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Employment Law ALERT

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Police intervention in violent strikes

Given the unfortunate reality that strikes can be characterised by violence, it is important to understand the role the police can be called upon to play in ensuring that violence and damage to persons and property is prevented, or where it has already taken place, does not continue.



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Police intervention in violent strikes

Given the unfortunate reality that strikes can be characterised by violence, it is important to understand the role the police can be called upon to play in ensuring that violence and damage to persons and property is prevented, or where it has already taken place, does not continue.

In *Minister of Police and Two Others v Umbhaba Estates (Pty) Ltd and 53 Others* (1281/2021) [2023] ZASCA 85 (1 June 2023), the Supreme Court of Appeal handed down a judgment on 1 June 2023, where it considered the liability of, amongst others, the Minister of South African Police Services for failing to take adequate steps to prevent the unlawful actions of striking employees. The case concerned employees of Umbhaba Estates who, unhappy with their terms and conditions of employment following a transfer of their employment to Umbhaba Estates, embarked on a protracted strike during which they committed criminal acts on their employer's property including assaults, malicious damage to property, vandalism, theft and looting.

The striking employees' criminal conduct was committed despite Umbhaba Estates' proactive and ongoing steps to prevent this. When management of Umbhaba Estates received the notice of the strike they contacted the police to warn them of the strike and possible

violence. Management foresaw the potential for the strike turning violent based on the employees' previous conduct. As anticipated, the strike quickly became violent. On the first day some of the striking employees were armed with sticks, they threw stones at people, whipped non-striking employees with sjamboks and hit vehicles with knobkerries.

During the strike, management contacted the police consistently and on numerous occasions requested their assistance in order to prevent the striking employees from continuing to commit unlawful acts, enforce the court orders (once court orders had been obtained from the Labour Court), and generally maintain public order. The responses from the police were minimal. At the start of the strike the police stated that they were unable to act without a court interdict. Umbhaba Estates then approached the Labour Court for an interdict to address the violence. Despite three court orders being issued by the Labour Court interdicting the striking employees from picketing within 500m of the main gates, interdicting




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Police intervention in violent strikes

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them from destroying and damaging their employer's assets and property, and authorising the police to arrest striking employees who breached the earlier court order and those who continued to intimidate non-striking employees and/or who continued to damage their employer's property, the police failed to enforce the court orders, made limited arrests and failed to monitor the strike on a daily basis.

Finding

The court found that the police had wrongfully and negligently failed to prevent striking employees from causing damage to Umbhaba Estates. The court emphasised that the police have a duty to reasonably foresee that violence could erupt and that it was clear that on the few occasions that the police attended at the premises their presence was a deterrent of the violence. Despite this and Umbhaba Estate's repeated requests, the police failed to adequately respond.

In their defence, the police admitted that Umbhaba Estates had requested their assistance on several occasions, but asserted that reasonable steps were taken by the police to negotiate with the striking employees, adequate action was taken to restore order when requested, and arrests were effected. In response to this Umbhaba Estate introduced video footage and photographic evidence which clearly showed that there was blatant non-compliance with the Labour Court orders and an inadequate response from the police.

The significance of and lessons to be drawn from this case for an employer faced with a violent strike or the potential for a violent strike include the following:

- If an employer anticipates violence during a strike, it is advisable to warn the police of the potential violence when the employer is issued with notice of a strike.

- The police have a duty to prevent damage and violence associated with criminal acts on private property, regardless of whether a court order has been secured. In this case the court reiterated that the police have a legal duty to maintain public order, to intervene and prevent crime, to protect and secure people and their property, and to uphold and enforce the law, even before the first court order was obtained.
- An employer should keep a full and accurate record of conduct during a strike in the form of video footage and photographs. This evidence can be critical in court proceedings.
- It is advisable to have a copy of this judgment and make it available to the police if they indicate a reluctance to act where criminal behaviour is occurring.

Gillian Lumb and Sebastian Foster

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