



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

REPORTABLE

Case no: 2025 – 212826

In the matter between:

SIBANYE RUSTENBURG PLATINUM

MINES (PTY) LTD

Applicant

and

ASSOCIATION OF MINEWORKERS AND

CONSTRUCTION WORKERS UNION

First Respondent

NATIONAL UNION OF MINEWORKERS

Second Respondent

UASA - THE UNION

Third Respondent

PERSONS LISTED IN ANNEXURE "A"

Fourth to Further Respondents

Heard: 10 November 2025

Delivered: 18 November 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 18 November 2025.

Summary: Jurisdiction – Labour Court retains jurisdiction to interdict strike / related conduct even if strike has ended – includes where striking employee have been dismissed – granting of relief to applicant competent

Strike – interdicting strike as unprotected where employees dismissed – no longer a relationship between employees and employer – no longer concerted withholding of labour – matter of mutual interest can only exist between employer and employee – strike thus ended – granting of relief would serve no practical purpose

Mootness – principles considered – where employees dismissed and no underlying dispute present – order will serve no purpose other than advice concerning unprotected nature of strike – matter moot – interim order discharged

Unlawful conduct – Court entitled to interdict unlawful conduct by striking employees even if employees already dismissed – no case for such interdict made out by applicant – relief sought directly linked to strike action itself – no evidence of unlawful conduct by union – in absence of strike no cause for relief – interim order discharged

JUDGMENT

SNYMAN, AJ

Introduction

[1] This matter came before me on 10 November 2025 as an opposed application, brought by the applicant to interdict strike action by the individual respondents, which had commenced that same day. The applicant also sought to interdict contemplated unlawful behaviour by the individual respondents in the course of embarking the strike. The application was brought in terms of Section 68(1) of the Labour Relations Act (LRA).¹ The matter was brought and

¹ Act 66 of 1995 (as amended).

then argued on the basis of final relief being sought by the applicant.² This means the applicant must show: (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the absence of any other satisfactory remedy.³

[2] As stated, the application was opposed by the first and second respondents, acting on behalf of their members employed at the applicant. For ease of reference, I will refer to the applicant as 'Sibanye', the first respondent as 'AMCU' and the second respondent as 'NUM' in this judgment.

[3] When the matter was argued on 10 November 2025, AMCU and NUM complained that they were afforded insufficient time, due to the extreme short notice of the application, to properly address the content of the applicant's founding affidavit, and specifically raised an issue that the 48 hours' time limit in section 68(2) had not been complied with.⁴ The founding affidavit however did contain a request that non-compliance with this time limit be condoned. Due to the urgency of the matter, I was willing to grant an interim order relating to the prevention of any unlawful conduct by the striking employees, however I was not willing to declare the strike action as being unprotected without affording AMCU and NUM a proper opportunity to answer the applicant's founding affidavit in this respect. As a result, and on 10 November 2025, I granted the following interim order:

1. The provisions of the rules of Court relating to time periods and manner of service referred to therein are dispensed with and the matter is dealt with as one of urgency in terms of Rule 38.
2. The applicant's non-compliance with section 68(2) of the LRA is condoned, subject to the terms as set out in this order.
3. The application is postponed to 13 November 2025 at 09h00 for hearing, on a virtual platform.

² There was an alternative prayer for interim relief, but this was in the end not pursued.

³ *Setlogelo v Setlogelo* 1914 AD 221 at 227; *Masstores (Pty) Ltd v Pick 'n Pay Retailers (Pty) Ltd* 2017 (1) SA 613 (CC) at para 8; *V & A Waterfront Properties (Pty) Ltd and Another v Helicopter and Marine Services (Pty) Ltd and Others* 2006 (1) SA 252 (SCA) at para 20; *Mere v Tswaing Local Municipality and Another* (2015) 36 ILJ 3094 (LC) at para 4.

⁴ Section 68(2) reads: 'The Labour Court may not grant any order in terms of subsection (1) (a) unless 48 hours' notice of the application has been given to the respondent: However, the Court may permit a shorter period of notice ...'.

4. Pending the hearing of the matter on 13 November 2025, the individual respondents are interdicted and restrained from committing, or participating in, any conduct as contemplated by and / or identified in paragraphs 2.1.3, 2.1.4, 2.1.5, 2.1.6 and 2.1.7 of the notice of motion.
5. The first and second respondents are directed to file an answering affidavit (if any) by close of business on 11 November 2025.
6. The applicant is directed to file a replying affidavit (if any) by close of business on 12 November 2025.
7. The entire merits of the applicant's application, including the issues pertaining to the interim relief granted in paragraph 4 of this order, shall be addressed and argued on 13 November 2025.
8. Costs are reserved for argument on 13 November 2025.

[4] The matter was then argued before me on 13 November 2025, on the basis that the applicant sought final relief in terms of its notice of motion. The applicant also sought to amend its notice of motion, by adding AMCU to the individual employee respondents as a party against whom relief under paragraph 2.1 of the notice of motion was sought. I was happy to grant the applicant the relief sought, and will decide the matter on the basis of the notice of motion, so amended. Whether the applicant has however made out a case for the relief sought in this notice of motion is quite another issue, which I will deal with later in this judgment.

[5] Both AMCU and NUM filed answering affidavits, as directed in my order of 10 November 2025. In these answering affidavits, both AMCU and NUM did not seek to challenge the bulk of the facts as raised by the applicant in the founding affidavit. Instead, and on the grounds as will be dealt with later in this judgment, they contended the matter was moot and that the applicant on its own version in the founding affidavit failed to make out a proper case for the relief sought. The applicant filed a replying affidavit.

[6] After the matter had been argued in full, I indicated to the parties that I wanted to further consider the arguments raised, especially on the issues of the further developments that had happened and the relief sought being moot, and I therefore extended the interim order granted on 10 November 2025 to 18

November 2025, when I would hand down final judgment in this matter. I now hand down such judgment.

