



- (1) Reportable: No
(2) Of interest to other Judges: No

Signature

11 September 2026

Date

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case no: 2026-130909

In the matter between:

MSUNDUZI MUNICIPALITY

Applicant

and

SOUTH AFRICAN MUNICIPAL WORKERS UNION

First Respondent

**INDEPENDENT MUNICIPAL AND ALLIED
TRADE UNION**

Second Respondent

ALL EMPLOYEES OF MSUNDUZI MUNICIPALITY

Third Respondent

AFRIKA MAYIBUYE WORKERS DESK

Fourth Respondent

MZWANDILE GOGÉ

Fifth Respondent

Heard: 10 September 2026

Date of Judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on Caselines and release to SAFLII. The date of handing down judgment is deemed to be 11 September 2026.

JUDGMENT

GANDIDZE, J

Introduction

- [1] On 5 June 2026, the Msunduzi Municipality, the applicant, filed an urgent application seeking to restrain and interdict the respondents from unlawful conduct during what it contended was an unprotected strike that commenced on 1 June 2026 and was still ongoing when the application was heard on 8 June 2026. In addition, the applicant sought this order against the South African Municipal Workers Union (SAMWU), the first respondent:

‘2.1.2. That the First Respondents be and is hereby restrained and interdicted from inciting, or planning, engaging on a unlawful and unprotected strike in terms of its notice dated 03 June 2026 which is intended to commence on 10 June 2026.’ (sic)

- [2] As regards costs, the order sought was as follows:

‘2.4 The Respondents pay the taxed costs of the application only if they unsuccessfully oppose it.’

- [3] When the matter was heard on 8 June 2026, only SAMWU had filed a notice of opposition and an answering affidavit.
- [4] The court ordered that the matter be heard as urgent and issued a *rule nisi* interdicting the respondents from engaging in an unprotected strike and unlawful conduct. Importantly, the court did not grant the prayer in prayer 2.1.2, which sought to interdict SAMWU from engaging in the strike action scheduled to commence on 10 June 2026. In oral argument, the court was informed that a separate application had been filed in respect of that strike action, and the court declared the strike protected.
- [5] The return date for the *rule nisi* issued on 8 June 2026 was 10 September 2026, and the matter came before the court on that date.
- [6] At the commencement of oral argument, Mr Tshangana, for the applicant, informed the court that the *rule nisi* should be discharged, that the only issue remaining for determination was costs, and that the other issues had become moot. Mr Dlamini appeared surprised by the submission, and the court stood the matter down to allow the parties to agree on the issues requiring determination. The court was informed that only the issue of costs required determination.

The parties' submissions

- [7] Mr Tshangana submitted that costs orders are governed by section 162 of the Labour Relations Act¹ (LRA), which provides that this Court may order payment of costs in accordance with the requirements of law and fairness. He further submitted that one consideration is the parties' conduct. He submitted that, despite pictures of strikers blocking the depot entrance, the administration building, and the roads, as well as trashed bins and punctured tyres, SAMWU chose to oppose the application. He also submitted that SAMWU denied that its members were participating in the strike action, despite pictures of strikers wearing SAMWU regalia. However, Mr Tshangana readily conceded that there was a dispute as to when the pictures relied upon were taken and by whom, that the SAMWU members said to be implicated in the unlawful conduct had not been identified, and, importantly, that the *rule nisi* had been issued against 'all employees of the municipality' and that the list of employees was not annexed to the application.
- [8] Mr Dlamini submitted that, as a cited party, SAMWU had no choice but to oppose the application. Regarding the order interdicting unlawful conduct, he submitted that the court granted it on the basis that SAMWU would not suffer any prejudice if such an order was granted, despite the applicant not identifying the SAMWU members allegedly involved in the unlawful conduct, with reference to the decision in *Commercial Stevedoring Agricultural & Allied Workers Union & Others v Oak Valley Estates (Pty) Ltd & Another*². He also submitted that the court did not grant an order declaring the strike unprotected, and that the order sought against SAMWU to interdict the strike set to commence on 10 June 2026 was successfully opposed and therefore not granted. Because the applicant insisted on arguing costs, SAMWU sought costs against the applicant.
- [9] In reply, Mr Tshangana conceded that, properly interpreted, the court did not declare the 1-8 June 2026 strike unprotected. Having heard Mr Dlamini, he

¹ Act 66 of 1995, as amended.

² (2022) 43 ILJ 1241 (CC).

also submitted that, if the Court was disinclined to order costs against SAMWU, an appropriate order would be for each party to pay its own costs.

Discussion

- [10] On the return date, the only sensible order to have been sought was to discharge the rule nisi and to have each party pay its own costs. This explains why, after hearing Mr Dlamini, Mr Tshangana conceded as much in his reply. All of Mr Dlamini's contentions were on point and accepted. SAMWU did not act unreasonably in opposing the application on the grounds it advanced.
- [11] In addition, costs were sought only against a respondent who unsuccessfully opposed the application. As held in *Member of the Executive Council for Finance, KwaZulu-Natal & another v Dorkin NO & another*³, in this court costs do not follow the result. Importantly, the order granted on 8 June 2026 shows that the applicant and SAMWU were each partially successful. That being the case, it is difficult to understand why the applicant persisted in seeking a costs order against SAMWU on the return date.
- [12] As regards Mr Dlamini's submission that the applicant must be ordered to pay SAMWU's costs for insisting on a costs order, the Court took judicial notice of his surprise at the start of oral argument that all issues had become moot, except the issue of costs. It remained unclear what issues, other than costs, he expected to argue on the return date.
- [13] In the premises, I make the following order:

Order

1. Each party pays its own costs.

³ (2008) 29 ILJ 1707 (LAC) (*Dorkin*) at para 19.

T. Gandidze

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Mr Tshangana

For the Respondent: Mr Dlamini

LABOUR COURT