



(1) REPORTABLE: **YES**
(2) OF INTEREST TO
OTHER JUDGES: **YES**
(3) REVISED: **YES**

30 September 2026

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026 – 233518

In the matter between:

GLADYS MOKHUMA AND SIX OTHERS

Applicants

and

**ALZU PIG GENETICS (PTY) LTD T/A PIC
SOUTH AFRICA**

Respondent

Heard: 25 September 2026

This judgment was handed down electronically by circulation to the parties and legal representatives by email and by uploading onto CaseLines. The date and time for hand-down is deemed to be 30 September 2026

Summary: Urgency – principles considered – applicants satisfying requirements for urgency – matter decided as one of urgency

Application for interdict – provisions of s 68(2) considered – 48 hours' prior notice – contemplates actual hours irrespective of Saturdays, Sundays, public holidays – time period complied with – proper prior notice given

Section 76(1)(b) – continued use by employer of replacement labour – purpose of section considered – section contemplated lawful lockout to exist – failure by employer to comply with s 76(1)(b) does not render lockout unlawful – s 76(1)(b) fulfilling different purpose

Lock-out – purpose of lockout considered – lockout implemented along with commencement of strike – strike terminated by employees – underlying dispute between the parties remains unresolved – employer entitled to continue lockout employees until such dispute resolved – issue must be resolved by way of collective bargaining – only if issue in dispute resolved must employer allow employees to report for work

Lock-out – s 64(1)(c) – purpose of notice provisions considered – unresolved dispute already reached impasse and failure to settle – employer gave proper lockout notice at commencement of strike – no further lockout notice required even if strike terminated – remains same lockout

Application for interdict – principles considered – applicant failing to satisfy requirements of clear right – no case for relief made out – application dismissed

JUDGMENT

SNYMAN, AJ

Introduction

- [1] The current matter has as its origins a dispute concerning wages and conditions of employment between the applicants and the respondent as their employer. This led to strike action being embarked upon by the applicants, and the respondent acting in kind by implementing a lockout. The strike ended; however the employer persisted with its lockout. This is what led to the current urgent application, which has been brought in terms of section 68(1) of the Labour Relations Act (LRA)¹. The applicants brought the application on 22 September 2026, and in terms of the notice of motion, they are seeking final relief to the effect that the respondent's continued lockout be declared to be unprotected and interdicted, and the applicants be allowed to resume their duties. The

¹ Act 66 of 1995 (as amended).

applicants also seek uncially relief to the effect that an order be granted for the payment of their wages for the lockout period following the ending of the strike.

- [2] As stated, what the applicants are seeking in this application is final relief. Because of this, the applicants must satisfy three essential requirements, being: (a) the existence of a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the absence of any other satisfactory remedy.² The application is opposed by the respondent not only on the merits thereof, but also on the basis of a lack of urgency.
- [3] The application came before me on 25 September 2026. After considering the pleadings and written submissions, and after hearing argument by the parties, I granted the following order:
1. The application is heard as one of urgency in terms of Rule 38.
 2. The application is dismissed.
 3. There is no order as to costs.
 4. Written reasons for the order will be provided on 30 September 2026.
- [4] This judgment constitutes the written reasons as contemplated by paragraph 4 of my order above. I will commence with the issue of urgency.

Urgency

- [5] In its answering affidavit, the respondent has specifically taken issue with the urgency of the application. However, and for the reasons to follow, I believe there is no substance to such opposition, and the matter is clearly urgent.
- [6] Urgent applications are governed by Rule 38 of the Labour Court Rules. The ordinary requirements necessary to establish urgency was summarized in *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another*³ as follows: (a) the applicant has to set out explicitly

² *Setlogelo v Setlogelo* 1914 AD 221 at 227; *V & A Waterfront Properties (Pty) Ltd and Another v Helicopter & Marine Services (Pty) Ltd and Others* 2006 (1) SA 252 (SCA) para 20; Telkom (supra) at para 6; *Royalservice Cleaning (Pty) Ltd v Democratic Union of Security Workers and Others* (2012) 33 ILJ 448 (LC) para 2; *Van Alphen v Rheinmetall Denel Munition (Pty) Ltd* (2013) 34 ILJ 3314 (LC) para 7.

³ (2016) 37 ILJ 2840 (LC) at paras 20 – 26, and all the authorities cited there.

the circumstances which renders the matter urgent with full and proper particularity; (b) the applicant must set out the reasons why the applicant cannot be afforded substantial redress at a hearing in due course; (c) where an applicant seeks final relief, the court must be even more circumspect when deciding whether or not urgency has been established; (d) urgency must not be self-created by an applicant, as a consequence of the applicant not having brought the application at the first available opportunity; (e) the possible prejudice the respondent might suffer as a result of the abridgement of the prescribed time periods and an early hearing must be considered; and (f) the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency.