Background facts

- [7] As alluded to in the aforesaid introduction, the facts in this matter are largely common cause or uncontested. That means, fortunately, there are no real factual disputes I need to resolve. In the end, and as will appear from the facts summarized below, there was a material development after this matter was first argued before me on 10 November 2025, which changed the entire nature and dynamic of this matter.
- [8] Sibanye is part of the Sibanye-Stillwater Group. On 31 January 2025, Sibanye acquired all the assets and liabilities of Kroondal Operations (Pty) Ltd (Kroondal), which then also became part of Sibanye. Both Sibanye and Kroondal had existing relationships with AMCU, NUMA and UASA, who were recognised for the purposes of collective bargaining.
- [9] AMCU and NUM are party to a number of wage agreements concluded with Sibanye (now incorporating Kroondal), which includes, of particular application in this case, the 2022 – 2027 Review of Wages and Other Conditions of Employment Agreement between Sibanye and the unions dated 28 October 2022, which agreement applied for the entire period July 2022 to June 2027 (the SRPM Wage Agreement). It also includes the 2023 – 2028 Review of Wages and Other Conditions of Employment Agreement concluded between Kroondal, AMCU, and NUM for the period 1 July 2023 to 30 June 2028 (the Kroondal Wage Agreement).
- [10] These two wage agreements settled, *inter alia*, all demands relating to wages, benefits and a number of other terms and conditions for the period 1 July 2023 to 30 June 2027 and 1 July 2023 to 30 June 2028, respectively. In particular, clause 18 SRPM Wage Agreement provides that: *'no party to this Agreement, or other person or entity bound by this Agreement, shall in respect of the period 1 July 2023 to 30 June 2027, seek to vary, review or negotiate wages and other terms and conditions of employment and benefits, or make further demands or proposals relating to terms and conditions of employment and benefits for the duration of this Agreement ...'*. This agreement also contains

an undertaking not to strike in respect of any demand which has cost implications for the employer, in this period. Clause 14 of the Kroondal Wage Agreement largely mirrors clause 18 the SRPM Wage Agreement, and contains similar undertakings.

- [11] Sibanye employs approximately 2 247 rock drill operators (operators), at its various operations. Approximately 1 291 of these operators work at the three affected shafts in this matter, and are the fourth to further respondents in this application. Most of them are members of AMCU.
- [12] One of the benefits that operators are entitled to, is what is called a 'rock drilling bonus' (RDB). This is a monthly bonus paid to operators relating to actual work they perform. These bonuses form part of the benefits and conditions of employment regulated by the two wage agreements referred to above.
- [13] Despite the aforesaid, and on 20 October 2025, the operators at Sibanye's Khuseleka and Thembelani shafts gathered on the surface at the start of their shifts to hand over a memorandum to shaft management. This memorandum emanated from the operators themselves, and did not involve AMCU. As appears from the memorandum, the operators demanded that their RDBs be increased to R5 000.00 per month. The memorandum further stipulates that feedback must be given to them in respect of this demand within seven days. On 22 October 2025, the operators gathered at the Siphumelele shaft at the start of their shift to convey the same demand. Despite the fact that AMCU represents approximately 88% of the operators at the three shafts, the operators indicated that they intended to address the RDB issue directly with Sibanye without involving AMCU.
- [14] However, and despite what the operators had said about not involving AMCU, Sibanye, because of the fact that AMCU represents such a high percentage of operators, that AMCU was recognised for collective bargaining purposes, and in the interests of good industrial relations, Sibanye immediately contacted AMCU on 20 October 2025, informing it of the operators' demands and requested AMCU to urgently intervene. This resulted in a number of meetings in the period 22 October 2025 to 5 November 2025. It may be added that

despite the operators being represented by AMCU, it was agreed to allow a chosen delegation from the operators themselves to attend the meetings.

- [15] A meeting was held between Sibanye and AMCU on 22 October 2025. It was resolved that AMCU branch and shaft structures will engage with representatives of the operators at all three shafts (Khuseleka, Thembelani and Siphumelele), during that afternoon and that night, and obtain clarity regarding the demands. Sibanye made it clear that the RDB could not be discussed outside of the wage agreements, a notion AMCU was in fact in agreement with. AMCU confirmed that they would provide written confirmation and consent from operators that their demands would rather be pursued through AMCU.
- [16] A further meeting was held on 23 October 2025, following the further events at the Siphumelele shaft on 22 October 2025. AMCU confirmed that the operators were referred to the AMCU branch committee, and expressed its appreciation that management did not engage directly with the operators and instead referred them to AMCU. AMCU informed management that their engagements with the operators were 'fruitful'. Management thanked AMCU for their intervention with their members and affirmed that the matter was receiving attention at a senior level.
- [17] The next meeting was on the following day, 24 October 2025. In this meeting, management indicated that it valued the contribution of AMCU in this process. Again, it was indicated that the issue of RDB was receiving urgent attention by senior management, and to this end, a working group was established, represented by members from the incentives department, HR and line management, to look into the issue. It was undertaken that feedback will be provided to AMCU on 3 November 2025 on the findings of this working group. Again, management expressed their gratitude to AMCU for their leadership in this process, but also requested AMCU to remind their members to adhere to company policies and procedures, and not participate in any unlawful acts as it could lead to serious consequences. In turn, AMCU requested management to avoid direct engagement with the operators without the involvement of AMCU.
- [18] A further meeting was held on 27 October 2025. AMCU reported in this meeting that it had a 'tough discussion' with the operators that morning, to

avoid issues on the shafts, however the operators rejected the proposed response timeline from management as being on 3 November 2025. The operators demanded feedback by 29 October 2025. It was indicated by management that this was not possible, and feedback could only be provided by 3 November 2025.

- [19] Another meeting took place the next day, 28 October 2025. In this meeting, management thanked AMCU for their engagement with their members. Management however confirmed it was not possible to change the feedback timeline of November 2025, due to the work that needed to be done. AMCU raised a concern that management are now 'relaxing', since AMCU has decided to take the demands of the operators. Management responded by saying that the reason for the cautious approach was to ensure that a long-lasting solution is decided upon, taking all the other operations into consideration.
- [20] The meeting then held on 3 November 2025 did not really deliver anything, as it was agreed that final feedback would be given in a meeting to be held on 5 November 2025. The meeting on 5 November 2025 then indeed took place. In this meeting, management informed AMCU that the RDB had in fact been settled in the wage agreements and therefore it would not increase the RDB at this time. But what management undertook to do was to make the issue of the RDB part of a wider review of employee bonuses, to be undertaken in early 2026 (February 2026). In response, the operators expressed their dissatisfaction about not getting the R5 000.00 RDB they demanded.
- [21] Following this meeting on 5 November 2025, AMCU held a mass meeting with the operators that same day. AMCU briefed all the operators of the final stance adopted by Sibanye. This resulted in a mass meeting being held by the operators themselves on Sunday, 9 November 2025, at approximately 10h30, at the Thembelani Siza shaft. In this meeting, a mandate was sought from the gathered operators on what to do next, considering Sibanye was not willing to entertain their demand. The meeting then resolved to embark on a strike commencing on Monday, 10 November 2025. Further, the meeting resolved to block other employees from entering the workplace once their strike commenced. The principal speaker at the meeting further informed all attendees that any operator who attempts to report to work will be harshly

dealt with, and that employees all know each other and that those who refuse to support the strike will be identified and confronted at their places of residence. The meeting also supported this proposed course of action.

