

Protest action has become part of South Africa's political landscape. The extent to which it is increasingly marked by violence is cause for alarm (see *LGB 13(3)*, p 10).

Assemblies, pickets, marches and demonstrations are essential features of a democratic society. However, unlawful behaviour when exercising the political rights set out in section 17 of the Constitution not only causes damage to public and private property, but also infringes the rights of others. That is why section 11(1) of the Regulation of Gatherings Act (Act 205 of 1993) provides that a person or organisation can be held liable for damage caused during a gathering which degenerates into a riot. In terms of section 11(2)(b), no liability exists when the convenor can prove that 'the act or omission in question did not fall within the scope of the objectives of the gathering or demonstration in question and was not reasonably foreseeable'.

A recent judgment of the Supreme Court of Appeal provides valuable lessons to labour organisations, protest organisers and municipalities on their role in the context of protest action and the interpretation of this provision.

The facts

In May 2006 the South African Transport and Allied Workers' Union (SATAWU) organised a protest march, which constituted a gathering as defined in the Gatherings Act. The march turned into a riot, causing extensive damage to vehicles and shops in Cape Town's city centre. Eight people instituted action in the Western Cape High Court to hold SATAWU liable for the damages in terms of section 11(1) of the Gatherings Act. In denying liability in its Supreme Court appeal against the High Court judgment, SATAWU argued that section 11(2)(b) of the Gatherings Act was unconstitutional because it had 'stultifying' effects on the right to demonstrate, to assemble, to picket and to present petitions, as protected by section 17 of the Constitution.

Decision

Although SATAWU had met all the material steps required when organising a gathering, the Court held it liable for the damage caused to the eight Cape Town citizens. The Court considered SATAWU's testimony, which showed that events leading up to the march had led to a volatile situation, characterised even by fatalities. Because SATAWU persisted in organising the march when it was reasonably foreseeable that nothing could prevent it from degenerating into a riot, the Court decided that it ought to be held liable.

Analysis

The Court emphasised the important role that municipalities play in facilitating gatherings. As discussed in the previous *Bulletin* (*LGB 13(3)*, p 8), municipalities receive and process notices of gatherings. They convene the 'golden triangle' meetings with the South African Police Service (SAPS) and the convenors of gatherings. They are expected to generally take steps to try and limit any foreseeable harm that a gathering may create, which is a very complex and difficult task.

The judgment provides clarity on the scope of section 11(2) of the Gatherings Act, particularly regarding the SAPS' role in providing security. It makes it clear that municipalities may prohibit a gathering if the SAPS cannot ensure security. This authority is crucial, considering that municipalities are often at the receiving end of destructive behaviour during riots.

Importantly, the judgment clearly establishes that a gathering's convenor can be held liable for damages caused during the gathering, despite having taken measures to ensure a peaceful gathering. This is so if the gathering takes place despite it being reasonably foreseeable that nothing will prevent it from degenerating into a riot.

Ultimately, the judgment instructs all stakeholders to act responsibly, particularly when the situation is highly charged and the demonstration has the potential to result in harm to others. It calls for a higher duty of care from all stakeholders.



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