

SOUTH AFRICA / JUDGMENT

Choko-Choko and Others v Tharisa Minerals (Pty) Ltd (2025/072040)

[2025] ZALCJHB 233 (19 June 2025)

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COURT

Labour Court Johannesburg

BEFORE

Prinsloo

CASE / FILE NUMBER

2025/072040

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case

No: 2025-072040

In

the matter between:

VUYANI PAUL
CHOKO-CHOKO AND THE PERSONS
WHOSE
NAMES ARE LISTED IN ANNEXURE 'A'
Applicants
and
THARISA
MINERALS (PTY)
LTD
Respondent

Heard:

6 June 2025

Delivered:

19 June 2025

This

judgment was handed down electronically by consent of the parties' representatives by circulation to them by email. The date for hand-down is deemed to be 19 June 2025.

JUDGMENT**PRINSLOO, J****Introduction**

- [1] The Applicants approached this Court on an urgent basis, seeking an interim interdict to restrain the Respondent from conducting disciplinary hearings against them, pending the finalisation of the urgent application to interdict a strike, which is pending under case number 2025-051769.
- [2] The deponent to the founding affidavit is Vuyani Paul Choko-Choko, who indicated that he is ‘an adult male, employed by Tharisa Mineals (sic). I deposed (sic) to this founding affidavit for myself, as well as on behalf of the other Applicants listed in annexure “A” attached hereto’. Annexure A is a list of ‘Tharisa Minerals employees who are given notice to attend disciplinary hearing’.
- [3] The Respondent took issue with Mr Choko-Choko’s locus standi to bring this application on behalf of any other employee because he is not a legal practitioner who can act on behalf of all his

clients, provided that there is a proper mandate to do so, nor is he a trade union official who can act on behalf of the members of a trade union. Mr Choko-Choko deposed to this affidavit in his personal capacity.

- [4] The Respondent challenged Mr Choko-Choko to produce written mandates from the other ‘applicants’ and submitted that in the absence of such mandates, the Court should find that only Mr Choko-Choko was properly before Court.
- [5] Notwithstanding the fact that the Respondent challenged Mr Choko-Choko’s locus standi and the fact that he is legally represented, Mr Choko-Choko did not provide any mandates from the other individuals to confirm that he was indeed mandated to institute legal proceedings on their behalf. Mr Choko-Choko, on the strength of the legal advice he received, stated in his replying affidavit that he does not need to be a legal practitioner or a trade union official to depose to a founding affidavit. He stated that ‘Annexure A’ consists of the full names, identity numbers and signatures of the other applicants, as well as a date on which they had signed it, confirming their consent to be part of this application.
- [6] There are three difficulties with Mr Choko-Choko’s response. First, it is evident from Mr Choko-Choko’s answer that neither he nor the legal representatives who advised him comprehended the

issue raised by the Respondent or understood what the legal requirements for the institution of legal proceedings are. It is true

that Mr Choko-Choko does not need to be a legal practitioner or a trade union official to depose to a founding affidavit in legal

proceedings he instituted on his own behalf, but it does not follow that he can do so, in his personal capacity, on behalf of other

litigants.

[7] In *Ganes and Another v Telecom Namibia Ltd*[1] (Ganes), the Supreme Court of Appeal (SCA) held that:

‘The deponent to an affidavit in motion proceedings need not be authorized by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorized.’

[8] Second, ‘Annexure A’ is a name list of ‘employees who are given notice to attend disciplinary hearing’ and it contains the full names, identity numbers and signatures of the individuals, as well as a date on which they had signed the list. It certainly does not confirm their consent to be part of this application, as alleged by Mr Choko-Choko, and it does not constitute authority to institute proceedings on their behalf.

[9] Third, Rule 35(5) of the Labour Court Rules[2] provides that an application must be supported by affidavit, which affidavit must clearly set out the names, description and addresses

of the parties. None of the individuals, as per ‘Annexure A’, is properly cited as a party before this Court.

[10] The only applicant properly before this Court is Mr Choko-Choko.

[11] The Respondent took issue with urgency in its answering affidavit. However, when the matter was argued, Mr van As for the Respondent submitted that the matter should be decided on its merits. The attack on urgency is not without merit, but I will exercise my discretion and deal with the merits of this case. This Court has limited resources and a meritless case like the present one, should not make its way back to Court, it should not be allocated another Court day and it should not require the attention of another Judge, as it no doubt would, if it is struck off the roll for lack of urgency. This

matter should be decided on its merits, sooner rather than later.