- [7] The urgency consideration of particular application *in casu* is whether the applicants would not be able to afforded substantial redress in due course, and the applicants must provide proper reasons in support of a case that this would not be possible.⁴ As succinctly described by the Court in *Maqubela v SA Graduates Development Association and Others*⁵:

‘Whether a matter is urgent involves two considerations. The first is whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. In all instances where urgency is alleged, the applicant must satisfy the court that indeed the application is urgent. Thus, it is required of the applicant adequately to set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary. ...’

If there is in fact substantial redress available in the ordinary course, urgent relief should be declined. This was made clear in *Madonsela v Legal Practice Council and Others*⁶ as follows:

‘It is trite that what amounts to substantial redress depends on the circumstances of the case, and the nature of the rights involved, and is a distinct

⁴ *Mojaki v Ngaka Modiri Molema District Municipality and Others* (2015) 36 ILJ 1331 (LC) at para 17; *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2012] JOL 28244 (GSJ) at para 6; *Vanguard of Organised Labour v Mahlangu and Another* (2026) 47 ILJ 619 (LC) at para 7.

⁵ (2014) 35 ILJ 2479 (LC) at para 32. See also *Transport and Allied Workers Union of SA v Algoa Bus Co (Pty) Ltd and Others* (2015) 36 ILJ 2148 (LC) at para 11.

⁶ (2025) 46 ILJ 2664 (LC) at para 18.

issue from that of a lack of an alternative remedy. Thus, if the applicant can demonstrate that she will not be afforded substantial redress at the hearing in due course, then the matter should be accorded urgency. If, however, such substantial redress is available in due course, then the court ought to refuse to accord the matter urgency.'

[8] Applying the aforesaid considerations *in casu*, I have little hesitation in accepting that the applicants have satisfied the requirements of urgency. The strike ended on 17 September 2026, and when the applicants reported for duty on that date, they were excluded from reporting for work on the basis of the continuing lockout. The applicants, through their attorneys, sent a letter of demand to the respondent on 18 September 2026, demanding that the lockout be terminated and the applicants be allowed to resume their duties, and that an undertaking to that effect be provided by close of business on that same day, failing which an urgent application will be brought. In terms of section 68(2), the applicants were compelled to give at least 48 hours' prior notice of the current application. It follows that when the application was brought on 22 September 2026, it was actually promptly and immediately brought. There can be no doubt that the applicants acted with due and proper expedition, and that the application was brought at the first appropriate occasion.

[9] In any event, there is no substantial redress available to the applicants in the ordinary course. The only manner in which the applicants are able to obtain the current relief sought is by way of the urgent application. As a general proposition, and because of the continuing and ongoing nature thereof, as well as the associated prejudicial consequences thereof, intervention in the case of strikes or lock outs that are alleged to be unlawful, ordinarily justify urgent intervention. Deciding such an application in the ordinary course will result in undue prejudice to the party seeking relief. For these reasons as well, I am convinced to decide this matter as one of urgency.

[10] Accordingly, the applicants' application falls to be decided as one of urgency in terms of Rule 38.

Relevant facts

- [11] Fortunately, and in this case, most of the essential factual matrix is either undisputed, or common cause. The only factual dispute relates to whether the respondent employed replacement labour for the applicants, and still continues to do so, which will be separately dealt with later in this judgment.
- [12] The seven applicants are employed by the respondent as general workers. The applicants' duties include cleaning, as well as duties associated with the care of pigs, such as feeding them and administering injections.
- [13] On 7 September 2026 and subsequent to failed conciliation proceedings in respect of a matter of mutual interest dispute referred by the applicants to the Commission for Conciliation, Mediation and Arbitration (CCMA), the applicants gave the respondent written notice of their intention to embark upon protected strike action with effect from 10 September 2026. The notice indicated that the strike would be for a specific duration, being until 13 September 2026, with the applicants returning to work on 17 September 2026. The notice further recorded that the issue in dispute that was sought to be resolved by the strike was the following demands: (1) a R15 000 per month minimum wage; (2) a guaranteed 13th cheque; (3) hours of work; (4) transport allowance paid directly to the driver; and (5) the increase date be changed from September to March 2027.
- [14] In response to this strike notice issued by the applicants, and on the same date (7 September 2026), the respondent issued a notice of instituting a defensive lockout with effect from 10 September 2026. In the notice, the respondent recorded that the lockout would stay in effect until the applicants accepted the increase and benefits given in September 2025. A further demand was that there would be no wage negotiation with the employees at Springtop Piggery. Lastly, it was stated that any employee that wanted to return to work had to sign a document indicating acceptance of the respondent's demands.
- [15] The strike duly commenced on 10 September 2026 and, in response thereto, the lockout commenced on the same date.
- [16] According to respondent, and on 15 September 2026, it employed three general workers to assist with general labour and cleaning duties whilst the strike was ongoing. These employees did not assume the applicants' functions, or differently put, worked in their stead in the course of the strike. This was

because the applicants' duties are not confined to cleaning and includes duties associated with the care of pigs, including feeding them and administering injections. The individuals that were brought in have performed only general labour and cleaning duties. This has enabled the respondent's existing employees to devote their time to the more specialised duties associated with the care of pigs, meaning that these existing non-striking employees would absorb the other duties fulfilled by the applicants. On the other hand, the applicants contend that the employees engaged by the respondent were employed as replacement labour in the course of the strike, were employed to maintain production, and so enable other employees to perform the duties ordinarily performed by the applicants.

