



## CONSTITUTIONAL COURT OF SOUTH AFRICA

*South African Commercial Catering and Allied Workers Union v Massmart Holdings and Others*

**CCT 145/24**

**Date of hearing: 06 May 2025**

**Date of judgment: 25 March 2026**

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### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On 25 March 2026, the Constitutional Court handed down judgment in an application for leave to appeal against part of the judgment and order of the Labour Appeal Court, which found that the Labour Court had jurisdiction to award just and equitable remedies under section 68(1)(b) of the Labour Relations Act 66 of 1995 (LRA) for conduct in furtherance of a protected strike.

The appeal was brought by the South African Commercial Catering and Allied Workers Union (SACCAWU). On 26 May, 2021, SACCAWU staged a strike outside several stores operated by Massmart Holdings Ltd and its subsidiaries (together, Massmart). Picketing rules for the strike were set by the Commissioner for Conciliation, Mediation and Arbitration (Commissioner) prior to the strike and stated that pickets would be held in designated areas near the affected stores, would be conducted in a peaceful, lawful manner and would abide by relevant Covid-19 regulations and workplace plans in place at the time. Picketers were not to be armed, make defamatory statements or intimidate customers or staff of Massmart. SACCAWU was to appoint strike marshals to ensure compliance by its members.

Massmart alleged that SACCAWU failed to ensure compliance with the picketing rules by its members and to appoint sufficient marshals. Specifically, Massmart alleged that picketing took place outside of designated areas and in breach of Covid-19 regulations, picketers blocked store entrances and picketed inside malls, intimidated staff and customers, damaged property and made untrue statements on the radio concerning the disputes underlying the strike, resulting in stores being closed and losses of over R9 million. Despite notifying SACCAWU of the picketers conduct, Massmart alleges that SACCAWU failed to prevent the breaches of the picketing rules.

Massmart sought compensation for the losses incurred during the strike under section 68(1)(b) of the LRA before the Labour Court in May, 2022. SACCAWU opposed Massmart's claim on several grounds, most notably that section 68 of the LRA does not apply in the context of a protected strike and that the Labour Court thus does not have jurisdiction to award

compensation under section 68(1)(b). Rather, SACCAWU argued that legal remedies relating to protected strikes are governed by section 67 of the LRA, which only allows an aggrieved party to seek delictual remedies for offences before the High Court.

The Labour Court ruled in favour of Massmart, holding that section 68(1)(b) of the LRA can be applied to any conduct that constitutes an offence, even if it is undertaken in furtherance of a protected strike. The Labour Court relied on the Supreme Court of Appeal's ruling in *Dunlop Mixing*, which interpreted section 68(1)(b) in this manner.

SACCAWU appealed the judgment to the Labour Appeal Court, arguing that the Supreme Court of Appeal's judgment in *Dunlop Mixing* was distinguishable from this matter, and that the Labour Appeal Court's ruling in *Stuttafords*, which held that section 68(1)(b) did not apply to protected strikes, should be followed. The Labour Appeal Court found that, as *Stuttafords* had been decided before the LRA was amended in 2002, extending section 68(1)(b) to cover "conduct in furtherance of a strike or lock-out," its interpretation of section 68(1)(b) was no longer applicable. It therefore upheld the Labour Court's decision, leading SACCAWU to appeal to the Constitutional Court.

Before this Court, SACCAWU argued that the provisions of section 67 establish the framework for addressing legal claims relating to protected strikes and lock-outs, while section 68 does the same for unprotected strikes and lock-outs. It contended that section 67 establishes broad protections for workers and employers participating in protected strikes or lock-outs, which are lost only in relation to offences committed during the protected strike or lock-out. In such cases, delictual remedies are available through the High Court, but compensation under the LRA through the Labour Court is not. Massmart maintained that protections under section 67 are lost when offences are committed, enabling just and equitable compensation to be sought by an aggrieved party under section 68(1)(b).

#### *The first judgment*

The first judgment (the minority), penned by Dambuzza AJ, accepts that the matter engages this Court's jurisdiction, but ultimately would have dismissed the appeal on the merits. The first judgment found that the purpose of the LRA was, amongst other things, to provide a framework to promote orderly bargaining between employers and employees and effective resolution to labour disputes. To this end, the Labour Court and Labour Appeal Court are established as specialised courts to determine labour disputes. The jurisdiction afforded to these courts must be interpreted generously to allow them to effectively adjudicate a wide variety of labour disputes. The first judgment further holds that the interpretation and application of section 68(1)(b) do not fall within the Labour Court's concurrent jurisdiction with the High Court.

The first judgment went on to examine the text, context and purpose of section 68(1)(b) of the LRA. It noted that section 67 affords legal protections for strikes or lock-outs which comply with the LRA, with narrow exceptions for conduct which constitutes an offence. Section 68 affords the Labour Court exclusive jurisdiction over any strike or lock-out, or any conduct in contemplation or furtherance of a strike or lock-out that does not comply with the LRA. Like the Labour Appeal Court, the first judgment emphasised the addition of "conduct in contemplation or furtherance of a strike or lock-out" in the 2002 amendment. This, according

to the first judgment, was intended to expand the scope of compensation under section 68(1)(b) of the LRA to include non-compliant conduct during both protected and unprotected strikes and lock-outs, and to afford the Labour Court exclusive jurisdiction over determining a just and equitable remedy in such claims.

