

SOUTH AFRICA / JUDGMENT

Naidoo and Others v Safety and Security Sectorial Bargaining Council (SSSBC) and Others - Urgency (D216/2023)

[2023] ZALCD 15 (17 August 2023)

[2023] ZALCD 15

COURT

Labour Court Durban

BEFORE

Allen-Yaman

CASE / FILE NUMBER

D216/2023

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IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: D216/2023

Not Reportable

In the matter between: ANGEMI NAIDOO First Applicant SHAUN MARTIN VAN VOLLENHOVEN Second Applicant LIST OF APPLICANTS ANNEXED AS ANNEXURE A Third to Eighty Third Applicants And SAFETY AND SECURITY SECTORIAL First Respondent BARGAINING COUNCIL (SSSBC) KHOMOTSO MOSOANE THE SECRETARY Second Respondent OF THE SSSBC ROMILLA NUNHOO DISPUTE RESOLUTION Third Respondent MANAGER OF THE SSSBC DAYLAN WELCOME DISPUTE RESOLUTION Fourth Respondent OFFICER OF THE SSSBC COMMISSION FOR CONCILIATION Fifth Respondent MEDIATION AND ARBITRATION MINISTER OF POLICE Sixth Respondent NATIONAL COMMISSIONER SOUTH Seventh Respondent AFRICAN POLICE SERVICE

Heard: 19 May 2023

Delivered: This judgment was handed down electronically by circulation to the parties and / or their legal representatives by email. The date and time for handing-down is deemed 14h00 on 17 August 2023.

JUDGMENT:URGENCY

ALLEN-YAMAN AJ

[1] The applicant's initiated an application, to be heard on 19 May 2023, in which they sought various forms of relief, including an

order that the application be heard as one of urgency in accordance with the provisions of Rule 8, and the applicants' failure to comply with the normal time periods, forms and service as contained in Rule 7 be condoned. At the hearing of the matter the applicants sought leave to supplement their Notice of Motion with additional forms of relief. The nature of the relief sought by the applicants in both their original and supplementary Notices of Motion will be addressed hereunder.

- [2] The sixth and seventh respondents delivered a notice of intention to abide the decision of the court, whilst the fifth respondent simply remained passive.
- [3] The forth respondent is no longer employed by the first respondent, and the application was accordingly opposed by the first to third respondents only. To this end, they delivered an answering affidavit in which, in limine, the authority of the first and second applicants to act on behalf of the remaining applicants was challenged, as were both urgency and jurisdiction. In addition the first to third respondents opposed the application on its merits.
- [4] The point relating to authority was not persisted with at the hearing of the matter. Accordingly, the question of urgency, being

the only issue addressed by the first to third respondents in their heads of argument, is that which is required to be determined at the outset.

Urgency

- [5] As was argued by the first to third respondents in their answering affidavit, the determination regarding whether a matter is urgent involves two primary considerations: being whether an applicant has made out a case for urgency in its papers and whether a delay in the determination of the matter would result in an applicant being afforded substantial redress in due course.
- [6] The first applicant explained that she had brought the application on an urgent basis, '... due to the detrimental impact and the closure of Angeni Naidoo Law Firm as a result of the 1st to 4th Respondents (sic) conduct, and that such non action impacts directly on the prompt, speedy and expeditious resolution of labour disputes and jurisprudence in this regard.'
- [7] This suggestion was amplified in the following terms,

'I am the owner of Angeni Naidoo Law Firm as a sole proprietor. My law practice specialises in employment related matters at various bargaining councils inclusive of the SSSBC, GPSSBC, Labour and Labour Appeal Courts. The majority (approximately 90%) of my law practice work is at the SSSBC with more than approximately 77 active litigation files, hence this urgent application before the Honourable Court. I have attached my diary from July 2022 to October 2022 recording that my firm was fully booked with SSSBC matters confirming that my sole practice work approximately 90% is from my clients' matters at the SSSBC (Annexure H1 to H4).'

[8] Distinct from the applicants' extraneous complaints and ancillary relief sought, it is evident that the main purpose of the application was, at the outset, to obtain an order ensuring that a number of matters in which the first applicant is the attorney of record and the second applicant is the counsel briefed by the first applicant to represent the employees in those matters were enrolled

for hearing by the first respondent.

