

**Blinkwater Mills (Pty) Ltd & another v Food & Allied Workers Union & others
(2020) 41 ILJ 873 (ML)**

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Citation	(2020) 41 ILJ 873 (ML)
Case No	Not supplied
Court	Mpumalanga Division of The High Court of South Africa, Middelburg Local Seat
Judge	Mphahlele J
Heard	August 1, 2019
Judgment	November 29, 2019
Counsel	<i>Adv R G Beaton SC</i> (with <i>Adv J F Griesel</i>) for the plaintiffs. <i>Adv M Euijen SC</i> for the defendants.
Annotations	No annotations to date

Flynote : Sleutelwoorde

High Court—Jurisdiction—Delictual claim—Common-law claim for damages arising from protected strike—Section 68(1)(b) of LRA 1995 not giving Labour Court jurisdiction to order payment of just and equitable compensation for any loss attributable to protected strike nor does it empower Labour Court to entertain delictual actions—High Court having jurisdiction.

Labour Court—Jurisdiction—Strike context—Section 68(1)(b) of LRA 1995—Labour Court having exclusive jurisdiction to determine just and equitable statutory compensation for loss attributable to unprotected strike—Court not having jurisdiction to entertain delictual actions and order compensation for loss attributable to protected strike.

Headnote : Kopnota

The defendant union, FAWU, and its members participated in a protected strike at the plaintiff company. The company claimed damages arising from damage caused by the conduct of strikers during the strike and associated picket in the High Court. The union raised an objection to the claim, contending that, in terms of s 68(1)(b) of the LRA 1995, the Labour Court had exclusive jurisdiction to order the payment of just and equitable compensation for any loss attributable to conduct during the strike, regardless of whether the strike was initially a protected one.

The court noted that the statutory cause of action in terms of s 68(1)(b), which provides for just and equitable statutory compensation for any loss attributable

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to an unprotected strike or conduct, is distinct from a common-law delictual claim. The common-law delictual claim requires that the plaintiff must establish that it suffered loss caused by an unlawful and intentional or negligent act or omission of another

party. If these requirements are met, the plaintiff is entitled to recover the full loss suffered. On the other hand, in the case of an unprotected strike, a claim for compensation will succeed if the requirements of s 68(1)(b) are met and the Labour Court has a wide discretion to determine what the amount of compensation to be awarded will be.

The court noted further that in this matter the company was claiming common-law damages. The court disagreed with the union's contention that any loss which arises out of strike action or associated picketing, which is actionable, must, in terms of the provisions of s 68(1)(b), be adjudicated by the Labour Court, regardless of whether the strike was, initially, in compliance with chapter IV of the LRA or not. The mere fact that an offence is committed during a protected strike does not suddenly convert a protected strike to an unprotected one. Similarly, an unprotected strike does not become protected if no offences are committed during the strike. Accordingly, s 68(1)(b) does not in any way give the Labour Court jurisdiction to order the payment of any just and equitable compensation for any loss attributable to a protected strike nor does it empower the Labour Court to entertain delictual actions.

The court accordingly found that there was no merit in the objection and it was dismissed with costs.

Case information

Ruling by the High Court on objection to jurisdiction. The facts and further findings appear from the reasons for judgment.

Cases Considered

Annotations:

Motor Industry Staff Association v Macun NO & others 2016 (5) SA 76 (SCA); (2016) 37 ILJ 625 (SCA) (relied on)

Rustenburg Platinum Mines Ltd v Mouthpeace Workers Union (2001) 22 ILJ 2035 (LC) (considered)

Statutes Considered

Labour Relations Act 66 of 1995 s 67(8), s 68, s 68(1)(b), s 69, s 157(1), s 157(2)

Adv R G Beaton SC (with *Adv J F Griesel*) for the plaintiffs.

Adv M Euijen SC for the defendants.

Judgment reserved.

Judgment

Mphahlele J:

[1] The plaintiffs claim damages from the defendants arising from a protected strike and associated picketing which is protected in terms of the provisions of ss 68 and 69 of the Labour Relations Act 66 of 1995 (the LRA).

[2] The plaintiffs maintain that the plaintiffs' claim is a delictual claim arising from a protected strike and based on conduct by the defendants, which amounted to offences as meant in s 67(8) of the LRA.

[3] The defendants raised an objection to the plaintiffs' claim in the following respect: 'In terms of s 68(1)(b) of the LRA, the Labour Court has exclusive jurisdiction to order the payment of just and equitable compensation for any loss attributable to conduct arising

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out of a protected strike or protected picket that does not comply with the provisions of the LRA.'

[4] The defendants contend that any loss which arises out of strike action or associated picketing, which is actionable, must, in terms of the provisions of s 68(1)(b) of the LRA, be adjudicated by the Labour Court, regardless of whether the strike was, initially, to be regarded as being in compliance with chapter IV of the LRA or not.

