IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, CAPE TOWN

Reportable

Case no: CA11/19

In the matter between**:**

COMMERCIAL STEVEDORING AGRICULTURAL

& ALLIED WORKERS UNION **First Appellant**

LIST OF PERSONS APPEARING IN ANNEXURE

'A' AND 'B' OF THE NOTICE OF MOTION **Second Appellant**

and

OAK VALLEY ESTATES (PTY) LIMITED **First Respondent**

BOLAND LABOUR (PTY) LTD **Second Respondent**

Heard: 07 May 2020

Delivered: 17 November 2020

Summary: Interdict ---employees interdicted from participating in criminal acts----Labour Court's order too broad and amounting to eviction of employees from their homes located at the employer's premises.

Labour Court jurisdiction ---S 69 not empowering Labour Court to adjudicate violation of picketing rules in the absence of conciliation ----Conciliation perquisite for Labour Court's jurisdiction.

Coram: Phatshoane ADJP, Davis JA and Murphy AJA

JUDGMENT

DAVIS JA

Introduction

[1] This appeal against the judgment of the court *a quo* of 21 June 2019 raises important questions regarding the legal regime governing picketing by employees who may or may not belong to a trade union. It also trenches upon the specific parameters within which an interdict can be granted in circumstances where it is alleged that the action of employees and/or the members of the union have extended beyond the right to picket peacefully.

Factual background

[2] The background to the order granted by the court *a quo* can be traced to negotiations concerning allegations raised by appellants[1] of significant discrimination on the part of first respondent after the first appellant had commenced organising at the premises of the first respondent in 2018.

[3] According to Mr Karel Swart, the national organiser of first appellant ,these engagements with the first respondent proved to be fruitless. Accordingly, first appellant declared a dispute which could not be resolved. Thereafter a protected strike was declared which was to commence on 6 May 2019. Prior thereto, on 2 May 2019, a set of picketing rules were issued by the Commission for Conciliation, Mediation and Arbitration ('CCMA') for the purposes of this proposed strike.

[4] According to the founding affidavit deposed to by Mr Christopher Rawbone-Viljoen, the managing director of first respondent, during the week of 6 to 10

[11] These were the respondents before the court a quo. In this judgements, I shall refer to these parties as the appellants and the applicants before the court a quo as the respondents.

May 2019 there were numerous infringements of the picketing rules by the appellants. In particular, Mr Rawbone-Viljoen, stated that on 5 May 2019, five men had entered first respondent's farm and attempted to set fire to the veld surrounding first respondent at two separate places. On 6 May 2019, some of the second appellants left the hostel accommodation situated on the premises wearing masks or balaclavas in breach of the picketing rules . On 7 May 2019, some of the second appellants moved out of the demarcating picketing area and attempted to force their way to the main entrance of the first respondent's property which, in turn, necessitated that first respondent had to call the public order police service in order to ensure that the second appellants returned to the designated picketing area. On 9 May 2019, a delivery truck belonging to the first respondent and driven by one of its employees was subjected to an attack by way of unnamed persons throwing rocks at the truck as it was being driven on the N2 highway. This resulted in a shattered window on the driver's side of the truck and damage to the side door thereof. According to Mr Rawbone-Viljoen, between 13 and 16 May 2019, further incidents took place, including what he referred to as very high levels of intimidation such as the blocking of the N2 highway as well as the main entrance and access road to first respondent's farm.

[5] On 17 May 2019, first respondent's attorneys addressed a letter to first appellant in terms of which an undertaking was sought that by 14h00 on that day first appellant's members would refrain from picketing outside of the designated picketing area, desist from wearing masks in breach of the picketing rules as well as the carrying of dangerous weapons and the obstructing of the entrances to the premises failing which the first respondent would apply to court for an interim interdict. The undertaking which was sought was not given. Consequently, the respondents approached the Labour Court which on 20 May 2019 granted an interim interdict by way of a rule nisi. On 29 May 2019, Rabkin-Naicker J, sitting in the court *a quo*, heard argument on the anticipated return date of the rule nisi.