[9] The basis upon which the applicants contended that the application was urgent was stated in the following terms,

'If the matter is not heard immediately the Applicants will not be afforded substantial redress at a hearing in due course and an apprehension of irreparable harm

7.1 The Applicants are entitled to have their disputes adjudicated at forums created for such as provided for in section 34 of the Constitution. The Applicants disputes have been unreasonably delayed and without any set down dates has the potential to cause irreparable harm to the Applicants as ANLF will be forced to close down without these matters being set down. Furthermore Angeni Naidoo Law Firm cannot fulfil its mandate due to a supervening impossibility of performance by the Respondents.

7.2 I have to place my paralegals on short time or retrench them as a direct consequence of the SSSBC Respondents not fulfilling their duties and obligations as an accredited Council. The matters cannot be heard on the normal motion Court roll that is currently unfortunately backlogged for months. This will necessitate that if the matter is not heard immediately a significant delay will cause severe prejudice to the individual Applicants, ANLF law practice and the paralegals employed.

7.3 Angeni Naidoo Law Firm will have to close down as most if not all disputes and legal work are at the SSSBC and emanating from the SSSBC. The paralegals will either have to be placed on short time or retrenchment, causing irreparable harm in the current economic conditions in the workplace and South Africa.'

[10] The first applicant deposed to the founding affidavit on 12 April 2023, evidently having expected the application to have been allocated a date on this court's urgent roll on 18 April 2023, which expectation did not come to pass. The date which was allocated to this matter was 19 May 2023. This having been the case, without abandoning any of the relief sought by them in their initial Notice of Motion, the applicants delivered an additional Notice of Motion and supplementary affidavit in which they sought the leave of the court to supplement both their Notice of Motion and founding affidavit, the details of which will be addressed hereunder.

[11] Given the nature and ambit of the applicants' various substantive claims, and the type of relief sought by them in respect of each, it is apposite to consider the issue of urgency in relation to each, individually.

Prayer 2

[12] The first of the applicants' prayers having been the order sought relating to urgency, the second of the applicants' claims was articulated in the following terms,

'That the SSSBC Panellists Directive 9/2022 dated 30 November 2022 (Annexure A: SSSBC Panellists Directive 9/2022) be declared irrational, improper, unconstitutional, invalid, void and alternatively is reviewed and set aside.'

[13] Directive 9/2022 reads as follows,

'Kindly take note that as of the 01st January 2023 all panellists are directed to not agree on continuation dates with the parties in dispute. Dates must be submitted to the DR Department in terms of clause 6(f) of the Service Level Agreement. Please be advised that any dates that are cited in the outcome reports as of the 01st January 2023 will be allocated to cases as per the discretion of the Secretary of Council in terms of clause 3.4.1(d)(i) of the SSSBC's Dispute Procedure which reads,

"the Secretary of Council must decide the date, time and venue of the arbitration hearing meeting", therefore cases will be scheduled as per the rules of the SSSBC.

The Council currently has a backlog of long outstanding dismissal disputes that are pending finalisation and must be speedily resolved.

Furthermore, as from the 01st January 2023 you will be required to submit a detailed report to the Council explaining why cases from previous financial years have not been resolved.'

[14] The issue taken with Directive 9/2022 was that it had caused the first to fourth respondents not to enrol a number of arbitrators on dates which had ostensibly been agreed to between themselves and the arbitrators appointed in those matters (notwithstanding Directive 9/2022) for the continuation thereof.

[15] The first to third respondents argued that any urgency which may be found to be present in this claim, which is denied, was in any event self-created. This is so, they argue, for two reasons. The first is

that all parties were provided with a directive on 28 September 2022, Parties Directive 1/2022, which is required to be read together with Directive 9/2022. The former reads as follows,

'Kindly take note that all cases which are postponed from the 28th of September 2022 will only be scheduled after June 2023.

Please be advised that the high postponement rate and the non-finalisation of cases is straining the Council financially.

As per the attached Directive issued to the panellists, we urge you to kindly be prepared to have all part heard case finalised at the next hearing as per the scheduled dates.'

