



**IN THE HIGH COURT OF SOUTH AFRICA  
FREE STATE DIVISION, BLOEMFONTEIN**

**Not reportable**

Case no: 4344/2025

In the matter between:

**LESIDI ALUMINIUM CC**

**FIRST APPLICANT**

**BIG 5 COOKWARE (PTY) LTD**

**SECOND APPLICANT**

and

**NATIONAL UNION OF METALWORKERS OF  
SOUTH AFRICA**

**FIRST RESPONDENT**

**CHRIS SOETSANE N O**

**SECOND RESPONDENT**

**ANDILE ZITHO N O**

**THIRD RESPONDENT**

**EMPLOYEES OF APPLICANT PRESENTLY PARTICIPATING  
IN OR INTENDING TO PARTICIPATE IN INDUSTRIAL ACTION  
OR UNLAWFUL CONDUCT AT THE APPLICANT'S PROPERTY  
(LIST OF NAMES ATTACHED AS 'A')**

**FOURTH RESPONDENT**

**COMMISSIONER VUYO BASHOLO**

**FIFTH RESPONDENT**

**COMMISSION FOR CONCILIATION, MEDIATION  
AND ARBITRATION, BLOEMFONTEIN**

**SIXTH RESPONDENT**

**Neutral citation:** *Lesidi Aluminium CC and Another v National Union of Metalworkers of South Africa* (4344/2025) [2026] ZAFSHC 222 (27 March 2026)

**Coram:** PARKS AJ

**Heard:** 29 January 2026

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for the hand-down is deemed to be 14h30 on 27 March 2026.

**Summary:** Employment law – concurrent jurisdiction of Labour Court and High Court – urgent application – rule *nisi* – industrial action – unlawful conduct – interdict – mootness – final relief.

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## ORDER

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- 1 The rule *nisi* granted on 20 August 2025 is discharged.
  - 2 Each party to pay its own costs.
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## JUDGMENT

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### Parks AJ

[1] This matter concerns an application to confirm a rule *nisi* issued on 20 August 2025, arising from alleged unlawful and prohibited conduct during an industrial action. No relief is sought against the fifth and sixth respondents, as the issues pertaining to them have since become moot. The rule *nisi* was granted on an urgent basis. In terms of the order, the first to fourth respondents were interdicted and restrained from engaging in any unlawful or criminal conduct in furtherance of the protected strike. The order further interdicted any unidentified respondents from associating themselves with, making common cause with, or providing support to the individual respondents in relation to the prohibited conduct. In addition, the court directed that service of the order be effected by email and specified four email addresses for this purpose.

[2] JF Botha, a general manager of the first applicant, states that the first respondent commenced strike action on 4 August 2025, prompting a letter advising the first and second respondents of a breach of the picketing agreement. The situation escalated on 13 and 18 August 2025, requiring intervention by the South African Police Service. Striking employees barricaded the road with stones and burning tyres, blocking access to the premises. With police assistance, non-striking employees were eventually able to enter, and the debris was cleared to restore access.

[3] On 19 August 2025, the first applicant issued a lockout notice to all striking employees in terms of the Labour Relations Act 66 of 1995 (the LRA). The deponent states that the premises were quiet at 05h05, but by 06h30 the striking employees had again obstructed the access road with stones and burning tyres. Employees attempting to enter

were met with stone-throwing, causing some to retreat out of concern for their safety. The police were contacted and arrived at approximately 07h05 to stabilise the situation. Photographs dated 15 and 18 August 2025, together with two confirmatory affidavits, were filed in support of these allegations.

[4] Following the granting and service of the interim order of 20 August 2025, a notice of entry as attorneys of record, together with a notice of intention to oppose, was filed on behalf of the first to fourth respondents on 26 August and 5 September 2025, respectively. The deponent, however, states that the answering affidavit is lodged primarily on behalf of the first to third respondents, and further contends that the interdict unlawfully restrains employees from exercising their right to protest, a right authorised by the fifth respondent. Counsel for the respondents further contends that the rule *nisi* ought to be discharged on several grounds: namely, the alleged failure to effect proper service on the fourth respondent; the assertion that certain aspects of the matter have become moot; whether this Court has the jurisdiction to adjudicate the matter; questions regarding the applicants' authority to institute the proceedings on behalf of the second applicant and an allegation that the applicants are abusing the court process.

[5] The respondents' counsel submitted that service had not been effected on the fourth respondent, which had previously necessitated the postponement of the matter on an earlier court date. Counsel further submitted that they do not represent the fourth respondent, notwithstanding that the notice of intention to oppose reflects representation of the first to fourth respondents. According to counsel, this was a typographical error, a position supported by the answering affidavit in which the deponent expressly states that he is authorised to depose to the affidavit on behalf of the first to third respondents only.

[6] Counsel further argued that, although the applicants produced a return of service on the day of the hearing indicating that service had purportedly been effected on 24 November 2025 on one Thapelo Mohale, identified as an employee and National Union of Metal Workers of South Africa (NUMSA) member, such service did not constitute proper or sufficient service on the fourth respondent. The argument advanced was that, because no individual member of the fourth respondent was identified or notified, proper service had not been effected. I am unable to agree with this submission. The court order expressly directed that service be effected by email, and the return of service attached at page 158 confirms that the order was emailed to the four specified email addresses on 21 August

2025 at 07h40. In the circumstances, the objection to service cannot be sustained.