- [17] As reflected in the strike notice, and on the morning of 17 September 2026, the applicants ended their strike and sought to tender their services. Upon the applicants seeking to report for work, they were informed by the respondent's Farm Manager, Mr Ras, that in order for the respondent to permit them to report for work, they were required to accept the respondent's demands as contained in the lockout notice, and that they would be required to sign a document recording their agreement in this respect. The applicants were each presented with such document, which in essence mirrored the issues in dispute pertaining to the demands by the respondent as reflected in the lockout notice of 7 September 2026. The applicants refused to sign the documents.
- [18] According to the respondent, and because the applicants refused to record their acceptance of its demands by signing the documents concerned, it continued with the lockout it instituted with effect from 10 September 2026, until such time as the applicants accepted its demands. It appears that the respondent continued to employ the three general workers to fulfil the general and cleaning duties in the absence of the applicants.
- [19] On 18 September 2026 at 08h54, the applicants' attorneys sent a letter of demand to the respondent in which it stated *inter alia* that the respondent had now imposed an offensive lockout on 17 September 2026 when it refused to accept the applicants' services when they terminated their strike, and in doing so, it failed to comply with the provisions of section 64(1)(c) of the LRA because notice of this offensive lockout had not been given. According to the applicants,

this rendered the lockout unlawful. The applicants also took issue with the fact that respondent continued to employ replacement labourers, which was also contended to be unlawful. The applicants demanded that the unlawful lockout be uplifted and that the applicants be allowed to return to work immediately and unconditionally, or the Labour Court would be approached on an urgent basis.

[20] On the same day at 15h54, the respondent answered this letter of demand by the applicants. It stated that the defensive lockout remained in place and would remain in place until the applicants agree to the terms as indicated in the lockout notice. The respondent disputed that the lockout was offensive. The respondent recorded that used a '*few replacement labourers*', which it was entitled to do in the course of a defensive lockout. Lastly, the respondent indicated that it would oppose any urgent Labour Court application.

[21] The applicants then instituted the current urgent application at 10h43 on 22 September 2026, setting the matter down for hearing at 10h00 on 25 September 2026.

Analysis

[22] In terms of section 68(2) of the LRA, it is required that when this Court is approached in terms of section 68(1)(a) to declare a strike or lock out to be unprotected and to interdict the same, prescribed prior notice must be given to the respondent party. Section 68(2) provides:

'The Labour Court may not grant any order in terms of subsection (1) (a) unless 48 hours' notice of the application has been given to the respondent: However, the Court may permit a shorter period of notice if-

- (a) the applicant has given written notice to the respondent of the applicant's intention to apply for the granting of an order;
- (b) the respondent has been given a reasonable opportunity to be heard before a decision concerning that application is taken; and
- (c) the applicant has shown good cause why a period shorter than 48 hours should be permitted.'

[23] The applicants have not asked this Court to permit a shorter period of notice and have not made out any such case. As such, the applicants needed to give

at least 48 hours' notice of the application. According to the respondent, the applicants have however failed to give the prescribed 48 hours' prior notice, and as such, for this reason alone, the applicants ought to be non-suited. It is however my view that this contention of the respondent has no substance and the 48 hours' prior notice period has in fact been complied with, for the reasons to follow.

- [24] It is important to consider that the relevant time limit in section 68(2) is defined with reference to hours, and not days. This means that the time period must be calculated from the starting moment to the ending moment, irrespective of whether any of the days concerned, within which this hourly time period would resort, would be a Saturday, Sunday, or public holiday. This is different from the instances where the time limit is defined by reference to days, where a civil method of calculation is applied, and in that case, the first day is included in the count and the last day is excluded.⁷ This is explained in *Dormell Properties 282 CC v Renasa Insurance Co Ltd and Others NNO*⁸ as follows:

'In Roman law, which our law has retained in this respect, the expiry of a period of time could be calculated either by the natural or the civil method. The natural method calculates '*de momento in momentum*', from the exact moment of the first day, upon which the period to be calculated commences, to the exactly corresponding moment of the last day. The civil method of computation includes the first day of the period to be calculated and excludes the last day ...'

- [25] *In casu*, the applicants brought the application at 10h43 on 22 September 2026, with the application being set down for hearing on 25 September 2026 at 10h00. Whilst it is true that 24 September 2026 was a public holiday (Heritage Day), that is immaterial in the calculation of the hourly time period. The 48 hours' time period would therefore be fulfilled at 10h43 on 24 September 2026, and the application heard on 25 September 2026 would therefore comply with the

⁷ The civil method of calculation has an added nuance, in that if the last day falls on a Saturday, Sunday or public holiday, the last day would be deemed to be the following working day – see *Gabuza v Road Accident Fund* 2020 (2) SA 228 (GP) at para 2]. See also section 4 of the Interpretation Act 33 of 1957 which reads: 'When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday'.