- [16] In response, the applicants denied that the situation was one of self-created urgency and, in amplification of such denial, asserted that Directive 1/2022 applied only to cases which had not yet commenced and was therefore inapplicable to their urgent application.
- [17] The first difficulty with this proposition is that Directive 1/2022 deals with the postponement of all cases and, on the face of it, cannot be interpreted to mean that it was intended to apply only to cases that had not yet commenced. The applicants did not dispute in their replying affidavit the first to third respondents' allegation
- that they were issued with this directive on or shortly after it had been issued, in September 2022. They also did not dispute that they had been aware of Directive 9/2022 since December 2022.
- [18] The correspondence annexed to the applicants' founding affidavit confirmed that the first applicant herself was aware of Directive 9/2022 at the beginning of 2023 and yet waited some four months before deposing to an affidavit in support of an application for the setting aside thereof.
- [19] The only conclusion which can be arrived at in circumstances in which the applicants were aware of both Directives by the end of 2022, and then elected to wait until the middle of April 2023 to launch their application on what was then contended to be an urgent basis was, as the first to third respondents have argued, that any urgency which may have been found to have been present was entirely self-created.
- [20] As to the claim itself, save for bald conclusions that the Directive was 'irrational, improper, unconstitutional, unjustifiable, invalid, and void', neither a factual or legal basis upon which this court could itself draw such conclusions was advanced by the applicants. As to the alternative relief sought, that the Directive be 'reviewed and set aside' the applicants have not sought to prosecute any type of review application in terms of Rule 7A.
- [21] Moreover, whilst the applicants sought the setting aside of Directive 9/2022, they sought no relief in relation to Directive 1/2022, which itself operates as an impediment to the enrolment of the various arbitrations without reference to Directive 9/2022 at all.
- [22] As such, it is highly doubtful that the applicants could obtain substantial redress in due course, not because a period of delay will deprive them of the redress which they seek, but rather because the applicants have failed to make out a prima facie case for the relief sought by them under the second of their claims.

Prayer 3

- [23] The applicants' third claim was as follows,

'Directing that the 1st to the 4th Respondents be compelled to issue on an urgency (sic) basis as directed by the Honourable Court set down notices for all the agreed

dates consented to by all the parties and arbitrating commissioner at the previous appearances (Annexure B: list of agreed future dates consented by parties and commissioners after Directive 9/2022) either virtually or at a properly ventilated venue in compliance with OHSA standards as derived from the basic employment related principles in the LRA and jurisprudence to be adjudicated promptly, speedily and expeditiously.'

[24] The annexure to which the applicants referred, Annexure B, constituted a list reflecting the names of thirteen of the third to further applicants, the dates on which each of their matters had last been arbitrated, and the future dates on which it had been agreed between the parties and the arbitrators themselves that these arbitrations would be re-enrolled. This list demonstrated that the status of the various matters which the applicants sought this court to compel the first to fourth respondents enrol on the dates agreed between the parties was as follows:

- The sixth applicant, Cele, is the applicant in a non-promotion dispute. The dispute was last arbitrated in November 2022 and the parties had agreed that the matter would resume in July 2023.
- The fifteenth applicant, Dubra, and the twenty fifth applicant, Govender, are applicants in a dismissal dispute. The dispute was last arbitrated in January 2023 and the parties had agreed that the matter would resume in May 2023.
- The thirty-third applicant, Mchunu, is the applicant in a dismissal dispute. The dispute was last arbitrated in January 2023 and the parties had agreed that the matter would resume in April 2023.
- The thirty-fifth applicant, Mkhosini, with two unidentified other applicants, are applicants in a dismissal dispute. The dispute was last arbitrated in February 2023 and the parties had agreed that the matter would be arbitrated in July 2023 in the event that the settlement agreement then being negotiated was not concluded.
- The forty-sixth applicant, Naicker, is the applicant in a non-promotion dispute. The matter was last arbitrated in January 2023 and the parties had agreed that the matter would resume in April 2023.
- The sixtieth applicant, Padayachee, is the applicant in a non-promotion dispute. The matter was last arbitrated in January 2023 and the parties had agreed that the matter would resume in April 2023.
- The sixty-third applicant, Pillay, is the applicant in a dismissal dispute. The matter was last arbitrated in March 2023 and the parties had agreed that the matter would resume in August 2023.
- The sixty-fourth applicant, Pillay, is the applicant in a non-promotion dispute. The matter was last arbitrated in February 2023 and the parties had agreed that the matter would resume in April 2023.