The order and reasoning of the court *a quo*

[6] On 21 June 2019, Rabkin-Naicker J granted an order in favour of the respondents. The significance of the contents of this order to the appeal before this Court requires that it be reproduced in full:

> '1.1 The second and further respondents whose names are set out in Annexure "A1" and "B1" attached to this judgment are interdicted from participating in any unlawful or criminal acts in support of furtherance of their protected strike;
>
> 1.2 The first respondent is directed to call upon the individual respondents to desist from unlawful and/or criminal acts in support or furtherance of their protected strike.
>
> 1.3 The second to further respondents are interdicted and restrained from:-
>
> (a) Intimidation, harassing, assaulting:
>
> (i) any employee of the first and/or second applicants whether such employee is employed on a temporary, casual, fixed term, fixed purpose or permanent basis; or
>
> (ii) any other persons involved in or connected with the conduct of the first applicant's operations or the business of the second applicant at Oak Valley Farm, Grabouw ("the farm"), and/or
>
> (iii) any customers of, visitors to, supplies and other business associates of the first applicant wishing to visit the farm or do business with or support the first applicant at the farm;
>
> (b) From in any way preventing any of the persons referred to above from gaining access to the farm and premises at Oak Valley, Grabouw, Western Cape from which first applicant conducts its business (hereinafter "the premises");

(c) From in any way preventing any of the persons referred to above from leaving the premises;

(d) From in any way unlawfully interfering with or obstructing the normal operations of the first applicant's business at the farm and on the premises;

(e) From attending at the premises at any time save for the purpose of presenting themselves for the execution of their duties in accordance with their contracts of employment with the Applicants;

(f) Prohibiting the individual respondents from being within 800 metres of the perimeters of any entrance to the premises for purposes other than those referred to in paragraph 1.3 (e) hereof or for purposes other than the peaceful and orderly picketing of the premises in accordance with the picketing rules;

(g) Prohibiting the individual respondents from damaging any property of the first or second applicants;

(h) prohibiting the individual respondents from setting fire or attempting to set fire to any property of the first applicant;

2.4 the first respondent is interdicted and restrained from instigating, inciting the second to further respondents in engaging, inciting or instigating in any unlawful conduct;

2.5 the first respondent is directed to call on its members, including the individual respondents to desist from unlawful conduct as set out above and comply with the agreed Picketing Rules and the terms of this order.'

[7] In granting this order, Rabkin-Naicker J was required to deal with a number of different arguments put before the court a quo by counsel for the appellants. It was firstly contended that, in the event that there were existing picketing rules and that it was alleged that there was a material breach thereof, the parties were bound to refer the matter to the CCMA before any of the parties

were entitled to approach the Labour Court for interdictory relief. This argument was rejected by the court a quo on the basis that s 69 (12) of the Labour Relations Act 66 of 1995 ('LRA ') provides:

> '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 s 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 location designated in the collective agreement, agreed rule contemplated in subsection (4) or rules determined by the Commission.'

[8] In the view of the learned judge in the court a quo, the powers set out in s 69 (12) needed to be read as an addition to its exclusive jurisdiction to interdict conduct in furtherance of a strike that does not accord with Chapter IV of the LRA. Thus in terms of s 69 (1) of the LRA, the right to picket was set out as being for the purpose of peacefully demonstrating support for a strike. Therefore the court was required to read s 69 (1) together with s 69(12). This meant that the powers of the Labour Court in respect of interdicting conduct pursuant to a strike had to be read together with s69(12) of the LRA. For this reason, the objection to the jurisdiction of the Labour Court interdicting conduct that breached picketing rules when the impugned conduct had to be located within the context of a strike had no merit.