Background

[12] On 10 April 2025, the Applicant and other employees served the Respondent with a written notice of intention to strike on 14 April

2025. On 11 April 2025, the Respondent launched an urgent application to interdict the strike action and to declare the strike unprotected. An interim interdict was granted on 15 April 2025, with the return date of 9 May 2025. The Court declared the strike action, which commenced on 14 April 2025, to be unprotected.

[13] The return date was extended by consent until 31 July 2025.

[14] On 16 May 2025, Mr Choko-Choko was issued with a notice to attend a disciplinary hearing, scheduled for 21 May 2025. The charges levelled against him relate to the planning, organising and leading of an unprotected strike action; the planning, organising and leading of an unauthorised picket which prevented other employees, customers and visitors from entering the Respondent's premises; dishonest conduct in that he submitted strike notices with misleading information about the nature of the planned strike action namely that it would be peaceful; and bringing the Respondent's name in disrepute in that he had involved a non-union organisation in a workplace dispute and being involved in acts aimed at interfering with the law enforcement duties of the SAPS.

[15] The Applicant approached this Court for an interdict to restrain the Respondent from conducting a disciplinary hearing against him, pending the finalisation of the urgent application to interdict the strike action. This application is premised on the Applicant's understanding that the application to interdict the strike action that took place on 14 April 2025 is not yet finalised and is still pending because 'it is going to be finalised on 31 July

2025. What is yet in place now is an interim order', and that 'the disciplinary hearing against us ...is premature in view of the fact that it is apparent that the Respondent is relying on the interim order in preferring the charges against us'.

[16] The Applicant submitted that 'there is no merit for the Respondent to conduct a disciplinary hearing against us...as such hearing is dependent on the existence of a particular state of affairs yet to be decided upon by this Court, which has a potential to put a permanent end to the disciplinary hearing'.

[17] The Respondent opposed the application and disputed that the strike action was peaceful. The Respondent's case is that the SAPS had to disperse striking employees who blocked access to and egress from the Respondent's mining operations and thereby prevented non-striking employees from reporting for work. The Respondent explained that the disciplinary proceedings instituted against the Applicants relate to both allegations of participating in an unprotected strike and strike-related misconduct. According to the Respondent, the interim order is unrelated to the disciplinary charges instituted against the Applicant.

Jurisdiction

[18] The first issue to be considered is whether this Court has jurisdiction to grant the relief sought by the Applicant on the grounds set out in his supporting affidavits.

[19] The Labour Court derives its jurisdiction from section 157(1) and (2) of the Labour Relations Act[3] (LRA) and its powers from section 158 thereof.

[20] In *Moropane v Gilbeys Distillers and Vintners (Pty) Ltd and Another*[4], the Court held that:

‘I must accordingly turn to the question whether this court has jurisdiction to entertain the present application. This question is intimately intertwined with the question whether the applicant has a right to have the court intervene and come to his assistance at this stage.

I might, at the outset state that if the court has the jurisdiction it would have the power to grant an appropriate remedy. ... But because it has a power does not mean that it has jurisdiction. This proposition is sometimes overlooked.’

[21] In *Natal Sharks Board v SA Commercial Catering and Allied Workers Union and Others*[5], the Court held that ‘Powers and jurisdiction are separate concepts that should not be confused’.

[22] In *Shezi v SA Police Services and Others*[6] (*Shezi*), the Court considered the issue of jurisdiction and held that:

‘This court is a creature of statute. Its inherent powers, authority and standing are equal to that of a Division of the High Court, but only in relation to matters under its jurisdiction (see s 151(2) of the LRA). There is a misconception that the court has jurisdiction over all disputes that arise in the context of an employment relationship. It does not. Some 20 years ago, the Judge President bemoaned the fact that the Court did not enjoy jurisdiction over all employment-related disputes, and urged the legislature to remedy this shortcoming. Regrettably, the legislature did not respond to this call and in broad terms, the jurisdiction of this court remains to be determined in terms of the Act as it was drafted in 1995.’

[23] Section 157

(1) provides that, subject to the Constitution and section 173, and except where the LRA provides otherwise, the Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of the LRA or any other law are to be determined by this Court. What this requires is that a party referring a dispute to this Court for adjudication must necessarily point to a provision of the LRA or some other law that confers jurisdiction on this Court to adjudicate the dispute. Jurisdiction, of course, is to be determined strictly on the basis of the applicant’s pleadings; the merits of the claim are not material at this point. What is required is a determination of the legal basis for the claim, and then an assessment of whether the Court has jurisdiction over it.[7]

[24] In *MEC Health Limpopo Province v Makgoba and others*[8], the Labour Appeal Court (LAC) held that:

‘While section 158 (1)(a)(iv) of the LRA empowers the Labour Court to grant declaratory orders, the exercise of that power is dependent on jurisdiction – it applies only to those disputes in respect of which the Labour Court may exercise jurisdiction in terms of section 157. Section 157

(2) provides that the Labour Court has the inherent powers, authority and standing equal to a division of the High Court, but only in relation to matters under its jurisdiction. The Constitutional Court recently affirmed that the application of section 157 (1) requires the court in the absence of specific sections that delineate the Labour Court’s statutory exclusive jurisdiction, to determine whether a matter is one that arises in terms of the LRA or another law, to be determined by the Labour Court.[9]’

[25] In casu, the Applicant pursued his case in terms of section 158(1)(a) of the LRA, which provides for the powers of the Labour Court. As already alluded to, just because the Court has a power does not mean that it has jurisdiction. The Applicant must point to a provision of the LRA or some other law that confers jurisdiction on this Court to adjudicate his dispute. Put differently, it is incumbent on an applicant referring a matter to this Court for adjudication to identify the provision in the LRA, or any other law, which confers jurisdiction on this Court to entertain the claim.

[26] The Applicant did not point to any provision in the LRA or another statute which confers jurisdiction on this Court to interfere in incomplete internal disciplinary hearings. The Applicant has also not convincingly addressed the question whether he has a right to have the Court intervene and come to his assistance at this stage, which is central to the issue of jurisdiction. In view of the delineated, statutory jurisdiction of this Court and the absence of any pointing to a provision of the LRA or some other law that confers jurisdiction on this Court to adjudicate this dispute, I doubt that this is a matter this Court has jurisdiction to decide in the first place.

[27] However, I am bound by the judgment of the LAC in *Booyesen v Minister of Safety and Security and Others*[10] (Booyesen), where it was held that:

‘...the Labour Court has jurisdiction to interdict any unfair conduct including disciplinary action. However such an intervention should be exercised in exceptional cases. It is not appropriate to set out the test. It should be left to the discretion of the Labour Court to exercise such powers having regard to the facts of each case. Among the factors to be considered would in my view be whether failure to intervene would lead to grave injustice or whether justice might be attained by other means. The list is not exhaustive.’

Analysis

[28] This Court may intervene in incomplete disciplinary proceedings, based on *Booyesen*, but such intervention is not unqualified and bottomless.

[29] In Shezi[11], the Court considered that in Booysen, the LAC held that this Court had jurisdiction to interdict any unfair conduct, including disciplinary action, but that it should do so only in exceptional cases. It was held that:

‘It is important to emphasise that regardless of the legal basis on which intervention is sought, whether by way of interim relief, a review application or a claim in contract, the rule that intervention is exceptional remains. Once the court determines that the pleadings disclose a jurisdictional basis for intervention in uncompleted disciplinary proceedings, the case for exceptionality must be made. The rule in Booysen, it should be recalled, is that intervention is warranted only if a failure to intervene would lead to a grave injustice, or whether

justice might be attained by any other means.’[12]

[30] In Jiba v Minister: Department of Justice and Constitutional Development and others[13], the court held that:

‘... although the court has jurisdiction to entertain an application to intervene in uncompleted disciplinary proceedings, it ought not to do so unless the circumstances are truly exceptional. Urgent applications to review and set aside preliminary rulings made during the course of a disciplinary enquiry or to challenge the validity of the institution of the proceedings ought to be discouraged. These are matters best dealt with in arbitration proceedings consequent on any allegation of unfair dismissal, and if necessary, by this court in review proceedings under s 145.’

[31] In Ngobeni v Passenger Rail Agency of SA Corporate Real Estate Solutions and others[14] (Ngobeni), the Court has held that:

‘In any event, this court does not ordinarily intervene in incomplete disciplinary proceedings. In Booysen v Minister of Safety & Security & others (2011) 32 ILJ 112 (LAC), the LAC made it clear that the Labour Court may only interdict unfair conduct in the course of disciplinary proceedings ‘in exceptional

circumstances’, such as where a grave injustice would result.’

[32] The LAC did not establish an unqualified right to intervention in uncompleted disciplinary proceedings. The nature and extent of such relief are dependent on the basis on which intervention is sought, and that basis must necessarily fall within this Court’s jurisdictional footprint, as established by section 157(1) of the LRA. In other words, an applicant seeking intervention in uncompleted disciplinary proceedings must establish first that the application embodies a proper cause of action on which the intervention is sought and secondly, that the circumstances are exceptional and thus warrant

intervention.

