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IN THE LABOUR COURT OF SOUTH
AFRICA HELD AT CAPE TOWN

CASE NO: **2025-061014**

In the matter between:

Boomerang Fruits (Pty) Ltd

Plaintiff / Applicant

and

**uMkhonto weSiswe, Employees Listed
In Annexure A**

Defendant / Respondent

JUDGMENT

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Cape Town**



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THE LABOUR COURT OF SOUTH AFRICA,

HELD AT CAPE TOWN

CASE NO: 2025-061014



In the matter between:

BOOMERANG FRUITS (PTY) LTD

Applicant

and

UMKHONTO WESIZWE

1st Respondent

EMPLOYEES LISTED IN ANNEXURE "A"

TO THE NOTICE OF MOTION

2ND and Further Respondents

Heard: 30 May 2025 and 20 June 2025

Delivered: 16 July 2025

Summary: (Unprotected strike action – final interdict – interim rule partly confirmed – Political party acting in representative capacity – actions not merely advisory – Party not instigating strike but supporting strike by participating in demonstration by strikers, representing strikers in mediation of strike demands, objecting to employer representation, insulting management representative, issuing media vilifying the employer during the strike publicly condemning – final order justified in absence of evidence that demands of strikers resolved – order against political party modified in absence of evidence it instigated strike – Costs – both sets of respondents equally responsible for postponement of hearing on return day – attorney for individual respondents failing to confirm authority to appear and withdrawing, warranting consideration of punitive cost award – political party partially liable for remaining costs of application

JUDGMENT

LAGRANGE, J

Introduction

[1] This application is to confirm an urgent rule *nisi* issued on 7 May 2025. The salient part of the interim order read:

- “1. Condonation is granted to the Applicant for non-compliance with the forms, service and time periods prescribed in terms of the Rules of the Labour Court, that same be dispensed with, and that this application be heard and finalised as an urgent application as contemplated in Rule 35, as read with Rule 38 of the Rules of the Labour Court.
2. Condonation is granted to the Applicant for non-compliance with Section 68(2) of the LRA, if necessary, and that bringing this application in a shorter period be permitted, insofar as it may be deemed necessary.
3. A rule *nisi* is issued calling upon the Respondents to appear and show cause on 30 May 2025 why a final Order should not be granted on the same terms as those set out in paragraph 4 below; and
4. Pending the return date, paragraphs 4.1 to 4.5 below, shall operate as an interim Order with immediate effect:
 - 4.1 An order declaring that the strike action by the Second to Further Respondents is unprotected and unlawful, as contemplated in Section 64(1)(a) read with Section 68(1) of the LRA.
 - 4.2 Interdicting the First Respondent from encouraging, participating in, or promoting the unprotected strike in any manner whatsoever.
 - 4.3 Interdicting and Restraining the Second to Further Respondents from encouraging,



participating in, or promoting the unprotected strike.

4.4 Interdicting and restraining the First and Second to Further Respondents from engaging in any actions of threats and intimidation of fellow employees and management of Boomerang and interfering with the Applicant's business operations in any manner.

- 5. Any party affected hereby may anticipate the return date on 48 hours' notice to all other parties.*
- 6. The costs of the application are reserved for determination on return date."*



- [2] The first respondent ('MKP' or 'the party') opposed the interim relief and opposes the confirmation of paragraphs 4.2 and 4.4 of the rule and any award of costs. The second and further respondents ("the individual respondents") did not oppose the interim relief but on the first return day on 30 May 2025, a number of them and an attorney, Mr G de Bruyn, of Gordon de Bruyn Attorneys, who claimed to represent them, appeared in court to resist an order of final relief being made.
- [3] However, the matter could not proceed because De Bruyn Attorneys had not yet been able to take proper instructions from their clients and was not in a position to file answering affidavits. Secondly, the first respondents only filed their supplementary answering affidavit the previous day, leaving insufficient time for the applicant ('Boomerang') to respond. Accordingly, the matter was postponed by agreement until 20 June 2025, with costs being reserved.
- [4] The individual respondents were required to serve any answering affidavits by 9 June 2025 but did not do so. A couple of days later, De Bruyn attorneys filed a notice of withdrawal. The applicant advised that it would still seek a cost award against the attorney and their clients, given the fact that they were granted a postponement in order to file answering affidavits.
- [5] Consequently, when the postponed hearing resumed on 20 June 2025, the individual respondents were not represented. Further, none of the individual

respondents were in attendance either. Accordingly, the only affidavits before the court were those filed by Boomerang and MKP.