[7] The respondents contend that the dispute between the parties has become moot. The interim order was granted in August 2025, and the first respondent subsequently withdrew the strike by way of a letter dated 7 October 2025, with effect from 10 October 2025. Employees were instructed to resume their normal duties on Monday, 13 October 2025. It was further argued that a court will generally not adjudicate a matter that has become moot unless the interests of justice justify doing so. The applicants, however, advanced no argument to show that it would be in the interests of justice for the Court to determine the matter notwithstanding its mootness.

[8] With regard to jurisdiction, the respondents contend that the relief sought effectively seeks to interdict and restrain employees from participating in a strike. Such relief, they argue, concerns a labour dispute regulated by the LRA, over which the Labour Court enjoys exclusive jurisdiction. They further submit that the dispute arises from a protected strike and that the citation of the CCMA commissioner as a respondent reinforces the characterisation of the matter as a labour dispute. In support of this position, the respondents rely on the authorities of *Gcaba v Minister of Safety and Security and Others*<sup>1</sup> (*Gcaba*) and *Makhanya v University of Zululand*<sup>2</sup>, and argue that the applicants' reliance on s 157(2) of the LRA to found this Court's jurisdiction is legally untenable.

[9] In *Gcaba*, the Constitutional Court reaffirmed the position articulated in *Chirwa v Transnet Limited and Others*,<sup>3</sup> namely that jurisdiction is determined with reference to the pleadings. Thus, if the pleadings, properly construed, assert a claim falling within the ambit of the LRA and one that is, by statute, subject to the exclusive jurisdiction of the Labour Court, the High Court would lack jurisdiction. *Gcaba*<sup>4</sup> further emphasises that s 157(2) of the LRA confirms that the Labour Court shares concurrent jurisdiction with the High Court in respect of alleged or threatened violations of fundamental rights entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, insofar as such rights

<sup>1</sup> *Gcaba v Minister for Safety and Security and Others* [2009] ZACC 26; 2010 (1) SA 238 (CC); 2010 (1) BCLR 35 (CC) ; (2010) 31 ILJ 296 (CC) ; [2009] 12 BLLR 1145 (CC) paras 74-75 (*Gcaba*).

<sup>2</sup> *Makhanya v University of Zululand* [2009] ZASCA 69; 2010 (1) SA 62 (SCA) ; [2009] 8 BLLR 721 (SCA); [2009] 4 All SA 146 (SCA); (2009) 30 ILJ 1539 (SCA) para 16.

<sup>3</sup> *Chirwa v Transnet Limited and Others* [2007] ZACC 23; 2008 (4) SA 367 (CC) 2008 (3) BCLR 251 (CC) ; [2008] 2 BLLR 97 (CC) ; (2008) 29 ILJ 73 (CC) para 169.

<sup>4</sup> *Gcaba* para 71.

arise from employment and labour relations. The Court in *Gcaba*<sup>5</sup> explained that the purpose of s 157(2) is to broaden the Labour Court's jurisdiction to include disputes concerning alleged infringements of constitutional rights within the labour context, rather than to limit or oust the jurisdiction of the High Court.

[10] Counsel for the applicants, in response, submitted that the matter does not concern the legality of the industrial action itself, but rather the unlawful and violent conduct perpetrated during that industrial action. Such conduct, it was argued, infringed the applicants' fundamental rights, including the right to fair labour practices under s 23 of the Constitution. In support of this argument, reliance was placed on *Bothaville Milling (Pty) Ltd t/a Thuso Mills v National Emancipated & Allied Workers Union of South Africa ("NEAWUSA") and Others*,<sup>6</sup> a matter which likewise concerned industrial action accompanied by unlawful conduct, in which the Court held as follows:

'Having regard to what is set out in the founding papers of the applicant, it is clear that its case is purely based on the averred criminal conduct and conduct violating fundamental rights during and in the course of the industrial action between the parties. The applicant is not seeking an order prohibiting a strike or validating the industrial action proceedings. . . The High Court, has concurrent jurisdiction with the Labour Court in the circumstances of this case as provided for in section 157.'

[11] I am, however, of the view that, in the present matter, the applicants' pleadings cannot be construed as advancing a claim under the LRA. The interdict sought does not prohibit employees from exercising their right to strike; rather, it is directed at restraining unlawful conduct committed in the course of that exercise. I am accordingly satisfied that the High Court is not precluded from adjudicating disputes concerning the alleged infringement of constitutional rights. The respondents' point in *limine* regarding jurisdiction, therefore, cannot be upheld.

[12] The respondents further challenged the deponent's authority to act on behalf of the second applicant. The first and second applicants are distinct legal entities, yet the deponent alleges authority only in respect of the first applicant. No authority is alleged or established in relation to the second applicant. It was further argued that it is not a rule 7 issue as averred by the applicant but rather a question of whether the deponent is

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<sup>5</sup> Ibid.

