

SOUTH AFRICA / JUDGMENT

Mbokodo and Another v NEHAWU and Others (2025/094549) [2025] ZALCJHB 273 (30 June 2025)

[2025] ZALCJHB 273

COURT

Labour Court Johannesburg

BEFORE

M T M Phehane

CASE / FILE NUMBER

2025/094549

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

No: 2025-094549

In

the matter between:

NORMAN
MBOKODO
First Applicant
SELBY
MABELE
Second Applicant
and
NEHAWU
First Respondent
FANIE
NGWENYWAMA
Second Respondent
DEKETSO
MOSELENA
Third Respondent
WELCOME
MNISI
Fourth Respondent
GIFT
MASEKO

Fifth Respondent
LINAS
MAHAMBABA
Sixth Respondent
PROVINCIAL
EXECUTIVE COMMITTEE
Seventh Respondent
REGIONAL
OFFICE BEARERS
Eighth Respondent

Heard: 24 June 2025

Delivered: 30 June 2025

JUDGMENT

PHEHANE, J

- [1] In this opposed urgent application, the applicants seek declaratory final interdictory relief in essence, to interdict the convening of a Congress of the first respondent from taking place on 25 to 27 June 2025 and related relief, pending compliance with the provisions of the constitution of the first respondent.
- [2] Firstly, the applicants have failed to comply with their own truncated time frames as set out in their notice of motion and to ready this application for hearing on 24 June 2025. Secondly, all the necessary papers were not uploaded timeously on CaseLines for the expedient adjudication of this application. For this reason and on the basis of the contentions as set out in the answering affidavit[1] that this application is not urgent and with due regard for the provisions of Rule 38,[2] this application ought to be struck off the roll for lack of urgency.
- [3] Another issue arises - the dispute before this Court is pending before the Mpumalanga Division of the High Court in Mbombela under case number 2025-088026. Consequently, this application fails on the doctrine of lis pendens.
- [4] The applicants aver that their application is premised on contract and that is the reason they approached the High Court for relief. The same application for the same relief was heard in the High Court on 17 June 2025.[3] It transpires on the applicants' own version, that they became impatient when the judgment and order of the High Court was reserved and thus approached this Court for the same relief.

[5] In a judgment handed down on 23 June 2025, the High Court struck the applicants' application off the roll for lack of urgency.[4] The applicants disingenuously now submit before this Court, that the High Court lacks jurisdiction and its order is thus null and void in a desperate attempt to avoid the challenge of *lis pendens*, yet, they aver that their claim is premised on contract and have failed to withdraw their dispute that is currently pending in the High Court.

[6] In *Feni v Commission for Conciliation, Mediation and Arbitration and Others*,[5] the Labour Appeal Court explained as follows regarding the doctrine of *lis pendens*:

'[14] Aligned, however, to the concept of *res judicata* is that of *lis pendens*. As Nugent AJA said in *Nestlé (South Africa) (Pty) Ltd v Mars Inc 2001 (4) SA 542 (SCA)* at paragraph 16 [also reported at [2001] 4 All SA 315 (A) -Ed]:

"The defence of *lis alibi pendens* shares features in common with the defence of *res judicata* because they have a common underlying principle, which is that there should be finality in litigation. Once a suit has been commenced before a tribunal that is competent to adjudicate upon it, the suit must generally be brought to its conclusion before the tribunal and should not be replicated (*lis alibi pendens*). By the same token the suit will not be permitted to revive once it has been brought to its proper conclusion (*res judicata*). The same suit between the same parties, should be brought once and finally."

[15] Wallis J explicated upon the doctrine in *Caesarstone Sdot-Yam v World of Marble and Granite 2000 CC and others 2013 (6) SA 499 (SCA)* at paragraph 2 [also reported at [2013] 4 All SA 509 (SCA) - Ed] where he said that the policy underlying the doctrine of *lis pendens* "is that there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk they may reach different conclusions." [Own emphasis].

[7] In view of the afore-going, the applicants' conduct amounts to nothing more than forum shopping and is vexatious.[6] The submission on behalf of the applicants that the High Court lacks jurisdiction after they have not succeeded on urgency in the High Court, is mischievous. In the circumstances, an order that the applicants pay the costs of this application on a punitive scale is warranted.

[8] If I am wrong on my finding of *lis pendens*, which I do not think I am, then, I would have struck the matter off the roll with costs for the reasons mentioned above.

[9] In the premises, the following order is made:

Order

1. The application is dismissed.
2. The applicants are to pay the costs on a scale as between attorney and own client.

M. T. M. Phehane

Judge of the Labour Court of South Africa

Appearances:

For the applicants: Adv Zwane

Instructed by: WS Nkosi Attorneys

For the respondents: Adv Hulley SC

Instructed by: M Matshiyane Attorneys

[1] At paragraphs 14 to 32 on pp 003-6 to 003-18 on CaseLines.

[2] Rule 38 of the Rules Regulating the Conduct of the Proceedings of the Labour Court published in GN 477a in GG 50608 of 3 May

2024. See also: East Rock Trading 7 (Pty) Ltd and Another v Valley Granite (Pty) Ltd and Others (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

[3] See: founding affidavit at paras 95 to 98 on pp 002-27 to 002-28 on CaseLines.

[4] The judgment per Bhengu AJ in the High Court appears at pp 012-1 to 012- 13 on CaseLines. This judgment set out the facts of this dispute in detail. The judgment records that two points in limine served before it, jurisdiction and urgency. The judgment deals only with urgency. It seems to me, that Bhengu AJ was satisfied that the Court had jurisdiction, otherwise an order would not have been issued. It is trite that in contractual dispute, such as the present dispute, the High Court and Labour Court have concurrent jurisdiction.

[5]

[2020] 10 BLLR 1001 (LAC) at paras 14 to 15.

[6] Feni, supra at para [16].

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