- [33] Intervention by this Court in uncompleted disciplinary proceedings is limited to truly exceptional cases, where the failure to intervene would lead to a manifest injustice. By definition, if the applicant is able to acquire adequate redress by a challenge to fairness in due course, the court will not intervene. Arbitration is the primary means through which the LRA contemplates that disputes about the fairness of workplace discipline are to be resolved.
- [34] On this ground alone, the application must fail.
- [35] In casu, the Applicant failed to show that there are any exceptional circumstances that justify intervention in his disciplinary hearing, which is already at an advanced stage. In fact, there is not a single averment made to support a case for 'exceptional circumstances'.
- [36] In my view, it is fatal to this application that the Applicant failed to establish exceptional circumstances which would warrant or justify this Court's intervention in an internal disciplinary process. The authorities are clear: the Labour Court's jurisdiction to intervene in disciplinary proceedings is limited to truly exceptional circumstances.
- [37] Litigants have been warned on many occasions that this Court will not lightly intervene in incomplete workplace disciplinary hearings and that it will do so only where exceptional circumstances have been shown.
- [38] In *S Minya v A Post Office and others*[15] it was held that:
- [1] There is a misconception prevailing amongst employees aggrieved with minute details of internal disciplinary enquiries, that when the Labour Appeal Court (LAC) in *Booyesen v Minister of Safety & Security & others* held that this court had jurisdiction to intervene in such internal enquiries, this meant that the court is ordinarily the first port of call to deal with such internal grievances. This is despite the fact that the LAC had specifically stated that such intervention would only be called for where exceptional circumstances are demonstrated, such as where a grave injustice would result.
- [2] From a plethora of such cases that are routinely brought on an urgent basis, it has become increasingly apparent that this court is more often than not called upon to micro-manage these internal proceedings, and that every little complaint about internal disciplinary proceedings, whether real or perceived, has by default, become an "exceptional circumstance". It has long been stated that the powers of this court under the Labour Relations Act (LRA) do not include the micro-management of workplace discipline or every dispute arising out of the workplace. This is so in that the prerogative to maintain discipline remains that of the employer, and further since the framework of the LRA is such that it is dispute specific.
- [3] Equally worrisome with these applications, is that more often than not, no legal basis is pleaded for this court to assume jurisdiction, other than flippant and out of context references to terms such as "unlawful", "invalid", "legality", "void", "unconstitutional", and in some instances, "unfairness", with the hope that relief will be granted. These phrases as

thrown into the mix are often deemed to be a panacea and a magic wand to every complaint arising from internal disciplinary proceedings, with the hope that those proceedings will be wished away.

[4] The facts of this case are symptomatic of the misconception mentioned above, and to say that the court has reached a point beyond exasperation with such cases on its urgent roll is truly an understatement. More often than not, in instances where the applicant parties are not legally qualified or legally represented, this court, being one of equity, tends to adopt a more lenient approach. However, where the parties are legally represented, the court has to draw a line in the sand.'

[39] Despite this admonition and warning, applications to intervene in internal disciplinary matters continue to populate the urgent roll. The present case is no exception. None of the averments made by the Applicant meet the threshold of exceptionality, a prerequisite for intervention in incomplete disciplinary proceedings.

[40] Even if I am wrong in finding that, absent exceptional circumstances, this Court has no jurisdiction to hear this application, there are other reasons why this application must fail.

[41] In *National Treasury and others v Opposition to Urban Tolling Alliance and others*[16] (OUTA), the Constitutional Court held that:

'Under the Setlogelo test, the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm.'

[42] This application has to fail because in OUTA, the Constitutional Court made it clear that an interdict is meant to prevent future conduct and not decisions already made.

[43] This principle has been confirmed in *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*[17], where the Constitutional Court held that:

'In granting an interdict, the court must exercise its discretion judicially upon a consideration of all the facts and circumstances. An interdict is "not a remedy for the past invasion of rights: it is concerned with the present and future". The past invasion should be addressed by an action for damages. An interdict is appropriate only when future injury is feared.'

[44] Put differently: an interdict is appropriate only when future injury is feared. This means that when the wrongful act giving rise to the injury has already occurred, either it must be of a continuing nature or there must be a reasonable apprehension that it will be repeated.[18] If the injury is one that 'occurred once and for all and is finished and done with', then the applicant should allege

facts

justifying a reasonable apprehension that the harm is likely to be repeated.[19]

[45] In casu, the Applicant seeks an order to interdict and restrain the Respondent from conducting a disciplinary hearing against him, pending the finalisation of the interim strike interdict on its return date.

[46] The facts before me are that the Applicant was notified on 16 May 2025 that he had to attend a disciplinary hearing on 21 May 2025. The Applicant launched this application on 23 May 2025, after the scheduled date of the disciplinary hearing and the matter was enrolled for hearing on 30 May 2025, when it was postponed to 6 June 2025.