- [22] Having become aware of this meeting of 9 November 2025 and what the operators had resolved to do, Sibanye's attorneys, that same day, addressed urgent correspondence to both AMCU and NUM, calling on them to intervene, and also informing them that an urgent application would be brought to the Labour Court to prevent this behaviour. The letter *inter alia* recorded:

'... It has come to our client's attention that that RDOs held a mass meeting on Sunday, 9 November 2025 near Thembelani Siza shaft. The meeting was attended by RDOs from Thembelani, K6 and Khuseleka. During the meeting, RDOs agreed to down tools at the start of the shift on Monday, 10 November 2025. Of great concern is the fact that the employees have already expressed their intention to carry out acts of violence against any employee that does not support the strike. Our client hereby calls on AMCU as a responsible trade union to take urgent action to intervene and call its members to order, before jobs and lives are placed in jeopardy ...'

- [23] The operators however carried out their decision. On 10 November 2025 at the Siphumelele shaft, the operators gathered outside the boom gate and refused to proceed underground to their working places. At Khuseleka shaft, operators gathered outside the shaft on the nearby sports field and also refused to proceed underground to their working places. Finally, at the Thembelani shaft, no operators clocked in for the morning shift.
- [24] At this juncture, it must be said that it was undisputed that the RDB constituted a benefit and a demand that would have a cost implication to Sibanye, that was regulated by and settled in the two wage agreements, for the period 1 June 2023 to 30 June 2027, and the period 1 July 2023 to 30 June 2028, respectively. Further, there was no referral of any dispute to the CCMA in terms of section 64(1) of the LRA.
- [25] Sibanye has indicated that it would suffer severe irrecoverable financial losses should the strike that started on 10 November 2025 be allowed to continue. As a result of the strike, Sibanye said it would suffer approximate losses in the amount of R83 288 069.00 per day of lost production. This figure accounts for

lost revenue, as well as operating expenses that will occur even during the strike.

- [26] Another difficulty Sibanye raised, which was never contradicted, was that the operators explicitly expressed their willingness and intention to use violence against those who do not join their cause. In fact, and in its affidavit, NUM indicated that it was not party to this entire dispute, and that its members did not form part of or associated themselves with the operators that resolved on 9 November 2025 to proceed with the strike. NUM in fact complained that its members tendered their services and sought to report for work on 10 November 2025, but were prevented from doing so by the striking operators that were members of AMCU. Sibanye stated that particularly based on past experience, lives may be at risk if the strike continues.
- [27] As stated above, the urgent application by Sibanye then indeed followed on 10 November 2025, leading to the interim order I granted on that date. However, then, and before further affidavits were filed by the parties, there were significant developments on this case, which would have a direct impact on whether final relief should be granted. These events now follow.
- [28] On the morning of Monday, 10 November 2025, Sibanye issued a written ultimatum to all the striking operators at each of the three shafts notifying them that their conduct amounted to unprotected strike action and calling on them to return to work by 10h00 that day. This was followed by a final ultimatum sent by SMS to the striking operators at approximately 16h30, calling on them to report for work at the start of their shift at 03h00 on 11 November 2025 or face dismissal.
- [29] Also on 10 November 2025, at approximately 22h18, Sibanye sent correspondence to AMCU, notifying it that Sibanye had issued ultimatums and a final ultimatum to the striking operators and calling on AMCU to intervene. Copies of the ultimatums were attached to the letter. A similar letter was sent to NUM. The letter read:

'Despite requests by the Company for the union to intervene, employees have not returned to work.

We wish to inform you that a Final Ultimatum has been issued to employees participating in the unprotected strike. No further ultimatums will be issued.

Copies of the ultimatums that were issued to striking employees are attached. Should employees not comply with the final ultimatum, this may lead to their dismissal.

This action was taken in circumstances where no representations were received as to why a final ultimatum should not be issued.

You are accordingly required to urgently intervene and take the necessary steps to ensure that striking employees return to work at the start of their next shift at 03h00 am. ...'

- [30] Suffice it say, and despite the ultimatums issued and the correspondence to AMCU, none of the striking operators resumed their duties. This resulted in a further letter by Sibanye to AMCU on 11 November 2025, recording the following:

'As you are aware, the Company Issued a Final Ultimatum directing striking employees to return to work for their next shift at 03h00 on 11 November 2025. The ultimatum was communicated on 10 November 2025 as follows:

To striking employees at about 16h30 by SMS;

To striking employees at about 19h30 by placing a copy thereof on notice board to which the striking employees have access; and

To unions at about 19h30 by email.

Employees have not complied with this ultimatum.

You are hereby invited to provide written representations explaining why striking employees should **not** be dismissed for their participation in the current unprotected strike.

Written representations should be provided via email to T[...] or delivered to Terence Komane Hexriver Complex by no later than 08h00 am, tomorrow morning, Wednesday 12 November 2025 ...'

- [31] AMCU answered in a letter also on 11 November 2025. It indicated that it was attempting to convene a meeting with its members. AMCU stated that even

though the current action was not initiated by it, it was prepared to engage constructively with Sibanye to serve the interests of its members. AMCU referred to the fact that even though there have been engagements between the parties since 20 October 2025, AMCU was convinced that it is because these engagements ceased, that the employees were provoked to commence with the current action. It was proposed that the internal dispute resolution processes in terms of the Recognition Agreement and/or Wage Agreement be applied, and the parties meet to try and resolve the issue. No representations were however made.

[32] Sibanye replied on that same day (11 November 2025). Sibanye expressed its concern that that AMCU's response made no mention of the fact that its members were engaged in an ongoing strike, and/or that the strike is unprotected. Sibanye expressed its dissatisfaction that the proposal to meet was not accompanied by an undertaking that its members will return to work pending the meeting to be held. Sibanye stated that whilst it was amenable to meet with AMCU, the processes that were underway aimed at dealing with the unprotected strike would not be placed on hold. AMCU was reminded to make representations as to why its members should not be dismissed and to submit any such representations by 08h00 the following day (12 November 2025).

[33] When no representations were then forthcoming by the morning of 12 November 2025, and with the operators still not having returned to work, Sibanye, on 12 November 2025, summarily dismissed all the striking operators. They were issued with letters of dismissal. A letter was also sent to AMCU on 12 November 2025, which read:

'We record that despite being afforded the opportunity to make representations on why AMCU believes its members should not be dismissed for participating in the unprotected strike, AMCU has failed to submit any representations.

On the evidence available to the Company, it is clear that your members are engaged in an unprotected strike.

In the circumstances, the Company hereby advises that your members are summarily dismissed for participating in the unprotected strike. ...'

[34] AMCU answered on 12 November 2025. It proposed that the employees' dismissals should be reversed, pending further engagements. But Sibanye was having none of it. Answering affidavits and the replying affidavit then followed.

