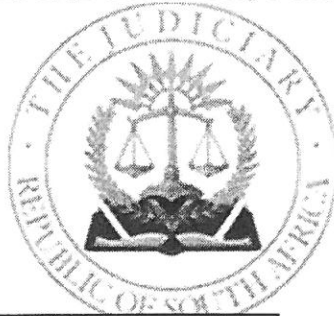


**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**



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

[Date]

**CASE NO.: 0016060/17**

In the matter between:

**THE SOUTH AFRICAN BREWERIES (PTY) LTD**

Applicant

and

**PROFESSIONAL TRANSPORT & ALLIED WORKERS  
UNION OF SA AKA PTAWU**

First Respondent

**HARRISON BALOYI**

Second Respondent

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**LEGAL SUMMARY**

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**MABESELE J**

1. The applicant has a contractual relationship with the truck owners to transport alcohol from its depots to its retail customers. The truck owners in turn employ crew members in order to fulfil their obligations. The crew members, including the second respondent, are members of the first respondent (a trade union). A labour dispute, which led to a violent strike and

damage of the applicant's property, between the truck owners and their employees arose. The applicant approached the court, seeking an interdict against the actions of the union members.

2. The court held that the applicant was entitled to interfere in a labour dispute between the union members and their employers if such a dispute resulted in a violent strike that adversely affected its business operations.
3. The court held, further, that the applicant had proved that its goods were damaged and the argument it had advanced that it incurred substantial financial costs in protecting its property was not disputed. Consequently, the order was granted as prayed for in the notice of motion. Costs were ordered against the trade union.



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO: 0016060\17**

- (1) REPORTABLE: YES / ~~NO~~  
(2) OF INTEREST TO OTHER JUDGES: YES / ~~NO~~  
(3) REVISED. ✓

12/05/2017

*Mabesele*

In the matter between:

**THE SOUTH AFRICAN BREWERIES (PTY) LTD**

Applicant

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First Respondent

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Second Respondent

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**JUDGMENT**

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**MABESELE J**

## Introduction

[1] This application came before me on an urgent basis, on 12 May 2017, for an order in the following terms:

1) Interdicting and restraining the first respondent from:

1.1 encouraging its members to interfere with, threaten, harass, intimidate, in any way to interact with employees, contractors and representatives of the applicant when marching, gathering, protesting, demonstrating or otherwise grouping in the vicinity of any of the applicant's premises set out in annexure "B02" to the founding affidavit.

1.2 encouraging or permitting its members to place placards, posters, or other signs on any of the applicant's premises set out in annexure "B02" to the founding affidavit.

1.3 encouraging its members to damage, unlawfully interfere with, or in any way to come into contact with the applicant's property, equipment or assets as well as its employees, contractors and representatives at any of the premises set out in annexure "B02" to the founding affidavit.

2. Interdicting the second respondent, individually, and/or from acting in concert with others and/or encouraging others from unlawfully interfering with the business operations of the applicant and from threatening and committing any act of violence against the applicant, its employees, representatives, including their property.

3. The first respondent to pay the costs of the application.

[2] The applicant's premises set out in annexure "B02" are the following:

Name	Region	Address
Aliwal North	CAPE	1 van der Horst, Aliwal North, 9750
Bellville	Cape	9 La Belle Rd Stikland
East London	Cape	8 Edison Street, Gately Township, East London
Knyansa	Cape	8 Boswerker Street Industrial Knyasna
Ottery	Cape	Cnr Old Strandfontein Road & new Ottery
Perseverance	Cape	47 Kohler Street, Perseverance, Port Elizabeth
Queenstown	Cape	18 Stephendson Road, Queensdustria, Queenstown
Bloemfontein	Central	320 Church Street, Hamilton, Bloemfontein
Hartswater	Central	5 Dwars Street, Phokwane 8570
Kimberley	Central	13 Ettienne Rosseau Kimustrial Kimberley 8301
Kuruman	Central	3625 Textile Street Kurdustria Kimberley 8301
Mafikeng	Central	5 2 <sup>nd</sup> Street Industrial site Mafikeng
Phuthaditjhaba	Central	Site 41, Industrial Area No1, Phuthadiitjhada
Potchefstroom	Central	25 Pietersen Street, Potchefstroom
Rustenburg	Central	20 Cobalt Street, Ext 9, Rustenburg
Upington	Central	827 Industrial road, Upington
Vereeniging	Central	Off Lager Avenue, Leeukuil, Vereeniging
Welkom	Central	135 Constanina Street, Industria , Welkom
Butterworth	East Coast	1 Tainton Rd Ibika Industrial Area
Empangeni	East Coast	13-19 Copper Drive Empangeni Rail 3880
Ladysmith	East Coast	23 Progress Road, Ladysmith
Pietermaritzburg	East Coast	9 Barnsley Road, Campdrift, Pietermaritzburg
Port Shepstone	East Coast	2 Hudson Road Marburgh Ext 81, Port Shepstone
Kokstad	East Coast	3 Hudson Road Marburgh Ext 81, Port Shepstone

