



- (1) Reportable: Yes
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO: 2026-077439

In the matter between:

CHEP SOUTH AFRICA (PTY) LTD

First Applicant

CONTRACT A-FORCE CORPORATE SOLUTIONS (PTY) LTD

Second Applicant

and

SIMPHIWE ZUNGU AND 86 OTHERS

First to Eighty-Seventh Respondents

SOUTH AFRICAN POLICE SERVICE

Eighty-Eighth Respondent

Heard: 30 April 2026

Supplementary heads: 4 May 2026

Delivered: 18 May 2026

Labour Law - Strike and picketing - Urgent application for final interdict and declaratory relief – Alleged breach of picketing rules and unlawful conduct.

Jurisdiction – Labour Court lacks jurisdiction to grant a final interdict prohibiting picketing – dispute to be referred for conciliation – Court's powers limited to granting interim relief.

Final Interdict – Requirements restated - Application of *Plascon-Evans* principle in motion proceedings.

Unlawful conduct during strike – Mere participation in strike or picket insufficient to justify interdict – Applicant must establish a factual link between individual respondent and alleged unlawful conduct

Evidence – Hearsay and second-hand hearsay inadmissible and disregarded absent application for admission – Video evidence coupled with failure by specifically identified respondents to deny allegations may justify inference of participation or association in misconduct

Relief – declaratory relief against identified respondents granted – final interdict refused in the absence of evidence of ongoing or reasonably apprehended harm

LABOUR

JUDGMENT

MAKHURA, J

Introduction

COURT

[1] The applicants approached this Court on an urgent basis seeking final interdictory and declaratory orders against the first to eighty-seventh respondents (respondents) in the following terms:

'2. declaring that 1st to 87th respondents are in breach of the Picketing Rules agreed upon between CHEP, C-Force, and 1st to 87th respondents on 15 August 2025;

3. declaring that the conduct of the 1st to 87th respondents in assaulting and threatening to assault employees of the applicants as a means of promoting, encouraging, supporting and participating in the strike is unlawful and not in compliance with Chapter IV of the Labour Relations Act;

4. interdicting and restraining the 1st to 87th respondents from engaging in acts of violence, intimidation, harassment, threats, obstruction of access to the Plant, or any other unlawful conduct that has occurred during the course of the strike;

5. interdicting and restraining the 1st to 87th respondents from picketing in support of the strike at CHEP's plant situated at 1[...] Y[...] Road, Jet Park;

6. interdicting and restraining the 1st to 87th respondents from calling for, orchestrating, participating in or encouraging in any way the picket, or any conduct in contemplation or in furtherance of the picket;'

- [2] The essence of the application is that the applicants seek to interdict both the alleged misconduct or unlawful conduct and the picketing. The respondents oppose the application and contend that the Court lacks jurisdiction to entertain the application to interdict the picket. Further, they deny the allegations of unlawful conduct.

Material facts

- [3] The dispute between the parties stems from various demands raised by the respondents, which were referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) for conciliation. When conciliation failed on 15 August 2025, the parties, in accordance with section 69 of the Labour Relations Act¹ (LRA), agreed to the Picketing Rules on the same day.

- [4] These agreed Picketing Rules prohibit the striking employees from obstructing or preventing members of the public, customers, employees or service providers from entering or leaving the first applicant's premises. They also prevent the striking employees from engaging in any unlawful, violent, intimidating, coercive, threatening or assaultive behaviour. The parties agreed that picketing would take place *"in a public place outside the premises of the employer"* within five meters of the employer's premises. The striking employees were to conduct themselves in a peaceful, unarmed and lawful manner. They were allowed, inter *alia*, to approach

¹ Act 66 of 1995, as amended.

the employer's clients, customers, members of the public and other non-striking employees within the designated area not to enter the premises in support of the strike.

- [5] The Picketing Rules also include a dispute resolution mechanism in terms of which any dispute regarding the interpretation of the agreed rules or alleged breach thereof shall be dealt with in accordance with the relevant provisions of section 69 of the LRA.
- [6] Pursuant to the conclusion of the Picketing Rules, the respondents issued a notice of intention to strike. The strike commenced on 21 August 2025. The legality of the strike itself is not an issue before this Court. What is an issue, on the applicants' version, is that the picketing was characterised by acts of violence, including assaults, intimidation and threats, which they contend breached the Picketing Rules and amounted to unlawful conduct. The applicants rely on allegations of unlawful conduct or misconduct between 21 August 2025 and 25 March 2026.