Analysis

[35] Considering what has now turned out to be the undisputed facts in this matter, I believe it is clear that the operators that are members of AMCU embarked upon strike action on 10 November 2025 demanding a RDB bonus of R5 000.00 per month, by refusing to report for their underground duties and / or gathering at the various shafts, until this demand was met. It is also clear that this demand, on the facts, would resort under section 65(3)(a) of the LRA⁵, because this demand for an increased RDB would be issue specifically regulated and determined by the two valid and binding wage agreements between Sibanye and AMCU, thus making strike action prohibited and unprotected.⁶ In short, there was a strike and it was unprotected. As said in *BMW SA (Pty) Ltd v National Union of Metalworkers of SA on behalf of Members*⁷: '*... A collective agreement concluded between the parties is binding between them. It is a contract that sets the agreed terms between them and as long as what is agreed upon is not in conflict with the applicable legislation or contra bonos mores it is binding and enforceable between them ...*'. It is equally undisputed that there has been no compliance with any of the provisions of section 64(1) of the LRA,⁸ which in itself renders the strike unprotected. Ordinarily therefore, there would have been no difficulty in declaring such strike action to be unprotected based on these circumstances. For example, in *Vodacom (Pty) Ltd v Communication Workers Union*⁹ the Court held as follows:

⁵ The section reads: '*Subject to a collective agreement, no person may take part in a strike or lock-out or in any conduct in contemplation or furtherance of a strike or lock-out - (a) if that person is bound by - (i) any arbitration award or collective agreement that regulates the issue in dispute ...*'.

⁶ See *Air Chefs (Pty) Ltd v SA Transport and Allied Workers Union and Others* (2013) 34 ILJ 119 (LC) at para 27; *ADT Security (Pty) Ltd v SA Transport and Allied Workers Union and Another* (2012) 33 ILJ 2061 (LC) at para 18 and 26; *Transnet Ltd v SA Transport and Allied Workers Union and Others* (2011) 32 ILJ 2269 (LC) at paras 20 – 22.

⁷ (2012) 33 ILJ 140 (LAC) at para 10.

⁸ Section 64(1) requires that the dispute first be referred to conciliation, be unsuccessfully conciliated, and that 48 hours' written notice of the strike action be given.

⁹ (2010) 31 ILJ 2060 (LAC) at para 10.

‘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. ...’

[36] But what then happens in the case where the employees that embarked upon the strike action, such as the operators *in casu*, were actually dismissed by the employer for participation in such strike action, before the issue of whether the strike was protected or unprotected fell to be decided by the Court? Would that make any difference? Before answering this question, it must immediately be said that irrespective of whether the striking employees have been dismissed, or the strike had ended for some other reasons, this Court will still have jurisdiction to determine whether or not the strike is protected or unprotected. The Court would also still have the jurisdiction to interdict any conduct embarked upon pursuant to such strike, even after the dismissal of employees. This is because of the clear working of section 68(1), which reads:

‘(1) In the case of any strike or lock-out, or any conduct in contemplation or in furtherance of a strike or lock-out, that does not comply with the provisions of this Chapter, the Labour Court has exclusive jurisdiction-

(a) to grant an interdict or order to restrain -

(i) any person from participating in a strike or any conduct in contemplation or in furtherance of a strike; or

(ii) any person from participating in a lock-out or any conduct in contemplation or in furtherance of a lock-out ...’

[37] In turn, what constitutes a ‘strike’ is then defined in section 213 of the LRA as:

‘... the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee ...’. (emphasis added)

[38] So, and insofar as it concerns jurisdiction, the fact that the employees have been dismissed, does not deprive this Court of the jurisdiction to afford

Sibanye the declaratory and / or interdictory relief it seeks. This situation prevents a dual jurisdiction situation from arising with the High Court, for something that is quintessentially an employment law dispute and should be decided by a specialist Court like the Labour Court. An example would be where striking employees that are no longer employed and have been dismissed persist in perpetrating unlawful behaviour despite being dismissed, could still be interdicted in the Labour Court, which would otherwise need to be dealt with in the High Court. Section 68(1) of the LRA, as read with the definition of a strike in section 213, clearly caters for this eventuality.

- [39] But the fact that the Court may have jurisdiction to decide the issue, does not mean that it would always be appropriate to exercise this jurisdiction and decide the issue. It is in this context that a pertinent question comes up, namely what the point would be of declaring a strike as being unprotected where the employees embarking upon that strike have already been dismissed.
- [40] Sibanye believes that the fact that the employees have been dismissed should not stand in the way of the Court still declaring the strike to be unprotected. In this regard, Sibanye placed emphasis on the judgment in *Food and General Workers Union and Others v Minister of Safety and Security and Others (FGWU)*¹⁰ where the Court held:

'If, as Mr *Baker* contends, strike action ceases in all circumstances from the moment strikers are dismissed, the effect on this court's jurisdiction over strike action would be seriously compromised. Firstly, its jurisdiction to grant an interdict against misconduct in furtherance of the demand or grievance underlying the dispute, which up to then vested in this court by virtue of s 68 (see *Sappi Fine Papers (Pty) Ltd (Adamas Mill) v PPWAWU & others* (1998) 19 ILJ 246 (E); [1997] 10 BLLR 1373 (E); *Mondi Paper (A Division of Mondi Ltd) v PPWAWU* (1997) 18 ILJ 84 (D)), would shift to the High Court immediately the employer dismissed the strikers. Since concurrent jurisdiction has not been provided for in these circumstances, this court could no longer intervene. Second, an interdict granted by this court before the dismissal could immediately cease to be of effect when the strikers were dismissed. Such a situation would, in my view, be in conflict with the intention behind the creation

¹⁰ (1999) 20 ILJ 1258 (LC) at para 14.

of this court as a specialist tribunal charged with the responsibility of applying an Act, one of the central purposes of which is the promotion of orderly collective bargaining and the effective resolution of labour disputes: see the remarks of Nepgen J in *Sappi Fine Papers* at 1385A-C. It must be assumed, therefore, that the legislature intended to avoid these results by the insertion of the words 'or have been employed by the same employer' in the definition of strike ...'

- [41] As opposed to what Sibanye relied upon, AMCU relied on *Tharisa Minerals (Pty) Ltd v National Union of Mineworkers and Others*¹¹. In that case, the Court was specifically tasked to consider whether or not to confirm an interim order that a strike was unprotected in circumstances where the employees had since been dismissed as a result of the strike. The Court said:¹²

'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 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 ...'

- [42] Looking at these two judgments, I am inclined to lean towards the position adopted in *Tharisa supra*. I do not believe that the judgment in *FGWU supra* assists Sibanye, for a number of reasons. Firstly, the Court in *FGWU* was not called upon to decide whether to confirm an interim order where striking employees had been dismissed, but was called upon to decide a jurisdictional question, namely whether persons who have been dismissed would nonetheless be entitled to seek protection against interference by others with the exercise of their right to strike.¹³ Secondly, and as I have already discussed, the issue of jurisdiction is not really at stake in this case, as this Court would clearly have jurisdiction to intervene, even in the case of dismissed employees. Thirdly, and importantly, Sibanye failed to consider the entire judgment in *FGWU*, and in particular how that Court viewed the situation

¹¹ (2025/051769) [2025] ZALCJHB 344 (4 August 2025).