[9] There was a further objection raised by counsel for the appellants, namely that the rule nisi had been couched in language which was far too expansive in that it referred to 'a third group of respondents (being) those people who associate themselves with individual respondents and make common cause

with them and physically support the respondents in the criminal and unlawful conduct referred to thereafter.' Counsel for the respondents did not pursue the necessity of citing unidentified respondents in this manner. Thus, Rabkin-Naicker J declined to confirm part of the order which concerned the obstruction of the N2 highway outside of Grabouw and which the founding affidavit in support of the application referred to as 'related protest action'. In the view of the learned judge, the phrase employed in s 69 of the LRA, namely a picket by its members and supporters' had to be read restrictively 'to cover employees who are not members of the union and support the protected strike'. It cannot be interpreted to mean the public in general over whom a registered union has no authority.' However, she refused to accept the argument put up by the appellants that the failure to identify individual employees in relation to specific unlawful acts in breach of the picketing rules meant that interdictory relief could not be granted.

The appeal

[10] With the leave of the court *a quo*, appellants have approached this Court on appeal. Three specific grounds of appeal have been raised:

(i) The order of 21 June 2019 prohibits people from accessing their homes;

(ii) It interferes with appellants freedom of movement;

(iii) Its wording is vague and thus incompetent in law as it amounts to a general and imprecise decree to act lawfully.

Does the interdict amount to an eviction order?

[11] The central argument raised by Ms de Vos on behalf of appellants was that the order prevented the second to further appellants from being within 800 meters of the entrance of the first respondent's farm for purposes other than complying with their contracts of employment or picketing in accordance with

the picketing rules. In her view, the interdict was in effect an eviction order, given that the second to further respondents resided on the farm as part of the terms and conditions of their employment and the order prevented them from free access to their homes.

[12] It was admitted on the papers by Mr Rawbone-Viljoen that the individual employees resided in hostel accommodation which was located on the first respondent's farm. It is therefore difficult to follow the argument of Mr Stelzner ,on behalf of the respondents, that all that was required from the appellants was that they should have accepted a tender from respondents to offer changes to the proposed component of the order which may have affected their right to enter and exist their homes. If it is correct, as it must be given the affidavit deposed to by Mr Rawbone-Viljoen that the individual employees reside on the farm, then it follows that both paragraphs 1.3 (e) and (f) of the order which was granted represent obstacles to their free and fair access to their own accommodation. The order is clear: individual appellants can only attend at the premises of first respondent for the purposes of presenting themselves for the execution of their duties in accordance with their contracts of employment' (para 1.3 (e)) and they are prohibited from being within 800 metres of the premises of any entrance to the premises for purposes other than presenting themselves for the execution of their duties in accordance with their contract of employment (para1.3 (f)). Whatever tender may have been made, these paragraphs remain in the order of the court a quo.

[13] Mr Stelzner argued that the appellants had never raised the issue of eviction expressly in their papers before the court a quo. This submission raises the question as to whether the order constituted a form of eviction, at least by implication which on and of itself would suffice to make out a case in favour of appellants .This precise issue was canvassed by the Constitutional Court in *Zulu and others v eThekwini Municipality and others* 2014 (4) SA 590 (CC) (*Zulu*). Dealing with an impugned order which authorised the municipality to 'take all reasonable steps to prevent any persons from ,inter alia, occupying

the Lamontville property which was the subject matter of the order, Zondo J (as he then was) said at para 24:

> 'There is nothing in that part of the order to suggest that the occupation of the property that was to be prevented did not include continuing occupation that it commenced prior to the granting of the order. Indeed, the order seems wide enough to include the prevention of the continuation of such occupation. That means that in terms of that part of the order the appellants could be prevented from continuing to occupy the Lamontville Property.'

Significantly, Zondo J then went on to say at para 25:

> 'Preventing the appellants from continuing to occupy the property would amount to their eviction because they would be precluded from either returning to their homes after a temporary absence or because they would be kicked out of their homes to prevent them from continuing to occupy the property. This means that, to this extent, that part of the interim order is an eviction order.'

