IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

CASE NO: J1620/2010

In the matter between

GENERAL DOMESTIC AND PROFESSIONAL EMPLOYERS ORGANISATION — **1st Applicant**

and

REGISTRAR OF LABOUR RELATIONS — **1st Respondent**

JUDGMENT

LAGRANGE, J

Introduction

[1] The applicant ('the GDPEO') was a registered employer's organization until its deregistation by the registrar of Labour Relations ('the registrar') on 27 July 2010.

[2] It lodged a notice of appeal against the registrar's decision on 6 August 2010 with this court in terms of section 111 of the Labour Relations Act 66 of 1995 ('the LRA'). The Applicant firstly seeks declaratory relief that, as a matter of law, the lodging of an appeal under section

111 automatically suspends the registrar's decision to deregister it. Alternatively, it seeks interim relief suspending the effect of the decision pending the outcome of its appeal**.**

[3] The respondent raised *in limine* objections in its answering affidavit to the application, but these were not persisted with in argument before the court, so need not be addressed.

Suspension of de-registration pending the outcome of an appeal as matter of law

Previous decisions of the Labour Court

[4] In ***Unica Plastic Moulders CC v National Union of South African Workers***[1], Basson J considered an application to interdict the respondent union from interfering with the applicant's business and employees. The union had been de-registered and an appeal had been lodged with this court against the registrar's decision to de-register it. In the course of considering what rights the de-registered union might have retained, the learned judge was compelled to deal with the effect of the pending appeal on the union's status.

[5] Basson J concluded that, as a matter of law, the noting of an appeal against the Registar's de-registration decision does not suspend the effect of the decision for the following reasons:

[5.1] Firstly, section 106(3) of the LRA conveys an unequivocal intention on the part of the legislature that all rights enjoyed by a trade union will end with de-registration.[2]

[5.2] Even though section 106(3) does not state expressly that the registrar's decision is not suspended pending an appeal, it must be implied having regard to how the

[1] Unreported judgment of the Labour Court, Case no J1072/2010, dated 3 August 2010)

[2] At para [17] of the judgment. Section 106(3) of the LRA reads: *"When a trade union's or employer's organisation's registration is cancelled, all the rights it enjoyed as a result of being registered will end."*. (emphasis added)

effect of de-registration of trade unions or employer organizations that was dealt with under the transitional provisions of Schedule 7 of the LRA.[3]

[5.3] Thirdly, academic authorities support the proposition that despite the common law position that noting an appeal suspends the effect of the decision appealed against, if an appeal is noted against an administrative decision taken in terms of statutory powers, it depends on the enabling statute whether or not the common law presumption will apply.[4]

[5.4] Fourthly, the court held that there was an important public policy consideration as to why the rights of a trade union should come to an end when it is de-registered by the registrar (pending the appeal), namely that "*… a trade union is in a position of trust vis à vis its members and as such is entrusted with ensuring that the employee is treated fairly by his or her employer in the workplace. A registered trade union is further allowed to represent its member at the CCMA, the Bargaining Council and the Labour Court and is as such in a similar position as an attorney or counsel. From a public policy point of view a trade union should not be able to enjoy the rights afforded to a registered trade union if it has flaunted the very act from which these rights are being derived*."[5]

[5.5] The court found further support for its thinking in the judgment of Molahlehi, J in ***CCMA v Registrar of Labour Relations & Others*** **(CASE NO: J984/10) dated 27 July 2010**, where he also found that the registrar's decision to deregister is not suspended pending the outcome of the appeal in terms of section 111(3) of the LRA. The learned judge agreed with the assessment of Molahlehi J of the objects

[3] *"Item8 of Schedule 7 of the LRA provides that :"Cancellation in terms of sub-item (6) takes effect – (a) if the trade union or the employer's organization has failed, within the time contemplated in section 111(3), to appeal to the Labour Court against the cancellation, when that period expires; or (b) if the trade union or the employer's organization has lodged an appeal, <u>when the decision of the registrar has been confirmed by the Labour Court.</u>"*

[4] Judgment at paras [19] and [20]

of the LRA in respect of trade unions, citing the following passages from his judgment:[6]