[5] Section 68(1) provides as follows:

'Strike or lock-out not in compliance with this Act

(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 — ...

(b) to order the payment of just and equitable compensation for any loss attributable to the strike or lock-out, or conduct, having regard to —

(i) whether —

(aa) attempts were made to comply with the provisions of this Chapter and the extent of those attempts.'

[6] Employers can recover losses suffered as a consequence of an unprotected strike or conduct in the furtherance or contemplation thereof.

[7] Section 68 deals with the legal consequences that flow from an unprotected strike or lock-out. In its original form, s 68(1)(b) only envisaged the payment of compensation in respect of losses arising from the strike or lock-out itself and not from other actions that took place during the course of the strike or lock-out. This was changed in 2002. The losses caused by actions in contemplation and furtherance of an unprotected strike or lock-out now fall within the scope of the section. It gives the Labour Court exclusive jurisdiction to order payment of compensation for any loss attributable to the unprotected strike or lock-out, or any loss attributable to conduct in contemplation or furtherance of such a strike or lock-out. This remedy provides for just and equitable statutory compensation for any loss attributable to the unprotected strike or conduct.

[8] This statutory cause of action as provided for in s 68(1)(b) is distinct from a common-law delictual claim. The common-law delictual claim requires that the plaintiff must establish that it suffered loss caused by an unlawful and intentional or negligent act or omission of another party. If these requirements are met, the plaintiff is entitled to recover the full loss suffered. On the other hand, in the case of an unprotected strike, a claim for compensation will succeed if the requirements of s 68(1)(b) are met and the Labour Court has a wide discretion to determine what the amount of compensation to be awarded will be.

[9] In the matter of *Rustenburg Platinum Mines Ltd v Mouthpeace Workers Union* (2001) 22 ILJ 2035 (LC); [2002] 1 BLLR 84 (LC) the court identified three requirements that must be met prior to liability being established:

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'It is manifest that in relation to a strike, three requirements must be satisfied before the question whether compensation as contemplated in subsection (1)(b) is to be awarded, and if so, in what amount, arise for determination. In the first instance, it must be established that the strike does not comply with the provisions of chapter IV of the Act. Secondly, the party invoking the remedy must establish that it has sustained loss in consequence of the strike. Thirdly, it must be demonstrated that the party sought to be fixed with liability participated in the strike or committed acts in contemplation or in furtherance thereof. This much is evident from the provisions of subsection (1)(a) which, in its delineation of the nature of the acts

which might legitimately form the subject-matter of an interdict or restraint, identifies who might be held accountable therefor. The legislature plainly intended to embrace the same class in relation to the court's competence to award compensation.'

[10] In this matter, the plaintiff is claiming for common-law damages. The strike contemplated in s 68 is an unprotected strike whilst s 67 deals with protected strikes. Section 68(1)(b) deals with an unprotected strike or picket, that is a strike or picket not in compliance with the LRA or that does not comply with the provisions of chapter IV of the LRA regulating strikes and lock-outs. Section 68(1)(b) does not confer exclusive jurisdiction on the Labour Court for any loss attributable to conduct arising out of a protected strike or protected picket.

[11] Section 157 of the LRA deals with the jurisdiction of the Labour Court and provides as follows:

'(1) Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.

(2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from —

(a) employment and from labour relations; ...'

[12] In *Motor Industry Staff Association v Macun NO & others* 2016 (5) SA 76 (SCA); (2016) 37 ILJ 625 (SCA) at para 24, the court stated that 'the purpose of s 157(2) was to extend the jurisdiction of the Labour Court to disputes concerning the alleged violation of any right entrenched in the Bill of Rights which arise from employment and labour relations, rather than to restrict or extend the jurisdiction of the High Court'. This means that, where the Labour Court does not have exclusive jurisdiction, the jurisdiction of the High Court is not affected.

[13] I do not agree with the defendants' contention that any loss which arises out of strike action or associated picketing, which is actionable, must, in terms of the provisions of s 68 (1)(b) of the LRA, be adjudicated by the Labour Court, regardless of whether the strike was, initially, in compliance with chapter IV of the LRA or not. The mere fact that an offence is committed during a protected strike does not suddenly convert a protected strike to an unprotected one. Similarly, an unprotected strike does not become protected if no offences are

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committed during the strike. Accordingly, s 68(1)(b) does not in any way give the Labour Court jurisdiction to order the payment of any just and equitable compensation for any loss attributable to a protected strike nor does it empower the Labour Court to entertain delictual actions.

[14] In the light of the aforementioned there is no merit in the objection raised and the exception should fail.

[15] In the result the exception is dismissed with costs.

Plaintiffs' Attorneys: *Markus Saayman Inc Attorneys.*

Defendants' Attorneys: *Cheadle Thompson & Haysom Inc.*