Brief chronology

- [6] Boomerang is an agricultural business engaged in growing, packing and exporting deciduous fruit in Elgin. All the pertinent events transpired in April and May 2025. MKP is a registered political party.
- [7] On Friday 25 April 2025, Boomerang failed to pay 3 hours overtime to approximately 35 packhouse staff at the correct hourly rate. The incorrect payments involved were between R 120 to R 176 per person. This problem came to management's attention around 17h00 and the packhouse manager addressed staff on the staff bus advised them it would be rectified.
- [8] Nevertheless, the following day, Saturday 26 April 2025, no employees came to work, and Boomerang received information that some staff had prevented the arranged transport from collecting workers for work. There was also a picket held by some employees in Elgin.
- [9] A manager, Mr S Ganya (Ganya'), spoke to some of the picketers to try and ascertain why they were not at work. He was informed by one of the employees, Ms N Nmbanjwata, that they were "*striking for the MKP union*" due to the unpaid wages. Ganya was also given the contact details of Mr A Gana ('Gana'), whom MKP described in the answering affidavit as its 'local community representative' and elsewhere as a local councillor.
- [10] The party claimed several employees had approached Gana on 25 April complaining about Boomerang's failure to promptly resolve their wage issues and about inhumane treatment. He advised them to "*follow the relevant procedures including approaching the police*", as that was the customary way of addressing withheld salaries in that area. Gana claims the police contacted certain unnamed representatives of Boomerang, who refused to attend a meeting to resolve the matter, and this prompted employees to refuse to report for work the following day.
- [11] However, Boomerang denies the police contacted any member of Boomerang's management about any complaint over unpaid wages and



stated that involving the police was not the normal method of resolving such issues in the area. It also argued it was highly improbable that the police would even have attempted on Friday evening to set up a meeting.

- [12] MKP claimed to have tried to calm employees down and de-escalate the matter, even advising them to return to work, but to no avail. MKP denies organising the picket and claimed it merely engaged in an advisory role. On Sunday, 27 April, Ganya alleges that Gana contacted spoke to him and advised him that MKP's labour desk was representing the employees. MKP admits that Gana spoke to Ganya explaining that the workers had several matters they wanted to address. MKP does not state in what capacity Gana "reached out" to Ganya. Nonetheless, it stated that its labour desk "was established to serve the local community and provide them with guidance. Many of the community members are subject to unbearable working conditions and do not have access to legal representation. However the MKP's labour desk is not a trade union and does [not] purport to be a registered trade union." Boomerang claimed it was unable to access to staff at that stage, which it attributed to MKP's activity, but the latter denies preventing Boomerang from engaging with its employees.



- [13] Boomerang claimed that Gana was insisting on a meeting with MKP because it was representing the employees, but it was advised by a local Democratic Alliance representative against attending such a meeting, because MKP is a political party, which was not supposed to be involved in employment related issues. Gana denies he insisted on a meeting with management. Nevertheless, it is common cause that Boomerang agreed to meet with MKP and up to ten employees at a hotel the following day. Boomerang claims it did so to try and resolve matters as soon as possible, despite being contrary to the advice it was given.
- [14] Boomerang closed the packing facility on 28 April, after it was informed that some staff have been told to disembark from transport to work that day. That morning senior management had ascertained what the overtime payment problem was and, believing it to have been a relatively minor pay discrepancy, surmised that there was more underlying the employees' actions, in which it suspected MKP was playing a role. MKP said it had

received a list of grievances from employees which included wage issues, but denies it had any interest in pursuing its own agenda.

[15] After workers failed to report for work, Boomerang then decided to follow the previous advice it had been given and cancelled the meeting that was to have taken place at the hotel that morning. It informed Gana around 09h10 that it had decided to cancel the meeting after obtaining legal advice. This allegation is specifically admitted by MKP even though elsewhere in the answering affidavit it claims Gana was only informed of the cancellation after the meeting was due to begin.

[16] In any event, Boomerang acknowledged the cancellation of the meeting led to a chaotic situation developing. Taxis arrived at the hotel venue and staff commenced picketing at the farm stall adjacent to the hotel. Traffic on the N2 national highway was disrupted and the police were called and became involved. Police then escorted a convoy of picketers to Boomerang's premises, which were closed owing to its earlier decision to close the packing facility. Packing staff and MKP staff or members comprising a group of about 40 people gathered at the farm gates. More taxis arrived with MKP members and other employees raising the size of the gathering to around 100 persons. Western Cape Policing Forum ('the police forum') members and SAPS public order policing service members were also in attendance. After advice from the policing forum members, Boomerang agreed to meet with MKP members and employees who were picketing. None of these events are contested.

[17] When management and the police forum representatives approached the gathering, Boomerang alleges that allegations were shouted by MKP members who were trying to incite the crowd. One slogan called for the farm to be burnt. The policing forum members managed to take control of the situation and then employees gave a handwritten letter of demands to management. Boomerang characterises these as largely work-related complaints which it believed could be resolved. MKP does not dispute this account of events. The handwritten list submitted appeared to be a mixture of grievances and proposals or demands. Amongst the discernible concerns raised in the handwritten list were overtime, holidays, change in working



hours, permanent employment status, use of insulting language, clocking issues, a dismissal complaint and dress code. The examples of alleged insulting language use, though clearly demeaning, were not of an overtly racist character.