¹² *Id* at para 7.

¹³ See para 8 of the judgment.

where employees were dismissed for participation in unprotected strike action, and then held:¹⁴

'It is clear, therefore, that the legislature treats protected strikes on a basis wholly different from the way in which it treats unprotected strikes. So, too, does it treat dismissals in the two contexts in a completely different way. The dismissal of an 'unprotected' striker is not void ab initio, as is the dismissal of a participant in a protected strike. On the contrary, like any other form of dismissal, the dismissal of an 'unprotected' striker brings the contract to an end from the moment of the dismissal: see *Edgars Stores Ltd v SACCAWU* (1998) 19 ILJ 771 (LAC); [1998] 5 BLLR 447 (LAC). It must also bring an end to the employment relationship — unless and until that relationship is subsequently revived by an order of this court in terms of s 191(5)(b)(iii). It must follow too that the dismissal of the participant in a strike that is not in compliance with the Act also deprives this court of jurisdiction to intrude into any disputes between the dismissed employees and their former employer ...'

This latter reasoning certainly appears to correspond with the conclusion the Court came to in *Tharisa supra*.

[43] All considered, the proper way to decide whether Sibanye is entitled to the declaratory relief it seeks, is to firstly determine whether a strike still exists. A strike can end in a number of ways. It can end when the strike is ended by the employees unconditionally returning to work. Or it can end when the underlying issue in dispute (lis) is resolved. It has also been said that a strike ends when it is suspended, meaning it is temporarily called off, whilst the underlying issue in dispute remains extant. Does the strike however end when the employees participating in the same are dismissed?

[44] In my view, the strike must be considered to have ended when the employees participating in the strike have been dismissed. *In casu*, where the employees (operators) have been dismissed, there can no strike, because they are no longer employees. This was actually contemplated in *FGWU supra*, where the Court held:¹⁵ '*When employees are dismissed, whether in the context of a strike or otherwise, they cease to be employees within the meaning of the*

¹⁴ Id at para 21

¹⁵ Id at para 11.

*statutory definition of that term. This much is clear from the tense in which that definition is expressed ...'. The Court in FGWU, having so found, expressed the view that: 'It may be artificial to accept that dismissed workers can be on strike in the ordinary meaning of that term. A strike is aimed at compelling an employer to do or refrain from doing something in its capacity as such or in the words of the statutory definition, at 'remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee'. It may be arguable that once employees who had been on strike are dismissed, any further action they might take cannot have this aim because the mutuality of interest between them and their former employer comes to an end ...'*¹⁶. Despite this reasoning, which I believe to be correct, the Court in *FGWU* nonetheless concluded:

'It is significant, however, that the legislature has refrained from using the definite article before the words 'employer' and 'employee'. The intention behind this omission must be that, in order to constitute a strike within the meaning of the definition, the grievance or dispute must relate to matters of mutual concern to employers and employees generally, and need not be limited to matters of mutual interest to the strikers and their own employer. Were this not the case, the definition of 'strike' would not cover secondary strikes. In the present context, this means that former employees can in principle have a grievance that can be said to relate to a 'matter of mutual interest between employer and employee' in the general sense.'

[45] Respectfully, I do not believe the aforesaid conclusion in *FGWU* is entirely correct, especially considering that Court's own reasoning that with dismissal of the employees any matter of mutual interest between employer and employee must necessarily come to an end. However, I believe a simple answer to this question is apparent from how the Constitutional Court dealt with the issue of when a strike terminates in *National Union of Metalworkers of South Africa v Trenstar (Pty) Ltd*¹⁷ where the Court decided:

'The LRA does not deal with the 'termination' of strikes or with 'suspended' strikes. This is unsurprising. A 'strike' is a state of affairs occurring with a particular purpose. It either exists or it does not. A 'strike' ends, in the sense of

¹⁶ Id at para 15

¹⁷ 2023 (4) SA 449 (CC) at para 25.

no longer existing, when there is no longer a concerted withdrawal of labour.'
(emphasis added)

As I said, this is where the real answer lies. In the case where employees have been dismissed, it is impossible for a concerted withdrawal of labour to continue to exist. Dismissed employees, in simple terms, cannot concertedly withdraw their labour.

- [46] Accordingly, the strike *in casu* ended with the final dismissal of the operations on 12 November 2025. It is clear on the facts that Sibanye regarded this as a final dismissal for participation in unprotected strike action. It is however also true that even where a strike has ended, it does not mean that relief of declaring the strike to be unprotected cannot be granted. This Court has consistently adopted the view that where the underlying dispute giving rise to the strike remained unresolved, it remains competent to declare the strike unprotected, even if the strike action itself had ended.¹⁸ But the authorities all dealt with a situation where the employment relationship remained extant. The following *dictum* in *Mawethu Civils (Pty) Ltd and Another v National Union of Mineworkers and Others*¹⁹, penned by the Court in the context of the confirmation of a *rule nisi* declaring a strike unprotected after the strike itself has ended, is apposite:

'Counsel for the respondents argued that the appeal has become moot with the passage of time and will have no practical effect. That is not correct. There is a live dispute between the parties about the legal character and consequences of the strike that has continued relevance in the on-going industrial relations in which they are involved. The appellants legitimately seek judicial affirmation of their stance in regard to the appropriate means of resolution of a dispute of this nature ...'

- [47] The critical take away from the judgment in *Mawethu Civils* is that there must be an extant underlying dispute between the parties, in the context of a continued relationship between the parties, for declaratory relief to be competent. Where the employees have been dismissed there is no longer

¹⁸ See *Centlec (SOC) Ltd v SA Municipal Workers Union and Others* (2019) 40 ILJ 846 (LC) at paras 18 – 19; *SA Post Office (Soc) Ltd v Influential Information and Communication Union of SA and Others* [2019] JOL 44235 (LC) at paras 34 and 38; *Johannesburg Roads Agency v SA Municipal Workers Union and Others* (2015) 36 ILJ 2310 (LC) at para 11.

¹⁹ (2016) 37 ILJ 1851 (LAC) at para 23.

such a continuing relationship between the parties, even if the underlying dispute has not been resolved. This is simply because employees that have been dismissed for unprotected strike action are no longer employees, and as such, there is no longer an employer / employee relationship with the employer. Determining the underlying dispute that gave rise to the strike in the first place thus has no consequence or practical effect. In simple terms, and *in casu*, what is possibly the point of saying the strike is unprotected because of the employees being bound by the two wage agreements that regulate the issue in dispute, in respect of employees that are no longer even employed. A strike is declared to be unprotected to achieve a specific purpose. That purpose must be to compel employees to cease their strike action and resume their duties. This would simply be impossible in the case of dismissed employees.

