



REPUBLIC OF SOUTH AFRICA

Of interest to other judges

**THE LABOUR COURT OF SOUTH AFRICA,
IN JOHANNESBURG
JUDGMENT**

CASE NO: J 716-13

In the matter between:

LEPELLE NORTHERN WATER

Applicant

**(Respondent in Leave to
Appeal)**

and

**SOUTH AFRICAN MUNICIPAL
WORKERS UNION**

First Respondent

**(First Applicant in Leave
to Appeal)**

**MEMBERS OF SOUTH AFRICAN
MUNICIPAL WORKERS UNION**

Second Respondent

**(Second Applicant in
Leave to Appeal)**

REASONS FOR JUDGMENT, VARIATION ORDER AND DIRECTIVE

LAGRANGE, J

Introduction

[1] On 12 April 2013, judgement was handed down in an urgent application to prohibit the first respondent and its members employed by the applicant from embarking on strike action. The reason for interdicting the strike action which was characterised as "protest action" was that the strike would have taken place in an essential service in which the applicant and its employees are engaged in the supply and distribution of water. Secondly, a declarative was issued that the demands made by the respondents had been met by the applicant and there was no live dispute in existence between the parties.

[2] The respondents, unbeknownst to me until very recently, applied for leave to appeal against the judgement. After filing the application for leave to appeal the applicants have asked for reasons for the judgment. On scrutinising the order I notice that reasons written on the court file are not recorded in the order.

[3] The written reasons given were the following:

"I am satisfied that the protest action planned by the respondent for 15 March 2013 months to strike action in an essential service which is in breach of section 65 (1) (d to) (i) of the Labour Relations Act, 66 of 1995.

I am satisfied that the requirements of urgency had been met given the evolution of the attempts to resolve the underlying dispute."

[4] Thus the order was handed down for those two reasons only. However, it appears that the order also included a finding that appeared in prayer 2.2 of the notice of motion, namely that:

“2.2 Declaring that the demands made by the respondents have been met by the applicant and therefore there is no live dispute in existence between the parties.”

Variation of the order

[5] In light of the reasons given for the order, it is clear that I did not consider it necessary to make any finding on the existence or otherwise of a live dispute between the parties in respect of the demands made by the respondents. It is patently clear to me that the portion of the order quoted above was obviously erroneously included and should not have formed part of the court order. Accordingly, that paragraph must be excised from the order issued. An appropriate variation order in terms of s 165(b) of Labour Relations Act, 66 of 1995 (‘the LRA’) is set out below.

Elaboration on reasons

[6] For the purpose of elucidation of the reasons mentioned above, I have elaborated thereon below, in the hope this might assist the parties if the application for leave to appeal is pursued.

Urgency

[7] The action planned by the respondents was a march to the head office of the applicant on 15 April 2013. The notice of the march was given by the respondents on 25 March 2013. Before applying for the interdict, the applicant arranged a meeting with the provincial secretary of the union on 5 April 2013 to try and persuade him that the intended action was unnecessary and unlawful. When that appeal was rejected, the applicant gave notice on 8 April 2013 warning the union that the march would be an unprotected strike, and failing a commitment to call the march off by 9 April 2013, in any event the applicant would proceed with the application for an interdict. The application was then launched on 11 April 2013. On that day the matter was postponed until the afternoon of 12 April 2013 to allow time for the filing of answering and replying affidavits. In the circumstances, I was satisfied that the applicants had not simply folded their hands and

waited until the proverbial 'eleventh hour' hour to file the application and the union had ample warning that an interdict might be brought.

Essential service

[8] The supply and distribution of water was declared an essential service in 1997 by the Essential Services Committee. The applicant's business is the supply and distribution of water. The individual respondents are all engaged in the applicant's business. I was not referred to any determination by the Essential Services Committee in terms of s 73(3) of the LRA, deciding that any of its employees had been designated as not engaged in the essential service. In the absence of such determination being made, I was satisfied on what was before me that all the individual respondents were engaged in the same essential service as their employer. At the time the matter was heard, I was also not advised that either party had exercised the right under s 73(1)(b) to refer a dispute to the Essential Service about whether some of the applicant's employees are not engaged in the essential service.

Variation Order

[9] In light of what is stated above, the order of this court handed down in this matter on 12 April 2013 is varied by the deletion of the following portion of the order:

"2. The demands made by the Respondents are declared to have been met by the Applicant and therefore there is no live dispute in existence between the parties."

Further, the remaining paragraphs 3, 4 and 5 in the order are renumbered as 2, 3 and 4 respectively.

Directive

[10] Should the applicants for leave to appeal wish to pursue the application for leave to appeal, they should file submissions within 15 days of the date when these reasons and variation order are handed down, and the

respondent in the leave to appeal application should file their submissions within 10 days of receipt the applicant's submissions .



R LAGRANGE, J
Judge of the Labour Court of South Africa
(In chambers)

7 November 2014

LABOUR COURT