[18] It is common cause that Strachan undertook to resolve the short payments by the following day. Gana claims that workers were not satisfied because they had other issues to discuss, whereas Strachan asserts that it was agreed Boomerang would meet MKP at the police station the following day for mediation to resolve the outstanding issues.

[19] Later in the day, Boomerang issued a further notice to employees, which was conveyed to them via WhatsApp requiring them to attend work on 29 April, advising also that transport would be provided for them. The same day a post appeared on MKP social media stating that Boomerang workers were on strike over abuse and exploitation, claiming that workers were forced to drink from toilets, pay for their own transport, work without being paid overtime and being subjected to racial abuse and racism.



[20] On Tuesday, 29 April 2025, some staff were allegedly at the transport pickup points but declined to get on the transport when it arrived and none of them reported for duty. Boomerang estimated it would suffer approximately R 1.5 million in losses due to not being able to fulfil an order due that day. MKP baldly denies these claims. It is true that management's evidence of what transpired at the pickup points might have been hearsay, but MKP does not claim employees did return to work that day.

[21] The same day the mediation session took place at SAPS offices, chaired by Dr. D. Williams, the chairperson of the Western Cape Police Forum ('WCPF'). At least four MKP representatives, including Gana and Ms L Gibisela ('Gibisela'), attended. MKP states that Gibisela is part of its labour desk and that no more than eight labour desk members were involved in the mediation. Boomerang's management team was accompanied by its legal representative. A police colonel and another member of the WCPF were present.

- [22] Boomerang alleged that MKP representatives objected to the presence of Boomerang's legal representative, demanding that the representative left the meeting or, alternatively, that the meeting be postponed for MKP to obtain legal representation. Boomerang claimed the MKP representatives said they were from its labour desk and that they were a union. MKP denies they claimed to be a union.
- [23] MKP baldly denies Boomerang's account of the meeting and that its representatives portrayed MKP as a union. It alleges its representatives attended solely in an advisory capacity. Beyond this, it did not give its own account of what transpired in the meeting. MKP also asserted that Gana was acting as a 'community leader' and not as an MKP representative.
- [24] While disputing that its representatives had asked Boomerang's legal representative to leave the meeting, it agreed that the legal representative did leave the meeting and that an MKP official from head office joined the meeting. It did concede that it had insulted Ganya labelling him as an illegal immigrant with a false ID and requested he should also leave the meeting. It also agrees that Gana placed the original list of handwritten demands on the table proposing that they settle three of the important issues, two of which concerned the pay queries and an issue of a tractor driver paying for alleged malicious damage to a vehicle.
- [25] Boomerang alleged its representative said they were willing to address all the issues on the handwritten list and discussion began on the first two issues, with MKP representatives speaking and preventing management from attempting to address issues. MKP denies being obstructive and also denies that two Xhosa management staff were threatened by Gibisela. It further disputes that the representatives made claims without substantiating them or that the meeting went around in circles, as alleged by Boomerang. In addition, it denies claiming that the police colonel, who was present at the mediation had a security firm which MKP said it could 'overpower' at any time. Without providing any specifics and despite conceding the insult levelled at Ganya, MKP maintains everyone present conducted the meeting cordially,



[26] Boomerang stated that it was a senior MKP member from Paarl who brought the meeting to a close allegedly because it was not dealing with the grievances, even though Mr J Strachan ('Strachan') the managing director stated he made an undertaking in the meeting to resolve the listed issues and that structures would be established to improve the handling of staff queries as well as establishing a workplace forum. He undertook that a task team would be set up to deal with the grievances and demands. Beyond a bald denial of the truth of any of these statements, MKP did not put up a version of how the meeting progressed, save to state that it ended because Boomerang did not want to address the employees' concerns. Boomerang retorted that MKP representatives raise further issues not mentioned in the handwritten list of the employees. These additional allegations are mentioned by MKP in social media posts set out below.



[27] MKP did not dispute Strachan's allegation that MKP representatives took a few of the employees to lay criminal charges against management, which later transpired to be charges of *crimen iniuria*.

[28] On the same day the mediation took place, the party issued a press statement under the heading "*MK TO LAY RACIST CHARGE AGAINST FARM OWNER*" (*sic*). The media statement invited all members of the media to attend at the Grabouw police station at 12h00 "*where charges of racism, assault, abuse and exploitation will be laid on behalf of the Boomerang fruit farm workers*" (emphasis added). It further stated that the MK party would accompany the workers to engage and lay charges against their racist employer at 10h00 by agreement with the police and that workers would air their grievances in a neutral place and charges. The media statement indicated that enquiries should be directed to Mr N Ndhlela, MKP's national spokesperson, or Gibisela who was identified as a "*Workers' Representative*". A longer press release the same day made it clear that it would be laying the charge on behalf of the Boomerang workers.

