fair manner, in the ordinary course of business*”¹⁷ a value judgment be made “*dictated by the overall impression created by the marks, given their respective characteristics, and the circumstances in which they are likely to be encountered, instead of being drawn into excessive analysis*”.¹⁸

[19] This Court in *Motor Industries*¹⁹ noted that:

‘While in certain cases the dominant feature of each mark may be the determining factor, the true rule is a broader one, namely, that the comparison is to be made between the main idea or impression left on the mind by each name, having regard to any essential or salient or leading or striking feature or features in each. (International Power Marketing v Searles Industrial, supra, at 168 H.) When the court is called upon to consider resemblance between the two names, it must be mindful of the fact that the advantages which it has after considering arguments from Counsel and the ample time for full consideration, comparison of the two names carry their own dangers. These advantages may cause the court to look at the names with greater care than they would be looked at by those whose probable

¹⁴ *John Craig (Pty) Ltd v Dupa Clothing Industries (Pty) Ltd* 1977 (3) SA 144 (T) at 151C – D; *Adidas AG and Another v Pepkor Retail Ltd* [2013] ZASCA 3 at [27]; *Orange Brand Service v Account Works Software* [2013] ZASCA 158 at [13]

¹⁵ *Plascon-Evans Paints Ltd v Van Riebeeck Paints* 1984 (3) SA 623 (A) at 640H – I; *John Craig (Pty) Ltd v Dupa Clothing Industries (Pty) Ltd* 1977 (3) SA 144 (T) at 150G - H

¹⁶ *Adidas AG and Another v Pepkor Retail Ltd* [2013] ZASCA 3 at para 24.

¹⁷ *Cowbell AG v ICS Holdings Ltd* 2001 (3) SA 941 (SCA) ([2001] 4 All SA 242)

¹⁸ *Orange Brand Service v Account Work Software* [2013] ZA SCA 158 at para 14.

¹⁹ *Op cit.* at para 32.

reactions the court is required to assess and with far keener awareness of similarities and dissimilarities than such people would probably have as they go about their daily lives. See Laboratoire Lechartre SA v Armour-Dial Incorporated, 1976 (2) SA 744 (T) at 746B - H.'

- [20] In comparing the two names, both side by side and separately, it is apparent that in their long form four of the five words used in IMATU's long form name, being "*Municipal and Allied Trade Union*", appear in MATUSA's name, with a similar repetition occurring in their respective acronyms. However, when regard is had to the sense, sound and appearance, distinctive and dominant components, similarities and differences between the names it is apparent that there exist strong distinguishing features between the names, particularly, in the use of the word "Independent", as a prefix to IMATU's name and the words "South Africa", as a suffix to MATUSA's. The result is that the sense, sound and appearance of the two names is made distinct in spite of the common words used. This is more so when the dominant impression created by the word "independent", in the prefix to IMATU's name, is that of an independent trade union in the sector.
- [21] It is, in any event, of relevance to take cognisance of the fact that there are bound to be similarities between the names of IMATU and MATUSA since they are both organising in the same sector, with the use of the words "municipal", "trade union", "allied" and "South Africa" being not only descriptive but words that are commonly used in the names of a number of other trade unions across distinct employment sectors.
- [22] In my view, the impact and the overall impression created by the names are not such that there exists a reasonable likelihood of a substantial number of interested people being misled or confused by the names. This is all the more so given IMATU's extensive and wide reputation and its established name in the sector. It is of further relevance that acronyms are commonly used to describe trade unions in South Africa, including in the local government sector. The result is that IMATU is commonly known and referred to by its acronym by those people operating within the sector and more broadly by members of the public. That acronym, I am satisfied, is so dissimilar from that

of MATUSA that no reasonable likelihood of confusion is created between the unions on this basis.

[23] I am not persuaded that the dominant features or ideas conveyed by each name turns on the use of the four words “municipal and allied trade union” in that the impression of a trade union which operates in the municipal sector is not, in my view, sufficient to cause confusion between the names. This is so given that other unions operate in the same sector with names which also include the words “municipal”, “union” and, the case of SAMWU, the words “South African”. The result is that SAMWU shares the words “municipal” “union” and “South African” with MATUSA yet, it is noteworthy, has not objected to the registration of MATUSA.

[24] The dissimilar acronyms used by the IMATU and MATUSA, in an environment in which acronyms are commonly used as opposed to long form names, do not allow for a reasonable likelihood of confusion and the visual appearance of the names does not create confusion given the use of the prefix “Independent” and their different acronyms. With due allowance for imperfect recollection, the probabilities support a conclusion that what is likely to remain in the mind of an average person are the words “Independent” and “IMATU”, compared with “Municipal”, “South Africa” and “MATUSA”. The difference between them would strike the average person and the similarities between four words in their names do not permit a conclusion that there exists a reasonable opportunity to cause confusion. Unlike in *Motor Industries* in which it was found that confusion arose regarding the name of a staff association for the motor industry, the same confusion does not arise in this matter.

[25] In the same manner as with a registered trademark, the registration of IMATU as a trade union does not create a monopoly in respect of the use of the words “municipal”, “allied” or “trade union” as concepts or ideas, even when used together.²⁰ Having regard to the likelihood of confusion “*appreciated globally*”²¹ the Labour Court cannot be faulted for its finding that the provisions of s95(4) did not create a bar to MATUSA’s registration as a trade union.

²⁰ *Smithkline Beecham Consumer Brands (Pty) Ltd* 1995 (2) SA 903 (A) at 910B.

²¹ *Sabel BV v Puma AG, Rudolf Dassler Sport* [1998] RPC 199 (ECJ) at 224.

MATUSA's name does not so closely resemble IMATU's name, both in long and short form, that it is likely to mislead or cause confusion.

[26] For these reasons, the appeal falls to be dismissed. There is no reason in law or fairness as to why costs should not follow the result.

Order

[27] In the result, the following order is made:

1. The appeal is dismissed with costs.

SAVAGE AJA

Coppin JA and Phatshoane AJA agree.

APPEARANCES:

FOR APPELLANT:

Mr Barrie SC

Instructed by Savage Jooste & Adams

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Mr Oosthuizen SC

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