



REPUBLIC OF SOUTH AFRICA

Of interest to other judges

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

CASE NO: J 1963/14

In the matter between:

MABOTWANE SECURITY SERVICES

Applicant

and

**TAWUSA OBO NQINILEYO & 200
OTHERS**

Respondents

Heard: 26 August 2014

Delivered: 27 August 2014

Summary: (Interim relief- strike interdict)

JUDGMENT

LAGRANGE, J

Introduction

- [1] The respondent union has given notice to strike on 27 August 2014. Although the notice is a few hours short of 48 hours, it would be able to strike from 09h00 on this day if its strike is a protected one.
- [2] The strike concerns a demand for organisational rights, the respondents having withdrawn a referral of the dispute to arbitration under s 21(7) of the Labour Relations Act 66 of 1995.
- [3] The applicant says that because the applicant(s) perform a service required for the functioning of the court the applicant(s) fall within the designation of an essential service.¹
- [4] The applicant says that individual respondents are responsible for performing guarding services for judges in the Western Cape and security for courts. The respondents do not deny that they perform these duties but merely that the responsibility for doing so lies with the state law enforcement agencies. However, the point is not who is responsible but whether the individual respondents are engaged in the essential service in question.
- [5] The respondents contend that since they dispute they are engaged in an essential service that only the Essential Services Committee can determine that in terms of s 73(1)(b) of the LRA. It is correct that the final determination of such a dispute lies with that committee.
- [6] Nonetheless, the court is faced with a situation in which interim relief is sought and it is not necessary for the court to determine that issue but to consider only if the applicant has a prima facie right to interdict the strike. On the limited facts available, it would seem that the individual respondents are performing services required for the functioning of the courts and accordingly fall within that essential service.

¹ See GN R1216 in GG 18276 of 12 September 1997 which *inter alia* designates services required for the functioning of the courts as essential services.

- [7] On the balance of convenience, the respondents' right to strike will be delayed but not extinguished if they are ultimately right about their status, but if the applicant is right and relief is initially refused it would suffer not only the potential losses of a strike but its employees who are actually not entitled to strike on account of the essential services they perform would have been able to strike with impunity. Moreover, if they are wrong they will be entitled to have their dispute arbitrated despite having withdrawn from the s 21 arbitration. In the circumstances the balance of convenience favours the applicant.
- [8] I note under s 73(3) that the essential service committee is required to determine such a dispute 'as soon as possible' so there should not be an inordinate delay in obtaining a determination from the committee, and the parties can no doubt take steps to encourage it to accelerate its proceedings.
- [9] The peculiarities of this application warrant an alternative form of relief to the standard interim order in such matters.

Order

[10] For the reasons above an order is granted in the following terms:

10.1 The matter is dealt with as one of urgency.

10.2 The respondents are interdicted from embarking on a strike pursuant to the strike notice issued on 25 August 2014 pending the determination of a dispute whether or not the individual respondents are engaged in the essential service designated as services required for the functioning of the courts.

10.3 Either party may refer the dispute to the essential services committee in terms of s 73(1) of the LRA.

10.4 No order is made as to costs.



R LAGRANGE, J

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT: J C Nkosi instructed by Nkabinde Attorneys

FIRST RESPONDENT: EM Masombuka instructed by Lennon Moleele Attorneys

LABOUR COURT