[47] It was conceded in Court that the disciplinary hearing for Mr Choko-Choko had already taken place on 22 May 2025. The Applicant seeks an interdict to prevent the conducting of a disciplinary hearing, which had already been conducted and of which there is no likelihood that it would be repeated. The reality is that it would serve no purpose to interdict a hearing that has already happened – as the Constitutional Court has confirmed: an interdict is not a remedy for the past invasion of rights. This is another reason why this application must fail.

[48] As the Applicant seeks an interdict, he must satisfy the requirements for an interim interdict. The requirements for interim relief were set out more than 100 years ago in *Setlogelo v Setlogelo*[20]. They are:

1. a prima facie right;
2. a well-grounded apprehension of irreparable harm if interim relief is not granted and the ultimate relief is eventually granted;
3. the balance of convenience in favour of the granting of the interim relief; and
4. the absence of any other adequate ordinary remedy.

[49] To establish a prima facie right, an applicant must provide prima facie proof of facts that establish the existence of a right in terms of the substantive law.

[50] Although the Applicant has a right to approach the court to obtain an interim interdict, the dicta in *OUTA* made it clear that the mere right to approach the court is not sufficient. The facts must establish the existence of a right in terms of the substantive law to approach this Court to intervene in an incomplete disciplinary hearing. I already expressed my doubt about the existence of such a right and this Court's jurisdiction, which is countered by *Booyesen*.

- [51] The Applicant averred that he has a constitutional right to strike and the right to be treated fairly during his disciplinary proceedings. It is his case that if this interdict is not granted, his constitutional right to strike and to be treated with fairness will be violated. It is, of course, not contentious that the Applicant is entitled inter alia to the rights granted under the Constitution and the LRA, but nothing on the papers before this Court supports an argument that these rights have been threatened or violated.
- [52] The constitutional right to strike does not include the right to participate in an unprotected strike, nor does it allow for participation in strike-related misconduct. The Applicant did not make any averments to support his vague allegation that his right to fairness has been violated – even if it was, an interdict would not be an appropriate remedy as the Applicant has an alternative remedy to address the issue of unfairness. This was confirmed in *Shezi* as follows:
- ‘This approach is consistent with the structure of the LRA as it applies to workplace discipline. The Act replaced the onerous procedural requirements in disciplinary enquiries developed by the industrial court under the 1956 LRA with a focus on informal workplace disciplinary processes and arbitration as the primary means to ensure fair employer conduct (see *Avril Elizabeth Homes* [2006] 9 BLLR 833 (LC)). As the court has previously observed (*Ngobeni v Prasa Cres and others* [2016] 8 BLLR 799 (LC), urgent applications where this court is asked to intervene in disciplinary hearings run the risk of bypassing the statutory dispute-resolution structure as established by the LRA, in the form of the CCMA and bargaining councils. One of the primary functions of those structures is to determine the substantive and procedural fairness or otherwise of dismissals. This court, and in particular the urgent court, has regrettably become the means through which process-related grievances are sought to be aired, more often than not as an element of a legal strategy in which every step of a disciplinary process is subjected to challenge. This court ought to be cautious not to become a willing accomplice to strategies of this nature. Genuine disputes about fair procedure in the exercise of workplace discipline ought to be determined at the lowest possible level primarily by the institutions created for that purpose.’[21]
- [53] In short, the Applicant failed to show a prima facie right.
- [54] The Applicant submitted that he would suffer irreparable harm if the interim interdict is not granted. Such harm is ‘irreparable financial harm’ as well as the possibility that the Respondent ‘would have replaced us in our positions at the workplace’.
- [55] Financial harm is, in all probability, harm experienced in a greater or lesser degree by any dismissed individual and does not per se constitute a ground for urgent relief and certainly does not give any and every dismissed individual a ticket to approach this Court on an urgent basis. This Court can intervene in exceptional circumstances and where an applicant is able to demonstrate detrimental consequences that may not be capable of being addressed in due course and if an applicant is able to demonstrate that he or she will suffer undue hardship if the court were to refuse to come to his or her assistance on an urgent basis.

[56] In *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another*[22] (AMCU), it was held that:

‘No matter what the cause of action may be, it is what the applicants want, and require, at the end of the day, that is the important consideration.

Whether relying on breach of contract, unlawful dismissal, or automatically unfair dismissal, the end result will always be the

same, if the applicants are successful. In the unfair dismissal case, an order of fully retrospective reinstatement will be competent,

which is exactly the same as restoring the status quo ante prior to dismissal. And in the case of an unlawful termination or breach of contract of employment, the relief of specific performance restores the status quo ante. The applicants can thus get proper

substantial redress in the normal course, without having to resort to these urgent proceedings.’