[29] In addition, MKP issued another media statement calling for an audit of labour and working conditions on farms in the Western Cape. The statement referred to the alleged inhumane treatment and racial abuse of workers by Boomerang and asserted that Strachan and his "*racist counterparts*" had

committed gross human rights violations against farmworkers. Apart from relating a number of alleged infractions of basic conditions of employment, the document alleged, amongst other things, that workers were beaten up and subject to deeply offensive racial slurs, including being referred to as 'kaffirs', which had not been mentioned in the strikers' list of grievances.

- [30] Following the mediation session, the company issued a notice to striking employees, noting that the business had been closed due to strike action on Monday and Tuesday and called on all employees to return to work the next day. Another notice was issued informing that the overtime short payments had been rectified and that Boomerang undertook to implement a more effective payment system.

- [31] On Wednesday, 30 May, farm and packing staff still did not report for duty and at that stage Boomerang decided to approach this court for urgent relief. It also notified employees that it was locking them out owing to the continuing strike. The same day, Gana sent a WhatsApp message to Boomerang, which read:

"Good day,

Guided by the resolution of our previous meeting we have scheduled a follow-up meeting for tomorrow, Thursday, 1 May 2024 at 10:00 at the Grabouw Police Station. The aim is to reach meaningful resolutions that will enable all workers to return to work on Friday, 2 May 2025.

The mediator, David Williams, has been informed of this notice and has been requested to liaise with you (the employer) to confirm your attendance.

Thank you.

Regards,

Cllr Ace"

- [32] MKP portrayed this notice as a request for a follow up mediation session which Boomerang refused to agree to.



Evaluation

Existence of a clear right

[33] There is no dispute that the individual employees embarked on an unprotected strike as there was no attempt at any stage to comply with the necessary procedures set out in section 64 [1] [a] in the Labour Relations Act, 66 of 1995 ('the LRA'). All the instructions to return to work went unheeded before the interim interdict was issued. Boomerang also gave ample notice of the interdict application. The employer was entitled to obtain the interim order bringing the unprotected strike to an end.

[34] The central issues to decide are whether the interim relief granted against the individual respondents should be confirmed and if it should include MKP and its members.



Confirmation of the rule

[35] On the return day it was common course that the strike action had been halted, and a group of the striking employees had been dismissed. There is no evidence to suggest that the substantive issues which gave rise to the strike have been resolved, except perhaps the underpayment of overtime.

[36] In *Centlec (Soc) Ltd v SA Municipal Workers Union & Others*¹, the Labour Court had to consider whether to confirm an interim order that a strike was unprotected, prohibiting the continuation of the strike and interdicting acts of intimidation. The employer abandoned the relief concerning the continuation of the strike as the strike action had been discontinued. The court reasoned that there could be no acts of intimidation which would arise in the absence of strike action continuing, so declined to confirm that prohibition². The court considered that the strike had been a stop-start affair and had dire consequences for the supply of electricity if it continued. It noted that there was no undertaking that strike action would not take place as long as the employees' demands remained unresolved. The court concluded:

¹ (2019) 40 ILJ 846 (LC)

² At paragraph 10.

“[19] It also cannot be in the interests of justice and the proper functioning of this court for parties such as the applicant to constantly approach the court simply to interdict sporadic industrial actions, and as and when they take place. In this case, the mere fact that the employees had voluntarily ceased the unprotected industrial action is cold comfort for the applicant, as in the light of the live controversy, there is no guarantee that they may not repeat the conduct in question. In my view, the apprehension of harm, prejudice or threat of prejudice in this case is not hypothetical or imagined. It has been demonstrated as real, and entitles the applicant to the relief that it seeks.”



(emphasis added)

- [37] In this matter, there was no pattern of sporadic strike action, but there is no reason to believe that employees are content with the outcome of the strike, bearing in mind that they did not resume work after the employer undertook to rectify the overtime underpayment, apparently because they had other unresolved grievances. Despite initial indications they might oppose final relief the court has no knowledge what the current attitude of the individual respondents is, in the absence of them filing any answering affidavit or making representations. Objectively speaking, there is nothing to show the outstanding issues were ever resolved and nor is there evidence of any undertakings made by the employees who returned to work about the status of their grievances. Accordingly, there is a prospect that discontented employees and supporters might encourage or promote a resumption of the strike over the unresolved demands. There is also no reasonable alternative remedy available to Boomerang to prevent the resumption of such activity other than to confirm the interim order.
- [38] In the circumstances, there is no reason not to confirm the unprotected status of the strike and to prohibit any further promotion of it by the individual respondents and recourse to threatening tactics, such as the arson threat that was made.

Relief relating to MKP

[39] The interim relief obtained against the party, which Boomerang wants confirmed is to prevent it paying an active role in furtherance or support of the presently dormant unprotected strike. It also seeks a cost order against it.