> *"[35] The objects of s106 read with s111 (3) of the LRA must also be understood in the context that the legislature having created an environment and a frame work for the guaranteed and enjoyment of the Freedom of Association in form of trade unions, also sought to ensure that certain minimum duties of transparency and accountability are imposed on the trade unions. The need for accountability arises from the fact that trade unions, as public entities, depends largely on financial contributions from the workers who are members of the public. It cannot be denied that the decision of the registrar to de-register a trade union has serious consequence on that union as an entity and its members. As an entity the decision of the registrar, is likely to have a profound impact on its structures and its operations including the right to represent its members in various dispute resolution processes. It further cannot be denied that there exists a possibility that the registrar in arriving at the decision to de-register a trade union may be based on an incorrect interpretation of facts before him or her or other invalid reasons which may ultimately result in the decision being overturned on appeal.*
>
> *[36] The prejudice that a union may suffer as a result of de-registration and enforcing such, even pending appeal, should be weighed against the public interest of protecting the interest of union members in particular that of ensuring that funds contributed are utilized for the purpose of benefiting union members. This simple accountability principle is founded on the notion that a union occupies a position of trust as concerning the management of the funds contributed by members. In short the provisions of s 106 of the LRA are protective in nature, intended to protect the vulnerable workers from abuse of their trust by unscrupulous union*

[6] at para [22] of the *Unica* judgment

officials whose involvement in a union may be for no other reason but to advance their selfish business interest. "

[5.6] Basson J continued:

"*[23]…There is no doubt that trade unions play an important role in the workplace and in that sense fulfill an important social responsibility towards employees who in most instances have no other recourse than the trade union who will then be entrusted to ensure that he or she is treated fairly by his or her employer. Where the union is registered, the union has the further right of representing the employee at the CCMA, Bargaining Council and the Labour Court. Commissioners, Arbitrators and Judges expect of union representatives to diligently and honestly serve the interest of their members. They have, after all, been granted the privilege and right to be able to represent their members by virtue of them having complied with the statutory provisions of the LRA. I am therefore in agreement with my learned brother Molahlehi, J that a trade union should not be able to represent these vulnerable workers if their conduct has been found to be unscrupulous by the registrar of Labour and especially where the registrar of Labour finds that the union is no longer operating as a genuine trade union but is being used to advance the selfish business interests of individuals. See further CCMA v registrar of Labour Relations (supra):*

> *"[38] The prejudice argument would probably have supported the interpretation of the CCMA had one of the consequences of de-registration been to render the continued operation of such a union illegal. In our law the existence and operation of unions is not based on registration but as indicated earlier on the principle of respect and guarantee of Freedom of Association. Thus a de-registered union can continue operating even after the de-registration. The consequence of de-registration is simply that the rights and benefits given to the union by the very law, which it had failed to obey, is taken away. "*

[24] The fact that a trade union will no longer be able to exercise organisational rights in terms of the LRA is an unfortunate consequence. However, the union only has itself to blame. See in this regard United People's Union of South Africa v registrar of Labour Relations (Case no J 2178/09)[7]:

> *"[10] Mr. Lengane, who appeared for UPUSA, made much of the consequences that a refusal to grant interim relief would visit on UPUSA. Indeed, those consequences have already manifested themselves in the form of the withdrawal of recognition and organisational rights by a number of employers following on the registrar's decision. This may be so, but UPUSA has only itself to blame. Trade unions are public institutions, not private businesses. The act of registration confers many benefits on those trade unions that seek to be registered. But these benefits come at the price of submission to the reporting requirements established by section 100 of the LRA, all of the requirements that are intended to provide a guarantee to union members that their membership subscriptions have been utilised to further their interests. A failure by a registered trade union to comply with section 100 and to keep books of account and records to the standard required by section 98 undermines this statutory guarantee. Ultimately, it is the registrar who is the underwriter of this warranty, and like all underwriters, the registrar must protect the general interest at the expense of the particular when this is necessary. The registrar is accountable to the public as a whole should a registered trade union (or employers' organisation, for that matter) fail to implement the required financial and administrative controls, and a degree of due diligence by the registrar in enforcing the relevant requirements of the Act is therefore necessary.*"

[7] Now reported as ***UPUSA v registrar of Labour Relations*** **(2010) 31** ***ILJ*** **198 (LC**)

[6] Basson J reiterated these views in a subsequent decision in the case of ***Lowveld General and Allied Employer's Organisation v Minister of Labour & others (unreported judgment, case no 2431/09 dated 22 October 2010)***, in that instance involving an employer's organisation.