The August – December 2025 incidents

- [7] The strike commenced on 21 August 2025. The applicants allege that the following happened on 21 and 22 August 2025:

'the picketers blocked Y[...] Road from both directions, preventing commuters and business vehicles from making use of the road. This occurred on two occasions on the same day. On 22 August 2025, CHEP wrote to the 1st to 87th respondents regarding the breach, demanding compliance with the Picketing Rules and issuing an ultimatum.'

- [8] The next incident occurred on 4 September 2025. It is recorded as follows in the founding affidavit:

'Three employees, Tshepo Ntsoane, Vincent Mashala, and Ignatius Pholoso, reported receiving threats at their homes on 4 September 2025 from two men who identified themselves as "Sakhile" and "GenjeGenje". These men allegedly stated that they had been paid by striking CHEP employees to warn the targeted

employees not to report for duty during the strike. Each employee relayed these threats to Operations Manager, Conty Thobejane, prompting concern about their safety and the safety of other non-striking workers.

Later that evening, three additional employees, Immanuel Raphiri, Thapelo Mohlatlole, and Taetjo Matshabaphala, were assaulted by a group of employees and unknown individuals while walking to their workplace for the night shift. Messrs Raphiri, Mohlatlole, and Matshabaphala suffered serious injuries, with some losing personal belongings, and were subsequently located, taken for medical treatment, and placed in alternative accommodation for their safety. The assaults were reported to SAPS the following day, and the cases were consolidated.' (Own emphasis)

- [9] The above incidents, the applicants argue, led to a decision to close the plant on 5 September 2025. The respondents continued to picket despite the plant closure.
- [10] On or about 11 September 2025, the applicants applied for an urgent interim interdict against the violence that allegedly continued at two of the first applicant's service centres in Samrand and Alrode. The respondents opposed the application and disputed the allegations of violence in their answering affidavit filed on 15 September 2025.
- [11] On 16 September 2025, the applicants addressed a letter to the respondents' attorneys accepting the *"bona fides of your client's denial of any involvement in the alleged acts of intimidation and assault"* and withdrawing the application with a tender of the respondents' wasted costs. However, they warned that any future incidents of assault, intimidation, or breaches of the picketing rules would be attributed to the respondents, and that they reserved the right to approach the Court again on an urgent basis.
- [12] The plant remained closed for the remainder of 2025. In December 2025, the parties met before the CCMA for facilitation, but these efforts did not resolve the dispute. The applicants indicated their intention to re-open the plant on 5 January 2026.

The January – March 2026 incidents

- [13] A second “wave” of alleged unlawful conduct occurred between January and March 2026. The applicants alleged that the non-striking employees had reported receiving threats of intimidation or violence if they returned to work on 5 January 2026.
- [14] Conty Thobejane is the first applicant’s Operations Manager. He avers that on 13 January 2026, Sam Mbatha (Mbatha), a non-striking employee, informed him that he received a telephone call from his wife that two unknown individuals attended Mbatha’s place of residence, where they informed his wife that if Mbatha loved his daughter, he must refrain from going to work.
- [15] On 15 January 2026, Matsobane Magwete (Magwete) received a WhatsApp message from an unknown mobile number registered under “*Power to Workers*”, which contained information showing his place of residence, emojis depicting blood and a firearm, and a message stating “*keep on working, you will see*”.
- [16] On 16 February 2026, Simon Mangwale (Mangwale) and Richard Vusumzi (Vusumzi) were allegedly assaulted by a group of about 14 employees from work at Spar depot, Jet Park, on their way to their respective homes. Video footage was produced, which shows a group of individuals approaching Mangwale. The applicants allege that they observed Sifiso Kubheka, Bongile Madundulwana and Innocent Simelane on video footage calling for more employees to join them. Mangwale was then surrounded, chased across the road, tripped and assaulted. In addition to the three respondents mentioned above, the applicants identified eight more employees from the group that allegedly assaulted Mangwale, namely, Philani Manana, Wonder Simelane, Sphelelani Mavuso, Lindani Patrick Sangweni, Tumelo Mahume, Zameko “Zakes” Ngobeni, Louis Patji and Alson Nxumalo. Kubheka was accused of planning and orchestrating the assault, even though he did not participate in the assault.