[40] MKP opposes a final order on the basis that it should never have been joined in the matter as it did not play any role in the strike action, except that of an advisor to the striking employees and attempted facilitator of a mediated solution. It argues it has no substantial interest in the matter.

[41] There is a smattering of cases where political parties or non-union organisations have become embroiled in labour disputes³. In *Calgan Lounge* the Economic Freedom Fighters party ('EFF') had organised protests and made demands on behalf of striking employees. The court found the EFF had been directly involved in, if not the instigators, in the unprotected strike action and had made no attempt to ensure compliance with the LRA. The court roundly condemned the party assuming a role reserved for trade unions under the LRA, and ordered costs against it.⁴ In *Langplaas* the EFF had taken up the concerns of striking workers and entered into the labour dispute. The court commented on this in the following terms:



“[17] I accept from the founding affidavit that the unprotected strike action was accompanied by unlawful and violent conduct, which was exacerbated by the involvement of other role players, including members of the surrounding communities and the [political party] in particular. Inasmuch as the employees were appreciative of the [political party’s] role in highlighting their concerns, it is my view that it had ultimately

³ See, e.g. *CCI SA (Pty) Ltd v African National Congress Youth League & others* (2024) 45 ILJ 969 (LAC), *Economic Freedom Fighters v Brightstone Trading 3 CC t/a Gordon Road Spar & others* (2023) 44 ILJ 2679 (LAC), *Langplaas Boerdery CC and Others v Matshini and Others* (2021) 42 ILJ 1210 (LC) (20 November 2020) and *Calgan Lounge v EFF and Others* [2019] 40 ILJ 342 (LC)

⁴ *Calgan* at paragraphs 2 and 40 to 44.

entered into a labour dispute, when it clearly had no business to do so.

[18] Being a political party, and to the extent that the EFF was of the view that it needed to assist the farmworkers, its role, in the light of the Employees being not unionised, ought to have been limited to an advisory one. This could have included referring the Employees to the DOLE, or (given the nature of the other grievances raised i.e. allegations of racism, and being compelled to attend church services) to the relevant Chapter 9 Institutions such as the South African Human Rights Commission and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.



[19] By however entering the arena, and actively participating in and/or instigating the strike and the accompanying violent conduct, the EFF made itself party to a labour dispute which it had no business with. By further advising the applicants through their attorneys of record that it would defend this application and further seek a punitive costs order against the applicants, the EFF became party to this litigation, when it should have had a limited advisory role in the dispute between the Employees and the applicants. To this end, the mere fact that it was submitted by counsel that the EFF only became involved by invitation of the Employees, or that it did not oppose this application in its name cannot in my view be sufficient to absolve it from the costs, as it had become a party by proxy.”

(emphasis added)

[42] The Labour Appeal Court cited and endorsed this approach in the CCI judgment:

“[21] ... It is well settled that the involvement of a political party in labour matters is limited to an advisory one only,

because they are not trade unions. In Langplaas Boerdery CC & others v Matshini & others (Langplaas Boerdery), one of the cases relied on by the appellant, the Labour Court ordered a political party to pay the costs of an application for an interdict for their involvement in an unprotected strike.”

(emphasis added)

[43] In *Brightstone*, an EFF branch official had demanded a meeting with management of a store concerning the demotion of an employee. When the employer did not agree LAC a meeting, he arrived at the employer's premises and demanded the revocation of the demotion. When management failed to comply with the demand, protest action ensued outside the store. The employer interdicted the action and the court ordered costs against EFF on the basis that the official and protesters misrepresented that their action was authorised by the EFF. On appeal, the LAC held that the test for demonstrating the party had authorised the conduct relying on the doctrine of ostensible authority had not been satisfied and dismissed the order against the EFF.⁵ In *CCI*, the ANC Youth League had issued a leaflet, Facebook posts and a voice note listing various workplace demands and calling for the shutdown of the employer's business. The employer obtained an interdict prohibiting the league's interference with its business. A planned march did not ensue. Later the league obtained permission from the municipality under the Regulation of Gatherings Act, 2025 of 1993 ('the RGA'), to march to the employer's premises. Similar media was issued as before. On this occasion, the Labour Court declined to interdict the march because it did not have jurisdiction as the march did not amount to a strike or protest action under the LRA, nor action in furtherance of either activity. The judgment was upheld on appeal on the same jurisdictional ground. The LAC found that:

“[26]... This is a situation where the appellant had no labour relationship with the respondents, the march was

⁵ *Brightstone* at paragraph 40.

sanctioned by the municipality in terms of the RGA (whether under false pretences or not) and none of its employees approached a political party for help nor did they agree to obstruct or retard the productivity of their work. The fact that the reason for the protest was almost exclusively about labour issues at the appellant does not automatically make it into a matter governed by the LRA. In terms of s 17 of the Constitution, any person can protest about perceived violations of labour rights, so long as it is done lawfully in terms of the RGA. Where it is employees and their union doing so, they must do so in terms of the LRA; if it is other members of the public like political parties, to the exclusion of employees, they can do so in terms of the RGA."



