



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: 2025-051769

In the matter between:

THARISA MINERALS (PTY) LTD

Applicant

and

NATIONAL UNION OF MINeworkERS

First Respondent

**THE PERSONS WHOSE NAMES ARE LISTED IN
ANNEXURE "A" HERETO**

First Respondent

Heard: 31 July 2025

Delivered: 4 August 2025

Summary: Return day – applicant seeking a final order to interdict strike which has ceased, resulting in the loss of employment by some of the workers – Dismissed employees not in any position to threaten the interests of the applicant – Confirmation of the order will not serve intended purpose – Where there is no strike action, the rule *nisi* stands to be discharged.

JUDGMENT

PHAKEDI, AJIntroduction

[1] This is an opposed application seeking an order confirming the order obtained in favour of the applicant on 15 April 2025. The specific parts of the order read as follows:

‘1. ...

2. An interim order is calling upon the second and further respondents to show cause 9 May 2025 at 10h00 or so soon thereafter as the matter may be heard why an order should not be made in the following terms:

2.1 Declaring the strike by the second and further respondents which commenced at 06h00 on 14 April 2025 ("the Strike") to be an unprotected strike as contemplated in section 68 of the Labour Relations Act 66 of 1995 ("the LRA");

2.2 Interdicting and restraining the Individual second and further respondents from participating in the Strike;

2.3 Interdicting and restraining the second and further respondents from encouraging and/or inciting other employees of the applicant from participating in the Strike.

3. Directing that the relief set out in prayers 2.1 to 2.3 above shall operate as an interim order with immediate effect pending the finalisation of this application.’

[2] The applicant argued that the *nisi* should be confirmed in the interests of giving certainty to the parties. This is because the employees might embark on an unprotected strike again, and this will necessitate the applicant to once again approach the court on an urgent basis seeking the same relief. It was argued further that confirmation of paragraph 2.1 above will not in any way give the applicant an unfair advantage during trial, as the trial court is not bound by the decision of the court declaring the strike unprotected.

[3] The second to further respondent argued that the above orders should be discharged on the basis that the alleged strike action ceased on 14 April 2025, and the employees who were meant to work night shift on the day reported for duty, and some employees were disciplined and subsequently dismissed.

[4] It was submitted further that the confirmation of the order would serve no purpose as the issues had become moot and/or academic due to fact that the applicant has dismissed some of the workers listed as further respondents and they are not in a position to commit the acts prohibited in paragraphs 2.2 and 2.3 of the order obtained on 15 April 2025.

Analysis and evaluation

[5] In terms of section 68 (1) of the Labour Relations Act¹ (LRA), this Court has exclusive jurisdiction to grant an interdict or order to restrain a strike or conduct in contemplation or furtherance of a strike. From the provisions of the section, it is undeniable that the powers of the Labour Court to interdict or restrain arise only in an instance where there is a strike action or conduct in furtherance of a strike action. In this matter, the interim interdict achieved its purpose, and a perpetual interdict will trample upon the constitutional rights of the respondents.

[6] The Constitutional Court in *Commercial Stevedoring Agricultural and Allied Workers' Union and Others v Oak Valley Estates (Pty) Ltd and Another*² ably restated the law on interdicts to be:

‘...Thus, for an interdict to be granted, it must be shown, on a balance of probabilities (taking into account the *Plascon-Evans* rule, where final relief is sought on motion), that unless restrained by an interdict, the respondent will continue committing an injury against the applicant or that it is reasonably apprehended that the respondent will cause such an injury.’

[7] This court has considered submissions by both parties, and it is not satisfied that any of the respondents, particularly those who have been dismissed, will

¹ Act 66 of 1995 as amended.

² [2022] 6 BLLR 487 (CC) at para 19.

continue participating, encouraging and inciting other employees of the applicant to commit unlawful acts in furtherance of a strike. With the strike action having ceased and some of the employees already dismissed, the confirmation of the rule *nisi* will not serve any purpose.

[8] Similarly, the Labour Court in *Contracta Force Corporate Solutions (Pty) Ltd v National Union of Public Service & Allied Workers & others*³ declined to confirm the rule *nisi* on the return day and held that:

'I am of the view that a court order should serve the purpose for which it was granted. The rule *nisi* was granted to interdict unlawful conduct pending the return day. On the return day it should either be discharged or confirmed based on the conduct which resulted in it being issued. Any disputes arising from the unprotected strike action should be resolved in their appropriate fora. An employer does not need a court order declaring strike action unprotected before taking disciplinary action against employees who participated in that strike and compensation against those employees for losses resulting from their unlawful conduct. I could find no legal basis for granting the declaratory order. The declaratory order will put the applicant at an advantage and prejudice the second and further respondents. As the need for the interdict has fallen away, the rule *nisi* must be discharged.'

[9] Costs in the Labour Court are regulated in terms of section 162 (1) of the LRA when the litigant before the court is relying on any of the provisions of the Act. In this matter, it is in the interests of fairness that each party must be burdened with its own costs.

[10] In the result, the following order is made:

Order

1. The rule *nisi* issued on 15 April 2025 is discharged in its entirety.
2. There is no order as to costs.

³ (2023) 44 ILJ 558 (LC) at para 7.

GC Phakedi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv MJ Van As with FA Darby

Instructed by: SCI Attorneys Inc

For Second Respondent: Adv Dlamini

Instructed by: Ngidi Inc Attorneys