- The seventy-second applicant, Steyn, is the applicant in a non-promotion dispute. The matter was last arbitrated in January 2023 and the parties had agreed that the matter would resume in May 2023.
 - The seventy-sixth applicant, Thaver, is the applicant in a non-promotion dispute. That dispute was last arbitrated in February 2023 and the parties had agreed that the matter would resume in July 2023.
 - The seventy-ninth applicant, Vezi, is the applicant in a dismissal dispute. The dispute was last arbitrated in February 2023 and the parties had agreed that the matter would resume in August 2023.
 - The eighty-first applicant, Zikode, is the applicant in a dismissal dispute. The dispute was last arbitrated in February 2023 and the parties had agreed that the matter would resume in April 2023.
- [25] The applicants' list also included one Allison, an applicant in a non-promotion dispute under PSSS42-17/18, whose dispute was last arbitrated in March 2023 and in respect of which the parties had agreed that the matter would resume on 28 August 2023. This individual was not cited as an applicant in these proceedings. This applies equally to the two unidentified individuals who are applicants (together with the thirty-fifth applicant) in a dismissal dispute. In such circumstances, as they have a direct and substantial interest in the outcome of the matter and are not parties to the proceedings, no relief could be granted to the applicants in relation to these matters in due course.
- [26] As to the other matters, a number of factors militate against the granting of the relief sought on an urgent basis.
- [27] The first is, again, that of self-created urgency. This much is demonstrable from the exchange of email correspondence between the first and third applicants on 28 March 2023. The first applicant had addressed an email to the third respondent in which she demanded that the third respondent provide her offices with notices of set down for
- 'the 78 matters' as well as for the matters in April in which the dates had been agreed. She informed the third respondent that,
- 'There is now clearly an urgency in this regard as the applicants and our law practice. No other alternative remedy is available.'
- She cautioned the third respondent that an application would be launched in which relief against the first respondent would be sought in the event that the notices of set down were not received by close of business the following day.
- [28] The response issued by the third respondent later that afternoon was unequivocal,
- 'Kindly take note that as per the directive issued in November 2022 arbitrators were not allowed to agree upon continuation dates with the parties from 01 January 2023.'

We note that the above cases were heard from 18 January 2023 going forward.

I place on record that the commissioners have defied the Councils directive with regards to agreeing to dates with the parties, hence notices of set down will not be issued.'

[29] In response the first applicant reiterated that an urgent application was to be launched, 'Should the April 2023 dates not proceed we shall bring an urgent application at the Labour Court due to vast prejudice to the Applicants and loss of income to ANLF I Staff salaries and endangerment to ANLF practice in this regard. No set down notices have been issued by SSSBC for May 2023 onwards, which directly impacts on the sustainability of ANLF. We are instructed by 78 Applicants whose matters are not set down at the SSSBC who are affected by this, which goes beyond SSSBC force majeure. Awaiting your urgent response by 16:00 pm tomorrow the 29th of March 2023.'

[30] As has been observed, it took the first applicant almost two weeks to draft and depose to a founding affidavit and another month thereafter to enrol the matter. The applicants were alive to the fact that the relief sought by them under prayer 3 could no longer be granted as a result of the lapsing of time, as a result of which a supplementary Notice of Motion and supplementary founding affidavit were delivered, in which additional claims 10 to 21 were added to their existing application. These claims will be addressed hereunder, save to mention for the present that they arose in circumstances in which the applicants acknowledged that the first to fourth respondents could not be compelled, in the middle of May 2023, to enrol the arbitrations in respect of which dates had ostensibly been agreed in April, May and June 2023.

[31] As to the remaining matters reflected on the applicants' list in respect of which the parties and the commissioners themselves had agreed to dates in July and August 2023, the applicants placed no evidence before this court as to what, if any, prejudice would be occasioned to those individual applicants who stood to be affected (ie those applicants listed in paragraph [24] above) in the event that their arbitrations did not proceed on the dates in question.