⁸ 2011 (1) SA 70 (SCA) at para 27.

prescribed 48 hours' prior notice. The applicants' application is thus properly before this Court for determination.

[26] I now turn to the merits of the application. The application is founded on the contention that the lockout continued by the respondent as from 17 September 2026 was unlawful. In essence, there are two reasons advanced by the applicants for this contention. The first is that the respondent continued to use replacement labour after the strike had terminated on 17 September 2026 and this rendered the lock out unlawful. The second reason is based on an argument that the lockout implemented by the respondent on 10 September 2026 was a defensive lockout and would thus only be a lawful lockout as long as the strike endured. According to the applicants, once the strike terminated on 17 September 2026, and the respondent nonetheless elected to continue with its lockout, that lockout became offensive, and as such, the respondent needed to give fresh notice of a lockout in terms of section 64(1)(c) of the LRA.

[27] I will deal with the issue of the continued use of replacement labour first. There is a factual dispute about whether the respondent indeed employed replacement labour. According to the respondent, it employed only three general labourers to just do cleaning whilst the applicants were on strike. Whilst the respondent concedes that the applicants also did cleaning duties, it explains that this was only a part of the duties the applicants fulfilled. According to the respondent, an important part of the applicants' duties was attending to the pigs, and these duties were simply absorbed and fulfilled by the respondent's remaining employees not on strike. In short, the respondent's position is that the employment of three general labourers to do cleaning does not constitute replacement labour for the applicants and the positions they occupied.

[28] The applicants in turn say that these general labourers were employed to render work because the applicants were on strike. Or differently put, if the applicants were not on strike, there would be no need to employ these three employees. Also, the duties fulfilled by these employees were part of the duties the applicants fulfilled, and the employment of these employees was thus done to maintain effective production. The applicants also point out that in its letter of 18 September 2026, the respondent in fact conceded that it employed replacement labour as it was entitled to do so, since its lockout was defensive.

[29] In terms of section 76(1)(b) of the LRA: '*An employer may not take into employment any person ... for the purpose of performing the work of any employee who is locked out, unless the lock-out is in response to a strike*'. It is of course true that where existing employees of the respondent would be utilised to fulfil the functions of the striking employees, this cannot be considered to be replacement labour for the purposes of section 76(1)(b). As the Court said in *SACWTU v Coats SA (Pty) Ltd*⁹:

'On the facts of this case the production is adversely affected by the lock-out, but to a lesser extent than would otherwise have been the case if there were no one doing the work of those locked out at all. The court is not convinced that the power-play is distorted by allowing those who are not locked out from performing the duties of those who are locked out ...'

[30] But what about the three general workers that were employed to do general work and cleaning? I am satisfied that despite the facts as advanced by the respondent, when the LRA refers to replacement labour in the context of section 76(1)(b) of the LRA, it does not just contemplate employees being employed to in essence replace the striking employees in their particular positions. In my view, it would include the employment of any person that would fulfil some or all of the tasks of the striking employees, in order to continue / maintain the operations of the business of the employer in the ordinary course. The crisp question must be that if it was not for the employees of the employer embarking upon the strike, would the employees that are engaged to fulfil some or all of the work ordinarily fulfilled by the striking employees have been engaged in the first place? Or simply described, was it not for the strike, would these replacement employees have been employed? Therefore, I accept that where it comes to the three general workers employed by the respondent as a result of the strike, in order to fulfil the cleaning functions and general work ordinary performed by the applicants, this constitutes replacement labour for the purposes of section 76(1)(b). It is also not lost on me that the respondent actually, in its letter of 18 September 2026, effectively conceded it employed replacement labour on the basis that it was entitled to do so.

⁹ (2001) 22 ILJ 1413 (LC) at para 9.

[31] However, and despite the fact that the respondent continued to employ this replacement labour after the strike had ended and it continued with its lockout, this would not render the continued lockout unlawful or unprotected. Where an employer contravenes section 76(1)(b), it simply does not impact on the lawfulness of the lockout. It is an entirely distinct and separate issue. In fact, the prohibition of replacement labour under section 76(1)(b) would only apply in the case of a lawful lockout. It is a mechanism to balance the power play where it comes to the employer exercising its entitlement to institute a lockout in the context of collective bargaining. It is not intended to impinge the lockout itself. In fact, if the lockout is unlawful, then in the first place, the employer would be prohibited from excluding the employees *per se*, and most certainly would not be entitled to employ replacement labour. This is not because section 76(1)(b) applies, but because the lockout itself is prohibited. The aforesaid was succinctly explained in *Technikon SA v National Union of Technikon Employees of SA*¹⁰ as follows:

‘... If the lock-out was not a protected one, the appeal must fail because then the appellant was not entitled to exclude the respondent's members from its premises nor was it entitled to employ replacement labour. ...’

