



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-082833

In the matter between:

**CITY OF EKURHULENI
METROPOLITAN MUNICIPALITY**

Applicant

and

**MUNICAL EMPLOYEES CIVIL
SERVANTS UNION (MECSU)**

First Respondent

VUKILE MLUNGWANA

Second Respondent

NKOSANA GOULD

Third Respondent

**MEMBERS OF MECSU EMPLOYED
AT THE APPLICANT (listed in Annexure A)**

Fourth Respondent

**ESSENTIAL SERVICES COMMITTEE OF
THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Fifth Respondent

Heard: 6 June 2025

Delivered: 20 June 2025

By consent, this judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be 20 June 2025.

JUDGMENT

PRINSLOO, J

Introduction

- [1] The Applicant approached this Court on an urgent basis for relief. The relief sought is two-fold – the Applicant seeks an order declaring the First (MECSU or union), Second (Mr Mlungwana) and Third (Mr Gould) Respondents in contempt of Court and an order to interdict the intended strike and any conduct in contemplation or furtherance of the strike which has been planned to take place as per the strike notice dated 27 May 2025.
- [2] The parties before Court, except the Fifth Respondent, have been embroiled in multiple urgent applications. It is necessary to set out the history of this matter as it will provide context for this application.
- [3] On 29 August 2024, the union's Secretary General, Mr Mlungwana, sent a strike notice to the Applicant, giving seven days' notice of its members' intention to embark on strike action. The demands were the following:
- '3.1. Grading of all traffic wardens into a constable post due to similarities in job functions of these two posts;
 - 3.2. Provision of ceremonial pass-out parade to 2022/2023 Metro Police trainees after completing training in metro police diploma;
 - 3.3. Implementation of four days in four days out plus 40 hours of overtime added to monthly salary to all metro police officers in the EMPD;
 - 3.4. Implementation of encashment of annual leave days;

- 3.5. Implementation of acting allowance policy;
- 3.6. Retrospective pay of 8 hours fire fighters worked per month;
- 3.7. Insourcing of contract security guards and cleaners follow City of Ekurhuleni Council Resolution of March 2022.'

- [4] The Applicant approached the Court on an urgent basis and sought an order interdicting the '*unlawful strike and picketing*'. The Applicant's case was *inter alia* that the Respondents' right to strike was limited in terms of section 65(1) (c), (d) and (i) of the Labour Relations Act¹ (LRA) in that the demands raised by the union are those that should be referred to arbitration or the Labour Court and that some of the employees render essential services. Furthermore, MECSU does not have organisational rights and should not be striking in respect of the aforementioned demands.
- [5] The urgent application was before Khumalo AJ on 5 September 2024 and he made an order to the effect that the matter stood down until 6 September 2024, that the Respondent had to upload its answering papers and the parties had to upload their heads of argument and that the '*Respondent undertakes not to embark on a strike action until this matter is fully ventilated in court*'.
- [6] The matter was argued on 6 September 2024, and after hearing oral argument, Khumalo AJ reserved his judgment. Khumalo AJ indicated that no strike or picketing should be embarked upon by the Respondents pending his delivery of the judgment.
- [7] It is unfortunate that, to date, Khumalo AJ has not delivered the judgment.
- [8] On 8 October 2024, MECSU, through Mr Mlungwana, issued another strike notice for the strike to commence on 21 October 2024. In the strike notice, reference was made to the strike notice of 29 August 2024 as well as the Applicant's urgent application to interdict the strike. It was specifically recorded that:

¹ Act 66 of 1995, as amended.

‘As we know that the labour court judge, after hearing the City’s urgent application on the 6th September 2024, reserved his judgment to date, more than 30 days later, hence the City has not served us with any such court interdict whatsoever. Clearly, if the City’s urgent application was successful the court would have granted the order soon thereafter. In the absence of any order of court interdicting or restraining us from embarking on a protected strike, we have now resolved to issue the employer with a fresh strike notice to continue with our protected strike action to demand the following:

- “3.1. Grading of all traffic wardens into a constable post due to similarities in job functions of these two posts;
- 3.2. Provision of ceremonial pass-out parade to 2022/2023 Metro Police trainees after completing training in metro police diploma;
- 3.3. Implementation of four days in four days out plus 40 hours of overtime added to monthly salary to all metro police officers in the EMPD;
- 3.4. Implementation of encashment of annual leave days;
- 3.5. Implementation of acting allowance policy;
- 3.6. Retrospective pay of 8 hours fire fighters worked per month;
- 3.7. Insourcing of contract security guards and cleaners following the City of Ekurhuleni Council Resolution of March 2022.”

[9] It is evident that the demands contained in the second strike notice, dated 8 October 2024, are verbatim the same as the demands contained in the first strike notice, dated 29 August 2024.

[10] The Applicant once again approached this Court on an urgent basis and on 17 October 2024 the Court (per Snyman AJ) issued an order which *inter alia* interdicted MECSU and its members from striking and/or picketing pursuant to the demands as set out in the notice of 8 October 2024, pending the handing

down of the judgment by Khumalo AJ, that the order shall automatically lapse upon the reserved judgment by Khumalo AJ being handed down and that the Registrar be directed to approach Khumalo AJ to expedite the handing down of the judgment which was reserved on 6 September 2024.

