



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT  
OF APPEAL**

FROM: The Registrar, Supreme Court of Appeal  
DATE: 7 December 2020  
STATUS: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

***NUMSA and Others v Dunlop Mixing and Technical Services (Pty) Ltd and Others  
(6/2020) [2020] ZASCA 161 (7 December 2020)***

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The Supreme Court of Appeal (the SCA) today upheld an appeal against an order by the KwaZulu-Natal Division of the High Court, Van Zyl J, that section 11 of the Regulation of Gatherings Act, 205 of 1993 (the Gatherings Act) applies to a picket authorised in terms of the Labour Relations Act, 66 of 1995 (the LRA).

During August 2012 members of the National Union of Metal Workers of South Africa (NUMSA) who were employed by Dunlop Technical Services (Pty) Ltd and its associated companies (Dunlop) embarked upon a protected strike. On 22 August 2012 a picket authorised by NUMSA at the Dunlop plants at Howick, KwaZulu-Natal became violent, resulting in damage to property. The picket was authorised in terms of s 69 (1) of the LRA.

On 23 May 2013 Dunlop instituted a claim for damages against NUMSA and its members involved in the strike action. The claim was founded on s 11 of the Gatherings Act which provides for liability of a convener of a gathering in circumstances where riot damage results from such gathering. NUMSA defended the action and pleaded that s 11 of the Gatherings Act does not apply to a picket which is authorised in furtherance of a protected strike. It asserted that the LRA is specialist legislation which serves to regulate labour disputes; that the picket was regulated by the provisions of the LRA and that the Labour Court enjoys exclusive jurisdiction to deal with conduct which is not in accordance with the provisions of the LRA. NUMSA further asserted that the LRA provides immunity from civil claims which arise from conduct in furtherance of a protected strike.

The parties agreed that this aspect be separately adjudicated by the high court. Van Zyl J, who heard the matter on 19 August 2015, delivered his judgment on 13 September 2019, ruling that s 11 of the Gatherings Act applies to a picket authorised in terms of the LRA.

The SCA found that a picket is not a gathering for the purposes of s 11 of the Gatherings Act. It found that the LRA makes comprehensive provision for conduct in furtherance of a strike, including the holding of a picket. A picket is a long established form of conduct to further the objects of strike action. The Gatherings Act consists of general legislation which gives effect to the constitutionally protected right of assembly. None of the procedural or other substantive provisions of the Gatherings Act have any application to a picket authorised in terms of s 69 of the LRA. The SCA found that precedence must be given to specialist and later legislation which seeks to regulate legal relations within its own sphere of operation. Since the LRA also provides for liability in the event that conduct does not comply with the LRA, legal principle requires that the provisions of the LRA apply to the exclusion of the Gatherings Act.

The SCA therefor set aside the high court's order and substituted it for an order that s 11 of the Gatherings Act does not apply.

The SCA noted that the judgment in the high court was delivered 4 years after the matter was argued. It noted that the judge had provided no explanation for such an extraordinary delay in his judgment. The absence of such explanation, which ought to have been provided, indicated that no reasonable explanation could be provided. In the circumstances it found that the delay constituted an unconscionable dereliction of duty on the part of the judge. It suggested that the Judge President of the Division ought to act upon the matter.