- [17] The group allegedly proceeded up the street, where the applicants allege that they assaulted Vusumzi. Two pictures depicting injuries to the ear were attached to the founding affidavit. The applicants allege that these are injuries sustained by Mangwale and Vusumzi. Vusumzi did not file a confirmatory affidavit.
- [18] In response, the deponent to the respondents' answering affidavit, Brian Dlamini (Dlamini), contends that he watched the video footage but was "*unable to identify any respondent, or any particular individual from the footage*". Mahume has responded to the allegations and raised an *alibi*. He stated that he has been living in Delareyville, North West Province, since 22 September 2025. These respondents, except Mahume, have since been dismissed.
- [19] The applicants further relied on several alleged incidents. First, an incident in January 2026 where Alwyn Sekgobela employed at the RPC plant, allegedly informed his manager, Cornelius Johannes Pieterse, of an incident that took place at his place of residence, where a group of five unknown men spoke to his mother, stating that he must stop working on the pallet side or there will be trouble. Second, an incident involving a late Plant Manager who allegedly communicated to his manager, Ryan Drinkwater, that whilst onboard a staff taxi, a group of unknown men approached the taxi passengers to enquire about his whereabouts, but did not know what he looked like. Third, a voice note that circulated, which allegedly stated that the striking employees' organisation has sufficient funds to sustain the strike, and that they could hire hitmen without hesitation if employees are called back to work. Fourth, on 25 February 2026, Terence Magagula allegedly informed Pieterse that a group of 10 men had gone to his address and told him that they knew he was working during the strike. On 5 March 2026, Magagula allegedly told Pieterse that five men came to his house looking for him.
- [20] On 25 March 2026, another incident allegedly occurred in which a group of employees attempting to leave the RPC plant was stopped by two minibuses and attacked by about 24 armed men with hammers, steel round bars, golf clubs and knives. Five employees, identified in the affidavit, allegedly sustained injuries and

were taken away by the ambulance for treatment. Andile Khumalo, the deponent to the founding affidavit, alleges that the employees who were attacked confirmed to him that Dlamini was part of the group that assaulted them. It is common cause that no confirmatory affidavits from these assaulted employees were filed.

[21] Dlamini denied the allegations, arguing that the allegations constitute hearsay evidence and that at the time of the alleged incident, he was on his way from the picketing area to his home.

[22] A video footage purportedly supporting the above allegations was produced in the applicants' replying affidavit. The replying affidavit identified four more respondents, in addition to Dlamini, as having taken part in the assault. They are Philani Manana, Innocent Simelane, Herold Mashale (Mashale) and Elias Msimanga (Msimanga). It is common cause that Manana and Simelane were identified as having participated in the 16 February 2026 assault. Mashale and Msimanga are part of the respondents.

[23] The production of the video footage resulted in this Court granting a postponement on 17 April 2026 to allow the respondents, particularly Dlamini and the other four respondents above, to reply to the allegations in the replying affidavit and to the video footage.² The five respondents filed their affidavits on 28 April 2026 and applied for condonation. I have decided, in the interest of justice, to grant the application. The respondents have also filed affidavits from other individuals, outside the terms of the Court order of 17 April 2026, and without an application for admission of additional or supplementary answering affidavit. These affidavits are therefore not properly before the Court and are to be disregarded.

[24] In replying to the new allegations in the applicants' replying affidavit and video footage, Dlamini maintained that the allegations relating to the 25 March 2026 incident were based on hearsay, as no witnesses had confirmed them. He

² The respondents did not object to the production of new evidence in the replying affidavit and instead sought a postponement to answer to those allegations. On this basis, the applicants submitted that these allegations were accepted into evidence on 17 April 2026. No objection or opposition was raised by the respondents.

reiterated his denial of any involvement and stated that neither he nor any of the other respondents could be identified in the footage. Dlamini further argued that the applicants had failed to reliably identify any individuals from the video. He pointed out the inconsistencies between those named in the applicants' affidavits and those who were issued with disciplinary notices, suggesting that the applicants' version was unreliable. According to him, the fact that the respondents identified in the replying affidavits had not been charged, but other individuals not mentioned were charged, is proof that the applicants failed to link the identified respondents to the assaults. He continued:

'Having read Mr Khumalo's replying affidavit, and having watched the CCTV footage annexed thereto, I want to go further, and deny that any of the respondents participated in or had any knowledge of the events captured in said footage.