[32] By way of example, the sixth applicant's dispute appears to last have been arbitrated on 7 November 2022. On 8 November 2022, when a postponement application was granted, the parties agreed that the arbitration would proceed on 10 July 2023, a period of some eight months later. It can hardly be said that in that particular matter the first, second and sixth applicants themselves have approached the prosecution of these arbitrations with any consideration being given to the need to conduct labour disputes on an expeditious basis. The same can be said of many other matters listed, where the agreed delay

between the dates of the last sittings of the relevant arbitrations and the date to which the matters were 'agreed' between the parties to be postponed were approximately five months.

[33] In the circumstances, the ostensible urgency was either self-created to the point that the applicants could not be afforded at least part of the relief sought by them due to their own delay, or wholly unsubstantiated by any explanation on the part of any of the applicant employees themselves as to why they required the relief to be granted on an urgent basis.

Prayer 4

[34] This claim was similar in form to the third, albeit without the parties having agreed dates, 'Directing that the 1st to the 4th Respondents be compelled to set down the 3rd to the 83rd Applicants (sic) disputes referred to the SSSBC (Annexure C: 3rd to 83rd Applicants (sic) list of awaiting long outstanding set down dates) before willing and able arbitrators.'

[35] It may firstly be mentioned that the relief as framed has resulted in the applicants having duplicated the relief they sought in relation to the applicants specifically mentioned in paragraph [24] above.

[36] In consideration of the schedule provided by the applicants it appears that, of the matters listed, the time frames applicable to the matters which are currently awaiting dates vary by a wide margin. The shortest period is one week whereas the longest period is two years and three months.

[37] The applicants pointed out that the third to eighty third applicants have an entitlement to have their disputes determined expeditiously. This proposition is undoubtedly correct. Save, however, for the few

examples within the complete list of matters which appear to have become delayed, it is not self-evident that matters which have

awaited a date for one or two months, for example, have been unduly delayed.

[38] To this may be added that it is also evident that a number of the matters in question have already been finalised and there is simply no basis for an order to be made that they be enrolled for arbitration.

[39] The fundamental difficulty with the approach adopted by the applicants in having consolidated all the separate disputes into one application, and not having sought to identify that which renders the

relief so sought equally urgent in relation to all the matters to which it pertains, is that the applicants have again failed to

demonstrate why the immediate enrolment of all the referrals, let alone each of them individually, is urgent.

Prayer 5 (first claim 5)

[40] The applicants sought an order,

'Directing that the 1st to 4th Respondents be compelled to issue the outstanding awards and rulings due to its failure to comply with its Dispute Procedure clause 3.4(h) Dispute Resolution Rule 15(j) (Annexure D: outstanding Awards and Rulings list).'

[41] The applicants' representative conceded in argument that none of the second to fourth respondents were, themselves, responsible for issuing the awards and rulings in question. These functions are required to be performed by the arbitrators themselves, none of whom had been cited as respondents in these proceedings.

[42] In those circumstances the applicants' representative conceded that the relief sought by them in their first prayer 5 of their Notice of Motion could not be granted for want of joinder of the arbitrators themselves, even if the application was to be determined at a point in the future.

Prayer 5 (second claim 5)

[43] The applicants sought an order,

'Declaring that the 5th Respondent investigate its renewal accreditation issued out to the First Respondent for the period 1 June 2020 to the 31st May 2023 without any condition set for the turnaround time for arbitration efficiencies be improved on, overdue awards/rulings be improved on, adjournment rate efficiencies be improved upon.'

[44] Whilst the first to third respondents themselves agreed that it was working under administrative challenges, this in and of itself does not establish urgency, as it does not dispose of the question why the

investigation which is sought to be ordered ought to be conducted in circumstances in which the first respondent's accreditation was to expire at the end of May 2023, approximately two weeks after the application was launched.

[45] The applicants' representative conceded that given that the first respondent's accreditation was then shortly to reach its termination date, the issue of the efficiencies of the first respondent would most appropriately be dealt with in the course of making representations to the fifth respondent concerning any renewal of its accreditation as may be made by the first respondent in the future.

Prayer 9

[46] As has been mentioned above, the applicants sought leave to file an Amended Notice of Motion in which they sought to supplement the relief sought by them with a number of additional claims, as well as to deliver a supplementary affidavit in support of their amended Notice of Motion.

[47] The first to third respondents consented to the granting of that order.

