

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG.**

Case Number: 2026-083307

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO

SIGNATURE

DATE: 19 May 2026.

In the matter between:

SMD TECHNOLOGIES (PTY) LTD
(Reg No.: 2015/107801/07)

Applicant

And

CAUSLA WORKERS' ADVICE OFFICE
SIMUNYE WORKERS FORUM

First Respondent

Second Respondent

JUDGMENT

NOKO J

Introduction

[1] The applicant instituted an urgent application seeking an order to restrict respondents' members from gathering at the entrance to its business premises at [...]

L[...] Road, M[...], Edenvale (“the business premises”). The applicant contends that the gathering contravenes the Regulations of the Gatherings Act¹ (“the Gatherings Act”), disrupts the applicant’s business operations, harms the applicant’s employees, and harasses the applicant’s directors and employees.

[2] The respondents oppose the application; each has filed answering affidavits.

Parties

[3] The applicant is a private company duly incorporated in terms of the Company Laws of the Republic of South Africa. The respondents, on the other hand, are membership-based organisations. The 1st respondent’s core function is to “... provide advice and representation to casual workers before forums (sic) like the CCMA.”² The 2nd respondent “... is a workers’ movement that organizes (sic) and represents precarious workers.”³

Background

[4] On 8 April 2026, approximately 60 individuals gathered at the entrance to the applicant’s business premises. This was a sequel to a similar gathering on 24 February 2026. The gatherings were preceded by a referral to the CCMA by the respondents, on behalf of their members, seeking declaratory relief that the employees who are members of the respondents should be found to be permanent employees of the applicant. Those members were employed through labour brokers. The referral to the CCMA was struck from the roll because the employees did not apply for condonation of the late referral.

[5] The respondents contend that members lodged a grievance with the applicant, complaining of racism by two of the applicant’s managers, of an unhealthy working environment due to excessive dust, and of restrictions on employees’ use of the restrooms. The applicant retorted that the grievances were being addressed.

¹ 205 of 1993.

² See para 17 of the First Respondent’s Answering Affidavit at 02-143.

³ See para 4 of the Second Respondent’s Answering Affidavit at 02-156.

[6] The respondents aver that the employees were dissatisfied because the two managers were not suspended despite demands for their suspension and an independent investigation, and that the applicant dismissed one of the respondents. This discontent led to the decision to stage protests and demonstrations on 24 March 2026. Members of SAPS were present at the gathering, which proceeded without incident.

[7] The applicant learned that another gathering was being planned and wrote to the respondent, complaining about disparaging publications regarding its products and threats against its customers, and further stating that such unlawful threats would damage its reputation and harm its business. In the same letter, the applicant requested an undertaking to cease and desist from such conduct. The respondent replied through Lawyers for Human Rights, denying that it had engaged in the alleged unlawful conduct and stating that the undertaking was therefore unnecessary and would not be tendered.

[8] A second gathering took place on 8 April 2026, which precipitated the applicant's *ex parte* application. A request was made to the Judge in the urgent Court to place the application on the roll. The Court directed the applicant to serve the application on the respondents. The *ex parte* application was served and enrolled for 10 April 2026; the Court did not enrol the matter and directed that it should not be dealt with *ex parte*. It was therefore enrolled for 21 April 2026 and served before this Court.

Contentions and submissions by the parties.

Urgency

[9] The applicant submitted that the application was premised on unlawful conduct by the respondent's members, which would cause reputational harm and loss of business. This was based on the argument that the respondent refused to give notice of the gathering as contemplated in section 3 of the Gatherings Act, disrupted access to the premises for employees, customers, and neighbours, and refused to provide an undertaking to comply with the letter of the Gatherings Act. Finally, the applicant had lost the entire day's production. In addition, the application, which was initially *ex parte*, was filed the day after the gathering; hence, there was no delay.

[10] The applicant further argued that it would not obtain substantial redress if the application were brought under normal cause. The applicant further argued that the respondent has also threatened to proceed to the customers' businesses to remove the applicant's products, and, as forecast above, business will be lost.

[11] The respondents, on the other hand, contended that the conduct complained of first occurred on 24 March 2026, and that, to this end, the applicant sat on its laurels. In the premises, urgency, if any, was therefore self-created. In addition, the applicant's averments regarding unlawful conduct are not supported by evidence, and, accordingly, the requirement that the circumstances underpinning urgency be explicitly set out was not met.

[12] I have considered the arguments advanced by both parties and find that the respondents' contention that the urgency was self-created is unsustainable. In addition, the applicant has properly supported the contention that proceedings on the normal roll would defeat the purpose. This conclusion is informed by the sentiments expressed in *East Rock Trading*⁴.

[13] To this end, I find that the application warrants the attention of the urgent Court.

Merits

[14] The applicants contended that the requirements for a final interdict were met. The applicant further argued that it is entitled to operate its business free from interference and intimidation. In support of this contention, the applicant referred to Ngqungwana.

[15] The applicant further contends that the respondents' members have caused injury by refusing employees access and by harassing directors and customers. There is a further reasonable apprehension of harm, as the respondents have threatened to approach the applicant's customers to remove the applicant's products from their shelves.

⁴ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196.

[16] The respondents, in turn, contended that the applicant's claims are unsustainable. The respondents sought to gainsay the applicant's contentions from two fronts. First, the applicant failed to proffer evidence that the injury was committed; second, failed to provide evidence that the 1st respondent committed the alleged unlawful conduct.