[11] On 21 October 2024, MECSU referred a mutual interest dispute to the SALGBC. The matter was conciliated and remained unresolved on 9 December 2024. The demands made were the following:

- ‘1. That the municipality stops privatisation of services rendered by employees and members of the union at waste management, parks, water, roads, fleet and energy departments;
2. That the municipality stop forcing MECSU members to use trucks of private companies to carry out the work of the municipality at waste management division;
3. That the municipality maintains its practice to provide full PPE once/twice a year at waste management, metro parks, water, roads, fleet and energy departments.
4. That the municipality provide patrol cars (tools of trade) to all the officers and traffic wardens at EMPD for execution of the duties of the municipality and/or
5. That the commissioner issue a certificate to strike of (sic) the dispute remains unresolved at conciliation.’

[12] The parties were directed to file heads of argument on whether the issues in dispute were indeed strikeable. The Applicant’s argument was that the matter was to be dealt with in terms of section 65(1)(c) of the LRA, which provides for a dispute to be dealt with by way of arbitration or by referral to the Labour Court. The Applicant wanted a certificate to arbitrate the dispute, and the union wanted a certificate to strike, disputing that the issues must be dealt with in terms of section 65(1)(c).

[13] Following the written submissions, a ruling was delivered on 20 December 2024. It was ruled *inter alia* that the issues raised by the union ‘are issues of

mutual interest which can either be referred to strike or to the Labour Court'. Draft picketing rules were provisionally adopted, and the parties were given until 6 January 2025 to consider the picketing rules.

[14] The Applicant requested an extension, which was granted, and submissions were made by 13 January 2025. The Applicant ultimately submitted that the matter be referred to arbitration, to give effect to section 65(1)(c) of the LRA.

[15] A ruling was issued on 20 January 2025, and the commissioner issued *'the certificate of strike together with the picketing rules'*.

[16] On 29 January 2025, MECSU issued a notice to picket in support of a protected strike. The Applicant once again approached this Court on an urgent basis for relief. On 31 January 2025, the parties agreed to remove the matter from the roll, and an order in the following terms was made:

- '1. That the parties would meet on 6 February 2025 at 10:00 at the Applicant's offices to commence with discussions on four of the union's demands;
2. The union and its members will not conduct any picketing pending the said meeting.'

[17] The Applicant explained that the meeting took place on 6 February 2025 to engage on the four demands made in the mutual interest dispute, but at the meeting, MECSU insisted that other demands, which were not referred to the SALGBC on 19 November 2024, be discussed. The union introduced new demands during the negotiations, which took place on 6, 13 and 19 February 2025. The Applicant provided comprehensive responses to the demands, which the union rejected. The Applicant anticipated that the parties would be engaging further with MECSU in order to reach an amicable solution, but on 19 February 2025, Mr Mlungwana transmitted a 48-hour strike notice, which strike action was to commence on 20 February 2025.

[18] It is evident that the strike notice issued on 19 February 2025 does not clearly set out the demands the Respondents seek to resolve by way of strike action – it refers to strike action ‘*in pursuit of the demands listed in the above mutual interest dispute*’ being a reference to SALGBC case no: GPD102416. The demands made under the said case number are those recorded in paragraph 11 *supra*.

[19] On 24 February 2025, the Applicant once again launched an urgent application seeking a rule *nisi* to *inter alia* declare any strike or conduct in contemplation or furtherance of a strike pursuant to the strike notice dated 19 February 2025 unprotected, to declare all of the demands are made within the defined and designated essential services and that no member of the union employed in a designated essential service may embark on any strike or conduct in contemplation or furtherance of a strike.

[20] On 26 February 2025, a rule *nisi* with a return date of 20 March 2025 was issued. The Court granted the following orders:

- ‘1. Declaring that any strike in contemplation or furtherance of a strike pursuant to the notice issued by the first respondent (MECSU) on 19 February 2025 is unprotected;
2. Declaring further all of the demands are made within defined and designated essential services and that no member of the respondent employed in a designated essential service may embark on any strike or conduct in contemplation or furtherance of a strike;
3. The first respondent and its members employed at the applicant are interdicted from engaging in any strike, including but not limited to picketing, instigating, promoting, encouraging any strike action, gathering and protest action, or any other conduct in pursuit of their demands pending the final outcome of this application;

4. The provisions of paragraph 2 above shall operate as an interim order with immediate effect pending the outcome of the return day;
5. Should the first respondent or its members fail to comply with the terms of this order and any part thereof the applicant is entitled to seek assistance from the South African Police Services and/or public order policing unit;
6. Costs are reserved.

[21] On 19 March 2025, the Applicant referred a dispute to the CCMA in terms of section 73 of the LRA, seeking the following determination from the CCMA:

‘Declaration that the employees employed in roles listed in the motivation are designated as essential services employees.’

[22] Following the referral of the essential services dispute, the first sitting of the essential services committee was scheduled to take place on 31 March 2025. The process was an ongoing one, and the effect of this was that the rule *nisi* issued on 26 February 2025 was extended until 30 April 2025, then extended until 15 May 2025, when it was extended until 6 June 2025.

[23] After first dealing with a point *in limine* raised by MECSU, the current position is that the essential services committee had issued a directive on 19 May 2025 whereby the parties were directed to file their written submissions on 26 May 2025, replies to be filed by 6 June 2025 and the essential services committee to deliver its ruling on the essential service determination within 14 days. In view of the imminent ruling, the return date of 6 June 2025 in case no: 2025-024810 was extended until 23 July 2025.

[24] Within this context, MECSU issued another strike notice on 27 May 2025, giving the Applicant seven days’ notice of the intention to embark on a protected strike. The strike was to commence on 6 June 2025. The Applicant once again approached this Court for urgent relief and filed an application on 3 June 2025, seeking relief in respect of the strike action, as well as an order

that MECSU, Messrs Mlungwana and Gould be found in contempt of Court. I will deal with the relief sought in turn.