Prospecton	East Coast	9-25 Jeffels Road, Propecton West
Springfield	East Coast	221 Inanda Road, Springfield
Mthatha	East Coast	11 Timber Road, Vulindlefa industrial sites, Umtata
Alrode	Egoli	2 Diens Rd Alrode
Baragwanath	Egoli	Cnr Old Potch Road & Golden Highway, Baragwanath
Chamdor	Egoli	2 Fransen Street, Chamdor
Denver	Egoli	Cnr Sandberg & Kruger Street, Denver
Isando	Egoli	Cnr Brewery & Isando Road, Isando
Wadewille	Egoli	1 Calcium Rd, Wadewille
Ga-Rankuwa	North	1 <sup>st</sup> Street, Industriak Park, Zome 15, Garankuwa
Grobblersdal	North	1 Bank Street, Grobblersdal
Nelspruit	North	3 Bosch Street, Industrial Area, Nelspruit, 1200
Polokwane	North	Cnr Kalsiet & Veldspaat Street, Magnia Via Polokwane
Standerton	North	12 Produce St, Industrial Area, Standerton, 2430
Tzaneen	North	Cnr Kalsiet & Veldspaat Str, Magnia Bia, 0700
Witbank	North	24 Newton Street, Ferrobank, Witbank, 1035
Waltloo	North	301 Kuit Street, Waltloo

[3] The applicant is the South African Breweries (PTY) LTD. The second respondent is Harrison Baloyi. He is employed by the first respondent as its representative. He appeared in person and had no mandate to represent the first respondent.

[4] The first respondent is the Professional Transport and Allied Workers Union of South Africa. It did not appear in court, despite receiving papers.

[5] Initially the applicant and the second respondent were of the view that the application be postponed to the ordinary opposed motion court subject to the draft order prepared by them being made an interim order of the court, pending the hearing of the application in that court.

[6] Before the draft order was made an order of the court the second respondent raised a concern with regard to certain contents therein, thereby resulting in the draft order being abandoned by both parties and the application proceeding.

### **Point in Limine**

[7] The second respondent raised a point *in limine*, contesting the jurisdiction of this Court to entertain the application. His contention was that the Labour Court had an exclusive jurisdiction over this matter because it concerns the strike by the employees. In this regard, reliance was sought on the provision of section 68(1) of the Labour Relations Act<sup>1</sup>.

Section 68(1) provides that:

*“In the case of any strike or lock-out, or any conduct in contemplation or in furtherance of a strike or lock-out, that does not comply with provisions of this chapter, the Labour Court has exclusive jurisdiction-*

*a) To grant an interdict or order to restrain-*

- I. Any person from participating in a strike or any conduct in contemplation or in furtherance of a strike, or*
- II. Any person from participating in a lock-out or any conduct in contemplation or in furtherance of a lock-out;*

*b) .....”*

[8] In contrast, the applicant's counsel argued that the application was aimed at protecting the applicant's property against damage by the employees of the truck owners and to prevent financial loss in the business. He submitted that the application has nothing to do with the strike to compel the truck owners to meet the demands of their employees. I agreed. As a result, I dismissed the point in *limine*.

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<sup>1</sup> 66 of 1995

[9] After both the parties had argued the merits at length, I granted the order in terms of the prayers in the notice of motion.

[10] I wish to express my gratitude to both the applicant's counsel, assisted by his instructing attorneys, and the second respondent, supported by his fellow employees, for the commitment which they have shown in this matter. I am, without doubt, gratified by the mutual respect shown by both the parties.

[11] The written reasons for the order granted are now furnished.