I am unable to identify any respondents from the footage provided.

The four respondents whom Mr Khumalo identifies by name in his replying affidavit (being Philani Manana, Innocent Simelane, Herold Mashale and Elias Msimanga) were not involved in the incident and do not have any knowledge thereof.'

[25] Manana, Innocent Simelane, Mashale and Msimanga each confirm Dlamini's allegations *inter alia* that they were not involved in the incident and do not have knowledge of the assaults. According to each of the four respondents' affidavits, at the time of the incident, Manana and Mashale were at their respective homes, and Innocent Simelane and Msimanga were at the Germiston train station travelling to Katlehong.

Analysis

The relief sought

[26] In terms of paragraphs 2 and 3 of the notice of motion, the applicants seek an order that the 87 respondents have breached the Picketing Rules and their "conduct ... in assaulting and threatening to assault employees of the applicants

as a means of promoting, encouraging, supporting and participating in the strike is unlawful and not in compliance with Chapter IV of the Labour Relations Act". The upshot of the relief sought is that it must be declared that the 87 respondents committed unlawful conduct and are in breach of the Picketing Rules.

- [27] Paragraphs 4 and 6 of the notice of motion seek to interdict the 87 respondents from picketing and from *"calling for, orchestrating, participating in or encouraging in any way the picket, or any conduct in contemplation or in furtherance of the picket"*. Paragraph 5 seeks to interdict them from engaging in acts of violence, intimidation, harassment, threats, obstruction of access to the plant, or any unlawful conduct during the strike.

Jurisdiction to interdict picketing

- [28] The respondents contend that this Court has no jurisdiction to entertain the application insofar as it seeks to interdict a picket. For this argument, the respondents rely on the Picketing Rules and section 69(8)-(11) of the LRA. They also relied on the Constitutional Court judgment of *National Union of Metalworkers of SA v Intervolve (Pty) Ltd and others*³ (*Intervolve*), which endorsed the LAC decision in *National Union of Metalworkers of SA and others v Driveline Technologies (Pty) Ltd and another*⁴ (*Driveline*). These two judgments, decided in the context of an unfair dismissal dispute, held that a referral of the unfair dismissal dispute for conciliation is a precondition for this Court's jurisdiction.

- [29] The parties agreed, per the Picketing Rules, that any dispute about alleged breach of the rules *"shall be dealt with in accordance with section 69 (8), (9), (10) and (11) of the LRA"*. Section 69(8) provides that any of the parties may refer a dispute to the CCMA, *inter alia*, regarding an alleged material breach of the agreed picketing rules. Subsections (9) to (11) deal with the referral of the dispute. Subsection (10) obliges the CCMA to attempt to resolve the dispute through conciliation. In terms of subsection (11), if the dispute remains unresolved at conciliation, any party to

³ (2015) 36 ILJ 363 (CC).

⁴ 2000 (4) SA 645 (LAC); (2000) 21 ILJ 142 (LAC).

the dispute may refer it to this Court for adjudication. The parties' Picketing Rules, however, provided for an alternative dispute resolution. Clause 6.2 records that:

'Any party to this agreement may request an urgent arbitration before referring the matter to the Labour Court in terms of section 69(11) of the LRA.'

[30] Subsection (12) provides that:

'(12) If a party has referred a *dispute* in terms of subsection (8) or (11), the Labour Court may, in addition to any relief contemplated in section 68 (1), grant relief, including urgent interim relief, which is just and equitable in the circumstances and which may include an order –

(a) directing any party, including a person contemplated in subsection (6) (a), to comply with a picketing agreement or rule;

(b) varying the terms of a picketing agreement or rule; or

(c) suspending a picket at one or more of the locations designated in the *collective agreement*, agreed rules contemplated in subsection (4) or rules determined by the *Commission*.'