The Court concluded:¹¹

‘The rationale behind s 76(1)(b) is that if an employer decides to institute a lock-out as the aggressor in the fight between itself and employees or a union, it may not employ temporary replacement labour. That is to discourage the resort by employers to lock-outs. The rationale is to try and let employers resort to lock-outs only in those circumstances where they will be prepared to do without replacement labour (ie when they are the aggressors) or where they are forced to in self-defence in the sense that the lock-out is 'in response to' a strike by the union and the employees - in other words, where the union and the employees are the aggressors. ...’

[32] Where it comes to the violation by an employer of section 76(1)(b), the appropriate remedy would be to seek an interdict to prohibit the employer from

¹⁰ (2001) 22 ILJ 427 (LAC) at par 26.

¹¹ *Id* at para 42.

employing replacement labour.¹² It would then mean that despite the employer still being entitled to continue with locking out the employees, it would have to do so without replacement labour. This, as said, balances out the equation, and prevents the unfair situation of the excluded employees being the only ones that suffer in the process, thus affording the employer an undue advantage.

[33] The applicants however believed that they had an ace in the hole in the form of the judgment of the Constitutional Court in *National Union of Metalworkers of South Africa v Trenstar (Pty) Ltd*¹³, which they contend is on all fours with the current case, and serves as clear precedent that the continuing lockout implemented by the respondent would be unprotected because it continues to use replacement labour. Unfortunately for the applicants, their reliance on *Trenstar* is entirely misplaced. This judgment simply does not provide the precedent they contend to be the case. In fact, *Trenstar* has nothing to do with whether a lockout is lawful or unlawful at all.

[34] In *Trenstar*, there was a strike instituted by employees, with a corresponding lockout by the employer. During the course of this strike and corresponding lockout, the employer employed replacement labour. The employees then decided to terminate the strike, however the underlying dispute giving rise to the strike in the first place remained unresolved. Consequently, the employer decided to continue with the lockout, however it still continued to use replacement labour. The employees contended that this conduct was in violation of section 76(1)(b). That is the question the Constitutional Court was called on to decide. The Court dealt with this as follows:¹⁴

‘An employer who decides to persist with an exclusion of employees from the workplace after they have ended their strike and tendered their services is no longer responding to the strike, but is choosing to use the lock-out offensively in a way that is indistinguishable from the employer who, in the complete absence of a strike, embarks on a lock-out to compel compliance with its demand. To say that the ongoing lock-out is still responding to the strike is to treat the ongoing lock-out almost as some form of punishment because the

¹² See the order granted in *National Union of Metalworkers of South Africa v Trenstar (Pty) Ltd* (2023) 44 ILJ 1189 (CC) at para 50.

¹³ (2023) 44 ILJ 1189 (CC)

¹⁴ *Id* at para 41.

employees chose to embark on a protected strike. The lawmaker could not have intended to reward retribution of that kind.’

[35] It is clear from the aforesaid reasoning in *Trenstar* that the Court in fact accepted that the employer, in the case of a terminated strike, would be entitled to continue with its lockout, however that lockout then just changes character, from one being in response to a strike to one being used in an offensive capacity. This does however not render the lockout unlawful, but it obviously has implications where it comes to the continued use of replacement labour. In this respect, the Court in *Trenstar* held:¹⁵

‘This court’s jurisprudence thus mandates us to prefer an interpretation which confines the use of replacement labour to the duration of the strike, provided that s 76(1)(b) is reasonably capable of that meaning. For the reasons I have given, that is a meaning which the language of the section can bear.

The Kings Hire case, on which *Trenstar* has placed so much reliance, is a red herring. The case was not concerned with an employer’s right to use replacement labour during a lock-out. Section 76(1)(b) was not mentioned in the judgment. The case was about the lawfulness of the employer’s lock-out. The union contended that the employer could not lawfully implement a lock-out where the employees had decided to suspend a proposed strike in response to which the lock-out notice had been issued. The Labour Court’s rejection of that contention is unremarkable and of no application here.’¹⁶

[36] In summary, the applicants’ reliance on section 76(1)(b) and the respondent’s continued use of replacement labour after the strike has terminated, as basis for rendering the lockout to be unlawful or unprotected, is lacking in substance. Their reliance on *Trenstar* is entirely misplaced. Section 76(1)(b) does not contemplate that the lockout itself is unlawful if it contravened. In fact, and as said, in the case of an unlawful lockout, section 76(1)(b) would not even apply.

[37] This then brings me to the applicants’ case that because the lockout has become offensive, the respondent was required to give fresh notice under

¹⁵ Id at paras 45 – 46.

¹⁶ The Court was referring to *National Association of SA Workers on Behalf of Members v Kings Hire CC* (2020) 41 ILJ 685 (LC), which will be dealt with later in this judgment.

section 64(1)(c), and its failure to do so renders the lockout unlawful or unprotected. For the reasons to follow, this case advanced by the applicants is equally lacking in merit.

