

NOT REPORTABLE. NOT OF INTEREST TO OTHER JUDGES

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD IN BRAAMFONTEIN)

CASE NUMBER: J1087/2010

In the matter between

MAPC TRADING (PTY) LTD

APPLICANT

t/a MAROUN'S AUTO PAINT CENTRE

v

NATIONAL UNOIN OF METALWORKERS

OF SOUTH AFRICA

1ST RESPONDENT

ABEL MATLALA & OTHERS

2ND RESPONDENT

3RD RESPONDENT

JUDGMENT

AC BASSON, J

- 1] This was an anticipated return date of the *rule nisi* issued by my learned brother Francis, J on 7 September 2010 and 9 September 2010. The contempt application that was pending before this Court at the time of

hearing this application has been withdrawn on 21 September 2010. The *rule nisi* was discharged with costs. Here are my written reasons for the order.

- 2] This was an application for an order interdicting the individual respondents from continuing with their unprotected strike and from remaining absent from the workplace on the grounds of their participation in a strike. The individual applicants are members of NUMSA (the 1st Respondent) and a certain Mr. Albert Bapela is a NUMSA shopsteward.

FACTS

Strike notice

- 3] In respect of the facts very briefly. A strike notice was sent out to the Motor Industry Bargaining Council (“MIBCO”), the Fuel Retailers’ Association “FRA”) and the Retail Motor Industry Association (“RMI”). FRA and MRI are employer’s organizations as defined in the Labour Relations Act 66 of 1996 “the LRA”). The letter pointed out that a protected strike would commence on Wednesday 1 September 2010 in consequence of a failure on MIBCO, FRA and RMI in meeting the wage and substantive negotiation demands of the 1st Respondent (“NUMSA”). In other words, the dispute related to a collective agreement to be concluded in MIBCO between NUMSA and the Motor Industry Staff Association on the one hand and FRA and RMI on the other side. RMI forwarded a copy of the strike notice to the applicant (although the applicant is not, according to its papers, a designated recipient). It is not in dispute that the strike called out

by NUMSA was a protected strike.

Does the applicant fall under the registered scope of MIBCO?

- 4] It is averred in the answering affidavit that the applicant's business falls within the registered scope of MIBCO hence the individual respondents are entitled to participate in the strike in support of the agreement to be concluded at MIBCO. Attached to the papers is a letter from MIBCO dated 9 September 2010 from the Regional Secretary of MIBCO. The letter is addressed to Mr. Kubeka from NUMSA. This letter serves to confirm that the applicant falls within the registered scope of MIBCO. The letter further states that the activities of the applicant falls under the definition of "Motor Industry" hence the applicant must register with MIBCO as an employer in the industry.
- 5] It is also averred in the answering affidavit that the applicant is in fact a member of RMI. According to NUMSA, its attorneys have confirmed with RMI's National Membership Database Administrator that the applicant is indeed a member of RMI.

Strike

- 6] On Wednesday 1 September 2010 22 employees of the applicant arrived at the premises of the applicant. They continued to work normally until 13H06 that afternoon. At that stage the industry-wide strike has already commenced. Several individuals marched past the entrance to the premises. Twelve of the applicant's employees were then enticed to join the strike. The other 10 employees remained at the premises.

- 7] On the 2nd of September the employees listed as respondents did not attend to their duties at the premises of the applicant and participated in the strike.
- 8] According to the applicant it send a letter to NUMSA on 2 September and one on 3 September 2010 (this time by the attorneys) advising them that the employees were participating in an unprotected strike. NUMSA denies having received the letters.
- 9] The applicant avers that the employees were aligning themselves with “another strike” and that such a strike constitutes an unprotected strike. NUMSA denies that the employees have aligned themselves with another strike. According to the answering affidavit, the individual respondents were participating in a protected strike in the Motor Industry.
- 10] NUMSA admits that they did not give direct notice to the applicant but contends that notice was given to MIBCO and RMI and that that was proper in terms of section 64(1)(b) of the Labour Relations Act 66 of 1995.
- 11] The applicant’s argued that wage negotiations were normally held every August and September and that the individual respondents therefore had no cause to be alarmed regarding their own wage negotiations scenario. The respondent denies this and argued that the individual applicants are entitled to take part in the industry-wide strike in support of the union’s demands for improvements to terms and conditions of employment throughout the Motor Industry. It further argued that the fact that the applicant revised the individual employee’s wages annually did not

- constitute a bar to the individual employees taking part in the industry-wide strike. The applicant persisted that the strike was unlawful.
- 12] The applicant is now seeking final relief and should therefore satisfy the requirements for final relief.
- 13] From the papers I am satisfied that the applicant falls under the auspices of MIBCO. Having accepted that the applicant falls under the registered scope of MIBCO it will in my view follow that any agreement reached at the bargaining council may potentially bind the applicant and consequently its employees. As such the individual respondents have an interest in the outcome of the wage negotiations. Proper notice of the strike was given of the commencement of the strike. I can find no reason why these individual applicants cannot join the strike in support of demands which may affect them.
- 14] I am accordingly satisfied on the papers that the individual employees are entitled to participate in the industry-wide strike for the reasons set out hereinabove. In the event the rule nisi is discharged with costs.

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AC BASSON, J

DATE OF PROCEEDINGS: 14 & 15 September 2010

DATE OF ORDER: 15 September 2010

DATE OF REASONS: 26 October 2010

FOR THE APPLICANT:

H Van der Riet, SC instructed by Cheadle Thompson & Haysom.

FOR THE RESPONDENT:

Adv Ascar instructed by Fluxmans Inc.