[7] In ***UPUSA v registrar of Labour Relations*** **(2010) 31** ***ILJ*** **198 (LC**), Van Niekerk J also had to determine whether to allow a de-registered union to continue to exercise the rights of a registered union pending the outcome of its appeal against the registrar's decision to de-register it. In that case, the learned judge noted that the union based its claim on the ordinary test for interim relief and did not rely on a distinct legal right to continue to exercise such rights.[8] The court then decided the application on the ordinary test for granting interim relief which entailed, *inter alia*¸ assessing the union's prospects of success in the appeal.

Analysis of the argument in casu

[8] In this matter, the applicant seeks to persuade the court that the decision in the *CCMA* case was wrongly decided. It attacks the reasoning in that decision on a number of grounds.

[9] Firstly, the applicant argues that the court in *CCMA* adopted the wrong approach when interpreting the statute. The court should first have accepted that the starting point is the common law principle that the lodging of an appeal suspends the operation of the decision appealed against. Then the court should have asked if it was an unavoidable conclusion that the statute intended to alter the common law position, instead of concluding that if the legislature had wanted the lodging of an appeal to stay the effect of the registrar's decision, it would have said so expressly.[9] In this regard the applicant cites, *inter alia,* the dictum in ***Casserley v Stubbs*** **1916 TPD 310** at 312, viz:

> "*It is a well known canon of statutory construction that we cannot infer that a statute intends to alter the common law. The statute must either explicitly say that it is the intention of the legislature to alter the common law, or the inference from*

[9] At para [32] of the *CCMA* judgment.

the Ordinance must be such that we can come to no other conclusion than that the Legislature did not have such an intention." (applicant's emphasis)

[10] The applicant urged the court to accept that if the court in *CCMA* had been alerted to the argument above, it would have approached the matter differently and would not have followed the purposive approach it adopted in interpreting the LRA.

[11] I agree that there is nothing in the *CCMA* judgment which suggests that the common law proposition in *Casserley* was argued before my brother in that matter. In the *UPUSA* case it was also not raised as an issue because of the way the matter was approached. However, in the *Unica* case too, it seems that the only common law point advanced was the principle that unless a statute provides otherwise, the lodging of an appeal suspends the operation of the decision appealed against pending the outcome of the appeal. Here too it seems the principle of not departing from the common law unless expressly provided for, or unless it is an unavoidable inference to be drawn, was not specifically raised.

[12] The applicant reiterates the argument that was considered in the *Unica* case that the suspension of the decision appealed against applies not only to decisions of a court but also to administrative decisions. It cites the most recent authority for this proposition being the judgment in ***Max v Independent Democrats and Others* 2006 (3) SA 112 (C)**. That matter concerned an appeal of a member of a political party against a decision to expel him for 'floor-crossing'. He sought an interdict suspending his expulsion pending the outcome of his appeal. The learned judge Davis, J held that there was nothing in party's code of conduct to suggest that the rule of automatic suspension of the decision should not apply.[10] The code only provided for a right of appeal against the decision. The court's thinking was also reinforced by a consideration of the impact of an expulsion on the affected individual and the role of individual MPs in a deliberative democracy. Further, the court considered the practical implications of not suspending the expulsion decision pending the appeal if the

[10] At 120G-H

errant member was then replaced in parliament by another member of the party before the appeal was heard.[11]

[13] Before looking at the LRA, a look at some of the authorities cited in the *Max* and *Unica* decisions is useful.

[14] Baxter gives the following example of appeals against decisions of a local road transportation board under the Road Transportation Act:

> *"In the case of private disputes the effect at common law of noting an appeal is to suspend the operation of the decision appealed against. But the right of appeal against decisions taken in terms of statutory powers is dependent upon the enabling statute. The common-law principle can constitute no more than a presumption in the case of administrative decisions, and this presumption may well be negatived by the implications of the statute. Take the Road Transportation Act, for example. A dissatisfied party may appeal to the NTC against the decision of a local road transportation board. Application may also be made to the chairperson of the NTC who has the power to suspend the decision of the local board pending the outcome of the appeal. The fact that such power was conferred on the chairman has led a court to the conclusion that the common-law principle (that a decision appealed against is automatically suspended) could not have been intended to apply in cases where such a suspension order is not made-for otherwise there would be no necessity for conferring the suspending power on the chairman."*[12]
>
> (emphasis added)

[11] At 120I-121J

[12] L Baxter, *Administrative Law*, (1984) at 381. Section 8(3) of the Road Transportation Act 74 of 1977, amended in 1983, reads: *"The chairman of the commission or a member thereof nominated by the chairman, may in his discretion and without giving prior notice to or hearing any interested party- …;(b) grant or refuse an application to suspend the operation of an act, direction or decision of a board appealed against;…"* See also the judgment in ***Leburu en Andere v Voorsitter, Nasionale Vervoerkommissie, en Andere* 1983 (4) SA 89 (W)** at 93D-F which affirmed the principle that the suspension of a decision ordinarily applies to appeals against administrative decisions relying on the authority in ***South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A)** at 544H - 545A.