(emphasis added)

- [44] Unlike *Brightstone*, the court in this matter is dealing with an unprotected strike which was underway and whether MKP's activities amounted to conduct in contemplation of or furtherance of the strike.
- [45] From the papers, it is evident that MKP was involved with the immediate dispute which triggered the strike from its inception. On its own account it was contacted by employees on Friday, 25 April, when the overtime underpayment grievance originated. On its version it got police to contact Boomerang late that afternoon or early that evening, but Boomerang denied receiving any communication from the police that day.
- [46] Even if the police did not take any action that Friday, the response of the only named striking employee in the papers, Nmbanjwata, on Saturday, showed that she believed MKP was already playing a role in the strike action which began on 26 April. While that might be dismissed as uncorroborated hearsay evidence, for the purpose of proving that the party was already playing a role in the strike, it is not disputed that Ganya was given Gana's contact details by one of the employees when the strike had commenced on Saturday. It was Gana who initiated contact with Ganya the next day. It was claimed that Gana was acting in his capacity as an MKP councillor.

However, in MKP's supplementary affidavit, it stated that *"The members of the Labour Desk, including Lidna Gibisele and Mr Gana, were acting as mediators, not instigators"* (emphasis added). Gana denies he demanded to meet with management, but it is clear he took the initiative to approach Ganya and the meeting would not have been provisionally scheduled otherwise. It is noteworthy that there is no evidence the striking employees took any initiative of their own, independently of MKP, to request a meeting.

- [47] The original agreement was that Boomerang would meet a delegation comprising MKP members and employees. While MKP denies that Gana portrayed it was acting in the capacity of a union under the auspices of its labour desk, there is no evidence that MKP explained to management that it was merely playing an advisory role, as it claims in its affidavits.



- [48] At the picket outside the farm on Monday, MKP representatives were gathered with the employees. Management met with MKP representatives and employees. This is the only meeting that there was evidence of employees playing a direct role in the interactions with management, namely when their handwritten list of grievances was handed to management.
- [49] Gana was part of the group protesting outside the farm gate, and it was not denied that MKP members were vocal in shouting allegations when the management delegation arrived at the gate and that one slogan uttered encouraged that the farm should be burned. The only reasonable inference to draw is that MKP participated in the protest gathering with striking employees, which was part of the employees' strike activities.
- [50] The same day, MKP issued a statement on social media, publicising employee's motives for engaging strike action and mentioning issues not raised in the workers' handwritten demands, such as workers being forced to drink toilet water and racism. MKP's dissemination of this statement on social media is difficult to reconcile with MKP's alleged role as mere advisor. Notably, none of the briefings mention whether the strike was protected or not. Why MKP needed to issue this public statement if its role was simply advisory is not explained.

- [51] In passing, I note MKP did not advise the strikers that some of their disputes might be resolved using the enforcement remedies in the Basic Conditions of Employment Act, 75 of 1996 or the Employment Equity Act 55 of 1998, or by ending the unprotected strike and following the correct procedures for pursuing collective bargaining demands in s 64 of the LRA in respect of those matters which require collective bargaining. It is reasonable to suppose that an organisation which sets up a labour desk would be familiar with the dispute resolution channels available and would promote the use of those mechanisms.
- [52] Looking at what transpired in the mediation at the police station, there was no evidence that any of the employees present spoke on their own behalf. While acknowledging that Boomerang's legal representative did leave the mediation meeting, the party baldly denies that its delegates requested the representative's recusal or the postponement of the meeting so that it could obtain its own legal representation. However, on the papers, it is difficult to discern a plausible alternative explanation for the representative leaving, if the representative's presence had not been raised as a stumbling block to the meeting proceeding. MKP offers no explanation why the representative would have left. MKP's bald denial that it made the recusal request is inherently implausible. Challenging who may attend the mediation on Boomerang's behalf is conduct which does not chime well with the role of a self-styled advisor to the striking employees. It is the type of tactical manoeuvre more typically associated with one of the protagonists in a dispute, seeking to eliminate a perceived advantage its adversary might enjoy while conducting a negotiation.
- [53] MKP baldly denies that it assumed the role of a representative of the employees in the meeting. It asserts it did not represent itself as a trade union but fails to deal directly with Boomerang's allegation that management representatives made it clear that the labour desk was not a registered union and it was only prepared to meet with the MKP delegation as representatives of the strikers in the interest of finding a solution. It is noteworthy that MKP offers scant detail of its own version of what transpired at the meeting, preferring to rely on sweeping denials of the entire content



of detailed averments set out in the founding affidavit. For the court assessing the evidence, this raises the question whether serious disputes of fact have been raised by MKP in some of its responses, and justifies the court taking a more robust approach to some of the denials.⁶ Given the uncontested evidence that Boomerang was ambivalent from the start in dealing with MKP, and the failure to deal with Boomerang's claim that it set out the basis of its willingness to engage with MKP in the mediation, I am inclined to accept it most probably did qualify the basis of its interaction with MKP, namely that it reluctantly agreed to deal with it as a representative of the strikers and that the MKP representatives accepted this *de facto* role, even if they maintained they were not acting in that capacity.