[31] The applicants have not explained why the dispute could not be referred to the CCMA for conciliation and/or "*urgent arbitration*" per the agreed Picketing Rules. Whilst the provision may not necessarily oust this Court's jurisdiction, section 68(12) presents a bigger challenge for the applicants' pursuit of interdicting the picket. A dispute about a material breach of picketing rules must be referred to the CCMA for conciliation. Conciliation is not optional. In the absence of a legally prescribed referral for conciliation, this Court lacks jurisdiction to entertain the application.

[32] Considering the provisions of section 68(12), it is evident that the LRA provides no other avenue for any of the parties to approach this Court for a final interdictory relief.⁵ This Court's interdictory powers are limited to granting interim relief to

⁵ See *Makhado* at para 13.

compel compliance with the rules, or vary the rules, or suspend a picket. The applicants did not refer a dispute about an alleged material breach of the Picketing Rules for conciliation. For the above reasons, prayers 2, 5 and 6 of the notice of motion cannot be competently granted, at least in the terms formulated – final interdict.

- [33] Even if I am wrong and the Court has jurisdiction, the applicants have failed to make out a case of widespread unlawful conduct to warrant interdicting the picket. The relief sought by the applicants to interdict and restrain the respondents from picketing is a drastic order that, if granted, will fundamentally undermine and debase the respondents' right to strike. It requires the respondents to be on strike but not gather at their workplace or within five metres from the premises per the agreed Picketing Rules. In my view, retaining the right to strike without the corresponding right to picket is tantamount to a voice without the breath to speak; it would render the respondents' primary tool of collective bargaining ineffective and would, in effect, constitute an interdict against an otherwise protected strike. For these reasons, I would refuse the application even if the Court had jurisdiction.

Unlawful conduct interdict: Legal principles

- [34] The applicants seek a final interdict. Therefore, they must meet the three requirements for a final interdict, viz, clear right, injury committed or reasonably apprehended and absence of adequate alternative remedy.⁶ Where disputes of facts arise, they are to be resolved in accordance with the *Plascon-Evans* principle⁷.

- [35] More than two and a half decades ago, Brassey AJ noted in *Polyoak (Pty) Ltd v Chemical Workers Industrial Union & others*⁸ (*Polyoak*) that employers often bring urgent applications to interdict misconduct against all striking employees, even

⁶ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

⁷ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984 (3) SA 623 (A) at 634E – 645D.

⁸ (1999) 20 ILJ 392 (LC).

where unlawful conduct is attributable to a portion of the employees. The Court held that:

‘Generally speaking, a person can only be restrained by interdict if the evidence demonstrates that, as a matter of probability, he or she will commit the act in question within the period encompassed by the proposed order. The conclusion is competent when the evidence shows that person has undertaken or agreed to commit the act or that an inference to this effect can be drawn from the fact that he or she has previously done so. In the absence of evidence identifying the respondent as a prospective perpetrator or accomplice in the acts of a perpetrator, however, he or she cannot be interdicted, and it matters not that the person is one of a group of strikers containing malefactors or that his or her interests as striker happen to be promoted by the wrongdoing in question. Our law knows no concept of collective guilt.’

[36] Brassey AJ further cautioned against overly broad interdict, where employers frequently seek protection from a range of acts going beyond those of which they complain, and also, where employers seek *“an open-ended [prayer], that is, one that binds the respondents for a period whose duration is indefinite and potentially unlimited”*. The Court emphasised that an interdict can be granted only to restrain misconduct that is likely to occur in the future, that the *“period during which this is likely to happen is a question of fact, but it will rarely, if ever, be indefinite”* and that this period *“will normally last for no longer than the motive for wrongdoing remains alive - typically, within this context, the duration of the strike plus the time it thereafter takes for life to return to normal”*. This *“unlimited operation of a sword of Damocles”*, so Brassey AJ cautioned further, is undesirable and legally wrong.

[37] In *Makhado Municipality v SA Municipal Workers Union*⁹ (*Makhado*), this Court was critical of employers who seek interdicts against unidentified and faceless groups. The Court held that:

‘Throughout the applicant’s founding affidavit, no attempt is made to identify any act of any particular individual (save in two instances dealt with below). The

⁹ (2006) 27 ILJ 1175 (LC); 2006 JOL 17074 (LC).

second and further respondents are referred to throughout as ‘the strikers’, the ‘crowd’, or a ‘mob of strikers’. Not even the strike committee is pertinently identified by name, let alone alleged conduct, save for the second applicant.