[15] The court in *Max* also had regard to the passage in De Ville's *Judicial Review of Administrative Action in South Africa* at 334, cited with approval in *Unica,* where the author contends:

> '*Where an appeal is allowed against an administrative decision the decision appealed against will (unless the statute in question provides otherwise) take effect only once the period for appeal has expired (and the person affected has not made use of the opportunity) or the decision has been confirmed on appeal (where the person affected makes use of the opportunity to appeal).*
>
> *The judging of an appeal against an administrative decision thus suspends the decisions being appealed against until such time as that decision is taken on appeal.*'

[16] It seems to me that the fundamental question to be answered is whether the provisions of the LRA do make it clear that the legislature intended to alter the common law position, either expressly or because no other conclusion can be drawn. I accept the statement of the principle of interpretation stated by the court in *Casserley's* case. I also am in agreement with the principle that an administrative decision is also suspended pending the outcome of an appeal against that decision, in the absence of a statutory provision to the contrary. The combined effect of these principles is that a departure from the second should only be permitted if express provision is made for it in the statute or it is an unavoidable conclusion that the legislature could not have intended it to apply.

[17] I do not agree with the applicant that nothing in the LRA indicates a legislative intent to abrogate the principle of suspending the effect of the decision appealed against. In both the *Unica* and *CCMA* matters the judges made reference to the transitional provisions which applied to appeals against de-registration, which are set out Schedule 7 of the LRA. in Item 5(8)(b) of Schedule 7 expressly provided for the suspension of the cancellation of the registration of a union or employers' organisation which had been registered under the previous LRA,[13] provided the body timeously lodged an appeal against the registrar's

[13] *Unica* judgment at para [17] and *CCMA* judgment at para [32]

decision, in which case the effect of the registrar's cancellation was to be suspended until the outcome of the appeal. That appeal still had to be made under the provisions of section 111(3) of the LRA, which is the same procedure that applies to unions and employer organizations registered after the inception of the new Act.

[18] Despite the legislature specifically applying its mind to the suspension of the cancellation of a previously registered union and addressing that appeal under the provisions of section 111(3), the LRA contains no analogous provision to Item 5(8) which applies to unions or employers' organizations registered since the Act's commencement. In my view, it is inconceivable the legislature would have included Item 5(8) for previously registered organisations but simply forgot to consider the position when it came to newly registered organizations. Moreover section 106(3) unequivocally states: "*When a trade union's or employers' organisation' is cancelled, all the rights it enjoyed as a result of being registered will end.*" Reading this provision together with Item 5(8) and section 111, I am driven to the conclusion that even though it did not expressly say so, it is an unavoidable conclusion that the legislature did not intend the common law principle of the suspension of an administrative decision to apply when an appeal is lodged under section 111(3) against the registrar's decision.

[19] Accordingly, the applicant's claim that an appeal against the de-registration decision of the registrar automatically suspends the effect of that decision is dismissed.

Claim for Interim Relief

[20] The fact that there is no automatic suspension of the cancellation of the organization's de-registration does not mean it cannot apply for relief from this court in the same way that a party can apply for relief notwithstanding the default position that an appeal normally stays the execution of the decision appealed against. Here the default position is that it is not stayed, and the applicant is asking the court to grant an exception to the default position. In so doing, it seems appropriate that the court must apply the same principles enunciated in the decision in ***South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty)***

***Ltd* 1977 (3) SA 534 (A)** cited with approval by the Constitutional Court in ***Minister of Health v TAC* 2002 (5) SA 703 (CC)**. In the *South Cape* judgment the court held that:

> *"The Court to which application for leave to execute is made has a wide general discretion to grant or refuse leave and, if leave be granted, to determine the conditions upon which the right to execute shall be exercised (see Voet, 49.7.3; Ruby's Cash Store (Pty.) Ltd. v Estate Marks and Another, supra at p. 127). This discretion is part and parcel of the inherent jurisdiction which the Court has to control its own judgments (cf. Fismer v Thornton, 1929 AD 17 at p. 19). In exercising this discretion the Court should, in my view, determine what is just and equitable in all the circumstances, and, in doing so, would normally have regard, inter alia, to the following factors:*
>
> *(1) the potentiality of irreparable harm or prejudice being sustained by the appellant on appeal (respondent in the application) if leave to execute were to be granted;*
>
> *(2) the potentiality of irreparable harm or prejudice being sustained by the respondent on appeal (applicant in the application) if leave to execute were to be refused;*
>
> *(3) the prospects of success on appeal, including more particularly the question as to whether the appeal is frivolous or vexatious or has been noted not with the bona fide intention of seeking to reverse the judgment but for some indirect purpose, e.g., to gain time or harass the other party; and*
>
> *(4) where there is the potentiality of irreparable harm or prejudice to both appellant* and respondent, the balance of hardship or convenience, as the case may be."[14]

[21] These factors are evaluated below, though not in the same order stated.

Prospects of success on appeal

[22] The registrar announced his intention to de-register the applicant because he alleged the applicant had ceased to function in terms of its constitution, was functioning for the personal

[14] At 545B-G of the judgment

gain of individuals, and ceased to function as a genuine organisation as envisaged by section 106(2A)(a) of the Act.

[23] It seems the registrar's chief difficulty with the applicant concerns whether or not labour consultants are using the applicant as a vehicle to circumvent the provisions of the LRA, which effectively prevent them from representing employers in various proceedings under the Act. It appears that some of the applicant's members are consultants and accordingly are able to appear on behalf of other employer members of the applicant in proceedings before the CCMA and the Labour Court.[15]

[24] The applicant disputes the validity of the claims for a variety of reasons, all of which I do not intend to address here. A few however need to be mentioned. Amongst the reasons on which it bases its appeal is that the administrative fees paid by members simply cover the administrative and management costs of the organisation and no individuals derive personal gain from this. It also claims that the only occasion the organisation did not operate in terms of its constitution was in 2006 where it inadvertently had more executive committee meeting members than the constitution provided for, but this was rectified and at the time the registrar made his finding the applicant claims it was operating in terms of its constitution. Lastly, the applicant claims that the decision to de-register it was irregular because, despite making a request for the documents on which the registar's decision was based, it was not provided with the same. The applicant contends by so acting and by insisting that it was sufficient that he was satisfied the applicant was not a genuine employer's organisation and that the applicant had been given an opportunity to make its own representations opposing the cancellation of its registration the registrar had not fulfilled the requirements of *audi alterem partem.*

[25] I am persuaded that the grounds of appeal mentioned show that the applicant's appeal is not necessarily frivolous and the last mentioned ground raises an important question of what information, the registrar ought to provide to a threatened organisation about the basis for his finding that it is not a genuine trade union or employers' organisation.

[15] In terms of Rule 25(1) of the CCMA rules and section 161(c) of the LRA respectively.

Prospects of irreparable harm and the balance of convenience

[26] The applicant alleges the following prejudice *inter alia* will flow from giving effect to the registrar's decision:

[26.1] The applicant will no longer be able to enter into collective agreements in terms of the LRA;

[26.2] It will not be able to participate in the establishment and functioning of bargaining councils.

[26.3] It will not be able to pursue a lock-out in terms of sections 64 to 77 of the LRA

[26.4] It will not be able to appear on behalf of its members in the CCMA, bargaining councils or at court amounting to approximately 260 matters a month.

[26.5] The applicant's allegedly imminent application to become a member of the Road Freight Bargaining Council

[26.6] The loss of these rights threatens the applicant's existence because members may desert it and join other employers' organizations.

[27] The respondent is dismissive of these claims of prejudice on the basis that some of the claims are lacking in detail and that the applicants' members would still be able to exercise the rights in their own capacity, which it currently exercises on their behalf. I have considerable sympathy with the respondent in this regard, especially as there is no evidence that the applicant is engaged in any centralized bargaining forum on behalf of any group of its members. The only evidence in this regard is the vaguely expressed ambition that the applicant was intending to try and gain admission to the Road Freight Bargaining Council. This contention is` unsupported by reference to the number of employers it represents falling under that council, or whether there was any realistic prospect of it gaining admission based on thresholds of representation which should be set out in the council's constitution.[16]

[16] In terms of section 30(1)(o) of the LRA.