[57] In my view, the Applicant failed to show why he should be allowed to jump the queue and why the redress he seeks must be given today and not tomorrow. He has not substantiated why he would not get substantial redress at a later stage, and in any event, the Applicant’s position is no different from any other employee facing disciplinary proceedings.

[58] The Applicant can indeed get substantial redress in the normal course, without having to resort to urgent court proceedings. In the event that the Applicant is dismissed (which he is not), he can refer an unfair dismissal dispute to the appropriate forum and if such dismissal is found to be unfair, he may be reinstated, irrespective of whether the Respondent decides to fill his position or not.

[59] This Court must be slow to entertain an application on an urgent basis where the harm to be suffered is only of a financial nature and where no exceptional circumstances are being disclosed, more so where there are other remedies available within the specifically crafted dispute resolution procedures applicable in labour disputes or where relief can be granted in the normal course.

[60] On the issue of balance of convenience, it is the Applicant’s case that ‘there is no merit for the Respondent to conduct a disciplinary hearing against us knowing that such hearing is dependent on the outcome of the application for the strike interdict to be decided upon’ by this Court on 31 July 2025.

[61] The Respondent submitted that the Applicant indicated that they would seek the discharge of the Court order on the return date because the matter became moot and academic as they had returned to work and the strike is no longer ongoing. In the replying affidavit, the Applicant submitted that certain paragraphs of the interim order became moot and academic, but that the order declaring the strike unprotected is not moot and academic, as the Court ‘will make a declaration of whether the strike was protected or not on 31 July 2025. It is therefore grossly unfair for the Respondent to discipline us on the basis that we planned

and participated on (sic) the illegal strike before this Court pronounces on that issue’.

[62] The position adopted by the Applicant is opportunistic.

[63] In my view, the Applicant’s understanding is incorrect. On the return date, the Court will decide whether to confirm or discharge the interim order. The Court already considered the status of the strike, and by granting the interim order, the Court declared that the strike is unprotected. The expectation that there would be another consideration of the issue and that there would be a different pronouncement on the return date is misconceived. On the return date, the Court will merely consider the version of the parties as presented and based on that, the interim order will either be discharged or confirmed – the Court will certainly not declare the strike ‘protected’ on the return date. If a

case is not made out that the strike was unprotected or if the dispute is no longer live, the interim order will not be confirmed,

and the rule nisi will be discharged.

[64] This, however, does not mean that the conducting of a disciplinary hearing against the Applicant is ‘dependent on the outcome of the application for the strike interdict to be decided upon’ by this Court on 31 July 2025. The Applicant’s reliance on the interim order as a reason not to be disciplined is opportunistic,

more so where the Respondent emphasised that the disciplinary proceedings were instituted in relation to the Applicant’s

participation in an unprotected strike as well as strike-related misconduct, and it is not reliant on the interim Court order. The disciplinary charges are unrelated to the interim order.

[65] The Applicant submitted that he has no other adequate remedy, other than an interim interdict. The Respondent disputed this and submitted that the Applicant has a plethora of alternative remedies available, namely, to defend himself at the disciplinary hearing, should the chairperson ultimately find against him in the disciplinary hearing he has an internal appeal process available and in the event that he is dismissed, he may refer an unfair dismissal dispute.

[66] In my view, the Applicant dismally failed to show the absence of substantial redress in due course or that he has no alternative remedies.

[67] The Applicant failed to make out a case for the relief he seeks.

Costs

[68] The last issue to be decided is the issue of costs.

[69] Insofar as costs are concerned, this Court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness.

[70] The requirement of law has been interpreted to mean that the costs would follow the result. In considering fairness, the conduct of the parties should be taken into account, and mala fides, unreasonableness, and frivolousness are factors justifying the imposition of a costs order.

[71] In *Zungu v Premier of the Province of KwaZulu-Natal and Others*[23], the Constitutional Court confirmed that the rule that costs follow the result does not apply in labour matters. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing those parties to bring to this Court (or oppose) cases that should not have been brought to Court (or opposed) in the first place.

[72] In its answering affidavit, the Respondent made submissions regarding reasons why this Court should award costs de bonis propriis against the Applicant's attorneys of record, Ngidi Incorporated Attorneys (NIA). The Respondent submitted that on 15 May 2025, NIA launched an urgent application to seek the reinstatement of employees who had been dismissed for participating in the unprotected

strike and strike-related misconduct, pending the finalisation of the interim order. The matter was argued and dismissed on 21 May 2025. The Respondent stated that this application stands to be dismissed too, more so since there are no exceptional circumstances which would warrant the Court's urgent intervention in an incomplete disciplinary. NIA should be aware of the shortcomings, but elected to launch this application. The application is without merit, and NIA should be ordered to pay the costs de bonis propriis.