Points *in limine*

- [25] The union raised three points *in limine* in its answering affidavit.
- [26] It is trite that an affidavit constitutes evidence and that it should contain only matters of fact within the knowledge of the deponent, and where it falls outside the personal knowledge of the deponent, it must be confirmed in a confirmatory affidavit.
- [27] In its answering affidavit, the union referred to a number of authorities, and the deponent not only provided the citation of the cases, he also presented legal argument on his interpretation of the authorities he referred to. It is inappropriate to include quotations from case law or legal arguments in affidavits – those belong in heads of argument. The deponent to an affidavit must be able to speak to the matters that appear in the affidavit because they are within his or her personal knowledge. The content of case law does not fall within the personal knowledge of a deponent, and legal arguments do not constitute evidence.
- [28] The first point is that the deponent to the founding affidavit, Mr Zulu, lacks *locus standi* to act on behalf of the Applicant to institute this application and to depose to the founding affidavit. The union's case is that Mr Zulu was not delegated to institute this application and to depose to the affidavit. In support of its argument, Mr Mlungwana, the deponent to the answering affidavit, referred to the provisions of Rule 7(1) of the Uniform Rules of Court and the authorities which dealt with the said rule.
- [29] There is no merit in the first point *in limine*, and it displays a lack of understanding of the applicable principles.

[30] The courts have made it clear that the deponent to an affidavit need not be authorised. In *Ganes and Another v Telecom Namibia Ltd*², the Supreme Court of Appeal (SCA) held that:

‘The deponent to an affidavit in motion proceedings need not be authorized by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorized.’

[31] Rule 7(1) of the Uniform Rules of Court provides that:

‘Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.’

[32] The Respondents’ notion that a deponent must have authority to depose to an affidavit is without merit. All that is required in terms of Rule 7(1) is that the legal representatives be authorised to institute the litigation. Mr Zulu’s authority cannot be challenged by way of Rule 7(1) as it is the attorney that must be authorised to bring an application on behalf of an applicant, and there is no need that any other person, including a deponent, should additionally be authorised.

[33] *In casu*, the Applicant is represented by attorneys, whose authority to institute legal proceedings has not been challenged.

² (2004) 25 ILJ 995 (SCA) at para 19.

[34] Ultimately, this Court must decide whether enough has been placed before it to warrant the conclusion that it is, indeed, the Applicant which is litigating and not some unauthorised person on its behalf. *In casu*, enough has been placed before the Court to accept that the institution of the urgent application was duly authorised and that it is indeed the Applicant which is litigating. This is more so considering the lengthy litigation history between the parties.

[35] The second point is misjoinder. MECSU's case is that Mr Mlungwana serves as the general secretary and Mr Gould as the president of the union, and that by virtue of their positions, they act as authorised representatives of MECSU. They are authorised to act on behalf of MECSU, and at no stage did they act in their personal capacities concerning the applications before this Court and the orders being issued by this Court. Their involvement has been exclusively in their roles within the trade union, and they acted in a representative capacity rather than as individual litigants. As such, they have no personal interest in these proceedings.

[36] It is trite that in order for parties to be joined to particular proceedings, they must have a direct and substantial legal interest in the matter, such as to make them necessary parties to the proceedings. Only parties that would be directly affected by the court's order or where the order cannot be sustained or carried into effect without prejudicing such a party are necessary parties to the proceedings.

[37] Misjoinder occurs where a party that has been joined to proceedings, is not a necessary party, and the test to determine whether there is a misjoinder is whether or not the party has a direct and substantial interest in the subject matter of the litigation, which might be affected prejudicially by a judgment of the court. Put another way, in the case of non-joinder, a necessary party is omitted, and in the case of misjoinder, an unnecessary party is joined.

[38] There is no merit in the 'misjoinder' argument.

[39] The Applicant has cited Messrs Mlungwana and Gould as individuals acting on behalf of the union, in an application to find them in contempt of Court. It is customary in this Court to cite individuals who act as responsible persons on behalf of a body corporate or legal entity as respondents in a contempt of court application. Rule 58 of the Rules for the Labour Court³ provides for the citation of, for instance, a CEO, head of department, owner, proprietor, or municipal manager as a respondent in a contempt of court application. As was held in *Commissioner for Inland Revenue v Richmond Estates (Pty) Ltd*⁴, equally applicable here: 'A company is an artificial person with no body to kick and no soul to damn...'.

[40] In a contempt of Court application, the responsible person (whom the applicant seeks the court to find in contempt) of the respondent, who was aware of the court order and who is deliberately refusing to comply with it, is cited as a necessary party in contempt proceedings.

[41] *In casu*, it is evident from the founding affidavit that Mr Mlungwana is cited as the secretary general of MECSU and Mr Gould is cited as a member of MECSU, who appeared in Court on behalf of MECSU on 15 May 2025 and who has personal knowledge of what the Court had said on 15 May 2025 regarding the extension of the rule *nisi*. They are respondents before this Court in the contempt of Court application.

[42] The Applicant made it clear that the First, Second and Third Respondents were served with the court order of 26 February 2025; they are aware of it, and their conduct transgressed the Court order, which conduct is wilful and *mala fide* and therefore they should be guilty of contempt of Court.

[43] They are necessary parties as they have a substantial legal interest in the contempt of Court application. Messers Mlungwana and Gould would no doubt be prejudiced if they were not cited as respondents and afforded an

³ GN 4775 of 2024: Rules Regulating the Conduct of Proceedings of the Labour Court (effective, 17 July 2024).

⁴ 1956 (1) SA 602 (A) at 606G.

opportunity to defend the relief sought against them – they have the right to be heard, and if not joined, it would result in prejudice to them.