The Labour Court has previously warned that it will not grant relief against unidentified members of a faceless crowd, unless a proper basis is laid therefor. No such attempt is made in the founding, or even the replying papers in this regard.’¹⁰

[38] The Constitutional Court in *Commercial Stevedoring Agricultural & Allied Workers Union and others v Oak Valley Estates (Pty) Ltd and another*¹¹ (Oak Valley) reaffirmed the principles in the two judgments above. It stressed that the purpose of an interdict is to protect an applicant against actual or threatened unlawful conduct by identifiable individuals. Accordingly, an applicant for a final interdict must show, applying the *Plascon-Evans* principle, 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*”.¹² Without evidence linking the individual respondent to the alleged unlawful conduct, any apprehension of harm cannot be considered reasonable.¹³ The Court continued:

‘[42] Two important principles can be distilled from this court’s jurisprudence, and this line of cases. First, mere participation in a strike, protest, or assembly, in which there is unlawful conduct, is insufficient to link the impugned respondent to the unlawful conduct in the manner required for interdictory relief to be granted. Second, the necessary link can however be established where the protesters or strikers commit the impugned unlawful conduct as a cohesive group. Whether this is established will, of course, turn on the particular facts of the case. Where, for instance, unlawful conduct during protest action is ongoing, widespread, and manifest, individual protesters or strikers will usually have to disassociate themselves from the conduct, to escape the inference that it is reasonably

¹⁰ *Makhado* at para 18 – 19.

¹¹ [2022] 6 BLLR 487 (CC); (2022) 43 ILJ 1241 (CC).

¹² *Oak Valley* at para 19.

¹³ *Oak Valley* at para 20.

apprehended that they will cause injury to the applicant. By contrast, where a protest or strike is substantially peaceful, but there are isolated and sporadic instances of unlawful conduct, only those protesters who associate with those acts of unlawfulness can permissibly be placed under interdict. In addition, where a strike is beset by unlawful conduct and large numbers of protesters or strikers deliberately conceal their identities - for instance, through the wearing of masks - a court may be entitled to more readily conclude that an applicant has a reasonable apprehension that the participants in the strike will cause it injury.

...

[44] The requirement of a link, which has, save for a few instances, been consistently applied by our courts, appropriately balances these conflicting interests. On the one hand, it ensures that interdicts are not granted indiscriminately. On the other, it affords employers the required measure of protection. The requirement does not entail that an employer must lead direct evidence establishing conclusively that the interdicted employee was responsible for specific unlawful conduct. The employer could discharge its onus by putting up facts from which an inference can be drawn that it is more probable than not that the employee herself engaged in unlawful conduct or associated herself with it.

[45] As the High Court noted in *Mondi Paper*, 'the production of proper proof either directly or by circumstantial evidence is not beyond the ingenuities of employers, given the modern technology that is available' to them. Likewise, in *Durban University of Technology*, the High Court remarked that –

'with the modern methods of access control, CCTV cameras, etc, there is ample opportunity for the applicant's security services to be able to identify those persons who were on the campus when the violence occurred, and steps could be taken to identify them.' (Own emphasis)

Did the respondents commit unlawful conduct and/or associate with unlawful conduct?

[39] To succeed, the applicants must establish a factual link between the individual respondent and the alleged unlawful conduct, whether actual or threatened. Mere

participation in a strike, protest or picket in which there is unlawful conduct is not sufficient to link the impugned individual respondent to such unlawful conduct. A link may be established between an individual respondent and unlawful conduct where a cohesive group, including that individual, commits misconduct.

[40] Further, where there is widespread unlawful conduct during the strike, the evidentiary burden may shift to the individual respondent to dissociate from unlawful conduct, failing which an inference of association may justifiably be made. By contrast, if the strike is largely peaceful, with isolated or sporadic acts of unlawful conduct, the applicant employer must establish that the individual respondent either personally engaged in unlawful conduct or associated themselves with unlawful conduct. Ultimately, in motion proceedings, the applicant bears the onus to plead facts from which an inference can be drawn that, on a balance of probabilities, the individual respondent participated in or associated with unlawful conduct.