Prayers 10 to 21

[48] Each of the aforementioned prayers related to a claim for damages by each the first and second applicants. Each claim is similar in form, and will be summarised in relation to the first and second applicants

as they relate cumulatively to each.

[49] The first applicant has claimed the payment of damages as follows:

- Prayer 13

R45 000.00, being in respect of the loss of income sustained by her as the result of the loss of nine reserved dates in the month of April 2023 at the rate of R5 000.00 per day.

- Prayer 14

R15 000.00, being in respect of the loss of income sustained by her as the result of the loss of three reserved dates in the month of May 2023 at the rate of R5 000.00 per day.

- Prayer 15

R30 000.00, being in respect of the loss of income sustained by her as the result of the loss of six reserved dates in the month of April 2023 at the rate of R5 000.00 per day.

- Prayer 19

R20 000.00, being in respect of the loss of income sustained by her as the result of the first to fourth respondents having failed to enrol arbitrations on four dates previously agreed to the month of April 2023 at the rate of R5 000.00 per day.

- Prayer 20

R95 000.00, being in respect of the loss of income sustained by her as the result of the first to fourth respondents having failed to enrol arbitrations on nineteen dates previously agreed to the month of May 2023 at the rate of R5 000.00 per day.

- Prayer 21

R75 000.00, being in respect of the loss of income sustained by her as the result of the first to fourth respondents having failed to enrol arbitrations on fifteen dates previously agreed to the month of June 2023 at the rate of R5 000.00 per day.

[50] The first applicant accordingly claims the payment of damages in the total amount of R280 000.00.

[51] Similarly, the second applicant has claimed the payment of damages as follows:

- Prayer 10

R90 000.00, being in respect of the loss of income sustained by him as the result of the loss of nine reserved dates in the month of April 2023 at the rate of R10 000.00 per day.

- Prayer 11

R30 000.00, being in respect of the loss of income sustained by him as the result of the loss of three reserved dates in the month of May 2023 at the rate of R10 000.00 per day.

- Prayer 12

R60 000.00, being in respect of the loss of income sustained by him as the result of the loss of six reserved dates in the month of April 2023 at the rate of R10 000.00 per day.

- Prayer 16

R40 000.00, being in respect of the loss of income sustained by him as the result of the first to fourth respondents having failed to enrol arbitrations on four dates previously agreed to the month of April 2023 at the rate of R10 000.00 per day.

- Prayer 17

R90 000.00, being in respect of the loss of income sustained by him as the result of the first to fourth respondents having failed to enrol arbitrations on nineteen dates previously agreed to the month of May 2023 at the rate of R10 000.00 per day.

- Prayer 18

R150 000.00, being in respect of the loss of income sustained by him as the result of the first to fourth respondents having failed to enrol arbitrations on fifteen dates previously agreed to the month of June 2023 at the rate of R10 000.00 per day.

[52] The second applicant accordingly claims the payment of damages in the total amount of R460 000.00, the second application having erroneously calculated the amount of his purported losses under prayer 17.

[53] There are a litany of reasons why the first and second applicants' claims are not sustainable, as a matter of law. To identify but a few of the problems which are discernible:

- In the first place, the first and second applicants claim damages by way of application, rather than action, in circumstances in which it is generally accepted that claims of this type invariably give rise to disputes of fact, and necessarily entail proof of such damages.
- Secondly, both the first and second applicants were well aware of the Directives which had been issued at the end of 2022 which precluded their arranging dates for the further conduct of arbitrations at their own convenience, but did so nonetheless.
- The first and second applicants would have been left in no doubt on 28 March 2023 that the first to fourth respondents did not intend to comply with their demand that the arbitrations in question be enrolled on the dates selected by them without reference to the functionaries of the first respondent who are responsible for the allocation of the first respondent's resources, but nonetheless took no steps to militate their own potential losses.

- Fourthly, the first and second applicants purported damages in relation to the alleged loss of the number of days guaranteed work which to which they had availed themselves do not correlate with the schedule provided by them in relation to their second prayer in their initial Notice of Motion:
- Insofar as April 2023 was concerned, the applicants sought an order that 5 different arbitrations be set down on the dates selected by them over a period 8 days. This is to be contrasted with the total number of 13 days' income alleged to have been lost in the first and second applicants' damages claims.
- Insofar as May 2023 was concerned, the applicants sought an order that 2 different arbitrations be enrolled on the dates selected by them over a period of 3 days. This is to be contrasted with the total number of 22 days' income alleged to have been lost in the first and second applicants' damages claims.
- No dates in June 2023 featured in the applicants' second claim yet the first and second applicants seek the payment of damages for the loss of 21 days' income for that very month.