[14] That is precisely what the effect of the impugned section of the order granted by the court a quo implicated; it trenched upon the rights of the individual employees to enjoy peaceful access and egress from their domestic residences. The fact that counsel for the respondents might have invited the court *a quo* to add any qualification as the court may have considered necessary to make it absolutely clear that the order was not intended to infringe on the individual appellants right of accommodation under their contracts of employment is of no moment. It is a qualification that had to have been inserted into the express wording of the order so granted if it was not to fall foul of the dictum set out in *Zulu supra* by Zondo J.

[15] This point is reinforced by the following observation contained in para 20 of the judgment in*Zulu*:

> 'It was clearly not the intention of the respondents or indeed of the [MEC] to secure the eviction of the [appellants] or the persons who were already in

occupation at any of the properties including the Lamontville Property through the order.'

This observation however did not prevent the conclusion of court to which I have already made reference.

[16] Although the appellants also contended that the order restricted their freedom of movement, this argument was also targeted against para 1.3 (f) of the order which I have already addressed and which, in my view, falls foul of the approach set out by the Constitutional Court set out in *Zulu, supra*.

[17] I turn, therefore, to deal with the argument concerning the link between the individuals to whom the order is addressed, and the conduct complained of by the respondents. It will become apparent that this particular issue is linked to an evaluation of the argument concerning the precise nature of unlawful conduct as raised by the appellants

The link between individuals and the impugned conduct

[18] The court *a quo* rejected the requirement of establishing a link between the individuals who were interdicted and the impugned conduct. In this the court *a quo* adopted the view that the respondents' failure to identify the individual employees in relation to specified unlawful acts in breach with the picketing rules did not render interdictory relief incompetent. It did so for the following reason:

'The applicants have set out a number of incidents relating to breach of the Picketing Rules in their founding papers including intimidation of non-striking employees, the failure to keep to the picketing area, the wearing of balaclavas in contravention of the said Rules and an attempt by the picketers to force their way through the first applicant's main entrance. They have also provided photographs of some of these incidents.'

[19] Ms de Vos contended that the respondents had used an impermissible approach by assuming that all the people who were protesting had committed

unlawful acts. In her view, respondents had tarred everyone with the same brush and assumed that all members of the first appellant had behaved in the same fashion. It appears that initially relief was sought against a broad category of people. Upon the rule nisi having being granted a number of employees desisted with strike action. Thereafter, the first respondent sought relief against only against those people who persisted with the strike. The lists of names attached to a supplementary affidavit consisted of those individuals who persisted with their strike action after the rule nisi had been granted.

[20] Ms de Vos contended that the list of employees who were interdicted was not equivalent to a list of people who might have engaged in unlawful acts. Indeed the first respondent conceded that it could not identify each individual who may have committed an unlawful act. All that Mr Rawbone-Viljoen could state in his affidavit was that both members of this group ('and the various individual respondents whose names are listed annexures A and B') were present at the scene where the various acts of violence had been committed and thus breaches of the picketing rules occurred. These individuals would have been aware of the conduct of those around them. Hence, at the very least, they then had supported the conduct of their co-workers. For this reason, these individuals had intended to make common cause with those who actually perpetrated the offences, and they thereby manifested common purpose with the perpetrators by themselves performing some act of association 'with the conduct of the others by being part of the group and intended to support them in their conduct.'

[21] Ms de Vos contended that no evidential basis had been provided by the respondents for this allegation of common purpose. There was no evidence as to who had acted in association or with whom they had acted. In short, there was no act of association pleaded to justify the order so granted.