[44] The third point is non-joinder of the SALGBC. The Respondents' case is that the SALGBC has a material interest in this matter and ought to have been joined. This is so because the arbitrator issued a certificate of non-resolution under the auspices of the SALGBC, after he was satisfied that all procedural prerequisites had been met, and as such, the SALGBC played an instrumental role in the facilitation of the strike certification and the picketing rules.

[45] There is no merit in this point taken by the Respondents.

[46] The proceedings before the SALGBC are not being challenged in this application, and there is no relief sought against the SALGBC. The relief being sought, if granted, will have no implications for the SALGBC, nor will it affect the SALGBC directly or indirectly. The mere fact that the SALGBC facilitated the issuing of the strike notice and the picketing rules does not make it a necessary party with a legal interest in this application.

Protected strike action

[47] Before I deal with the merits of this application, it is necessary to set out the general principles relating to protected strikes.

[48] The right to strike is a constitutionally enshrined right, given effect to in the LRA. Chapter IV of the LRA regulates the right to strike, which right is essential to collective bargaining.

[49] In terms of section 64(1), every employee has the right to strike for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest. As such, and as a matter of principle, this right should not be unduly or inappropriately limited, and limitation must be strictly determined on the basis of what is specifically provided for in the LRA. The

default position is that strike action is allowed, unless specifically prohibited by the LRA.

[50] The LRA regulates the right to strike in two ways: being a procedural limitation and a substantive one. Chapter IV contemplates what is referred to as the 'golden formula', which entails that certain steps must be taken and certain requirements met before strikers are protected from the civil and contractual liability that could arise from the strike. To engage in a protected strike, where employees are protected against dismissal and other forms of legal liability, they must first of all comply with the procedural requirements set out in section 64 of the LRA.⁵

[51] The procedural limitation is that full compliance with the requirements in section 64(1) must occur. Acquisition of a protected right to strike is through a relatively simple procedure – first, the issue in dispute must be referred to either a bargaining council or the CCMA for conciliation; second, a certificate stating that the dispute remains unresolved must be issued, alternatively a period of 30 days must elapse from the date of referral of the dispute; and finally, the employer must be given at least 48 hours' written notice of the commencement of the strike. Where the State is the employer, the notice period is seven days.

[52] However, over and above the procedural requirements set out in section 64, section 65 lays down a number of substantive limitations to the right to strike. If a strike is in breach of any of the provisions of sections 64 or 65, the striking employees will be deprived of the protection of the LRA.

[53] The substantive limitations which prohibit strike action are found in the provisions of section 65(1) of the LRA:

⁵ H Cheadle, B Condradie, T Cohen et al, 'Strikes and the Law', LexisNexis, at p 107.

- (1) No person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or a lock-out if –
- (a) that person is bound by a collective agreement that prohibits a strike or lock-out in respect of the issue in dispute;
 - (b) that person is bound by an agreement that requires the issue in dispute to be referred to arbitration;
 - (c) the issue in dispute is one that a party has the right to refer to arbitration or to the Labour Court in terms of this Act;
 - (d) that person is engaged in –
 - (i) an essential service; or
 - (ii) a maintenance service.’

[54] In *Vodacom (Pty) Ltd v Communication Workers Union*⁶ (*Vodacom*), the Labour Appeal Court (LAC) held that:

‘Section 65 sets out limitations on the right to strike or recourse to lock-out which have to be read together with s 64. In short no matter that there has been compliance with s 64, the LRA limits a right to strike, such that if the strike reaches one of the limitations in terms of s 65, it is an unlawful strike, notwithstanding compliance with procedures under s 64. ...’

[55] The substantive limitations to the right to strike in section 65 of the LRA are defined by way of specific reference to what is called the ‘*issue in dispute*’ forming the subject matter of the strike, which includes a demand.

[56] The issue in dispute is ordinarily identified by reference to the demand or grievance articulated by those participating in the strike.⁷ This is a factual

⁶ (2010) 31 ILJ 2060 (LAC) at para 10.

⁷ See: *TSI Holdings (Pty) Ltd and Others v National Union of Metalworkers of SA and Others* (2006) 27 ILJ 1483 (LC).

enquiry. In order to determine whether an issue in dispute falls within the parameters of the aforesaid limitations, it is essential to determine what the true or real nature of this issue in dispute would be, no matter how any of the parties may have sought to describe or label the dispute. In *Coin Security Group (Pty) Ltd v Adams and Others*⁸ the LAC held that:

'It is the court's duty to ascertain the true or real issue in dispute: *Ceramic Industries Ltd t/a Betta Sanitaryware v National Construction Building Workers Union & others (2)* (1997) 18 ILJ 671 (LAC); *Fidelity Guards Holdings (Pty) Ltd v Professional Transport Workers' Union & others (1)* (1998) 19 ILJ 260 (LAC). In conducting that enquiry a court looks at the substance of the dispute and not at the form in which it is presented (*Fidelity* at 269G-H; *Ceramic* at 678C). The characterization of a dispute by a party is not necessarily conclusive (*Ceramic* at 677H-I; 678A-C).'

- [57] It is within this context that the application to interdict the the intended strike action and any conduct in contemplation or furtherance of such strike, which includes picketing, as per the strike notice of 27 May 2025, is to be decided.

The strike interdict

- [58] The Applicant seeks an order to interdict the the intended strike action, as per the strike notice of 27 May 2025. The application is premised on the fact that the Fourth to further Respondents, who are members of MECSU and are employed by the Applicant in designated essential services, are prohibited from striking and picketing.