As regards the doubtfulness of the damages claims as a matter of law, I can envisage no basis on which an attorney could to be entitled to any type of fee in circumstances which matters do not proceed. In circumstances in which an advocate is entitled to a fee on brief or a collapse fee, this is payable by the instructing attorney without more and the second applicant himself would accordingly have suffered no damages at all in the event that the applicable rules governing the fees of advocates was applied between himself and the first applicant.

[54] The aforementioned hurdles assume less significance, however, when contrasted to the single, absolute impediment to the possibility of the successful prosecution of the first and second applicants' damages claims, and that is the absence of jurisdiction. This court's jurisdiction is governed by s157 and s158 of the LRA. The matters within its jurisdiction are those which give effect to the Constitutional right to fair labour practices accorded to all employees. The claims sought to be enforced by the first and second applicants in which they seek payment of approximately R700 000.00 damages alleged to have been sustained by them and attributed by them to a loss of work occasioned by the failure on the part of the first to fourth respondents having enrolled various arbitrations for hearing upon their demand that they do so, has no bearing whatsoever on the enforcement of that Constitutional right. Nor is there any express provision in the LRA in terms of which this court is vested with jurisdiction to adjudicate claims of this nature.

Conclusion

[55] The requirements which are to be met in establishing a case for urgency have been reiterated in this court on numerous occasions and were summarised by the Labour Appeal Court in *Jiba v Minister of Justice and Constitutional Development and Others* 2010 (31) ILJ 112,

'Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and the degree to which the ordinary applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self-created when seeking deviation from the rules.'[3]

[56] The basis upon which the first applicant asserted that the application was urgent has been set out above. Save for the statement of the trite principle that the third to eighty third applicants enjoy the right to have their labour disputes dealt with expeditiously, the applicants did not articulate any specific

prejudice which would be sustained by any one of them in the event that the application were to be enrolled in the ordinary course. The only prejudice which was particularised in any detail was the prejudice which the first applicant envisaged would be suffered by her firm and, indirectly, her employees in the event that she was unable to earn the income anticipated for the months in question.

[57] It is accordingly the conclusion of this court that the applicants

failed to act when the need to do so was apparent to them, and thereby became the authors of the alleged urgency. Moreover, save for the allegations by the first applicant pertaining to the alleged financial prejudice which she alleged would be suffered by her firm in the event that the arbitrations were not enrolled, none of the remaining applicants advanced any suggestion that they would be unable to obtain substantial redress in the event that the application was to have been dealt with in the ordinary course.

[58] For these reasons the application will be struck from the roll for want of urgency.

Costs

[59] The first to third respondents asked that the first and second applicants be ordered to pay their costs and I can conceive of no reason, in either law or fairness, why such an order should not be granted.

[60] Nothing before me suggests that this application was anything more than an ill- conceived application initiated by the first and second applicants, not for the purpose of attempting to enforce any right on behalf of any of the third to eighty third applicants, but rather to ensure that their own respective businesses earned the revenues which they had planned to generate over the period of time in question, so as to ensure that the first and second applicants financial interests were secured. As such, the inescapable conclusion to be drawn is that the initiation thereof, on an urgent basis, constituted an abuse of this court's processes.

[61] In the circumstances, the first and second applicants will be ordered to pay the first to third respondent's costs incurred in dealing with this matter on an urgent basis.

Order

1. The application is struck from the roll for lack of urgency.
2. The first and second applicants are ordered to pay the first to third respondents' costs, jointly and severally, the one paying, the other to be absolved.

Kelsey Allen-Yaman

Acting Judge of the Labour Court of South Africa

Appearances Applicant: Mr SM van Vollenhoven (second applicant), briefed by Angeni Naidoo Law Firm (first applicant) Respondent: Mr G A Fourie SC, briefed by Bowman Gilfillan Inc

[3] At paragraph 18

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ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCD/2023/15.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/naidoo-and-others-v-safetyand-unknown-topic-alcd-2023>

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