<sup>6</sup> *Bothaville Milling (Pty) Ltd t/a Thuso Mills v National Emancipated & Allied Workers Union of South Africa ("NEAWUSA") and Others* [2021] ZAFSHC 232 paras 5-6 and 14.



competent to place facts before the Court on behalf of that entity. No confirmatory or explanatory affidavit was filed to remedy this defect. In light of the CCMA jurisdictional ruling of 5 and 8 September 2025, I am satisfied that the deponent lacks the requisite authority to bring the application on behalf of the second applicant, particularly as the striking employees are not employed by that entity.

[13] The respondents contend that the applicants' decision to enrol the matter on an *ex parte* basis, despite knowing that the respondents were actively participating in the strike, amounted to an abuse of the court process, particularly as they were afforded only three hours' notice before the hearing. They further argue that, given the existence of CCMA-issued picketing rules and the applicants' simultaneous challenge to those rules before the CCMA, the applicants' approach constitutes impermissible forum shopping which ought not to be condoned. I am unable to agree with this submission. The matter was properly enrolled on the urgent court roll, duly adjudicated, and the rule *nisi* expressly condoned any non-compliance with the rules relating to service.

[14] The respondent's counsel further submitted that the applicants placed insufficient evidence before the Court to justify the relief sought. The security report relied upon is hearsay, as the person who allegedly observed the events did not depose to an affidavit, confirm any unlawful conduct, or attest to damage or injury. The photographs annexed also do not depict any unlawful behaviour, and if the situation had been as volatile as alleged, clearer evidence would reasonably have been expected.

[15] The applicant again relies on an authority decided in this division, namely *LFC Milling (Pty) Ltd v National Emancipated & Allied Workers Union of South Africa and Others*,<sup>7</sup> wherein the court stated that various documentary evidence, including photographs of the averred unlawful conduct and documents supporting the averments of an industrial action, was presented. The court further held that the respondent had not presented any substantive facts that genuinely placed the applicant's case in dispute and ultimately confirmed the rule *nisi*.

[16] I do not agree with this submission by the respondents' counsel. Even if there were

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<sup>7</sup> *LFC Milling (Pty) Ltd v National Emancipated & Allied Workers Union of South Africa and Others* [2021] ZAFSHC 235 paras 23-25.

any doubt regarding the veracity of the deponent's statements, the colour photographs attached to the papers confirm the volatile situation at the premises of the first applicant. In particular, the photograph on page 149, dated 18 August 2025 at 08h03:30, depicts stones placed across the roadway, obstructing vehicle movement, as well as two clearly marked police vehicles. This clearly indicates that the situation required police intervention; otherwise, there would be no reason for police vehicles to be stationed on the open land adjacent to the first applicant's premises.

[17] Counsel for the respondents also addressed the requirements for granting a final interdict, namely, a clear right, irreparable harm, and the absence of an adequate alternative remedy, which they submit have not been established by the applicants. I do not consider it necessary to repeat these requirements in detail, save to note that the applicants do indeed hold a clear right to fair labour practices, bodily integrity, and the ability to conduct their business in conditions of safety and security, which includes a concomitant duty to safeguard their employees. Unlawful conduct by striking employees has the potential to cause irreparable harm to the applicants' employees and their families.

[18] However, with regard to the third requirement, whether the applicants lack an alternative remedy, the respondents' submission is well-founded. The strike has since been withdrawn and called off, and, in any event, the applicants had the option of pursuing relief through the CCMA, which they did by referring a dispute concerning the picketing rules and issuing a lockout notice effective 19 August 2025. I am unable, however, to agree with the applicants' contention that they are entitled to a permanent order prohibiting future acts of intimidation, violence, or obstructive conduct during picketing, and that the suspension of the protest and strike constitutes further justification for such relief. The mere cessation of strike action does not, without more, establish a basis for the granting of permanent interdictory relief.

[19] Given that the individuals cited as the fourth respondent may no longer be in the applicants' employ, I am not inclined to grant any order against them. Moreover, the protest and strike action have been withdrawn, rendering the dispute moot. This Court cannot issue an order in respect of conduct that has ceased, nor can it grant relief aimed at regulating hypothetical future conduct. Courts do not grant orders in perpetuity for events that may or may not arise.



[20] As costs ordinarily follow the result, it does not necessarily follow that the applicants were unsuccessful on the merits. However, as the application falls to be dismissed solely on the basis of mootness, and given that the respondents' points in *limine*, save for mootness and authority, cannot be sustained, I am of the view that an adverse costs order is not warranted.

**Order**

[21] I accordingly make the following order:

- 1 The rule *nisi* granted on 20 August 2025 is discharged.
- 2 Each party to pay its own costs.



**C PARKS**

**ACTING JUDGE OF THE HIGH COURT**

**Appearances**

For the applicants:

MC Louw

Instructed by:

Dippenaar & Crous Attorneys,  
Bloemfontein

For the first to third respondents:

P Vabaza

Instructed by:

Lenyehelo L Attorneys Inc,  
Johannesburg  
c/o Queen Mokhele Attorneys Inc,  
Bloemfontein.

For the fourth respondents:

No appearance.