[22] In support of her argument, Ms de Vos referred to the judgment in *Rhodes University v Student Representative Council of Rhodes University and others* (*Concerned Staff at Rhodes University as Interveners*) [2017] 1 All SA 617 (ECG) (*Rhodes).* In this case, the court dealt with the question of interdictory relief sought against students of the university engaging in unlawful activities on the applicant's campus and those persons engaging in or associating themselves with unlawful activities on the applicant's campus. The question arose as to whether certain of the respondents to whom order would apply would be subjected to 'an impossible standard (that they) were not to be tainted by unlawfulness simply because they are part of the crowd which acted unlawfully.' (para 55) In this the court made reference to *South African Transport and Allied Workers Union v Garvas and others* 2013 (1) SA 83 (CC) at para 53:

> 'Nothing said thus far detracts from the requirement that the right in s 17 must be exercised peacefully. And it is important to emphasise that it is the holders of the right who must assemble and demonstrate peacefully. It is only when they have no intention of acting peacefully that they lose the constitutional protection.'

[23] Significantly, the court in R*hodes*, considered that the assertions of certain of the respondents 'that they had done nothing wrong' was disingenuous in that 'there was no expression of contrition or undertaking not to engage in such activities in the future. Of course they were at all times entitled to exercise their freedom of expression, protest, picket and demonstrate lawfully in the limits of s 17. I must accept that but for granting of the interim interdict however chilling that may have been and even if this was impermissibly beyond that which ought to have been granted without some interdict even of lesser breadth, it is possible that their unlawful activity would have continued.' (para 93) In *Rhodes*, the court was faced with affidavits from certain of the students to whom the order applied denying that they had acted illegally. The fact that the court found that there had been no expression of contrition or

any undertaking not to engage in such activities in the future was considered to be fatal to their defence together with the fact that but for the relief the unlawful activity would have continued.

[24] Ms de Vos also relied on the judgment of Wallis JA in *Hotz and others v University of Cape Town* 2017 (2) SA 485 (SCA) (*Hotz*.). This judgment does concern the question of the breadth of an interdictory order that may be granted. In *Hotz*, Wallis JA concluded that the University was entitled to a final interdict. However the one granted by the court *a quo* was too broad in that it infringed upon the appellants right to freedom of movement as guaranteed in s 21 (1) of the Constitution of the Republic of South Africa, 1996. It also restricted their right to exercise the right to freedom of association with others who shared their view of problems encountered in universities in South Africa. It also constituted a substantial intervention in their social lives. See paras 79 – 80. For these reasons, the order of the court *a quo* was altered by way of a significant narrowing of its wording and hence scope. OF added significance about the judgment in *Hotz* to the present dispute is the rejection by the court of the argument that the university was not entitled to a final interdict. In particular, Wallis JA said:

> 'Given the vehemence with which the appellants expressed their complaints against the university and its management it was probable that they would have continued their protests and the actions related to it if able to do so … In the absence of any undertaking from the appellants not to repeat the conduct described above, the university had a reasonable apprehension that unless an interdict was granted the students would continue with conduct of the same type in breach of its rights.' (para 75)

[25] In summary, neither the judgment in *Hotz* nor in *Rhodes* supports the argument raised on behalf of appellants, namely that it was impermissible to grant an order against the various individual employees, notwithstanding that some of them may not have comported themselves illegally.

[26] Mr Stelzner on behalf of respondents referred to the replying affidavit of Mr Rawbone-Viljoen in which it was stated that 'respondents cannot identify these individuals other than on the basis of their past action and threatened future actions. They are not employees of either of the applicants and are not known by name are any of the applicants' representatives in this application. They are however readily identifiable both with individuals and in a group with reference to their actions to describe on the body of the affidavit and in the order.'

[27] Mr Stelzner submitted that this paragraph referred to a third category of appellants against whom an order was originally sought but in respect of which respondents abandoned their relief at the time the final order was sought. In other words, this paragraph did not refer to any employees but to an unidentified group to whom the respondents were unable to identify.

