

**IN THE LABOUR COURT OF SOUTH AFRICA**  
**(HELD AT JOHANNESBURG)**

**Case Number: J885/22**

In the matter between:

**RUTH NTLOKOTSE**

Applicant

and

**NUMSA & OTHERS**

First to Third Respondents

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**RESPONDENTS' APPLICATION FOR LEAVE TO APPEAL**

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**PLEASE TAKE NOTICE** that the first to third respondents ("***the respondents***") hereby apply to the above Honourable Court for leave to appeal to the Labour Appeal Court against the whole of the judgment and order handed down by his Lordship Mr Justice Moshoana on 23 July 2022.

**TAKE FURTHER NOTICE** that the respondents will rely on the following grounds in support of this application:

**First ground of appeal: *The National Executive Committee's power to suspend***

1. The learned judge erred by finding that national executive committee ("***NEC***") of the first respondent ("***NUMSA***" or "***the Union***") only has the power to suspend

an office bearer or official of the Union after convening a disciplinary hearing in terms of Chapter 8 of the Union's constitution ("**the constitution**") as a form of disciplinary sanction (i.e., punitive suspension). The learned judge should have found that, on a proper interpretation of the constitution (*alternatively*, as a tacit or implied term of the constitution), the NEC also has the power to place any member or employee of the Union on precautionary suspension pending the disciplinary hearing envisaged by Chapter 8 of the constitution (and that any member or employee so placed on precautionary suspension will be prohibited from taking part in any Union activities while they remain on precautionary suspension).

**Second ground of appeal: The Central Committee's power to suspend**

2. The learned judge erred by failing to find that, on a proper interpretation of the Union's constitution (*alternatively*, as a tacit or implied term of the constitution), the Union's central committee ("**CC**") has the power to place any member or employee of the Union on precautionary suspension pending a disciplinary hearing (and that any member or employee so placed on precautionary suspension will be prohibited from taking part in any Union activities while they remain on precautionary suspension).

**Third ground of appeal: The Regional Executive Committees' power to suspend**

3. The learned judge erred by failing to find that, on a proper interpretation of the Union's constitution (*alternatively*, as a tacit or implied term of the constitution), the Union's regional executive committees ("**RECs**") have the power to place any member or employee within their regions on precautionary suspension pending a disciplinary hearing (and that any member or employee so placed on

precautionary suspension will be prohibited from taking part in any Union activities while they remain on precautionary suspension).

**Fourth ground of appeal: Central Committee's power to place regions under administration**

4. The learned judge erred by accepting the applicant's argument that the CC only has powers to take over management of the affairs of a region (i.e. place a region under administration) in circumstances where the applicable regional congress ("**RC**") has suspended its REC. The learned judge should have found that, on a proper interpretation of the Union's constitution (*alternatively*, as a tacit or implied term of the constitution), the CC is empowered to place a region under administration:

4.1. whenever the CC deems it appropriate to do so, *alternatively*;

4.2. whenever, in the opinion of the CC, the region is unable to function effectively and serve its members in compliance with the Union's constitution; *further alternatively*

4.3. after an RC has convened but failed to elect a new REC.

**Fifth ground of appeal: The Central Committee's power to assume the role of the credentials committee**

5. The learned judge erred in finding that the CC arbitrarily usurped the function of the credentials committee. The learned judge should have found that, on a proper interpretation of the Union's constitution (*alternatively*, as a tacit or implied term of the constitution), the CC is empowered to assume the roll of the

credentials committee.

**Sixth ground of appeal: *Locus standi***

6. The learned judge erred in finding that section 158(1)(e) of the LRA entitled the applicant to seek compliance with the Union's constitution in respect of alleged non-compliance regarding other members of the Union. The learned judge should have found that:

6.1. section 158(1)(e) of the LRA requires that only a person with a direct and substantial interest in the legal right affected by the alleged non-compliance has the requisite *locus standi* to invoke the section; *alternatively*

6.2. before a union member can invoke section 158(1)(e) of the LRA in respect of alleged non-compliance regarding other members of a union, that member must apply for certification of a class action (as envisaged by the court in *Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others* 2013 (2) SA 213 (SCA) regarding 38(c) of the Constitution of the Republic of South Africa).

**WHEREFORE** the respondents shall seek an order on appeal that:

1. the judgment of Moshoana J be set aside and replaced with a ruling that the application is dismissed with no order as to costs; *and*
2. the respondents are granted the costs of the appeal.

**SIGNED AT PRETORIA ON THIS THE 26<sup>th</sup> DAY OF JULY 2022.**



**SERFONTEIN VILJOEN & SWART**

165 ALEXANDER STREET

BROOKLYN

PRETORIA

TEL: (012) 362 2556

FAX: 086 867 2271 / 086 471 8090

EMAIL: [jd@svslaw.co.za](mailto:jd@svslaw.co.za) /

[franlie@svslaw.co.za](mailto:franlie@svslaw.co.za)

**REF: MR CLAASSEN/fb/CM0141**

**TO: THE LABOUR COURT OF SOUTH AFRICA**  
JOHANNESBURG  
Email: [Labourcourts@judiciary.org.za](mailto:Labourcourts@judiciary.org.za) / [FNtuli@judiciary.org.za](mailto:FNtuli@judiciary.org.za)

**AND TO: THE REGISTRAR OF THE ABOVE**  
**HONOURABLE COURT IN CHARGE OF APPEALS**  
Mr C T Phophi  
Email: [cphophi@judiciary.org.za](mailto:cphophi@judiciary.org.za)

**AND TO: THE SECRETARY OF HIS LORDSHIP**  
**MR JUSTICE MOSHOANA**  
Att: Ms Riyaana Pandy  
Email: [RPandy@judiciary.org.za](mailto:RPandy@judiciary.org.za)

**AND TO: AHMED GANI ATTORNEYS**  
Attorneys for the **APPLICANT**

83 CENTRAL STREET

HOUGHTON

1<sup>st</sup> FLOOR

TEL: (011) 483 0659

FAX: 086 260 9037

EMAIL: kevin@againinc

**REF: N328/KS**