[41] In this matter, the applicants made numerous unsubstantiated allegations and sought to rely on hearsay and even second-hand hearsay evidence to prove that the respondents committed or associated themselves with unlawful conduct.

[42] The August and September 2025 incidents, which formed the basis of an earlier withdrawn urgent application, constitute inadmissible hearsay. The same applies to allegations of unlawful conduct post-September 2025 until January 2026. It is unnecessary to revisit all these allegations made in the founding affidavit, which I have covered above. There was no application to admit this hearsay evidence. This evidence cannot be considered and must be disregarded entirely.

[43] Accordingly, the Court will confine its analysis to the incidents of 16 February 2026 (excluding the alleged assault on Vusumuzi, which is also hearsay) and 25 March 2026.

16 February 2026 incident

[44] The applicants produced video footage depicting the assault on Mangwale. The footage shows three individuals approaching him at approximately 17h42, after which he attempts to move away and avoid them. Shortly thereafter, Mangwale is seen trying to flee as about four individuals pursue him. He is tripped and assaulted by a group, with additional individuals crossing the road and joining in the attack.

[45] Paragraph 63 of the applicants' founding affidavit identified and named 11 individual respondents as having participated in the assault. These individuals' names also appear in paragraph 16 above.

[46] The denial by Dlamini, who claimed that he could not identify any of the individuals from the video footage who assaulted Mangwale, is unconvincing, implausible and is rejected. Dlamini's argument that the evidence is hearsay, or that identification from the footage was impossible, is evasive and fails to engage meaningfully with the specific allegations made against the 10 respondents and is similarly rejected.

[47] Dlamini's version certainly does not constitute the 10 respondents' version. Each of these identified respondents was required to file an affidavit responding to the allegations against them. Their failure to do so, in the face of the video evidence and the specific allegations placing them at the scene, left the applicants' version uncontested. Accordingly, I accept that these 10 respondents were present and either actively participated in the assault or associated themselves with it. Even if the specific role of each respondent was not detailed, the evidence is, in my view, sufficient to support the inference, on a balance of probabilities, that they were involved in unlawful conduct against Mangwale.

[48] The applicants have made out a case against these 10 respondents. However, the same cannot be said about the 77 remaining respondents. On the applicants' version, there was a group of only about 22 individuals, some of whom did not pursue Mangwale nor cross the road. These could have been individuals who do not work for the respondents. The 77 respondents could not be said to have been aware of the assault. There is no shred of evidence that they were aware of the

assault that could trigger an enquiry into whether they associated themselves with the assault or not. In the circumstances, the applicants are entitled to an order in terms of paragraph 3 of the notice of motion, only against the 10 respondents mentioned in paragraph 63 of the founding affidavit.

25 March 2026 incident

[49] On 25 March 2026, the applicants allege that a group of 14 employees was blocked by two minibuses while trying to leave the RPC plant. About 24 men allegedly exited the two minibuses and assaulted the employees with hammers, steel round bar, gold clubs and knives. Five employees allegedly sustained injuries and were taken away by the ambulance for treatment. The five injured employees allegedly informed Khumalo that Dlamini was involved. Further, in terms of the replying affidavit, four additional respondents, Manana, Innocent Simelane, Mashale and Msimanga, were identified as having participated in the assault.

[50] While the footage shows individuals emerging from the minibuses and attacking people in the street, and the applicants named those who sustained injuries, they failed to establish that the injured were their employees or to link the incident to the ongoing strike because the five injured individuals did not file confirmatory affidavits to confirm the allegations of assault and injury against them. This leaves the applicants with the footage as their best evidence. None of the individual respondents have been described. There is no evidence relating to how they were dressed and their specific participation and/or involvement in the assault.

[51] Moreover, Dlamini, Manana, Simelane, Mashale and Msimanga have all denied involvement in the assault and raised *alibi* defenses. They were either at home or at the train station. The applicants did not provide sufficient detail from the video footage to identify these individuals reliably - for example, by describing their clothing, or specifying the acts attributed to each respondent. Applying the *Plascon-Evans* principle, the five respondents' version is accepted and their defence is upheld. Consequently, the applicants failed to prove that these

respondents engaged in unlawful conduct or associated themselves with it in relation to this incident.