[17] The 1st respondent contended that it was non-suited, as it neither participated in the gathering nor authorised any of its members to attend. The deponents to the affidavits on behalf of the 1st respondent, Constance Masekwameng and John Apollis, stated that they attended the gathering in their personal capacities solely to support members of the public with grievances about the applicant's treatment of its employees. In response, the applicant contended that the information on the 1st respondent's Facebook page and in the flyers clearly reflected the sentiments of the community members who attended the gathering.

[18] The 2nd respondent conceded that it was represented at the gathering and that it attended in solidarity with its members.

[19] The deponent of the affidavit filed in favour of the applicant, who is the HR manager, made averments that are hearsay and unsupported by any acceptable evidence or by confirmatory affidavits from employees allegedly denied access to the business premises, or from directors and customers allegedly harassed.

[20] The applicant further contended that no other ordinary legal remedy would adequately compensate for the damages to be suffered. In addition, the applicant contended that the respondents are merely voluntary organisations and would be unable to satisfy any order for damages.

Issues

[21] The issue for determination is whether the applicant has met the requirements for a final interdict.

Legal principles and discussion

[22] It is trite that a party seeking a final interdict must satisfy three requirements. First, the party must show that it has a clear right.⁵ The applicant has shown this right. The Court in *Ngqungwana* held that “[a] business entity has a right to conduct its business free of interference, disruption and threats to its employees and customers. Such an entity has the right to protect its business operations...”⁶

[23] The second requirement is that the party has suffered an injury or that there is a well-grounded, reasonable apprehension of imminent harm. The 1st respondent's contention that Maswanganyi and Apollis attended of their own accord is unsustainable. Firstly, the deponent in the 1st respondent's affidavit makes such an averment, which the 1st respondent does not confirm. Secondly, as the applicant has argued, the Facebook page and the flyers clearly place the 1st respondent at the scene. My conclusion aligns with the finding of the Constitutional Court in *Oak Valley Estates*⁷ that:

“...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.”⁸

[24] In the circumstances, I am persuaded that, on the facts presented by the applicant, an inference can be drawn that the 1st respondent was associated with the gathering.

[25] The applicant has referred to harassment and harm suffered by employees, customers, directors, and neighbours, and in response, the respondent correctly contended that, absent supporting confirmatory affidavits, such averments are hearsay and inadmissible. In addition, the injury, as alleged by the applicant, includes a loss of millions in sales and the entire day's production, which is equally unsupported by any

⁵ See *Setlogelo v Setlogelo* 1914 AD 221 and quoted with approval in referred to with approval in *Pilane and Another v Pilane and Another* [2013] ZACC 3; 2013 (4) BCLR 431 (CC) at para 39.

⁶ *Ngqungwana* above n 5 at para 9.

⁷ *Commercial Stevedoring Agricultural and Allied Workers' Union and Other v Oak Valley Estates (Pty) Ltd and Another* [2022] ZACC 7; [2022] 6 BLLR 487 (CC); 2022 (7) BCLR 787 (CC); 2022 (5) SA 18 (CC).

⁸ *Id* at para 44.

evidence, except HR's say-so. The Constitutional Court in *Oak Valley Estates* held that a deponent to an affidavit who alleges that another person informed him that unlawful conduct had been committed should file a confirmatory affidavit. The Court held that where no confirmatory affidavit is filed, averments attributed to that other person "... amounted to inadmissible evidence"⁹.

[26] A further contention by the respondents is that no arrests were made of individuals who damaged the property and/or those who harmed the applicant's employees or customers, which belies any accusation of unlawful activity or conduct. It was stated in *Oak Valley Estates*¹⁰ that an arrest by SAPS members would support a conclusion that there was unlawful activity. It is noted that the applicant acknowledged that SAPS members were present at the preceding gathering and that nothing untoward occurred.

[27] The contention that there is a reasonable apprehension of further injury arising from the respondents' failure to provide an undertaking is not sustained, as the respondents disputed the existence of any unlawful conduct. The judgment in *Go Touch Dow*¹¹ referred to by the applicant is distinguishable, because it concerned an interim interdict. In addition, the protesters provided an undertaking, and finally, there was a clear indication that they would continue their unlawful conduct.

[28] I must note that the respondents' reference to *Mlungwana*¹² is not directly applicable in this case, as the applicant's counsel has argued. However, issuing an interdict for failure to give a notice under the Gatherings Act may ultimately result in a party's incarceration for contempt of court if notice is not given. Indirectly, such a party is punished for what the Constitutional Court in *Mlungwana* has proscribed.

⁹ *Oak Valley Estate* at para [54], similar sentiments were expressed at para [56].

¹⁰ *Id* at para [64].

¹¹ *Go Touch Down Resort-Season CC and Another v Farm Rural Informal Dwellers Association and Another* [2022] ZAGPPHC 50.

¹² *Mlungwana and Others v State and Another* [2018] ZACC 45; 2019 (1) BCLR 88 (CC); 2019 (1) SACR 429 (CC).

Conclusion

[29] Given that the applicant failed to satisfy the requirement that the injury was committed or reasonably apprehended, the contentions or submissions in respect of the third requirement for a final interdict pale into insignificance. In the end, to the extent that the application failed to advance a persuasive case that injury was sustained or reasonably apprehended, the application is bound to fail.

Costs

[30] The general principle that the costs follow the result shall apply.

Order

[31] As a result, I make the following order.

The application is dismissed with costs, including counsel's costs on scale B.

M V NOKO
Judge of the High Court

DISCLAIMER: This judgment was prepared and is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 19 May 2026.

Date of:

Hearing: 24 April 2026

Judgment: 19 May 2026

Appearances:

For the Applicant:

L Hollander with J Maxwell, instructed by
SWG Inc

For the Respondents:

E Nhutsve, instructed by Lawyers for Human Rights.