[73] The Applicant filed a replying affidavit and in answer to the aforementioned and responded that the submissions are bad in law and embarrassing, and not supported by any facts.

[74] In argument, Mr van As submitted that the Applicant's legal representative should be liable for the costs. He argued that a similar application was brought to this Court last week, which application failed. Yet the Applicant's attorneys persisted with another similar application, dragging the Respondent to Court once again, and this conduct should not be condoned. This application lacks merit and is opportunistic.

[75] Mr Dlamini, counsel for the Applicant, submitted that this is indeed a meritorious case and that there is no basis for this Court to grant a cost order de bonis propriis. He submitted that the Respondent is bullying the Applicant's legal representatives and to ask for costs de bonis propriis is bizarre and unprofessional.

[76] This is not a meritorious application, and the Applicant's legal representatives filed papers that do not comply with the Rules of this Court, where the parties are not properly cited and where no exceptional circumstances were raised, notwithstanding the fact that it was a prerequisite in an application such as this one.

[77] In Ngobeni, the Court has lamented the fact that the urgent roll in this Court has become increasingly and regrettably populated by applications in which intervention is sought, in one way or another, in workplace disciplinary hearings. All of this is indicative of an attempt to use this Court and its processes to frustrate the workplace proceedings already underway. The Court's proper role is one of supervision over the statutory dispute resolution bodies. It is not a Court of first instance in respect of the conduct of a disciplinary hearing, nor is its function to micro-manage discipline in workplaces. The Court in Ngobeni also issued a warning to the effect that litigants should be warned that it is not often that this Court will intervene in incomplete

workplace disciplinary hearings and that similar abuses of the right to urgent relief that this Court affords in appropriate circumstances

will be met with punitive orders for costs. The Court has granted an order for costs on a punitive scale because the Court considered the application to be wholly misguided and one that served to frustrate one of the fundamental purposes of the LRA, which is the expeditious resolution of workplace disputes within a defined structure. In the Court's view, the applicant's conduct warranted an order for costs on a punitive scale.

[78] This is a case where the Court has to strike a balance, considering the requirements of law and fairness. The generally accepted purpose of awarding costs is to indemnify the successful litigant for the expense he or she has been put through by having been unjustly compelled to initiate or defend litigation. In *Public Servants Association of SA on behalf of Khan v Tsabadi NO and Others*[24] it was emphasized that:

‘... unless there are sound reasons which dictate a different approach, it is fair that the successful party should be awarded her costs. The successful party has been compelled to engage in litigation and compelled to incur legal costs in doing so. An appropriate award of costs is one method of ensuring that much earnest thought and consideration goes into decisions to litigate in this court, whether as applicant, in launching proceedings or as respondent opposing proceedings.’

[79] In my view, this is a case where a cost order is warranted. This is more so as the Applicant sought legal assistance from his lawyers. He did not approach this Court as an unrepresented layperson, but he was assisted by lawyers. Mr Choko-Choko was not responsible for the drafting of the papers and the statements made in order to support his application

- those are legal aspects left to his lawyers to attend to.

[80] A cost order is a method of ensuring that decisions to litigate in this Court are taken with due consideration of the law and the prospects of success, more so where an application is filed on an urgent basis.

[81] In casu, the application was also wholly misguided and meritless, and the Applicant dismally failed to satisfy the requirements for the interdict he sought. The Respondent had to defend a meritless urgent application, and fairness dictates that it cannot be expected to endure enormous costs defending litigation that ought not to have been brought in the first place. NIA should have put in some earnest thought and consideration into the merits of this case and the warning issued in Ngobeni before filing this urgent application and advising Mr Choko-Choko that it was a wise move to make.

[82] In *South African Liquor Traders' Association and others v Chairperson, Gauteng Liquor Board and Others*[25], the Constitutional Court ordered costs de bonis propriis on a scale as between attorney and client and held that:

‘An order of costs de bonis propriis is made against attorneys where a court is satisfied that there has been negligence in a serious degree which warrants an order of costs being made as a mark of the court's displeasure. An attorney is an officer of the court and owes a court an appropriate level of professionalism and courtesy.’