Appropriate relief

[52] The applicants have succeeded in establishing unlawful conduct against the 10 individual respondents in relation to the incident of 16 February 2026. These respondents' conduct must therefore be declared unlawful. For the remaining respondents, the application must be dismissed.

[53] The next issue is whether the 10 respondents should be interdicted and restrained from engaging in unlawful conduct. At the heart of this enquiry is the protection of the applicants from continuous actual or threatened unlawful conduct. The applicants must show that, unless restrained by an interdict, these 10 respondents will continue committing unlawful conduct against the applicants or that such unlawful conduct is reasonably apprehended.¹⁴

[54] It is common cause that these 10 respondents were dismissed on 7 April 2026. The parties are *ad idem* that the respondents' dismissal does not affect the jurisdiction of this Court to deal with the matter between the dismissed respondents and the applicants.¹⁵

[55] Relying on *Sibanye Rustenburg Platinum Mines (Pty) Ltd v AMCU and Others*¹⁶, the respondents argued that since these 10 respondents are no longer employees, they are therefore not entitled to participate in the strike. The respondents also relied on two further judgments of this Court. First, *Contracta Force Corporate Solutions (Pty) Ltd v National Union of Public Service and Allied Workers Union and Others*¹⁷, where the Court held that because the employees had been dismissed and their strike ceased as a result, they are “*in no position to commit*

¹⁴ *Oak Valley* at para 19.

¹⁵ See *Picardi Hotels Ltd v FGWU & others* [1999] 6 BLLR 601 (LC), where this Court referred to the fact that the definition of strike refers to refusal to work “*by persons who are or have been employed by the same employer or by different employers...*”.

¹⁶ (2025/212826) [2025] ZALCJHB 557 (18 November 2025).

¹⁷ (2023) 44 ILJ 558 (LC).

any acts against the applicant in their capacity as employees”. Second, *Tharisa Minerals (Pty) Ltd v National Union of Mineworkers and Others*¹⁸, where the Court held that:

‘With the strike action having ceased and some of the employees already dismissed, the confirmation of the rule nisi will not serve any purpose.’

[56] To the extent that the above cases suggest a general proposition that there can be no reasonable apprehension of harm simply by virtue of the dismissal and/or cessation of a strike, I am unable to agree with the proposition, as that will depart from the established legal principle and requirements for a final interdict. That would suggest that even when the employer can establish that the respondents will or are likely to cause harm, the final interdict must be refused solely because they are no longer employees and cannot legally participate in the strike. That they are not entitled in law to strike does not automatically mean that they may not cause harm to the applicants. Whilst the dismissal of the employees and the cessation of the strike are relevant and important factors in the enquiry, they are not conclusive. The question is not whether the individual respondents are still capable of striking or picketing as employees, but whether the applicants reasonably apprehend that they will or are likely to cause harm.

[57] In *casu*, the applicants relied on the founding affidavit, which was deposed to before the dismissal of the 10 respondents. The replying affidavit takes the issue against the 10 respondents no further. As I have already found, there is no evidence of widespread unlawful conduct. The fact that the strike is ongoing is not sufficient to establish a reasonable apprehension that the 10 respondents will continue to cause harm. Moreover, there was no indication of any further unlawful conduct by these individuals after the 16 February incident and up to the launch of the application (a period of seven weeks), or thereafter. The applicants did not supplement their papers to explain why they continued to fear harm from these

¹⁸ (2025/051769) [2025] ZALCJHB 344 (4 August 2025).

respondents following their dismissal. Consequently, there is no basis for this Court to grant a final interdict against the 10 respondents.

[58] In the premises, the following order is made:

Order

1. The Court has no jurisdiction to issue a final interdict against a picket.
2. It is declared that the conduct of the respondents listed in paragraph 63 of the applicants' founding affidavit (excluding Tumelo Mahume), on 16 February 2026, was unlawful.
3. Subject to paragraph 2 above, the application is dismissed.

LABOUR

COURT

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Mr L. Frahm-Arp

c/o Fasken

For the 1st – 87th Respondents: Ms N. Lewis

Instructed by: Lawyers for Human Rights

LABOUR COURT