[48] In *Contracta Force Corporate Solutions (Pty) Ltd v National Union of Public Service and Allied Workers and Others*²⁰ the Court actually dealt with an instance where the employer party sought the confirmation of an interim order declaring the strike action unprotected, where the employees had since been dismissed. The Court held as follows in this regard:²¹

‘I accept the argument of Mr Dwayi for the first respondent that the order the applicant sought may not be granted. It is common cause that the second to further respondents have been dismissed. Their unprotected strike action has long ceased and following their dismissal they are no longer employees of the applicant. They are therefore in no position to commit any acts against the applicant in their capacity as its employees. As the rule nisi interdicted conduct by the second and further respondents in their capacity as the applicant’s employees, the confirmation of the rule nisi will not achieve the purpose the applicant seeks it for.’

The Court concluded:²²

‘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

²⁰ (2023) 44 ILJ 558 (LC).

²¹ Id at para 5.

²² Id at para 7.

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 ...'

- [49] In circumstances quite similar to the approach adopted by Sibanye *in casu*, the Court in *National Union of Mineworkers v Wanli Stone Belfast (Pty) Ltd*²³ considered a set of facts where, after obtaining an interdict, the employer served the order on the employees and the union, and requested the employees and the union to make representations and to return to work. When the employees failed to return to their workplaces, ultimatums followed, and when the employees did not adhere to those ultimatums, they were dismissed. The Court had the following to say in this context:²⁴

'It is therefore common cause that by the time the company applied for the confirmation of the rule nisi and the order declaring the strike illegal, the employees had already been dismissed and were thus incapable of continuing with the strike, protected or unprotected.

Neither Mr *Kennedy* nor Mr *Basson* could shed any light on whether the court was informed, on the return day, that the employees were already dismissed and that the strike was effectively over. In my view, it would not be farfetched or unreasonable to infer that the court was not informed about the changed circumstances when application was made for the confirmation of the rule nisi. I say this because the court would not have confirmed the rule nisi if it was fully apprised of the changed circumstances. The court would, in all likelihood, have discharged the rule nisi.'

- [50] Whether the employees were fairly dismissed for participation in unprotected strike action is an entirely different issue and dispute. Deciding such a dispute does not require a declaratory order beforehand, and is decided along the

²³ (2015) 36 ILJ 1261 (LAC).

²⁴ *Id* at paras 35 – 36

lines of entirely different considerations.²⁵ It would however be true that in those cases where the very notion of whether the employees' strike was protected or unprotected is hotly contested, with one side contending it is protected whilst the other side contending it is not, the determination of the protected or unprotected nature of the strike may well come up when deciding an automatic unfair dismissal dispute relating to a dismissal for participation in protected strike action.²⁶ But that is also a different case based on a different cause of action, and there would simply no need for the Court to pronounce on this issue at this stage for either party to succeed in their respective cases in such event. As held in *Wanli Stone supra*.²⁷

'In this matter, the strict requirements of *res judicata* are not applicable, because the cause of action and the relief sought are not the same. In the first matter, the illegal strike was the cause of action, whereas in these proceedings the unfair dismissal of the employees is the cause of action. In the first matter, an interdict was sought, whereas in this matter reinstatement or compensation was sought for the unfair dismissal of the employees.'

[51] In the end, what is really at stake in this case is mootness. The general principles applicable to mootness, for the want of a better description, are now fairly trite. In *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others*²⁸ the Constitutional Court held:

'A case is moot and therefore not justiciable, if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law.'

The same Court in *MEC for Education, KwaZulu-Natal and Others v Pillay*²⁹ added the following dimension to the consideration of mootness:

²⁵ In terms of section 68(5) of the LRA: '*Participation in a strike that does not comply with the provisions of this Chapter, or conduct in contemplation or in furtherance of that strike, may constitute a fair reason for dismissal. In determining whether or not the dismissal is fair, the Code of Good Practice: Dismissal in Schedule 8 must be taken into account*'. Schedule 8 deals with the issue of substantive fairness where it comes to dismissals for participation in unprotected strike action in Items 6(1) and (2).

²⁶ In terms of section 187(10(a)), it constitutes an automatic unfair dismissal where the reason for dismissal is '*... that the employee participated in or supported, or indicated an intention to participate in or support, a strike or protest action that complies with the provisions of Chapter IV ...*'.

²⁷ *Id* at para 27.

²⁸ 2000 (2) SA 1 (CC) at fn 18.

²⁹ 2008 (1) SA 474 (CC) at para 32. See also *City of Cape Town v SA Municipal Workers Union on behalf of Abrahams and Others* (2012) 33 ILJ 1393 (LAC) at para 11.

'This court has however held that it may be in the interests of justice to hear a matter even if it is moot if "any order which [it] may make will have some practical effect either on the parties or on others ...'

[52] As to what may be considered to be in the interest of justice was articulated in *Normandien Farms (Pty) Limited v South African Agency for Promotion of Petroleum Exportation and Exploitation (SOC) Limited and Others*³⁰ as follows:

'Moreover, this Court has proffered further factors that ought to be considered when determining whether it is in the interests of justice to hear a moot matter. These include:

- (a) whether any order which it may make will have some practical effect either on the parties or on others;
- (b) the nature and extent of the practical effect that any possible order might have;
- (c) the importance of the issue;
- (d) the complexity of the issue;
- (e) the fullness or otherwise of the arguments advanced; and
- (f) resolving the disputes between different courts.'

[53] Whilst it can perhaps be said that the underlying dispute pertaining to the R5 000.00 RDB remains live, because it clearly has not been resolved or abandoned, the fact is that the employment relationship between Sibanye and the operators has ended. That makes any determination or even resolution of the underlying dispute irrelevant, and in particular, it will have no practical consequence or effect. The issue, and the declaratory relief sought by Sibanye, is therefore, in my view, clearly moot.