- [59] MECSU referred a mutual interest dispute to the SALGBC on 27 February 2025 regarding the employment of staff on roll-over contracts for permanent services at Harambe Integrated Rapid Transport Network, the reduction of overtime for officials at the Ekurhuleni Metro Police Department (EMPD) and

⁸ (2000) 21 ILJ 924 (LAC) at para 16.

the provision of night shift and danger allowance for EMPD officials. The matter was conciliated on 26 March 2025, but remained unresolved. On 30 April 2025, the SALGBC issued a notice for a hearing on the picketing rules to be held on 9 May 2025, on which date the picketing rules were finalised. On 13 May 2025, the presiding arbitrator issued the agreed-upon picketing rules that would apply.

[60] The agreed picketing rules specify that only members of MECSU and other employees of the Municipality who are not engaged in an essential service may take part in the picket.

[61] On 27 May 2025, MECSU issued a strike notice, which triggered this application.

[62] This Court has to determine whether the issue in dispute falls within the parameters of section 65(1)(d), and it is essential to determine what the true or real nature of this issue in dispute is. The Court must consider the demand, which forms the subject matter of the strike. The strike notice of 27 May 2025 pertains to the following demands:

- ‘1. That the employer (the Applicant) permanently employ contract staff at Harambe Integrated Rapid Transport Network under fleet and transport department;
2. That the employer adds 60 hours overtime over the monthly basic salary of officials, employed under its Ekurhuleni Metro Police Department (EMPD); and
3. That the employer provides night shift allowance and danger allowance to officials under EMPD.’

[63] Section 74 of the LRA provides that any party to a dispute that is precluded from participating in a strike or lock-out because that party is engaged in an essential service may refer the dispute to a bargaining council or the CCMA for conciliation, and, if it remains unresolved, for arbitration. It is undisputed that Metro police officers are essential service workers.

[64] The Applicant's case is that the demands set out in the aforesaid strike notice will saddle it with a significant risk in that essential services stand to be significantly affected whilst there is a pending dispute before the essential services committee, which is yet to make a determination.

[65] The Applicant's case is that all the members of MECSU render essential services and, as such, they are prohibited from striking and picketing. MECSU disputed this version and submitted that not all the members of the union are employed in designated essential services and that it has several members in non-essential services. The Applicant, in reply, insisted that the union members are all employed in essential services but highlighted that there is a dispute regarding designated essential services pending and that only the essential services committee can make a determination in that regard. This is not an issue for this Court to decide.

[66] MECSU submitted that the essential services workers will not participate in the intended strike, denied that the strike notice includes essential services workers or stated that the Metro police officers would not be striking. MECSU's argument is that the non-essential employees would be striking in respect of the demands set out in the strike notice of 27 May 2025.

[67] In *City of Cape Town v SALGBC and another*⁹ (*City of Cape Town*), the Court was faced with the question of whether a union could call its non-essential service members out on strike while referring a dispute for arbitration in terms of section 74(4) of the LRA for its essential service members, where such referral relates to the same demands as those the non-essential employees had embarked on a strike over. The Court held that:

[17] Parties engaged in essential services are precluded from participating in a strike as a mechanism to resolve an interest dispute. Parties engaged in non-essential services may,

⁹ [2011] 5 BLLR 490 (LC).

however (unless the parties have agreed to refer the dispute to arbitration), resort to industrial action as a mechanism to resolve an interest dispute. A party to an essential service dispute who refers a dispute to the council is calling upon an arbitrator to resolve the impasse between the parties through arbitration and is effectively requiring the arbitrator to determine the outcome of the interest dispute between the parties by issuing an award which will be binding upon the parties.

- [18] Where a (non-essential service) party wishes to resort to strike action as a mechanism to resolve a dispute, the dispute must be referred to conciliation in terms of section 64(1) of the LRA. Once conciliation has failed the parties may then give notice and thereafter embark on strike action. A party to a dispute in an essential service will refer the dispute to conciliation in terms of section 74(1) of the LRA and once conciliation fails, refer the dispute to arbitration in terms of section 74(4) of the LRA.

...

- [20] Moreover, I am in agreement with the finding that, on a proper reading of the LRA, there is no support for the principle that a union must make an election about whether it wishes to embark on a strike or refer a dispute to arbitration where the same dispute is raised on behalf of both essential services and non-essential services' employee. In other words, there is nothing in the LRA that requires a referring party to make an election in respect of the method the union intends to use to resolve the impasse as the LRA provides for strike action as a mechanism to resolve a dispute in the case of non-essential services' employees and compulsory arbitration in respect of essential services' employees. Furthermore, no mention is made in the LRA to suggest that essential service employees lose their right to arbitration simply because their non-essential service colleagues have seized the opportunity to strike. The LRA is clear: any essential service employee may request that a dispute be resolved through conciliation and thereafter

arbitration should the parties not settle the dispute. There is in my view no exception or restrictions to the right of essential services' employee in the manner suggested by the city.'

[68] Although the facts in *City of Cape Town* are different from the facts before me, the legal principles remain the same: Parties engaged in essential services are precluded from participating in a strike as a mechanism to resolve an interest dispute. A party to a dispute in an essential service has to refer the dispute to conciliation in terms of section 74(1) of the LRA, and once conciliation fails, it will refer the dispute to arbitration in terms of section 74(4) of the LRA. Parties engaged in non-essential services may, however, resort to industrial action as a mechanism to resolve an interest dispute.

[69] *In casu*, the union's case is that the essential services employees will not strike, but only the non-essential services employees will take part in the strike action. There is a pending dispute as to whether MECSU's members are all engaged in designated essential services.