- [38] First and foremost, the whole notion of offensive and defensive lockouts needs to be addressed. The applicants treat it like it is two distinct processes. But that cannot be correct. This was succinctly dealt with in *Technikon SA supra*,¹⁷ where the Court decided:

'The Act does not anywhere refer to the terms: defensive lock-out and offensive lock-out. However, it does refer in s 76(1)(b) to a lock-out that is 'in response to a strike' and in s 64(3)(d) to a lock-out in response to a strike that does not comply with the Act. These terms are used frequently in labour law parlance. However, care must be taken to ensure that pre-occupation with whether a lock-out is an offensive or a defensive lock-out does not have the effect that the focus is removed from where it should rightly be, namely, in the Act. In other words the true enquiry, which is whether the conduct complained of is permissible in terms of the Act, should never be lost sight of. ...'

- [39] Therefore, it is my view that *Technikon SA* makes it clear that no matter how one may seek to characterise the lockout, the only relevant question, in order to determine if it is lawful or not, is to ascertain whether the LRA has been complied with. As explained in *Technikon SA*:¹⁸

'... Employees have the right to strike and employers have a recourse to lock-out. In both cases the right to strike and the recourse to lock-out are subject to the limitations set out in s 65. In other words, there is no right to strike where any one of the limitations in s 65 applies. Accordingly, subject to the limitations to the recourse to lock-out in s 65, an employer has recourse to lock-out which it may exercise when the requirements of s 64(1) have been complied with ...'

- [40] *In casu*, there is no issue of the lockout being unprotected by virtue of the application of section 65 of the LRA. It is also common cause that the respondent indeed gave proper notice of the lockout, as contemplated by section 64(1)(c), at the outset of the collective action between the parties, and

¹⁷ Id at para 27.

¹⁸ Id at para 35.

that the lockdown, in terms of such notice, applied as from 10 September 2026 and still continued to apply when the applicants terminated their strike on 17 September 2026 and sought to report for work. So why would a further notice even be needed?

- [41] In answering the above question, there is a critical factor that the applicants have failed to appreciate. This factor is that the underlying issue in dispute, that was the subject matter and cause of the strike action, remained unresolved when the applicants terminated their strike on 17 September 2026. That issue in dispute concerned the demands by the applicants, as articulated in their strike notice, and the corresponding demand by the respondent, as articulated in its lockdown notice. These respective demands are set out above. When the applicants sought to report for work on 17 September 2026, the respondent specifically requested from them whether the underlying issue in dispute was resolved. This is an important question, because if the applicants unconditionally terminated their strike, it could be said that the underlying dispute would not be further pursued, and as such, can be considered to be resolved. But if the applicants did not unconditionally terminate their strike, then notionally, the underlying dispute remains live.
- [42] Accordingly, and in order to dispel any uncertainty in this regard, the respondent presented the applicants each with a document, which in essence reflected the respondent's demands in the lockdown notice, and it requested the applicants to sign this document which recorded that they agreed to such demands. Signature of this document would have confirmed that the underlying issue in dispute was finally resolved and the strike actually, and finally, terminated. The applicants refused to sign the documents. This, realistically, can only mean one thing. The applicants considered the underlying issue in dispute to remain unresolved, and the current '*termination*' of their strike was not a final measure. This inference also appears to be in line with the strike notice itself. From the notice, it appears that the course of action to be applied by the applicants in exercising their right to strike is not a complete cessation from work which would continue unabated until such time as the respondent finally acceded to their demands. Instead, it is indicated that the strike would be for a fixed period, being from 10 September to 13 September 2026, with the applicants returning to work on 17 September 2026. It follows that the '*termination*' of the strike on 17

September 2026 was simply giving effect to the strike strategy contemplated by this notice. It is not a termination because the dispute had been resolved or at an end.

- [43] In any event, and in the founding affidavit, the applicants have made out no case that the underlying dispute has been resolved. In fact, the underlying issue in dispute was not even dealt with in the founding affidavit. If the applicants indeed finally terminated the strike, they needed to make out such a case, and then contend that the continued lockout was unprotected because there was no live issue in dispute between the parties. But that is not the case made out by the applicants. They have limited their case solely to the issue that a fresh notice as contemplated by section 64(1)(c) was required, but was not given.
- [44] A lockout is defined in section 213 of the LRA as ‘... *the exclusion by an employer of employees from the employer's workplace, for the purpose of compelling the employees to accept a demand in respect of any matter of mutual interest between employer and employee, whether or not the employer breaches those employees' contracts of employment in the course of or for the purpose of that exclusion*’. The purpose of such an exclusion was identified in *Transport and Allied Workers Union of SA v Putco Ltd*¹⁹ as follows:
- ‘The purpose of a lock-out in terms of s 213 is to compel employees whose trade union is party to certain negotiations to accede to an employer's demand. Its object is to end a stalemate reached as a result of an impasse in negotiations between employer and employee in respect of matters of 'mutual interest'. A resolution of a dispute can be reached only between adversaries. As a matter of logic, then, there must be a dispute between an employer and employees or their trade union before a lock-out is instituted. ... ’
- [45] So, and *in casu*, the respondent has clearly directed a demand at the applicants. This demand was not acceptable to the applicants. As such, the respondent is entitled to implement and then continue with its lockout until that demand was accepted.²⁰ As held in *United Transport and Allied Trade Union / SA Railways*

¹⁹ (2016) 37 ILJ 1091 (CC) at para 32.