### **Background**

[12] The applicant is South Africa's premier brewer and leading distributors of beer. It operates seven breweries and forty depots in the country with an annual brewing capacity of 3.1 billion litres. Its portfolio of beer brands meets the needs of a wide range of consumers. All this beer is transported to the consumers.

[13] There is a primary distribution chain in which the beer is conveyed from each brewery to various depots around the country. Therefore beer is conveyed from depots to retail outlets, being the secondary distribution chain.

[14] As a replacement for the applicant distributing its product itself, it has engaged drivers which it previously employed to own and operate their own trucks to distribute the applicant's product as the secondary system. This is the beer distributed from the applicant's depots to the retail outlets.

[15] The truck owners run separate business to that of the applicant where they, *inter alia*, employ staff, consultants and the crew. The crew are members of the first respondent.



[16] Any complaints which the crew have with their terms of employment ought to be taken up with the truck owners who had employed them.

**The events giving rise to this application.**

[17] On 25 April 2017, the members of the first respondent demanded that the truck owners employ a fourth crew member, in addition to the usual three. These demands were not fulfilled. Subsequently, the first respondent caused its members to go on strike, which affected the business of the applicant as it could not get its product to market, timeously.

[18] On the same date the following events transpired:

A meeting was held between the applicant, representatives of the truck owners and the second respondent, ostensibly representing the first respondent and the striking crew members. Various issues were discussed at that meeting but no resolution was reached.

[19] On 3 May 2017, one of the truck owners was attacked at a place called Mashinini whilst making deliveries. A group of the striking crew members vandalised the truck and threw beer bottles off the truck. Similar incident occurred on 5 May 2017 when the striking members of the first respondent stoned the truck in Soweto and took beer off the truck<sup>2</sup>.

[20] On the same day the applicant received a text message<sup>3</sup> from the second respondent, stating the following:

*“Urgent general meeting at Baragwanath sab depot. I need all the crews to attend. It is clear that the owner driver must fall.....”*

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<sup>2</sup> Photographs showing the damage to the truck and beer are annexed to the papers and marked “B028”

<sup>3</sup> A screen shot of this message is annexed to the papers and marked “B030”

[21] In light of the threatening tone of the text message referred to above, the attorneys of the applicant sent an email<sup>4</sup> to the first and second respondents, reminding them of the written undertaking which they took on 13 May 2016, to prevent any interference to the applicant's business. Neither the first respondent nor the second respondent responded to the email.

[22] On 9 May 2017, a further meeting was held between the applicant, representative of the truck owners and the second respondent. The purpose of that meeting was to attempt to resolve the issues between the parties. The first respondent remained steadfast in its demand that the truck owners employ a further crew member. The first respondent made a further demand that all criminal charges laid against its members in respect of the conduct referred to above be withdrawn and that the truck owners should undertake not to institute disciplinary proceedings against their crew members who had been engaged in an unlawful strike. These demands were not acceded to, thus, resulting in the meeting ending without a resolution being reached.

[23] Subsequent to the meeting, the applicant received an email from the second respondent, stating the following:

*"Hi*

*I would like to take this opportunity to thank SAB to facilitate the meeting with Bara OD and the Union however, the meeting hasn't bear any fruitful solution to the ongoing strike for the passed week. After parties failed to rich the concerns on a compromised position on 2 issues as the trade union we are left with no option but to call for Gauteng stay away in all depots in support of members at Baragwanath depot. We therefore hereby giving a 74 hours' notice to sab since well is going to affect the normal business operations as a result....."*

### **Issues to be decided**

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<sup>4</sup> A copy is annexed to the papers and marked "B031"

[24] The dispute was between the truck owners and their employees. It concerned employment of additional employee and withdrawal of criminal charges laid against the employees as well as the undertaking by the truck owners not to institute disciplinary proceedings against the employees.

[25] The question was whether the applicant was entitled to interfere in a labour dispute between the members of the first respondent and their employers if such a dispute resulted in a violent strike or protest which affected, adversely, the business operations of the applicant; and, if so, whether the applicant had made out a case for the relief which it had sought.

### **Applicant's case**

[26] It was argued on behalf of the applicant that the members of the first respondent deliberately interfered with the business operations of the applicant by damaging its product whilst carried by the truck owners for delivery to its customers, thereby causing financial loss in the business. It was argued further that due to ongoing damage to the applicant's product, the applicant was forced to employ a private security firm to escort the owner drivers when delivering its product to the customers and had incurred substantial financial costs. A further argument was that the contents of the email sent to the applicant by the second respondent demonstrated, clearly, the intentions of the members of the first respondent to cause financial loss in the business of the applicant.