[28] There is a further concern based on principle rather than on a particular factual matrix. None of the judgments relied upon by the appellants, in particular neither that of *Hotz*, *Rhodes* or *Garvas* dealt with the situation of illegal picketing in circumstances where an employer was unable to identity some of the picketers even where the entire group of protestors were employees and from which group some had acted illegally. On the- evidence, in this case,the first respondent was able to name certain individuals who participated in what it considered to be unlawful acts together with a further group of unnamed but clearly unidentifiable individuals. The case made out by respondents was that the acts complained of would continue unless an order was granted. To insist in the fraught context of an industrial relations dispute that an employer can only gain relief against those employees which it can specifically name from a group which was involved in unlawful activity is surely a bridge too far in that it could render an employer, in significant part remediless, notwithstanding a clear apprehension of harm.

[29] In addition, the order as Mr Stelzner correctly pointed out would serve only as a starting point. If there was a contempt application brought on the basis of conduct in breach of the order so granted, it would have to be shown with greater precision that a specified individual had the necessary *mens rea* to breach the order of court. In short, a bystander who had not breached the picketing rules would have nothing to fear from an order being so granted in that he or her conduct would not have been in breach of the order. No illegal act had been perpetrated by such a person. To be in contempt, it would also have to be shown that the respondent had knowledge of the order and its contents. See the instructive judgment in this connection in *Matjhabeng Local Municipality v Eskom Holdings Limited and others* 2017 (11) BCLR 1408 (CC). In addition, the names set out in annexures A and B are examined, it was possible for certain of the employees so affected by the order, if they so wished, to have provided an undertaking that they would not participate in any further illegal activity and have shown some requisite contrition of a kind which was set out in both the *Rhodes* and *Hotz* judgments. In short, once the third category had been removed from the order, to this extent the order granted by the court a quo was competent.

[30] There is however a further issue which requires examination and that is whether an order dealing with breaches of picketing rules is competent without any initial recourse to CCMA

The proper approach to disputes regarding compliance with picketing rules

[31] Ms de Vos contended that the court *a quo* did not have jurisdiction to consider whether the picketing rules, in this case, had been breached without this issue having been referred initially to the CCMA. In short, she contended that, if the respondents sought an order directing the appellants to comply with the picketing rules, it had to ensure compliance with s 69 (12) (*a*) of the LRA which empowers a court to direct any party to comply with the picketing agreement or rule after the matter has been referred to the CCMA and it has

failed to resolve the dispute. See s 69 (11) of the LRA. In short, the submission was that the court *a quo* did not have jurisdiction until such time as the dispute regarding compliance with the picketing rules had been referred to the CCMA in terms of s 69 (8) which provides:

> '(8) Any party to a dispute about any of the following issues, including a person contemplated in subsection (6) (a), may refer the dispute in writing to the Commission-
>
> (a) an allegation that the effective use of the right to picket is being undermined;
>
> (b) an alleged material contravention of subsection (1) or (2);
>
> (c) an alleged material breach of a collective agreement or an agreement contemplated in subsection (4); or
>
> (d) an alleged material breach of a picketing rule determined in terms of subsection (5).'

[32] The only authority cited by the respondents as a counter to this submission was a judgment of Landman J in *Lomati Mill Barberton (A Division of Sappi Timber Industries) v PPWAWU and others* [1997] 4 BLLR 415 (LC) at 417 (*Lomati)*. In *Lomati*, the court was approached as a matter of urgency to resolve dispute which had arisen in regard to picketing rules. Although the court referred to s 69 of the LRA, Landman J, because of the urgency of the matter, effectively condoned the absence of conciliation by relying on s 157 (4) of the LRA in order to assume jurisdiction and thereby grant urgent relief. But s 157 (4) of the LRA headed 'Jurisdiction of the Labour Court,' is no authority for the proposition that it should override the express wording of s 69. Section 157 (4) (a) provides that the Labour Court may refuse to determine any dispute other than an appeal or review before the court, if the court is not satisfied that an attempt was made to resolve the dispute through conciliation. No reason was offered in the judgment in *Lomati* or by Mr

Stelzner as to why this provision should empower the Labour Court to assume jurisdiction on some pragmatic ground of urgency, when there is a clear architecture provided by the legislature for dealing with picketing disputes.

