CONSTITUTIONAL COURT OF SOUTH AFRICA

National Union of Metal Workers of South Africa v Lufil Packaging (Isithebe) and Others

CCT 172/19

Date of Judgment: 26 March 2020

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Thursday, 26 March 2020 at 10h00, the Constitutional Court handed down judgment in an application for leave to appeal against an order of the Labour Appeal Court, which overturned an order of the Labour Court. The Labour Court had dismissed the application for review of a Commission for Conciliation Mediation and Arbitration (CCMA) ruling. This application concerns the issue whether a trade union can admit as members and receive organisational rights for employees who do not fall within the scope of the trade union's constitution, which defines eligibility for membership.

During January 2015, NUMSA (the applicant) approached Lufil Packaging (Isithebe) (the respondent) requesting that the respondent deduct union fees for its members who are employed by the respondent. The respondent refused the request on the basis that its operations, being in the paper and packaging industry, did not fall within the permitted scope of the applicant's constitution. The respondent alleged that the applicant was not entitled to organise members within the respondent's workplace and that NUMSA had acted ultra vires its own constitution in admitting these employees as members. The applicant then referred a dispute to the CCMA.

In the arbitration award by the CCMA, the applicant was granted certain organisational rights, including the deduction of union fees. The respondent filed an application in the Labour Court to review and set aside this award. The essence of the respondent's case was that its operations did not fall within the registered scope of the applicant and consequently, the applicant did not have the required locus standi (the right to pursue something) to bring the dispute to the CCMA and that, as such, the referral ought to be dismissed.

The respondent argued that the provisions of the applicant's constitution, which set the scope of its operation and identified the industries in which it is permitted to organise, did not entitle the applicant to claim organisational rights in respect of the respondent's workplace. Additionally, the respondent argued that the employees' right to join the applicant is limited by the terms of the applicant's constitution. Section 4 of the Labour Relations Act 66 of 1995 (LRA) gives effect to the employees' right to freedom of association and includes the right to join a trade union "subject to its constitution".

The Labour Court noted that the exercise of organisational rights essentially governs and regulates the manner in which the union's right to represent its members is exercised. The Labour Court dismissed the application and upheld the CCMA's ruling. It stated that the relationship between a union and its members is a private matter and it is not for a third party (in this case the respondent) to raise a challenge about whether the applicant is complying with its own constitution. The Court went on to specify that the only conditions that need to be met if a union wants to exercise organisational rights is that the union must be registered and it must be sufficiently representative.

The respondent appealed this decision to the Labour Appeal Court, which upheld the appeal and set aside the CCMA's arbitration award. The Labour Appeal Court stated that, at common law, unions only have those powers that are conferred on them by their constitutions and they cannot create a class of members outside of the provisions of their constitution. Such a decision is ultra vires and invalid and can be challenged by the employer from whom organisational rights are sought.

In this Court, the applicant contended that the matter concerns the constitutional right to fair labour practices, the right to freedom of association, and raises the question of how the LRA should be interpreted to advance these rights.

The applicant argued that the Labour Appeal Court erred in holding that a trade union cannot admit members who are not eligible for membership in terms of its constitution, as this interpretation of section 4(1)(b) of the LRA fails to give proper regard to the constitutional rights to fair labour practices and freedom of association.

The respondent argued that the applicant chose to specify in its constitution that only employees in certain identified industries are eligible to become members and that the LRA makes it clear that membership is subject to a union's constitution. The respondent further argued that its entitlement to challenge the applicant acting *ultra vires* its constitution flows from the fact that the applicant is attempting to claim organisational rights in the respondent's workplace. The respondent accordingly distinguished its challenge in this context, from a challenge brought by a third party to union membership in the context of an employee's right to representation in unfair dismissal proceedings.

A unanimous judgment, penned by Victor AJ (Khampepe ADCJ, Froneman J, Jafta J, Madlanga J, Majiedt J, Mathopo AJ, Mhlantla J, Theron J and Tshiqi J concurring), held that the eligibility requirement to join a trade union was defined in NUMSA's constitution and that at common law and based on the LRA, NUMSA's constitution precludes

membership outside of the metal and related industries listed in its constitution. Any admission of members outside the terms of its constitution is *ultra vires* and invalid.

The judgment upheld the Labour Appeal Court's decision and held that when NUMSA wished to admit Lufil's employees as members, it ought to have amended its constitution as provided for by the LRA. On that basis, the court held that it would not be in the interest of justice to grant leave to appeal. The application for leave to appeal was accordingly dismissed.