[54] Be that as it may, after the meeting, MKP assisted some workers to lay charges against management. This step must be understood in the context of the party having publicised in advance the action it was going to take in accompanying the workers to engage and lay charges "against the racist employer" followed up with a media briefing on the charges and outcome of



⁶ See *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA). At paragraph 12 of the judgment, the court re-iterated the general principle enunciated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A), namely that "an applicant who seeks final relief on motion must, in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers". At paragraph 13 Heher JA elaborated on what constitutes genuine disputes of fact and how the court should deal with denials which do not warrant such classification: "A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say "generally" because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognize or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter." (emphasis added)

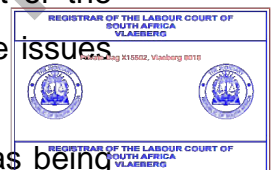
workers “*airing their grievances*”. MKP was clearly taking the initiative by this conduct and was emphasising its role in actively assisting the strikers. The press briefing in question also referred all queries only to the party’s national spokesperson and Gibisela, who was designated in the briefing as the ‘workers’ representative’. The fact that Gibisela was identified in this way is a strong indication that MKP’s labour desk was fulfilling the role of the strikers’ representative. It also makes Boomerang’s allegation that this was also how the MKP delegation portrayed itself in the mediation session more credible.

[55] Consonant with this approach to the dispute giving rise to the strike, it is not surprising that MKP could not provide details of a single concrete example of an occasion when it had encouraged strikers to return to work. Even on its own account, it never told the strikers to regularise their dispute by following the strike procedures in the LRA. Its last WhatsApp message to Boomerang on 30 May clearly reflects its view that only the resolution of the dispute would lead to workers returning to work. It speaks authoritatively of workers returning to work on 2 June 2025 if matters were resolved. This is the type of communication that would normally emanate from a union pursuing members demands while a strike continues. Once again, it supports the contention that it was acting in the capacity of a representative of the strikers.



[56] Considering the above, I am satisfied that, to all intents and purposes, MKP and its labour desk were performing the function normally performed by a trade union, without being one, irrespective of how it and its labour desk portrayed their role. The fact that the strikers were content to allow it to perform this function only strengthens the conclusion that it was not a bystander or adviser on the sidelines of the dispute. From the inception of the strike it was at the forefront of the interface between management and the strikers playing a representative role. When the picket took place outside the farm premises, its members and Gana stood with the members and played an active role in confronting the management representatives who approached the picket. It also played a major role in channelling the way in which the dispute was handled.

[57] MKP sought to persuade the court that the role it played was a constructive one of promoting mediation. It argues that nothing done in its name caused any harm to Boomerang. However, apart from acting as the *de facto* representative of the strikers, MKP simultaneously actively engaged in stimulating animosity towards Boomerang. It did so by publicising wider-ranging accusations of inhumane treatment, assault and racism on the part of Boomerang, at the very same time it was supposedly engaging in good faith with management. For present purposes it does not matter if any of these more egregious allegations were true or not. What is relevant is that these public statements were issued by the party in the context of the ongoing unprotected strike at a stage when discussions to resolve issues had only just commenced.



[58] In the last media briefing MKP vilified Boomerang and Strachan as being part of a long history of racial oppression going back to Jan Van Riebeeck. Boomerang was described as a 'colonial nest' and 'active site of colonial exploitation'. This socio-political polemic was completely absent from the striker's list of grievances and was plainly an effort by MKP to elevate the dispute to a broader political level, which complimented its call for an audit of western cape farms, mentioned previously. The tone and thrust of the media campaign was plainly antagonistic towards Boomerang and its management, and completely at odds with MKP's purported role as a mere adviser attempting to facilitate a settlement of grievances.

[59] Anyone reading MKP briefings vilifying Boomerang and its management would have been led to believe that the strike was a legitimate response to an abominable working environment and appalling employer, which deserved to be supported. Whatever other purpose these actions might have had, they were aimed at fostering public sympathy or support for the strikers and public antipathy towards the employer. I agree, other than the fact that MKP was in communication with the strikers even prior to the onset of the strike, that there is no evidence that it instigated the strike. Nonetheless, it consistently assumed the role of the representative of the strikers in pursuit of their demands, participated actively in the protest outside the farm gates and launched a media attack on Boomerang,

portraying it in villainous terms, all of which lent direct or indirect support to the strike.