[33] This is made clear by the wording of s 69. In particular, s 69 (10) is couched in peremptory language; that is the Commissioner 'must attempt to resolve the dispute through conciliation'. In turn, this implies that in order for the Labour Court to have jurisdiction to determine a dispute under s 69 (8) of the LRA, the dispute must be conciliated by the CCMA. By attempting to assume jurisdiction on a rather vague ground of equity, the approach adopted in *Lomati* ignores the very express provision concerning the function of the conciliation process in the case of picketing disputes, in particular that set out in sections 69 (8) – (10) of the LRA.

[34] In my view, s 69 (10) constitutes a requisite for the preLabour Court to assume jurisdiction. Section 157 (4) presupposes that a court has jurisdiction to determine the dispute but then refuses to do so for various reasons.There is nothing in this section that provides the Labour Court with the power to condone the fact that it does not have jurisdiction in terms of s 69 in the first place nor is there any express provision that a court can ignore the carefully calibrated conciliation process. In summary, the approach taken in *Lomati* is incorrect and should not be followed in future. This finding has implication for parts of the order which was granted by the court *a quo;* that is those parts of the order which relate to allegations that the picketing rules had been breached. These allegations, on the basis of the reasoning adopted above, should have been referred to the CCMA for resolution.

Conclusion

[35] In the result, there are a number of components of the order granted on 21 June 2019 that have to be set aside. In particular paragraphs 1.3 (b) and (c) of the order which concern alleged breaches of the Picketing Rules together

with paras 1.3 (e) and 1.3 (f) which have been found to be in effect to have been an eviction order.

[36] There was a cross-appeal lodged by respondents regarding the failure of the court a quo to make a cost order in favour of the respondents. In the light of the approach adopted, the cross-appeal should fail. As the appellants should have been materially successful in this appeal, costs should follow the result. As the respondents should only have met with limited success before the court a quo, no order as to costs pursuant to that application should be granted.

The order

[37] For all of the reasons set out the following order is granted.

1. The appeal against the order of the Labour Court of 21 June 2019 is to the extent set out is upheld with costs.

2. The order of the Labour Court is set aside and replaced with the following order:

2.1 The second and further respondents whose names are set out in Annexure "A1" and "B1" attached to this judgment are interdicted from participating in any unlawful or criminal acts in support of furtherance of their protected strike;

2.2 The first respondent is directed to call upon the individual respondents to desist from unlawful and/or criminal acts in support or furtherance of their protected strike.

2.3 The second to further respondents are interdicted and restrained from:-

(a) Intimidation, harassing, assaulting:

(i) any employee of the first and/or second applicants whether such employee is employed on a temporary, casual, fixed term, fixed purpose or permanent basis; or

(ii) any other persons involved in or connected with the conduct of the first applicant's operations or the business of the second applicant at Oak Valley Farm, Grabouw ("the farm"), and/or

(iii) any customers of, visitors to, supplies and other business associates of the first applicant wishing to visit the farm or do business with or support the first applicant at the farm;

(b) From in any way unlawfully interfering with or obstructing the normal operations of the first applicant's business at the farm and on the premises;

(c) Prohibiting the individual respondents from damaging any property of the first or second applicants;

(d) prohibiting the individual respondents from setting fire or attempting to set fire to any property of the first applicant;

2.4 The first respondent is interdicted and restrained from instigating, inciting the second to further respondents in engaging, inciting or instigating in any unlawful conduct;

2.5 The first respondent is directed to call on its members, including the individual respondents to desist from unlawful conduct as set out above and comply with the agreed Picketing Rules and the terms of this order;

2.6 There is no order as to costs.

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Davis JA

Phatshoane ADJP and Murphy AJA concur.

APPEARANCES:

FOR THE APPELLANTS:	Seri Law Clinic
FOR THE RESPONDENTS:	Basson Blackburn Inc