



IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

Not Reportable

CASE NO: P109/20

Applicant

TRUDA FOODS (PTY) LTD

In the matter between:

And

ZOLILE ROGER XALISA

First Respondent

THULANI BUKANI

Second Respondent

XOLANI GXAGXA

Third Respondent

XOLILE MASHUKUCA

Fourth Respondent

THE RESPONDENTS LISTED ON THE

SCHEDULE ANNEXED HERETO MARKED Z

Fifth Respondent

Heard: 12 March 2021

Delivered: This judgment was handed down electronically by circulation to the Applicant and the Respondents' Legal Representatives by email, publication on the Labour Court website and release to SAFLIL. The date and time for handing-down is deemed to be 15h00 on 14 May 2021.

JUDGMENT

[3] On 14 October 2020 about 700 employees of the applicant withdrew their labour and joined the protest. Vehicles, including those contacted to transport employees were prevented from getting in and out of the applicant's premises.

[2] The events which resulted in the issuing of the order are that on 14 October 2020 the respondents and a number of other individuals forced the closure of the applicant's business in Komani. The applicant manufactures and supply maize snacks, porridge and soya mince. One of its manufacturing operations is in Komani where it employs about 1000 employees. The applicant had a relationship with Komani Residents Association (the KORAs) in terms of which it assisted in a number of its initiatives. The applicant submitted that in May 2020, members of KORAs and an entity known as SASWU which purports to be a trade union attempted to interfere with the manner in which it conducts its business and employee relations. The two entities acted as representatives of the applicant's non-unionised employees and made demands from the applicants. Some demands were based on alleged non-compliance with employment legislation, employee benefits, minimum wage, the employment of KORAs and SASWU members by the applicant and the funding of KORAs initiatives. When the applicant refused to heed the demands the first to the fourth respondents who will be referred to as the KORAs and SASWU members in this judgment instigated the employees of the applicant to embark on an unprotected strike.

[1] This is an application for contempt of an order which was granted by this court on 21 October 2020 against the Komani Residents Association (KORAs), Zolile Roger Xalisa, Thulani Bukani, Xolani Gxagxa, SASWU, Xolile Mashukuca and 86 employees of the applicant. The application is opposed by the respondents. The court order which was a *rule nisi* returnable on 5 November 2020 interdicted the respondents and other employees of the applicant from committing acts of misconduct during an unprotected strike and protest by members of the public against the applicant. The acts of misconduct included threatening and preventing non-striking employees from attending work, interrupting and interfering with the applicant's business operations and spreading untrue and defamatory statements about the applicant.

Non-striking workers who wanted to go to work were intimidated and in the interest of safety the applicant closed its operations and obtained the order of 21 October 2020 on an urgent basis. It is that order which the applicant seeks this court to find the respondents in contempt of.

[4] On 21 October 2020 the applicant served the order on all the respondents against whom it was granted. The applicant submitted that the respondents are in contempt of court in that they failed to comply with the order. In support of the allegation the applicant submitted that on 22 October 2020 at 06h00 a group of about 30 people including its staff members protested at the main gate of its premises. The protest was led by the first to fourth respondents. The protesters formed a human chain and blocked the road leading to the applicant's premises. More protesters joined in and the group increased to about 100 protesters some of who were armed with metal rods, bricks and sticks. They denied vehicles access to the applicant's premises. The vehicles included buses which carried about 150 employees who attempted to report for work for the 07h00 shift. Owing to the protesters' conduct the applicant was unable to resume its operations.

[5] On 23 October 2020, the first to fourth respondents led a group of about 20 protesters which approached the applicant's premises before the commencement of the morning shift. The protest by about 30 people continued on 26 October 2020. It was still led by the first to fourth respondents. The protesters again prevented buses transporting the applicant's employees from going to work but were informed by members of the South African Police Service (SAPS) to desist from their conduct. The applicant further submitted that later in the day the protesters managed to barricade the road with rocks, stop the buses transporting employees, threaten and intimidate the non-striking workers who were in the buses. It added that the first to fourth respondents deliberately continued their attack on social media in violation of the order.

[6] In an affidavit attested to by the first respondent who is the deputy chairperson of KORA the respondents denied having acted in violation of the order. The first

respondent submitted that the respondents participated in a peaceful protests 200 metres from the applicant's premises on 22 and 23 October 2020. He further denied that they committed acts of misconduct during the protest. The first respondent submitted that other than alleging that the fifth to further respondents liked, on social media, the posts KORAs and SASWU posted about the applicant, no specific allegations of violating the order were made against them. He added that a number of the applicant's employees participated in the protests that were held after the order was issued. Their identities are visible in the photographs the applicant sought to rely on but they have not been cited as respondents in this application.