[83] In *Indwe Risk Services (Pty) Ltd v Van Zyl: In re Van Zyl v Indwe Risk Services (Pty) Ltd*[26], the Court considered circumstances where a de bonis propriis cost order was warranted and held that:

‘I am also mindful of the fact that an order for costs de bonis propriis is only awarded in exceptional cases and usually where the court is of the view that the representative of a litigant has acted in a manner which constitutes a material departure from the responsibilities of his office. Such an order shall not be made where the legal representative has acted bona fide or where the representative merely made an error of judgment. However, where the court is of the view that there is a want of bona fides or where the representative had acted negligently or even unreasonably, the court will consider awarding costs against the representative. Because the representative acted in a manner which constitutes a departure from his office, the court will grant the order against the representative to indemnify the party against an account for costs from his own representative. (See in general Erasmus Superior Court Practice at E12-27.)’

[84] In casu, it is evident that the Applicant's attorneys filed an urgent application without any reflection as to the provisions of the LRA, the applicable authorities and the possible prospects of success. One could reasonably accept that a practising advocate or attorney assisting a paying client should, at least, consider the aforesaid when an urgent application is filed and other parties are dragged to Court. In this instance, there was no regard for any of the aforesaid. Had the authorities been considered, NIA would have known that a case for ‘exceptional circumstances’ must be made out, which was not done, to the severe prejudice of the Applicant.

[85] The way in which this urgent application was drafted and pursued is not merely an error of judgment. The Applicant's legal representatives acted in a manner that constitutes a departure from their office by drafting papers that did not comply with the Rules of this Court, by pursuing litigation in circumstances where no case had been made out and thereby burdening this Court, with limited resources and a substantial backlog, and that on an urgent basis. This Court's displeasure should be known to the legal representatives.

[86] This is an exceptional case where the Applicant's representatives acted in a reprehensible manner, not only towards their client, but also towards this Court, with no regard to their duty as officers of the Court, and which would justify an order for costs de bonis propriis.

[87] Ngidi Incorporated Attorneys are afforded seven days within which to make submissions as to why a cost order de bonis propriis should not be confirmed. If no submissions are received within the prescribed time, the cost order will have final effect.

[88] In the premises, I make the following order:

Order

1. The application is dismissed;
2. The Respondent's costs are to be paid de bonis propriis by Ngidi Incorporated Attorneys, on the scale as between party and party;
3. The order for costs in paragraph 2 supra is provisional and Ngidi Incorporated Attorneys are afforded seven days to make written submissions as to why the order should not be confirmed, failing which the cost order will be final.

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Advocate N B Dlamini

Instructed by:

Ngidi Incorporated Attorneys

For the Respondent:

Advocate M van As

Instructed by:

Soldatos Cooper Inc Attorneys

[1] (2004) 25 ILJ 995 (SCA) at para 19.

[2] GN 4775 of 2024: Rules Regulating the Conduct of the Proceedings of the Labour Court.

[3] Act 66 of 1995, as amended.

[4]

(1998) 19 ILJ 635 (LC) at 638E-F.

[5]

(1997) 18 ILJ 1324 (LC) at 1327I.

[6]

(2021) 42 ILJ 184 (LC) at para 9.

[7] See: Shezi at para 10, Chirwa v Transnet Ltd and Others

[2007] ZACC 23; 2008 (4) SA 367 (CC) at para 155; Gcaba v Minister of Safety and Security and Others

(2010) 1 SA 238 (CC) at para 75.

[8] (JA121/2022) [2025] ZALAC 33 (4 June 2025) at para 27.

[9] Baloyi v Public Protector and others 2021

(2) BCLR 101 (CC) at paras 23 to 24.

[10] (2011) 32 ILJ 112 (LAC) at para 54.

[11] Shezi supra at paras 17 – 20.

[12] Ibid at para 20.

[13] (2010) 31 ILJ 112 (LC) at para 17.

[14] (2016) 37 ILJ 1704 (LC) at para 12.

[15] (2021) 42 ILJ 141 (LC).

[16] 2012 (6) SA 223 (CC) at para 50.

[17] 2023

(1) SA 353 (CC) at para 48.

[18] A C Cilliers, C Loots et al, Herbstein & Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa, 5th ed, Juta, at p 1465.

[19] Performing Right Society Ltd v Berman and Another 1966

(2) SA 355 (R) at 357 – 358.

[20] 1914 AD 221 at 227.

[21] Shezi supra at para 21.

[22] (2016) 37 ILJ 2840 (LC) at para 39.

[23]

(2018) 39 ILJ 523 (CC) at para 24.

[24]

(2012) 33 ILJ 2117 (LC) at para 176.

[25] 2009 (1) SA 565 (CC) at para 54.

[26]

(2010) 31 ILJ 956 (LC) at para 39.

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