### **Second respondent's case**

[27] The second respondent argued, in his papers, that the dispute concerns the crew and the truck owners and that the applicant had no right, as a third party, to interfere and act on behalf of the truck owners. He argued that the truck owners are the only ones to approach the Court for the protection of their trucks against damage by their employees. A further argument raised was that the incidents relating to damage to

property occurred outside the workplace and that the applicant's product were not damaged. His response to the email marked "B043", which he forwarded to the applicant, was that he was merely informing the applicant of a possible strike by the crew members which could escalate to other premises of the applicant. He did not consider that email as a threat to the applicant. He denied that any of their members damaged the property of the applicant.

## The Law

The Constitution<sup>5</sup> empowers the trade unions to demonstrate and strike.

Section 17 states:

- (1) 'Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions'

Section 23 states:

- ' (1) Everyone has the right to fair labour practices.  
 (2) Every worker has the right-  
 (a) To form and join a trade union;  
 (b) To participate in the activities and programmes of a trade union; and to strike....'

[28] Section 23(2) (b) read with section 17, to my understanding, provides for a peaceful strike or protest. The reason, *inter alia*, is to protect the rights which are provided in section 12(1) (c)<sup>6</sup> of the Constitution and to ensure that the public and private property is not damaged or destroyed<sup>7</sup> by those participating in the strike.

<sup>5</sup> The Constitution of the Republic of South Africa, 1996

<sup>6</sup> Section 12(1) (c) makes provision for the right to be free from all forms of violence from either the public or private source.

<sup>7</sup> See section 11(1) of the Regulation of Gatherings Act, 205 of 1993 which provides that, where an organization holds a gathering that results in riot damage, the organization will be liable for damage. See, also, Section 25 (1)

[29] In *Garvis V SATAWU*<sup>8</sup> the Court found merit on the plaintiffs' action for damage of their properties (which included the goods that were on sale) by the members of the trade union. The events giving rise to the action arose out of a protracted strike organised by the trade union.

### **Evaluation of evidence and arguments**

[30] The applicant stated, rightly, in the founding affidavit that it did not have a contractual or employment relationship with the members of the first respondent who were on strike but that such relationship existed between such members and the truck owners. However, it annexed to the papers copies of photographs showing broken beer bottles on the truck that was on its way to transport liquor to the applicant's customers and argued that it was entitled to protect its product from further damage by those involved in a violent strike, thus, protecting its business operations. In this regard, the argument advanced by the second respondent that no damage was caused to the product of the applicant cannot stand.

[31] The argument advanced by the applicant that it had incurred substantial financial costs, arising from the employment of a private security firm to protect its product whilst delivered to the customers was not disputed.

[32] The second respondent's argument that the members of the first respondent cannot be held liable for the damage of the applicant's product which occurred outside the workplace has no merit. Any valuable property needs protection, whether at the workplace or elsewhere.

### **Findings**

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of the Constitution which provides that no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

<sup>8</sup> 2010(6) SA 280 (WCC) See, also, *SATAWU V Garvis and Others* 2011(6) SA 382; 2011(12) BCLR 1249 (SCA)

[33] There is no doubt, from the annexures to the papers, that the product of the applicant was destroyed on numerous occasions whenever it was delivered to the customers of the applicant. The applicant incurred substantial financial costs, arising from the employment of a private security firm to protect its product. The members of the first respondent were identified as the culprits. Therefore the applicant, by law, was entitled to approach this court on an urgent basis for an order which it had sought in the notice of motion.

### **Costs**

[34] The applicant did not seek costs order against the second respondent. The reason being that the second respondent was always acting on behalf of the first respondent during the strike by the members of the first respondent.

[35] Costs order was sought against the first respondent. After careful consideration of the argument advanced by counsel for the applicant regarding numerous occasions on which the applicant's product had been destroyed as well as the financial loss incurred by the applicant, I was of the view that costs order be awarded against the first respondent.

For these reasons, I granted the order in terms of the prayers in the notice of motion.

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**M. M. MABESELE**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

Hearing date : 12 May 2017  
Judgment delivered : 12 May 2017

**Appearances**

Applicant's Counsel : Adv B.Maselle  
Instructed by : Bowmans Attorneys

Respondent's : In person