[7] The purpose of contempt proceedings is to enforce court orders and to reinforce the court's authority. In *Fakkie No v CC Systems*<sup>1</sup> it was held that for an order of contempt of court to be granted, the order which forms the subject of the application must have been served on the respondents who willfully and *mala fide* failed to comply with the order. It is common cause that the applicant served the order on the respondents. This application is distinguishable from the contempt of court applications in which employers seek to enforce interdicts against their own employees. In this application the applicant seeks to enforce an order which was granted against members of a community based organisation and its members and an unregistered trade union and its official with no members at its workplace as well as a number of the applicant's employees. When obtaining the order which forms the subject of this application the applicant cited KORAs, the organisation the first to third respondents represented as well as SASWU the trade union which the fourth respondent represented. In the application at hand the applicant elected not to cite KORAs and SASWU while acknowledging that when the first to fourth respondents allegedly violated the order they did so in their capacities as representatives of KORAs and SASWU.

[8] The first to fourth respondent conceded that they led the protest by community members and a number of the applicant's employees before and post the

issuing of the order as community and trade union leaders. Their main defence is that they complied with the order and that the applicant had failed to prove their non-compliance with the order. As already stated, the purpose of contempt of court proceedings is to enforce court orders and assert courts' authority. It was argued, correctly so on behalf of the applicant that any dispute of fact in this matter could be resolved by the application of the rule in *Plascon Evans Ltd v Van Riebeeck Paints (Pty) Ltd*.

[9] The first to fourth respondents led the protest to the applicant's premises and instigated the applicant's employees to embark on an unprotected strike because the applicant refused them audience in their attempts to act on behalf of the applicant's employees. They were of the view that the applicant had an obligation to discuss employee issues with them. Their view is incorrect. The Labour Relations Act<sup>3</sup> (the LRA) is clear, it provides, in unambiguous terms what employees need to do in order to acquire organisational rights at the workplace. It also provides remedies to employees whose attempts to exercise their statutory rights at the workplace are thwarted by employers. Employees' rights to freedom of association and fair labour practice at the workplace are enshrined in the Constitution. So is the right of employers to conduct their businesses without unnecessary and unlawful interference. Both employees and employers are therefore required to assert their rights within the confines of the law.

[10] The applicant's allegations that the first to fourth respondents led protests in violation of the order were disproved in that the latter proved that they were present at the protest to ensure compliance with the court order. They were continuing to act as community leaders who had started the protest. Nothing turns on their lack of authority to interfere with the applicant's business for purpose of this application. The respondents further disproved the applicant's

<sup>2</sup> 1984 (3) SA 623 (A).  
<sup>3</sup> Act 66 of 1995, as amended.

submissions that the fifth to further respondents acted in breach of the order. The allegation was unsubstantiated.

[11] The respondents argued that this application should be dismissed because it is, *inter alia*, an attempt to punish them as community leaders for taking action against the applicant. The argument some merit. On the applicant's own version, on 22 October 2020 about 100 people joined the protest in which the respondents were the core group. The following day there were about 20 protesters and 30 on 26 October 2020. The protest was captured on CCTV and in photographs. The applicant alleged that on the dates referred to above the protesters, including the respondents, were acting in violation of the order. The applicant gave no cogent reasons for not citing the other protesters in these proceedings. The omission lends credence to the respondents' submission that this application is an attempt to punish them for fighting for the rights of the applicants non-unionised employees and to deal with the fifth to further respondents for liking their comments on social media. Had the applicant intended to enforce the order with the view of asserting the court's authority, it would have brought these proceedings against all the individuals who were seen and identified as having violated the order. Contempt proceedings were not designed to be used as weapons to punish employees, community leaders and representatives of unregistered trade unions for attempting to exercise rights reserved for representative trade unions in the LRA. For these reasons, I find that the applicant did not make out a case for the relief it sought. This application can, in the circumstances not succeed.

[12] The respondents did not seek a costs order against the applicant.

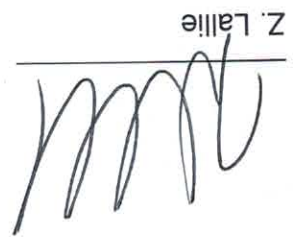
[13] In the premises, the following order is made:

Order:

1. The application is dismissed.

LABOUR COURT

2. There is no order as to costs.

  
\_\_\_\_\_

Z. Lallie

Judge of the Labour Court of South Africa

LABOUR COURT

Instructed by

For the Respondent:

Instructed by

For the Applicant:

Appearances

Advocate A de Wet SC

Pagdens Attorneys

Advocate Harvey

Law Clinic