The first judgment reinforced this interpretation with reference to section 69 of the LRA, which regulates picketing specifically. The first judgment drew attention to section 69(12), which affords the Labour Court jurisdiction to grant relief in disputes related to picketing in addition to relief granted under section 68(1)(b). As picketing is a regulated activity which can only lawfully occur in relation to a protected strike, the first judgment holds that the reference to section 68(1)(b) in section 69(12) demonstrates that section 68(1)(b) must apply to unlawful conduct during protected strikes that transgresses picketing rules, as well as unprotected strikes and lock-outs generally.

On this basis, the first judgment held that the Labour Court has jurisdiction to adjudicate claims arising from conduct that breaches Chapter IV of the LRA that occurs during a protected strike or lock-out, and that Massmart could properly seek just and equitable compensation under section 68(1)(b) from SACCAWU before the Labour Court. The first judgment would have dismissed the appeal on the merits.

#### *The second judgment*

The second judgment (the majority) penned by Majiedt J, with Madlanga ADCJ, Goosen AJ, Mhlantla J, Opperman AJ, Rogers J, Theron J and Tshiqi J concurring, agrees that this case engages this Court's jurisdiction and that leave to appeal ought to be granted, but uphold the appeal, holding that the Labour Appeal Court's order and underlying reasoning (and that of the Labour Court) were wrong.

The second judgment disagrees with the first judgment's approach to statutory interpretation, holding that the headings of sections 67 and 68 of the LRA were decisive, as both the headings and texts of these sections make clear that section 67 deals with strikes that are compliant with the LRA (protected strikes), while section 68 deals with strikes that are not (unprotected strikes).

Section 67, which only deals with protected strikes, provides that a protected strike, or conduct in support of a protected strike, is not a delict. Section 67(8) qualifies this by stating that section 67(2) does not apply to conduct in support of a protected strike where the conduct is an offence. Section 67 does not confer any jurisdiction on the Labour Court to award compensation in respect of criminal conduct (or delictual conduct) in support of a protected strike. Section 68, on the other hand, deals exclusively with unprotected strikes. On a plain reading of the introductory part of section 68(1) that precedes the powers of the Labour Court (including the power to grant compensation), the first judgment held that the phrase "that does not comply with the provisions of this Chapter" refers to the "strike or lock-out" contemplated in each of the preceding two phrases. It mirrors the preceding section 67(2) and (6).

The second judgment holds that section 68(1) only applies to those cases where an employer is seeking relief pursuant to the employees' participation in an unprotected strike, or the

employees' participation in conduct in support of an unprotected strike, not to protected strikes. Section 68(1) does not relate to the question whether conduct in support of the strike is unlawful in itself. On the other hand, if conduct – even if not otherwise delictual – is in support of an unprotected strike, the employer may seek relief from the Labour Court. That Court will then have exclusive jurisdiction in such instances.

The second judgment held that the correct interpretation of section 68(1)(b) was the one advanced by SACCAWU, which accords with the plain words of the section, read in context with the rest of that Chapter of the LRA and the statute as a whole. If the phrase “does not comply with the provisions of this Chapter” in section 68(1) is interpreted as referring to conduct (even where the strike is protected), it would not be possible for compensation to be claimed in respect of lawful conduct in support of an unprotected strike, since lawful conduct would not be in contravention of the Chapter.

The second judgment held that if the Legislature had intended to grant jurisdiction to the Labour Court in respect of delictual conduct in support of a protected strike, section 67 would have been the place to do it, yet that has not occurred. This does not take away the employer's right to claim damages in delict for such conduct if it is criminal (section 67(8)), but an employer needs to claim such damages in the ordinary courts and not in the Labour Court.

Regarding the divergent approaches and outcomes in *Stuttafords* and *Dunlop Mixing*, the second judgment held that the fact that *Stuttafords* was decided prior to the 2002 amendment of section 68(1)(b) does not in any way detract from the force of the reasoning in that case. Its more expansive approach rightly recognises that conduct, when connected to the strike's aims, may still fall within the protective scope of the LRA, affirming the principle that not every act of unlawfulness should automatically strip workers of their statutory protection. That approach aligns more closely with the purpose and structure of the LRA, which seeks to balance the rights of workers to engage in collective action with the need for lawful conduct. Both the Labour Appeal Court and the first judgment were wrong when they sought to distinguish *Stuttafords* on this narrow basis.

On the other hand, the second judgment holds that *Dunlop Mixing* cannot be applied here, as it was distinguishable on both the facts and the law. In *Dunlop Mixing*, the Supreme Court of Appeal considered whether a picket in support of a protected strike qualifies as a “gathering” under the Regulation of Gatherings Act. It held that while picketing may fit the general definition of a gathering, it is a specific form of expression governed by section 69 of the LRA, which takes precedence as the more specialised law. The second judgment held that the Supreme Court of Appeal's remarks in *Dunlop Mixing* regarding sections 67, 68 and 69 of the LRA were *obiter dicta*. The Labour Court and the Labour Appeal Court wrongly rejected the broad, worker-centred reasoning advanced in *Stuttafords*. Although the Labour Appeal Court stopped short of explicitly equating all unlawful conduct with unprotected action, its deference to *Dunlop Mixing* still signalled a preference for a narrower application of the LRA.

Regarding section 69, the second judgment held that it was wrong of the first judgment to invoke section 69(12) as an aid to interpreting section 68(2), explaining that an unlawful picket conducted in support of a protected strike does not fall within the scope of section 68, but it may give rise to relief under section 69(12). In these circumstances, section 69(12) provided no answer to the central issue in this case.

The second judgment therefore held that the appeal had to succeed. There was no order as to costs. This Court granted leave to appeal and upheld the appeal. It set aside the order of the Labour Appeal Court and replaced it with an order upholding the appeal, setting aside the order of the Labour Court, and substituted it with an order upholding the first exception, and dismissing the second to fourth exceptions.