- [60] It was argued by MKP that Gana was not authorised to act on its behalf and was merely acting as a trusted community leader and therefore none of the conduct he engaged in could be attributed to the party. MKP's attempt to distance itself from his actions is unconvincing. On Saturday 26 April, it was he who contacted Ndhlela for assistance with the matter. Aside from being National Chairperson of the party, Ndhlela was a member of MKP's National High Command, which Ndhlela described as "*the highest decision making body of MKP*". Ndhlela did not advise Gana to leave the matter in the hands of other members of the Labour Desk, nor is there any evidence that Ndhlela communicated directly with other member of the labour desk. After his initial communication with Gana, it was Gana who contacted Ganya who set up the initial meeting with Boomerang. He acted as part of MKP's labour desk, or in tandem with it, in the interactions with Boomerang and all the evidence points to them acting in harmony. Ndhlela himself attended the mediation, which Gana had arranged. Neither Ndhlela nor Gibisele interfered with or countermanded his interactions with Boomerang. Gana was not a maverick party member acting on a frolic of his own.
- [61] In the circumstances, Boomerang is entitled to an order confirming the interim relief granted to cover action committed in contemplation of or furtherance of the unprotected strike by MKP. The only aspect of the relief which requires modification is the order against acts of intimidation, as this was not proven on the final papers apart from an incendiary slogan being uttered during the gathering at the farm gates on 28 April. In any event as the strike is currently dormant, and the relief awarded in paragraph 4.4 of the interim order was made in the context of strike action which was still underway, it is not appropriate to confirm that relief, which might be construed as dealing with incidents arising independently of a strike being underway.⁷



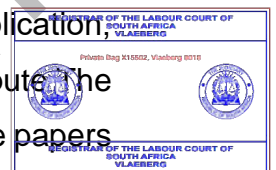
⁷ See in this regard the comments of the court in *Centlec (SOC) Ltd v South African Municipal Workers Union and Others* (2019) 40 ILJ 846 (LC) at paragraph 10.

Costs

[62] MKP argues it should not be held liable for the costs of postponing the hearing on 30 May 2025 on the basis that it had to be postponed in any event for the attorneys of the individual respondents to get proper instructions and file answering papers. That may be so, but its late filing of its supplementary answering affidavit was equally a contributing factor, which necessitated a delay. In the circumstances it should bear half the costs

[63] On the question of MKP's liability for the remaining costs of the application, a relevant factor is that MKP chose to become embroiled in the dispute. The party has failed to prove its role was merely advisory. I accept on the papers that even though it was involved in the employees' dispute even before the strike began, it has not been established that instigated the strike incited workers to embark on strike action. However, its conduct once the unprotected strike was underway entailed supporting and representing the strikers in pursuit of their demands and aggressively and publicly denigrating Boomerang and its management. In this respect, not only did it engage in the unprotected action in the capacity of a proxy union but some of its conduct was irreconcilable with the aim of constructively resolving the dispute. Rather, it was more likely to exacerbate matters.

[64] Boomerang had no option but to launch the application to curtail the action of the strikers themselves and MKP's actions in support of the strike. There is no reason why should not have to bear part of the costs of the application. In this instance, MKP was a third party intervening in the dispute and considerations of an ongoing relationship that might exist between a union or employees with an employer have no bearing on the question of costs. However, in the situation of the strikers is not the same. Ultimately, they did not oppose the final relief and given that those who were not dismissed have returned to work and are still in an employment relationship with Boomerang, I am disinclined to award costs against them based on considerations of law and fairness.

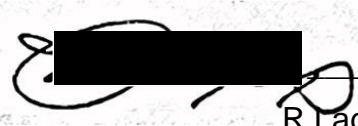


Order

Accordingly, a final order is made in the following terms:

1. It is declared that the strike action by the Second to Further Respondents which commenced on 26 April 2025 is unprotected and unlawful, as contemplated in Section 64(1)(a) read with Section 68(1) of the Labour Relations Act, 66 of 1995.
2. The First Respondent is interdicted and restrained from encouraging, participating in, or promoting the unprotected strike manner whatsoever.
3. The Second to Further Respondents are interdicted and restrained from encouraging, participating in, or promoting the unprotected strike.
4. The First Respondent must pay half the Applicant's wasted costs of the postponement on 30 May 2025, including the costs of two counsel.
5. G de Bruyn Attorneys, must show cause within 30 days of the date of this judgment why they should not be held liable for payment of half of the Applicant's wasted costs, including the costs of two counsel.
6. The First Respondent must pay half the remaining costs of the Applicant including the costs of two counsel, excluding costs of the postponement on 30 May 2025, which are dealt with in paragraphs 4 and 5 of this order.




R Lagrange

Judge of the Labour Court of South Africa.

Appearances:

For the Applicant: C De Kock assisted by D Seale instructed by
Carelse Khan Attorneys

For the 1st Respondent: BF Nothing instructed by Ndou Attorneys