[28] I accept that there may be some prejudice to the applicant's members involved in part heard or imminent proceedings in which the applicant is representing them. This prejudice could be cured by an appropriately worded order. Future matters not yet underway might be dealt with by alternative registered organizations, or the employers involved could obtain appropriate legal or industrial relations advice on how to handle the matters in advance. It is quite possible however that the applicant may lose members if it no longer can provide the services they rely on for it to provide, albeit for additional payment.

[29] In evaluating the irreparable harm to the respondent, one is dealing with an altogether different type of prejudice. The harm that might be done is to the value to be attached to the registered status of a union or employer's organisation if that title is preserved by an organisation simply because an appeal has been lodged against its de-registration. The institution of the registrar may suffer a loss of efficacy if it cannot clamp down on bogus institutions or ones that are not functioning as genuine unions or employers' organisations. Allowing organisations to continue operating under a 'registered' label can create a false impression in the eyes of employees and employers that the organisation is above board and prospective members need not have any concern that they are joining a *bona fide* organisation that meets all the requirements of a registered organisation in terms of the LRA.

[30] Having said this there are obviously cases where it is arguably more pressing for the registrar's ruling to be enforced pending an appeal. Some examples of such situations might be: if there are serious allegations setting out a *prima facie* case of corruption, gross neglect or mismanagement of the organizations resources; or where funds are used for purposes which cannot be reconciled with the objects of the organisation; where the controlling interests in the body are running it without regard to its constitution, or where collective bargaining arrangements are predicated on the registered status of the organisations involved and serious anomalies might if a party was effectively allowed to retain its membership of the forum despite the registrar's decision. I mention these merely to illustrate possible situations where compelling reasons might exist for not allowing a body to retain its registered status pending an appeal, despite the prejudice to that body. Every case would have to be carefully evaluated on its own facts.

[31] In this instance, I accept that the applicant has not made out a compelling case that it will suffer irreparable prejudice, except that if it is ultimately successful it may be difficult for it to resurrect itself and recover members it has lost. At the same time, the short term prejudice to the registrar's legitimate objective of preventing a non-genuine employer's organisation from continuing operations is not so compelling having regard also to the fact that even though it ostensibly has a large membership of 1100 members those members only employ 30 000 employees on the applicant's own version, suggesting a small average workforce. There is also no indication that it is operating to the prejudice of its members, even if it bona fides as a genuine employer's organisation are questionable, or that it is being seriously financially mismanaged.

[32] In the circumstances, I think that the balance of prejudice is marginally in the applicant's favour.

Conclusion

[33] When considering the balance of prejudice together with the prospects of success on appeal in particular in relation to the applicant's complaint about the procedure followed by the registrar before taking the decision to de-register, I believe that the applicant should be permitted to remain registered pending the outcome of the appeal against the registrar's decision.

[34] I am mindful however, that the leave to appeal might be pursued less enthusiastically as the applicant will suffer no prejudice while it remains pending. Accordingly, I have made allowance for the respondent to approach the court to revisit this interlocutory order if the appeal is not prosecuted diligently by the applicant. There is also nothing to prevent the respondent approaching the registrar of the court to have the appeal hearing prioritized on the roll once the matter is ripe for hearing.

Order

Accordingly, an order is made in the following terms:

[35] It is declared that the applicant has no automatic right to the suspension of a decision by the Registrar of Labour Relations to de-register it under the LRA.

[36] In the exercise of the court's discretion to regulate its own process, after considering the factors relevant to suspending the Registrar's decision pending the outcome of the applicant's appeal against that decision, the cancellation of the applicant's registration is suspended pending the outcome of the appeal to the Labour Court under section 111 of the LRA, subject to the proviso in paragraph (c) of this order.

[37] In the event that the applicant does not prosecute its appeal expeditiously, the respondent may approach the court to reconsider the suspension of his decision.

[38] No order is made as to costs.

ROBERT LAGRANGE

JUDGE OF THE LABOUR COURT

Date of hearing: 24 August 2010

Date of judgment: 19 November 2010

Appearances:

For the applicant: C Watt-Pringle SC, instructed by MacGregor Erasmus Attorneys

For the respondent: H v R Woudstra SC, instructed by the State Attorney, Pretoria