[70] For purposes of this judgment, it is undisputed that the EMPD officers (Metro police) are regarded as essential services employees and, as such, they are precluded from participating in a strike action. The question which leaps out is whether other non-essential employees can strike on behalf of the Metro police officers, as submitted by MECSU.

[71] It is evident from the demands contained in the strike notice of 27 May 2025 that two of the demands pertain specifically and exclusively to the Metro police officers, namely the demand for 60 hours overtime to be added to the monthly basic salary of officials in the EMPD and the provision of a night shift allowance and danger allowance to them. This is not a demand that is made in respect of any non-essential services employee, nor is it a demand that overlaps with demands made by non-essential services employees.

[72] The LRA specifically provides that a party to a dispute in an essential service has to refer the dispute to conciliation in terms of section 74(1) of the LRA,

and once conciliation fails, refer the dispute to arbitration in terms of section 74(4) of the LRA. A dispute or demand pertaining to essential services employees, such as the Metro police officers, is a dispute which must be referred to arbitration, after conciliation failed, and as the Metro police officers are precluded from strike action, such a demand cannot be resolved by strike action. In my view, as strike action is not the mechanism to resolve the dispute, such a demand cannot be made in a strike notice. This is more so where the same demand is not made in respect of non-essential services employees, and they would not have the right or interest to strike about a demand that does not concern them.

[73] There is no dispute that the strike notice was issued in compliance with the procedural requirements set out in section 64 of the LRA, but compliance with procedural requirements is not where the enquiry into whether a strike is protected or not ends. Over and above the procedural requirements set out in section 64, section 65 lays down a number of substantive limitations to the right to strike, and it prohibits strike action or any conduct in contemplation or furtherance of a strike if the person is engaged in an essential service. As already alluded to, the LAC in *Vodacom* confirmed that no matter that there has been compliance with section 64, the LRA limits a right to strike, such that if the strike reaches one of the limitations in terms of section 65, it would be unprotected, notwithstanding compliance with procedures under section 64.

[74] It is for these reasons that the intended strike and any conduct in contemplation or furtherance of such strike, including picketing, pertaining to the demands made in respect of the Metro police officers as per the strike notice of 27 May 2025, is to be interdicted.

[75] The remaining demand made is in respect of the permanent employment of contract staff at Harambe Integrated Rapid Transport Network. In this regard, there is a dispute between the parties as to whether all the members of MECSU are engaged in essential services or not. This dispute is pending before the essential services committee, and all indications are that a ruling on the determination is imminent.

[76] The importance of drawing a distinction between essential and non-essential employees cannot be overemphasised. The Constitutional Court in *South African Police Service v Police and Prisons Civil Rights Union and Another*¹⁰ upheld the LAC's findings in which it drew a distinction between members of the SAPS who performed an essential service, including policing functions, and non-members who provided a support function to the SAPS. The Court held that a strike by non-members would not disrupt the essential service rendered by SAPS, as these support duties could be performed by members or otherwise outsourced. In its findings, the LAC held as follows¹¹:

'In the circumstances, the essential service as contemplated by s 65(1)(d) of the LRA in relation to the SAPS is clearly the policing function as set out in the Constitution and spelled out in the SAPS Act. The term "engaged" in the essential service in this section must therefore only apply to those employees employed under the SAPS Act and designated as members as well as those employees deemed to be members by Ministerial decree in terms of s 29(1) and (2) of the SAPS Act. The members are the employees who constitute the SA Police Service that is part of the South African security service. While those employed under the PSA provide an important support and complementary function to the SAPS they do not form part of the SAPS that is contemplated by the Constitution and the SAPS Act and as such they are not part of the SAPS that is designated as an essential service by the LRA. These employees are therefore not engaged in the essential service as contemplated by s 65(1)(d) of the LRA and are not prohibited by the limitation on the right to strike as set out in s 65(1) of the LRA.'

[77] In my view, it will be appropriate to interdict the strike action and any conduct in contemplation or furtherance of such strike, including picketing, in respect

¹⁰ (2011) 32 ILJ 1603 (CC) at paras 33 – 40.

¹¹ *SA Police Service v Police & Prisons Civil Rights Union and Another* (2010) 31 ILJ 2844 (LAC) at para 19.

of the aforementioned demand, pending the outcome of the essential service determination, pending under case no: ES 817.

- [78] If the employees, who are members of MECSU, are found to be employed in a designated essential service, they are precluded from participating in strike action and their demands must be resolved by way of arbitration, as contemplated in section 74 of the LRA. If the essential service committee find that they are not essential services workers, they may resort to industrial action as a mechanism to resolve an interest dispute and such would be protected.

Contempt of Court

- [79] The Applicant seeks and order to find MECSU and Messers Mlungwana and Gould to be in contempt of Court and for them to be fined and/or incarcerated.
- [80] The Applicant's case is that MECSU and Mr Mlungwana are in contempt of the interim Court order of 5 September 2024 and 26 February 2025, which was extended on 15 May 2025 to 6 June 2025 (and was extended on 6 June 2025 to 23 July 2025) when they issued the strike notice on 27 May 2025. Mr Gould is to be found in contempt of the Court order extended on 15 May 2025.
- [81] I have dealt with the litigation history in detail *supra* and there is no need to repeat it here.
- [82] The Applicant's case is that the requirements for contempt had been satisfied in that there is an existing Court order, issued by Daniels J on 26 February 2025, and subsequently extended and still pending, of which MECSU and Messers Mlungwana and Gould are aware. More specifically, paragraph (b) of the said order prohibits MECSU and its members from embarking on a strike and the strike notice that was issued while the rule *nisi* is still effective, constitutes non-compliance with the terms of the court order as well as wilfulness and *mala fides* beyond reasonable doubt.

