IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

Case No: J 130/06

In the matter between:

JOHANNESBURG CITY PARKS Applicant

and

SOUTH AFRICAN MUNICIPAL WORKERS UNION First Respondent

MAFANYA, SC & OTHERS Second and Further Respondents

JUDGMENT

REVELAS J

[1] This is an application for leave to appeal against a judgment handed down by this Court on 22 March 2006, wherein a rule *nisi* issued by Mr Acting Justice Sibeko on 6 February 2006 was discharged. In terms of the rule issued by him, the respondents were *inter alia* interdicted from embarking on strike action on 7 February 2006.

[2] The aforesaid interim relief was granted on the basis that the certificate of non-resolution issued by the South African Local General Bargaining Council ("the SALGBC"), was invalid, as the

learned judge was of the same view as the applicant, namely that the dispute in question should have been referred to the Commission for Conciliation, Mediation and Arbitration ("the CCMA") and *not* the SALGBC.

[3] There is currently a demarcation dispute pending in the CCMA between the applicant and several other utilities, agencies and corporations. The applicant is adamant that the SALGBC had no jurisdiction over it and that all disputes, which arise in the interim, between itself and the respondents, should be referred to the CCMA pending the outcome of the demarcation dispute. The respondents on the other hand, contend that, pending the outcome of the demarcation dispute, they are entitled refer all their disputes with the applicant, to the SALGBC (or "the council").

[4] I discharged the rule because I was not convinced, for purposes of confirmation thereof, that the applicant fell outside the scope of the council. The factors which I took into account were: firstly, that the right to strike is protected by the Constitution, secondly, that the second and further respondents still did the same type of work, as they have done in the past before municipal restructuring, thirdly, that the collective agreement entered in to by them with the SALGBC, had been extended to non-parties, and, finally, that the applicant, who was burdened with an onus in order to obtain final relief, did not put sufficient facts before me to substantiate why the CCMA has jurisdiction over it.

[5] After discharging the rule, the strike action took place. Any relief (interdict against it) obtained on appeal in the future, would be academic and of no practical value.

[6] As I understand counsel for the applicant, the purpose of obtaining an order granting leave to appeal against my judgment, was to lessen its persuasive value, when arguing the demarcation dispute before the CCMA.

[7] When he issued the rule *nisi*, Sibeko AJ gave a judgment which materially differs from the judgment handed down by myself on the return day of the rule. The two different judgments alone, would have persuaded me to grant leave to appeal without hesitation. However, the fact that the relief finally sought, has become an academic question compels me to decide otherwise.

[8] Subsection 21A(1) of the Supreme Court Act 59 of 1959 ("the SC Act") provides as follows:

> **'(1) When at the hearing of any civil appeal to the Appellate Division or any Provincial or Local Division of the Supreme Court the issues are of such a nature that the judgment or order sought will have no practical effect or result, the appeal may be dismissed on this ground alone.'**

[9] On 16 August 2004, the Supreme Court of Appeal ("the SCA") dismissed an appeal in the matter of *Radio Pretoria v Chairman, Independent Communications Authority of South Africa, and*

Another 2005 (1) SA 17 (SCA) in terms of the aforesaid section, because it considered any judgment given by it in that matter to have no practical effect. It was clear on appeal that the question of a temporary licence which the applicant sought to obtain in the court *a quo*, was no longer a live issue. The question became moot. No order by the SCA would have impacted on the applicant's ability to continue broadcasting, until the litigation concerning the respondent's decision to refuse a four-year licence application had been finally resolved.

[10] In the same case, Navsa JA observed as follows at paragraph 41, page 55 H – J: **"Courts of appeal often have to deal with congested court rolls. They do not give advice gratuitously. They decide real disputes and do not speculate or theorise".**

[11] Even though the Labour Appeal Court does not have to deal with congested court rolls, I see no reason why the above reasoning should not apply to the Labour Court when considering applications for leave to appeal in matters where a judgment from the Labour Appeal Court would have no practical effect.

[12] To grant leave to appeal, merely to diminish the status or persuasive value of the judgment sought to be appealed against, for purposes of an ancillary dispute is not a sound ground of appeal, particularly if the issue at hand has become moot, as it has in this case. In any event, the requirements for obtaining an interdict and successfully pursuing a demarcation dispute, are different. Furthermore, I did not attempt in my judgment, to determine the

demarcation dispute, and made that quite clear.

[13] The application for leave to appeal is dismissed with costs.

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Elna Revelas

Judge of the Labour Court

Date of hearing: 25 April 2006
Date of judgment: 26 April 2006

On behalf of the applicant:
Adv. R Hutton

Instructed by: Moodie and Robertson

On behalf of the respondent:

Adv. J.G van der Riet SC

Instructed by: Cheadle Thompson and Haysom