

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CCT Case No: CCT172/19**

**LAC Case No: DAB/2018**

**Labour Court Case No: D722/2015 & D459/2016**

**In the matter between:**

**NATIONAL UNION OF METALWORKERS  
OF SOUTH AFRICA (KZN)**

**Applicant**

and

**LUFIL PACKAGING (ISITHEBE)  
[A DIVISION OF BIDVEST PAPERPLUS (PTY) LTD]**

**First Respondent**

**COMMISSION FOR CONCILIATION  
MEDIATION AND ARBITRATION**

**Second Respondent**

**LEON PILLAY N.O.**

**Third Respondent**

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**FIRST RESPONDENT'S PRACTICE NOTE**

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**NATURE OF THE PROCEEDINGS**

1. This is an application for leave to appeal the judgment and order of the Labour Appeal Court in *Lufil Packaging (Isithebe) (A division of Bidvest Paperplus (Pty) Ltd) v Commission for Conciliation, Mediation and Arbitration and*

*Others* [2019] ZALAC 39; (2019) 40 ILJ 2306 (LAC); [2019] 11 BLLR 1212 (LAC).

## **ISSUES TO BE ARGUED**

2. Whether a union can obtain organisational rights under the Labour Relations Act 66 of 1995 in an employer whose employees are outside the union's constitutional scope.

## **NECESSARY PORTIONS OF THE RECORD**

3. The entire record is relevant, save for the following portions:
  - 3.1. Volume 1
    - 3.1.1. Pages 45-48
    - 3.1.2. Pages 57-90
  - 3.2. Volume 2
    - 3.2.1. Pages 91-120
    - 3.2.2. Pages 124-183
  - 3.3. Volume 3
    - 3.3.1. Pages 184-246

### 3.4. Volume 4

#### 3.4.1. Pages 318-370

## **DURATION OF ORAL ARGUMENT**

4. The First Respondent estimates that it will require 1 hour for oral argument.

## **SUMMARY OF THE ARGUMENT**

5. The case is limited to whether a union must establish that the employees it claims are members for the purposes of obtaining organisational rights lawfully joined the union. The LAC Judgment, if upheld, will not permit employers to question union membership in other contexts, such as representation in disciplinary proceedings.
6. At common law, a union has no powers outside of those given to it in its constitution. If it admits a member contrary to its constitution, it acts *ultra vires* and unlawfully.
7. The LRA reinforces the common law position. It requires unions who seek organisational rights to register a constitution that prescribes the criteria for membership. It makes the grant of organisational rights dependent on

membership. The only plausible reading is that unions can only rely on lawfully admitted members when they claim organisational rights.

8. It would not be permissible to allow a union to rely on its own unlawful conduct to engage coercive state power against an employer.
9. The Applicant's (**NUMSA**) argument that it can admit workers in any industry is completely inconsistent with the text of its constitution.
10. The constitutional rights to join a trade union and to association support the LAC's approach. Both rights are meaningless unless unions can elect who is and is not admitted, and are held to their agreements on that question. Allowing union conduct contrary to its constitution undermines both rights.
11. International law and comparative law support the LAC's interpretation. At worst, they are neutral on the question.

#### **AUTHORITIES ON WHICH PARTICULAR RELIANCE WILL BE PLACED**

1. *MacDonald's Transport Upington (Pty) Ltd v Association of Mineworkers and Construction Union (AMCU) and Others* [2016] ZALAC 32; (2016) 37 (ILJ) 2593 (LAC); [2017] 2 BLLR 105 (LAC).
2. *National Union of Metal Workers of South Africa and Others v Bader Bop (Pty) Ltd and Another* [2002] ZACC 30; 2003 (3) SA 513 (CC).
3. *Ramakatsa and Others v Magashule and Others* [2012] ZACC 31; 2013 (2) BCLR 202 (CC).

4. *Van Wyk and Taylor v Dando and Van Wyk Print (Pty) Ltd* (1997) 7 BLLR 906 (LC).
5. *Afgri Operations Ltd v MacGregor NO & Others* (2013) 34 ILJ 2847 (LC).
6. *NUM obo Mabote v Commission for Conciliation Mediation and Arbitration and Others* [2013] ZALCCT 22; [2013] 10 BLLR 1020 (LC); (2013) 34 ILJ 3296 (LC).
7. *Lufil Packaging (Isithebe) (A division of Bidvest Paperplus (Pty) Ltd) v Commission for Conciliation, Mediation and Arbitration and Others* [2019] ZALAC 39; (2019) 40 ILJ 2306 (LAC); [2019] 11 BLLR 1212 (LAC).
8. E Fergus 'The Disorganisation of Organisational Rights – Recent Case Law and Outstanding Questions' (2019) 40 *ILJ* 685.

DATED AT JOHANNESBURG ON THIS 1<sup>st</sup> DAY OF NOVEMBER 2019.