[83] The Respondents' case is that the interim order of 26 February 2025 has no bearing on the present dispute. They submit that no order has been granted by the Court interdicting the Respondents from embarking on strike action to assert their demands, as stated in the mutual interest dispute of 27 February 2025 and the subsequent strike notice of 27 May 2025

[84] The Respondents explained that the strike notice issued on 29 August 2024 has no relevance to the present dispute and the strike notice of 27 May 2025, as the current dispute involves a different mutual interest dispute referral and it is about different demands than those stated in the strike notice of 29 August 2024. They claim that they are not aware of an order by Khumalo AJ which interdicted all future strikes by MECSU and its members.

[85] In respect of the Court order issued on 26 February 2025, it is the Respondents' case that the interim order issued by Daniels J is not about the current mutual interest dispute, nor does it preclude MECSU from referring other mutual interest disputes. They specifically deny the existence of an order of Court on the strike demands set out in the notice of 27 May 2025.

Contempt of Court: general principles

[86] In *Bruckner v Department of Health and others*¹², the Court dealt with the requirements for contempt and it was held that:

'It is trite that an applicant in a contempt of court application must prove beyond a reasonable doubt that the respondent is in contempt. An applicant must show:

- (a) that the order was granted against the respondent;
- (b) that the respondent was either served with the order or informed of the grant of the order against him and could have no reasonable ground for disbelieving the information; and

¹² (2003) 24 ILJ 2289 (LC) at para 26.

- (c) that the respondent is in wilful default and *mala fide* disobedience of the order.’

[87] In *Anglo American Platinum Ltd and Another v Association of Mineworkers and Construction Union and Others*¹³, the Court has held that:

‘The principles applicable in an application such as the present are well-established. In *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA), the Supreme Court of Appeal observed that the civil process for a contempt committal is a “peculiar amalgam” since it is a civil proceeding that invokes a criminal sanction or its threat. A litigant seeking to enforce a court order has an obvious and manifest interest in securing compliance with the terms of that order but contempt proceedings have at their heart the public interest in the enforcement of court orders (see para 8 of the judgment). The court summarized the position as follows at para 42:

“To sum up:

- (a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.
- (b) The respondent in such proceedings is not an “accused person”, but is entitled to analogous protections as are appropriate to motion proceedings.
- (c) In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and willfulness and *mala fides*) beyond reasonable doubt.
- (d) But once the applicant has proved the order, service or notice, and non-compliance, the

¹³ (2014) 35 ILJ 2832 (LC) at para 4.

respondent bears an evidential burden in relation to willfulness and *mala fides*: Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was willful and *mala fide*, contempt will have been established beyond reasonable doubt.

- (e) A *declarator* and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.”

[88] In *Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited*¹⁴ (*Matjhabeng*), the Constitutional Court confirmed the requisites for contempt of court as follows:

‘I now determine whether the following requisites of contempt of court were established in *Matjhabeng*: (a) the existence of the order; (b) the order must be duly served on, or brought to the notice of, the alleged contemnor; (c) there must be non-compliance with the order; and (d) the non-compliance must be wilful and *mala fide*. It needs to be stressed at the outset that, because the relief sought was committal, the criminal standard of proof – beyond reasonable doubt – was applicable.’

[89] The Applicant must prove the aforesaid requisites beyond reasonable doubt.

Analysis

Existence of the order and service

¹⁴ 2018 (1) SA 1 (CC) at para 73.

[90] *In casu*, there is no dispute that an interim Court order was issued on 5 September 2024 and 26 February 2025, and that the Respondents have knowledge thereof.

[91] What is disputed is whether the said Court orders have any bearing on the present dispute and whether there was non-compliance with the orders.

[92] The urgent application before Khumalo AJ pertained to seven demands that were made in a strike notice, dated 29 August 2024. The seven demands made in August 2024 are different from the demands made on 27 May 2025. On 5 September 2024, Khumalo AJ made an order to the effect that the matter stood down until 6 September 2024, that the Respondent had to upload its answering papers and the parties had to upload their heads of argument and that the '*Respondent undertakes not to embark on a strike action until this matter is fully ventilated in court*'. The matter was argued on 6 September 2024, and after hearing oral argument, Khumalo AJ, reserved his judgment.

[93] Another strike notice was issued on 19 February 2025 '*in pursuit of the demands listed in the above mutual interest dispute*', being a reference to SALGBC case no: GPD102416. The demands pertained to *inter alia* the stopping of privatisation of services rendered by employees and members of the union at waste management, parks, water, roads, fleet and energy departments; maintenance of the practice to provide full PPE once/twice a year at waste management, metro parks, water, roads, fleet and energy departments; and the provision of patrol cars (tools of trade) to all the officers and traffic wardens at EMPD for execution of the duties of the Municipality.

[94] On 24 February 2025, the Applicant launched an urgent application seeking a rule *nisi* to *inter alia* declare any strike or conduct in contemplation or furtherance of a strike pursuant to the strike notice dated 19 February 2025 unprotected, to declare all of the demands are made within the defined and designated essential services and that no member of the union employed in a designated essential service may embark on any strike or conduct in

contemplation or furtherance of a strike. On 26 February 2025, a rule *nisi* with a return date of 20 March 2025 was issued.

[95] The high water mark of the Applicant's case is that Daniels J prohibited MECSU and its members from embarking on a strike, and that the application is still pending, having the return date extended. Any strike action, therefore, would be tantamount to contempt of Court.