[54] But is it nonetheless in the interest of justice to consider it? I do not believe so. Sibanye has made out no proper case why it would be in the interest of justice to still declare the strike to be unprotected, in line with the considerations set out in *Normandien Farms supra*. The issue of interests of justice was not argued and there exist no controversies between different Courts that must be decided. The suggested conflict between the judgments in *FGWU* and *Tharisa* is in fact, properly considered, no conflict at all. Since Sibanye has taken the

³⁰ 2020 (4) SA 409 (CC) at para 50.

decision to dismiss the operators on 12 November 2025, all that remains is for AMCU to challenge those dismissals by virtue of section 191 of the LRA, and there is simply no reason why the nature of the strike action, if it must be considered,³¹ cannot be decided in those proceedings. The declaratory order sought will not impact on any other parties. An applicable example where the interest of justice would have required the declaratory relief sought by Sibanye to be granted can be found in *Centlec (Soc) Ltd v SA Municipal Workers Union and Others*³² where the Court dealt with a situation where the trade union and its members embarked upon sporadic and continuous work stoppages, thus ending a strike and then later resuming it again. The Court pertinently reasoned as follows, despite considering the matter moot as the strike had ended:³³

‘It also cannot be in the interests of justice and the proper functioning of this court for parties such as the applicant to constantly approach the court simply to interdict sporadic industrial actions, and as and when they take place. In this case, the mere fact that the employees had voluntarily ceased the unprotected industrial action is cold comfort for the applicant, as in the light of the live controversy, there is no guarantee that they may not repeat the conduct in question. In my view, the apprehension of harm, prejudice or threat of prejudice in this case is not hypothetical or imagined. It has been demonstrated as real, and entitles the applicant to the relief that it seeks.’

[55] The case *in casu* has no comparisons to *Centlec*. The dismissal of the operators is final and stands, until set aside. This must put paid to any possible further resumption of the strike itself. The relationship between the parties is at an end, and there is simply no requirement of justice that the nature of the erstwhile strike action be determined.

[56] The interdictory relief sought by Sibanye pertaining to the risk of unlawful conduct that may be perpetrated by the operators unfortunately faces a similar fate, not because the Court cannot grant that relief where the employees have been dismissed, but because of the manner in which Sibanye sought to plead and bring its case. The principal difficulty for Sibanye is the manner in which it

³¹ I am doubtful if this would even be necessary.

³² (2019) 40 ILJ 846 (LC).

³³ *Id* at para 19. See also *Boomerang Fruits (Pty) Ltd v Umkhonto WeSizwe and Others* (2025) 46 ILJ 2599 (LC) at para 37.

sought to articulate the interdictory relief sought in the notice of motion, and then support it in the founding affidavit. What Sibanye did was to specifically link the interdicting of contemplated unlawful conduct by the operators to the continuation of the strike. The notice of motion uses words such as '*in support of*' or '*in furtherance of*' of the strike itself where it comes to the interdictory relief sought. The only relief not linked to the actual strike itself is paragraph 2.1.7 of the notice of motion, which reads: '*blocking or otherwise obstructing any of the entrances / exits and / or roads leading to and / or from the Applicant's premises*'.

- [57] But once the strike has ended, as it has, then no relief linked to strike would be competent, for the same reason that applies to the declaratory relief sought, being that it is moot. Sibanye then tried to utilize, in reply, the possible unlawful conduct by the operators because they have now been dismissed as a basis to still substantiate the interdictory relief sought. But this is not the case as pleaded, and a new case cannot be made out on reply. It is trite that a litigant is bound to the relief sought in the notice of motion and founding affidavit. In *Betlane v Shelly Court CC*³⁴ the Court said: '*It is trite that one ought to stand or fall by one's notice of motion and the averments made in one's founding affidavit ...*'. In *Van Der Merwe and Another v Taylor NO and Others*³⁵ it was similarly held that: '*... The applicants must stand or fall by the factual averments in their affidavits which are intended to support the cause of action on which the relief sought is based ...*'. And as to the introduction of what may be described as a 'new' case, the Court in *Brayton Carlswald (Pty) Ltd and Another v Brews*³⁶ made the following clear:

'In my view, there are two insurmountable hurdles in the 'new' version being accepted. First, the general rule in motion proceedings is that an applicant must stand or fall by the averments made out in its founding affidavit ...'

- [58] With the strike thus terminating on 12 November 2025 as a result of the dismissal of the operators by Sibanye, there is no continuation of the strike, and therefore the events that serve as the basis for preventing unlawful

³⁴ 2011 (1) SA 388 (CC) para 29. See also *Van Der Merwe and Another v Taylor NO and Others* 2008 (1) SA 1 (CC) at para 122; *President of the Republic of SA and Others v SA Rugby Football Union and Others* 2000 (1) SA 1 (CC) at para 150; *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA) at paras 29-30

³⁵ 2008 (1) SA 1 (CC) at para 122.

³⁶ 2017 (5) SA 498 (SCA) at para 29.

conduct 'in support of' or 'in furtherance of' the strike no longer exists going forward. And with this, the interdicting of unlawful behaviour can no longer exist as there is nothing to prevent. Circumstances have overtaken the initial events, solely because of what Sibanye chose to do.³⁷ That rendered the matter, where it comes to this relief, equally moot. In *Commercial Stevedoring Agricultural and Allied Workers Union and Others v Oak Valley Estates (Pty) Ltd and Another*³⁸, the Court held:

'In a constitutional order, interdicts occupy a place of importance. In granting an interdict a court enforces 'the principle of legality that obliges courts to give effect to legally recognised rights'. The purpose of injunctive relief is to 'put an end to conduct in breach of the applicant's rights'. An interdict is intended to protect an applicant from the actual or threatened unlawful conduct of the person sought to be interdicted. 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. The requirement of a 'reasonable apprehension of injury' was explained by the then Appellate Division in *Nordien*:

'A reasonable apprehension of injury has been held to be one which a reasonable man might entertain on being faced with certain facts. The applicant for an interdict is not required to establish that, on a balance of probabilities flowing from the undisputed facts, injury will follow: he has only to show that it is reasonable to apprehend that injury will result. However, the test for apprehension is an objective one. This means that, on the basis of the facts presented to him, the Judge must decide whether there is any basis for the entertainment of a reasonable apprehension by the applicant.'

[59] But that still leaves the relief sought in paragraph 2.1.7 of the notice of motion. In this respect, it can be considered that Sibanye has said that its experience in the mining industry has shown that often a dispute is not resolved simply by a dismissal of employees by the employer. Sibanye pleaded that it is possible that the employees will continue with strike-related conduct such as

³⁷ I do not express any criticism for what Sibanye did in choosing to dismiss the employees. That would be squarely within its prerogative where it comes to employees participating in unprotected strike action. But it must then live with collateral consequences that may flow from such decision.

³⁸ (2022) 43 ILJ 1241 (CC) at para 19.

blockading and picketing in pursuit of their demands. Also, most of the operators reside in company accommodation on the premises and would have access to the wider premises of Sibanye. And lastly, Sibanye has said that feedback from supervisors and managers indicate that there is a growing tension between its employees and those that participated in the strike.