²⁰ *Putco (supra)* at paras 34 and 36.

*and Harbours Union and Others v Autopax Passenger Services (SOC) Ltd and Another*²¹:

‘The right of trade unions and employees to strike and the right of employers to implement a lock-out are not an end in themselves but a means to an end and exist specifically in the context of the process of collective bargaining. That end is the resolution of the impasse which exists in the collective bargaining process at the time when these mechanisms are invoked.’

[46] When employees decide to suspend or terminate their strike, no matter what one may call that act, whilst the underlying issue in dispute remains unresolved, it must mean that their right to strike on that issue still subsists and remains open to be invoked again, without any further condition, at any time. This was actually dealt with in *Transtar supra*, where the Court had the following to say:²²

‘Although the LRA does not deal with the termination and suspension of strikes, terminology of this kind is used in collective bargaining. Its precise meaning may depend on the context. In general terms, though, employees who tender to return to work by ‘suspending’ their strike, rather than ‘terminating’ it, are signalling that they do not abandon their demand and reserve the right to withdraw their labour again in pursuit of their demand. One must distinguish between a strike and an unconditional right to strike. If the dispute has been the subject of unsuccessful conciliation, and if 48 hours’ notice of the strike has been given, there is an unconditional right to commence a strike. But there is no strike until there is a concerted withholding of labour.’

If there is a concerted withholding of labour, and if the employees later return to work by ‘suspending’ their strike, they are conveying that they do not waive the unconditional right to strike which previously accrued to them. During the period of suspension, there is no strike as defined, only an unconditional right to strike. If employees suspend their strike and the employer accepts their tender of services, the employer could obviously not then refuse to pay them on the basis that they were still on strike.’

[47] In my view, these same considerations should equally apply to the entitlement of an employer to institute a lockout. As discussed earlier, the applicants’

²¹ (2014) 35 *ILJ* 1425 (LC) at para 40.

²² *Id* at paras 26 – 27.

'termination' of the strike was not an unconditional termination, and the underlying dispute remained live. Because the right to strike in respect of the issue in dispute in such circumstances persists, the respondent as employer remains entitled to continue its lockout. If it did not do so, it would then have to take the applicants back into service and pay them. That would defeat the point of the continued lockout, being to compel to applicant to accept its demand and so finally bring the dispute to an end. Equally apposite is the following *dictum* in *Technikon SA supra*:²³

'... there is no provision to the effect that, if the employer has given the notice to lock-out first or has begun with its lock-out before the employees can begin with their strike or can give their notice to strike, the employees lose their right to strike. This, therefore, means that a lock-out may commence before, simultaneously with, or after, a strike has commenced. It also means that a lock-out and a strike can run concurrently between the same parties. What this would mean in practice is that the strikers would be excluded from the premises of the employer.'

- [48] Therefore, with the entitlement to institute a lockout having accrued to the respondent, it already having given notice to exercise this right on 7 September 2026, and with the underlying issue in dispute still remaining unresolved, is there a requirement for a further notice under section 64(1)(c) when the applicants sought to terminate their strike and reported for work? The answer must be in the negative. Section 64(1)(c) reads:

'Every employee has the right to strike and every employer has recourse to lock-out if — ...

(c) in the case of a proposed lock-out, at least 48 hours' notice of the commencement of the lock-out, in writing, has been given to any trade union that is a party to the dispute, or, if there is no such trade union, to the employees, unless the issue in dispute relates to a collective agreement to be concluded in a council, in which case, notice must have been given to that council.'

- [49] As to the requirements of the notice itself, the only express requirement in section 64(1)(c) is 48 hours' prior notice to the trade union and/or the employees concerned. In *SA Transport and Allied Workers Union and Others v Moloto NO*

²³ Id at para 31.

*and Another*²⁴ it was held that the only certainty required to be reflected in a strike notice is when the strike will start. In my view, this equally applies to a lock-out notice. As held in *Autopax supra*:²⁵

‘The simple issue is whether the basis of the above reasoning can equally apply to a lock-out implemented by an employer. I can see no reason why not. A lock-out fulfils the same purpose in and is part and parcel of the same process of collective bargaining. It is also clear from the passages quoted above that the court in *Moloto* accepted that the provisions relating to lock-outs should equally not be restrictively interpreted. The fact is that s 64(1)(a) as a point of departure applies to both strikes and lock-outs. It contemplates one issue in dispute and as such, one notice that applies to all parties that are affected by the issue in dispute. ...’

