



Your reference:
Our reference: AMCU/Spoor/Kahn

Date: 20 April 2020

Directed to: Ms F Ntuli
Registrar
Labour Court – Johannesburg

PER EMAIL: fntuli@judiciary.org.za

Dear Ms Ntuli,

Re: REQUEST FOR URGENT ENROLLMENT: AMCU // MINISTER OF MINERAL RESOURCES AND THREE OTHERS

- 1 Today, the Association of Mineworkers and Construction Union (“AMCU”) seeks to issue, serve, and file an urgent application against the Minister of Mineral Resources and three other respondents regarding the regulation of mines during the lockdown.
- 2 The directive issued by the Judge President in respect of access to the Labour Court during the period of lockdown dated 14 April 2020 requires parties to explain “in full detail why the matter is considered to be so urgent that it must be considered in this period of lockdown.” We seek to do so in this letter. We record that we are on standby to answer any queries you may have telephonically or by email.
- 3 AMCU is a registered trade union with over 200 000 members, approximately 100 000 of whom are mineworkers.
- 4 On 16 April 2020, the Minister of Mineral Resources announced that coal mines would be permitted to operate at full capacity and all other mines may operate at 50% capacity.
- 5 As there are a half million mineworkers across South Africa, this means that over 250 000 mineworkers will soon return to work.
- 6 Returning mineworkers will face intense risks of Covid-19 infection.

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- 7 Despite this risk, the Minister of Mineral Resources and Energy and the Chief Inspector of Mines have decided not to exercise their powers under the Mine Health and Safety Act 29 of 1996 to impose binding obligations on employers to protect mineworkers from the Covid-19 pandemic. The regulations concerning mining that have been passed by the Minister of Co-operative Governance and Traditional Affairs are woefully inadequate to ensure that mineworkers are protected from Covid-19.
- 8 AMCU believes that this failure will jeopardise the health of a quarter million mineworkers, as well as their host communities. AMCU's belief is supported by an expert opinion from four Professors who are leading authorities in the sphere of public health and occupational medicine in South Africa.
- 9 AMCU's repeated efforts to engage with the Minister and Chief Inspector have been ignored or rebuffed.
- 10 As a last resort, AMCU brings this urgent application to review and set aside the Minister and Chief Inspector's decisions to not impose binding obligations under the MHSA (or their failure to decide whether to do so), together with alternative relief. It seeks, in the alternative, to review and set aside the regulations enacted by the COGTA Minister under the Disaster Management Act 57 of 2002.
- 11 AMCU also seeks preliminary relief to ensure that employers are notified of the application and able to join should they so choose, and to direct that the main application can be heard on Zoom or a similar digital video system. The applicant's attorneys undertake to set up the Zoom or similar system, so that the Court and other parties will simply have to dial in via a link in an email.
- 12 The relief AMCU seeks is directly related to the implementation of the lockdown and whether or not the Covid-19 pandemic will be defeated. If the matter is not heard urgently during the lockdown, the harm AMCU and its experts warn of will have occurred by the time the matter is heard. That harm will be irreparable. Not only will mineworkers have contracted Covid-19, but they would have passed the disease onto their communities. The health and lives of many thousands of mineworkers is at stake.

- 13 The relief AMCU seeks will also mitigate the risk to mineworkers and their communities who return to work after the lockdown has ended. This is essential as the pandemic may remain a reality until the end of the year, or into the next.
- 14 In the circumstances, we respectfully ask that the Judge on duty consider the matter and:
 - 14.1 hear AMCU's application for preliminary relief pertaining to service at 14h00 on Tuesday, 21 April 2020 or as soon thereafter as the Judge on duty is available; and
 - 14.2 hear AMCU's application for final relief at 10h00 on Tuesday, 28 April 2020 or such other date and time as may be determined by the Judge on duty in the week of 28 April 2020, with due regard to the urgency.
- 15 A copy of the draft notice of motion is attached for purposes of further information in relation to the application. The affidavits are in the process of being finalised and signed. If necessary, unsigned drafts can be made available. The full signed application will be sent by email as soon as possible this afternoon.
- 16 AMCU confirms that its legal representatives will serve this application on the respondents electronically, followed up by telephonic confirmation of receipt, and report to the Court on affidavit regarding its effort to serve on the respondents prior to the hearing of the matter.
- 17 As stated above, we are on standby to answer any question or concern that you or the Judge on duty may have at the phone numbers below. We have briefed Adv Alan Dodson SC and Adv Michael Bishop as counsel for AMCU in this matter.

Yours faithfully

(Signed electronically)

Richard Spoor – (083) 627-1722

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And to: Mr Gwede Mantashe
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