[96] It is common cause that another strike notice was issued on 27 May 2025, and that MECSU gave notice of the demands and its intention to strike. The demands relate to the employment of staff on roll-over contracts for permanent services at Harambe Integrated Rapid Transport Network, the adding of overtime hours for officials at the EMPD, and the provision of night shift and a danger allowance for EMPD officials.

[97] It is evident that all the strike notices issued by MECSU made different demands.

[98] The terms of the order of 26 February 2025 cannot be read in isolation. The application was clearly triggered by the strike notice dated 19 February 2025 and the specific demands made therein. The Court order of 26 February 2025 is also not an open-ended order. The Court granted *inter alia* the following relevant relief: Declaring that any strike in contemplation or furtherance of a strike pursuant to the notice issued by MECSU on 19 February 2025 is unprotected and declaring all of the demands are made within defined and designated essential services and that no member of the respondent employed in a designated essential service may embark on any strike or conduct in contemplation or furtherance of a strike.

[99] I do not understand paragraph (b) of the said order to mean that MECSU and its members are prohibited from embarking on any strike action. The relief granted is linked to and limited to the demands made on 19 February 2025, and it is not an open-ended interdict to interdict any and all strike action by MECSU and its members.

[100] The demands made on 27 May 2025 are different from the demands made in February 2025, and I cannot accept that the Court order of 26 February 2025 interdicted and restrained all strike action.

Wilful and mala fide non-compliance with the Court order

[101] The next consideration is whether the Respondents are in wilful and *mala fide* disobedience of the Court order, which the Applicant must prove beyond reasonable doubt.

[102] To establish non-compliance requires more than a failure to comply with the order. In *Matjhabeng*,¹⁵ the Constitutional Court affirmed that contempt of Court does not consist of mere disobedience of a court order, but of ‘*contumacious disrespect for judicial authority*’. The requirement of wilfulness and *mala fides* means that contempt is committed not by a mere disregard of the court order, but by the demonstration of a deliberate and intentional violation of the court’s dignity, repute or authority.¹⁶

[103] For the Applicant *in casu* to succeed with his contempt of Court application, it must show, beyond reasonable doubt, that the Respondents are in wilful and *mala fide* disobedience of the Court order of 26 February 2025. The mere fact that the Respondents issued another strike notice with different demands is not sufficient – more is required for purposes of a contempt of Court application.

[104] There are no facts placed before this Court to show, beyond reasonable doubt, that the Respondents did not have a *bona fide* belief that they were entitled to refer another mutual interest dispute and to issue a strike notice, containing different demands, once they have complied with the procedural

¹⁵ Ibid at para 65.

¹⁶ *Dibakoane NO v Van den Bos & Others; Van den Bos and Others v Gugulethu and Others* [2021] ZAGPJHC 652 (17 August 2021) at para 29.5.

requirements of section 64 of the LRA. I am not convinced that there was non-compliance, which was indeed '*contumacious disrespect for judicial authority*'.

[105] In *Ntsimane and Others v Memela*¹⁷, the LAC considered a contempt of Court matter and confirmed that the establishment of a wilful and *mala fide* disregard of the order, beyond reasonable doubt, was essential before the acting city manager could be found guilty of contempt of court.

[106] The threshold to find the Respondents in contempt of Court is high, and the onus to do so is on the Applicant, which it was unable to discharge. As a result, the contempt application has to fail.

[107] I can only express the hope that the Respondents would realise that demands made in respect of essential services workers cannot be struck over and it would serve no purpose to issue a strike notice in respect of such demands. The Respondents must follow the process set out in section 74 of the LRA to resolve disputes of mutual interest concerning essential services employees.

[108] The extent of litigation between the parties, regarding almost the same issues and the same relief being sought, is concerning and counterproductive. It cannot be that, every time the Applicant approaches the Court for an urgent order to interdict strike action concerning essential services employees, the MECSU would simply refer another mutual interest dispute and issue a new strike notice with different demands, which ultimately triggers another urgent application.

[109] This Court has limited resources, and considering the litigation history, the disputes between the Applicant and MECSU have burdened this Court on many occasions. The LRA has specifically crafted dispute resolution procedures which must be followed, also in respect of disputes concerning essential services employees. The Respondents should take note of the provisions of the LRA and act accordingly.

¹⁷ (2021) 42 ILJ 2400 (LAC).

Costs

[110] The last issue to be decided is the issue of costs.

[111] Insofar as costs are concerned, this Court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness.

[112] In *Zungu v Premier of the Province of KwaZulu-Natal and Others*,¹⁸ the Constitutional Court confirmed that the rule of practice that costs follow the result does not apply in labour matters. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing those parties to bring to this Court cases that should not have been brought to Court in the first place.

[113] This is a case where the Court has to strike a balance, considering the requirements of law and fairness. In my view, the interest of justice will be best served by making no order as to costs.

[114] In the premises, I make the following order:

Order

1. The intended strike and any conduct in contemplation or furtherance of such strike, including picketing, pertaining to the demands made in respect of the Metro police officers as per the strike notice of 27 May 2025, is interdicted.
2. The strike action and any conduct in contemplation or furtherance of such strike, including picketing, in respect of the demand made in respect of the permanent employment of contract staff at Harambe

¹⁸ (2018) 39 ILJ 523 (CC) at para 24.

Integrated Rapid Transport Network is interdicted, pending the outcome of the essential service determination, pending under case no: ES 817.

3. The contempt of Court application is dismissed.
4. There is no order as to costs

Connie Prinsloo
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Advocate S F Sibisi

Instructed by:

Saljee Govender van der Merwe Attorneys

For the First to Fourth Respondents:

Mr V Mlungwana from MECSU