- [50] The notice in terms of section 64(1)(c) of 7 September 2026 indicated when the lockout was to commence, being 10 September 2026. It indeed commenced on that date. The notice also stated that the lockout would continue until the dispute was resolved. It indeed simply continued because the underlying dispute remained unresolved. No further notice under section 64(1)(c) was thus required. Whether the lockout is labelled defensive, offensive, in response to a strike or whatever, it still remained the same lockout pursuant to the same demand, which demand remained unresolved. As stated in *Technikon SA supra*:²⁶ ‘... there is no statutory basis for the suggestion that the lock-out contemplated under s 64(1) is only an offensive lock-out. Section 64(1) contemplates any lock-out ...’. A similar view was echoed in *Nasecgwu and Others v Donco Investments (Pty) Ltd*²⁷ where the Court, with reference to the judgement in *Technikon SA*, said: ‘... it is clear from this judgment that a lock-out may only be instituted with notice as contemplated by s 64(1)(c) of the LRA irrespective of the label such a lock-out is given ...’. As such, the respondent always remained entitled to continue with the lockout, even if the applicants sought to terminate their strike and report for work, without having to give another notice as contemplated by section 64(1)(c). As held in *National Association of SA Workers on Behalf of Members v Kings Hire CC*²⁸:

²⁴ (2012) 33 ILJ 2549 (CC) at para 86.

²⁵ *Id* at para 46.

²⁶ *Id* at para 37.

²⁷ (2010) 31 ILJ 977 (LC) at para 9.

²⁸ (2020) 41 ILJ 685 (LC) at para 46.

‘Because the underlying issue in dispute still remained unresolved, and with the respondent having implemented the lock-out, the respondent was entitled not to accept the employees’ tender of services. It is insufficient for NASAW to simply suspend the strike, or hold it in abeyance, to secure the lifting of the lock-out and the return of the employees to work. The reason for this is that for as long as the underlying issue in dispute remains unresolved, NASAW and the employees can at any time resume the strike.’

And in *Transportation Motor Spares v National Union of Metalworkers of SA and Others*²⁹ the Court said:

‘... the employer is entitled at the stage of the proposed return to work on the part of the strikers to lock them out until the dispute over which they had gone out on strike has been resolved. It is therefore up to the employer to enquire from the strikers when they seek to return to work what the basis is for their return to work and to decide whether he will allow them to resume their duties or not and if he will, then on what terms they will be so allowed.’

[51] Consequently, it is my view that the applicants have failed to make out a case that the lock-out implemented by the respondent as from 10 September 2026 and which continued after they terminated their strike on 17 September 2026 is unlawful. I am convinced that there exists an underlying issue in dispute between the parties that remained unresolved, and this issue in dispute had been referred to conciliation and a certificate of failure to settle was issued. The lockout notice was issued simultaneously with the strike notice, and itself complied with all the procedural requirements under section 64(1)(c). The lockout commenced as stipulated in such notice and continued unabated, with the respondent remaining entitled to continue with it until the underlying dispute is finally resolved. Whether or not the respondent uses or does not use replacement labour is irrelevant where it comes to determining whether the lockout is lawful or unlawful.

[52] Where to now? As said in *Kings Hire supra*:³⁰ ‘It is now squarely in the hands of NASAW and the employees to have the lock-out uplifted. All they need do is to

²⁹ (1999) 20 ILJ 690 (LC) at para 18. See also *National Union of Metalworkers of SA on behalf of Members v National Employers’ Association of SA and Others (1)* (2015) 36 ILJ 743 (LC) at para 28.

³⁰ Id at para 50.

abandon their demand for a 13th cheque, which will resolve the underlying issue in dispute, and remove the cause for the lock-out. In such circumstances, the respondent would have to allow the employees to immediately return to work’. The same applies to the applicants. All they need to do is to either sign the document presented to them by the respondent, which is nothing but a manifestation of the respondent’s demands in the lockout notice, or indicate to the respondent that they finally and unconditionally terminate their strike. Once they do this, the respondent would be compelled to allow them to return to work.

- [53] For all the aforesaid reasons, the applicants have failed to establish a clear right to the relief sought. This means that the primary requirement for an interdict has not been satisfied. It is therefore not necessary to consider the other requirements alluded to earlier in this judgment. The applicants’ application falls to be dismissed.

Costs

- [54] This then only leaves the issue of costs. The parties have an ongoing relationship. I do not believe the applicants were unreasonable in pursuing this matter. The application did raise some novel legal issues. In *Zungu v Premier of the Province of KwaZulu-Natal and Others*³¹ it was held that the rule that costs follow the result does not apply in employment disputes, and that a costs order should not be made unless fairness and equity dictate it. Therefore, and even though the applicants were not successful, I do not believe that a costs order would be appropriate.³² Exercising the wide discretion I have in terms of section 162(1) of the LRA, I believe that this is a case where fairness dictates that no order as to costs be made.

Order

- [55] It is for all the reasons as set out above that I made the order that I did on 25 September 2026, as reflected in paragraph 3 of this judgment, *supra*.

³¹ (2018) 39 ILJ 523 (CC) at para 24.

³² Compare *Kings Hire (supra)* at para 52.



S Snyman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Lawyers for Human Rights

For the Respondent: Ms N Schroeder of Higgs Attorneys Inc