- [60] I am alive to the particular and unique circumstances of the workplace where Sibanye operates, and all the challenges with regard to possible violence and intimidation that exist in that environment. But Sibanye has not brought a case to interdict violence and intimidation by former employees being perpetrated as a result of them being dismissed. Whilst I was inclined to grant the interdictory relief sought on an interim basis whilst there was an actual and ongoing strike, that whole dynamic changed where the operators were all dismissed. In my view, and if the operators behave unlawfully in the form of perpetrating the kind of conduct contemplated by the notice of motion, following their dismissal, then Sibanye would be free to approach this Court again on that basis and then make out a proper case pertaining to that conduct, also under section 68(1) of the LRA.
- [61] The above being said, and based on the facts at least put up by Sibanye, I remain inclined to grant it the relief relating to interdicting the operators from barring any access to or from Sibanye's premises. This is because such relief is not linked to the strike, and the unique environment, especially having regard to the operators' continued access to the premises of Sibanye, makes it appropriate.
- [62] Even though I was willing to grant an order amending Sibanye's notice of motion as applied for to include AMCU itself in the interdictory relief sought, I do not believe Sibanye has come close to making out a case for such relief sought against AMCU, on the facts. There are a number of reasons for this. First, it is clear that AMCU was not involved in or in any manner instigated the dispute giving rise to the strike by the operators. It was clearly embarked upon by the operators off their own bat. Second, when AMCU was informed about the demand by the operators for the increase in the RDB, it actively involved itself in trying to get the matter resolved. Several meetings were held in the course of October and November 2025, and in several of these meetings, Sibanye in fact thanked AMCU for its efforts in trying to resolve the matter.

Third, AMCU met with the operators to attempt to convince them that the issue of the increase in the RDB should rather be addressed through AMCU, than directly by themselves. And finally, AMCU at all times fully briefed the operators on the actual position adopted by Sibanye with regard to the demand. AMCU simply was not the villain in this case.

[63] Perhaps the only instance where some criticism can be levelled at AMCU is the lack of sufficient effort on its part to convince the operators to stop their strike and return to work, once Sibanye started issuing ultimatums. I am now convinced that because I was not willing to declare the strike to be unprotected when the matter was first heard on 10 November 2025, in order to give AMCU a chance to properly answer the case, this was considered by AMCU and the operators to be some sort of licence to continue the strike. AMCU, I believe, should have used the opportunity to rather do everything possible to convince the operators to resume their duties, and leave the issue about the RDB to AMCU to deal with. But his failure, as unacceptable as it may be, cannot serve to justify relief against AMCU *per se*. In the end, this cost the operators their jobs, and this is now another issue for another day.

[64] In sum, in order to obtain an interdict against unlawful conduct by the dismissed operators, Sibanye needed to establish actual or threatened unlawful conduct on the part of the operators, now having been dismissed, designed to still press home their demand despite being dismissed. However, no such evidence was presented. Sibanye, unfortunately, and on the facts as they now stand, has failed to establish the reasonable apprehension required for an interdict against unlawful behaviour by the operators, and any relief sought in this regard must fail. The following dictum in *UIS Analytical Services (Pty) Ltd v Independent Democratic Union of SA and Others*³⁹ is apposite:

‘In the notice of motion, the applicant has asked for further interdictory relief relating to unlawful conduct by striking employees, such as interfering with non-striking employees, committing acts of violence and intimidation, and unlawfully interfering with the business of the applicant. But the applicant has not made out any case in the founding affidavit, on the facts, why such relief would be justified. The applicant cannot just come to Court and ask that unlawful behaviour be interdicted, where the applicant has not even

³⁹ (2025) 46 ILJ 642 (LC) at para 49.

established the existence of such unlawful behaviour or proven the real possibility that such unlawful behaviour may occur. The relief sought by the applicant in this regard must equally fail ...'

- [65] This only leaves NUM and its members. Sibanye has made out no case against them. NUM was not involved in anything that happened. Its members did not participate in the decision by the operators on 9 November 2025 to embark upon strike action. NUM filed an affidavit indicating that its members sought to report for duty and tendered their services, but were prevented from doing so by the operators that were striking (being the AMCU members). There is therefore no basis to grant any relief against NUM and its members.

Conclusion

- [66] When the matter was first argued on 10 November 2025, I was unwilling to grant Sibanye the declaratory relief sought to the effect that the strike was unprotected, because of the extreme short notice given by Sibanye to AMCU, making it impossible for AMCU to properly answer. But before this case could actually be considered, Sibanye dismissed the operators. That action taken rendered the declaratory relief sought to be moot, as it would no longer serve any practical purpose and have no consequence. There is also no case that it would be in the interests of justice that the declaratory relief be granted, despite the matter being moot. It follows that it is simply not competent to grant Sibanye the declaratory relief sought to the effect that the strike embarked upon by the operators on 10 November 2025 is unprotected, and this part of the application must be dismissed.
- [67] As to the interim order I granted on 10 November 2025 pertaining to interdicting contemplated unlawful conduct by the operators during the course of the strike, this relief was directly linked to continuation of the strike. Because the strike has now ended as a result of the operators being dismissed, it must follow that this relief would equally be rendered moot, and would serve no practical purpose. The interim order falls to be discharged, save only for the relief sought in paragraph 2.1.7 of the notice of motion, which still remains competent.

Costs

[68] This only leaves the issue of costs. Sibanye and AMCU have an ongoing relationship with one another. Whilst Sibanye ultimately, overall considered, did not succeed, the fact is that it was justified in bringing the application in the first place. I also consider that the operators indeed embarked upon unprotected strike action, and was it not for Sibanye having dismissed them, it may well have succeeded in obtaining final declaratory and interdictory relief. I have appreciation for Sibanye's motives, being the protection of its business, even though it was, due to intervening circumstances, misguided to persist with it in the end. And as I have said, I also consider that AMCU could have done more to get its operator members to return to work. Finally, I am guided by the judgment in *Zungu v Premier of the Province of Kwa-Zulu Natal and Others*⁴⁰ where it comes to the issue of costs in employment disputes, making a costs order in this case inappropriate. Exercising the wide discretion I have in terms of section 162(1) of the LRA, I believe that this is a case where no costs order would be appropriate.

[69] For all the reasons set out above, I make the following order:

Order

1. The fourth to further respondents are interdicted and restrained from blocking or otherwise obstructing any of the entrances / exits and / or roads leading to and / or from the applicant's premises.
2. Save for the order granted in paragraph 1, the interim order granted on 10 November 2025 is discharged.
3. The applicant's application for declaratory relief declaring the strike unprotected is dismissed.
4. There is no order as to costs.

S Snyman

⁴⁰ (2018) 39 ILJ 523 (CC) at para 25.

Appearances:

For the Applicant:	Advocate A Redding SC
Instructed by:	Solomon Holmes Attorneys Inc
For the First Respondent:	Advocate Omar
Instructed by:	Dockrat Inc
For the Second Respondent:	Mr G Gwebityala of Cheadle Thompson & Haysom Attorneys