



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape Division, Kimberley)

Case No: 825 / 15
Heard: 27 / 10 / 2015
Delivered: 04 / 12 / 2015

In the matter between:

J A C DAVIDS-PAULSE

Applicant

v

MEC: DEPARTMENT OF EDUCATION: NC

1st Respondent

THE HOD: DEPT OF EDUCATION: NC

2nd Respondent

**THE DEPUTY DIRECTOR: DEPT OF
EDUCATION**

3rd Respondent

**THE DISTRICT DIRECTOR: DEPT OF
EDUCATION - Z F MQCAWU DISTRICT:
UPINGTON**

4th Respondent

**THE DISTRICT DIRECTOR: DEPT OF
EDUCATION - JOHN TAOLO GAETSEWE
DISTRICT: KURUMAN**

5th Respondent

**THE CFO: DEPARTMENT OF EDUCATION
NORTHERN CAPE PROVINCE**

6th Respondent

Coram: Kgomo JP et Pakati J

JUDGMENT

KGOMO JP

[1] The applicant, Ms Davids-Paulse, is in the employ of the Department of Education and currently based in Upington, Northern Cape. She was previously an educator and rose to the position of school principal in Kuruman, Northern Cape. She now seeks the following relief:

- 1.1 That the decision taken by anyone of the following respondents during March 2012 in terms of which an amount of R108 432-00 was deducted from her salary be reviewed and set aside: The MEC of Education; the HOD of Education, the Deputy Directors of Education (Upington and Kuruman) and the CFO of Education (the 1st to 6th respondents, respectively).
- 1.2 That a mandamus be issued ordering the said respondents to refund Ms Davids-Paulse the stated deducted amount; and
- 1.3 That the respondents bear the costs of this application jointly and severally, the one paying the others to be absolved *pro tanto*.

[2] The respondents have raised two points *in limine*:

- 2.1 First, that this Court lacks the required jurisdiction to adjudicate upon this application as the Labour Court has been vested, in terms of s 157(1) of the Labour Relations Act, 66 of 1995 (the LRA), with exclusive jurisdiction;
- 2.2 Secondly, that, in any event, Ms Davids-Paulse has not exhausted all her internal remedies before approaching this Court for the mooted relief and must be non-suited.

THE JURISDICTIONAL CHALLENGE

[3] Section 157(1) and (2) of the **LRA** makes the following stipulation:

“157. Jurisdiction of Labour Court

(1) Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.

(2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from –

- (a) employment and from labour relations;*
- (b) any dispute over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and*
- (c) the application of any law for the administration of which the Minister is responsible.”*

[4] Section 186(2) is pivotal to this enquiry, it provides:

“186. Meaning of unfair labour practice

(2) “Unfair labour practice” means any unfair act or omission that arises between an employer and an employee involving –

- (a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee;*
- (b) unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;*
- (c) a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and*

(d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act No. 26 of 2000)”

- [5] In **Gcaba v Minister of Safety and Security** 2010 (1) SA 238 (CC), Van Der Westhuizen J remarked on jurisdiction:

“Jurisdiction under s 157(1) and (2)

[70] Section 157(1) confirms that the Labour Court has exclusive jurisdiction over any matter that the LRA prescribes should be determined by it. That includes, amongst other things, reviews of the decisions of the CCMA under s 145. Section 157(1) should, therefore, be given expansive content to protect the special status of the Labour Court, and s 157(2) should not be read to permit the High Court to have jurisdiction over these matters as well.

[71] Section 157(2) confirms that the Labour Court has concurrent jurisdiction with the High Court in relation to alleged or threatened violations of fundamental rights entrenched in Ch 2 of the Constitution and arising from employment and labour relations, any dispute over the constitutionality of any executive or administrative act or conduct by the State in its capacity as employer and the application of any law for the administration of which the minister is responsible. The purpose of this provision is to extend the jurisdiction of the Labour Court to disputes concerning the alleged violation of any right entrenched in the Bill of Rights which arise from employment and labour relations, rather than to restrict or extend the jurisdiction of the High Court. In doing so, s 157(2) has brought employment and labour-relations disputes that arise from the violation of any right in the Bill of Rights within the reach of the Labour Court. This power of the Labour Court is essential

to its role as a specialist court that is charged with the responsibility to develop a coherent and evolving employment and labour relations jurisprudence. Section 157(2) enhances the ability of the Labour Court to perform such a role.

[72] Therefore, s 157(2) should not be understood to extend the jurisdiction of the High Court to determine issues which (as contemplated by s 157(1)) have been expressly conferred upon the Labour Court by the LRA. Rather, it should be interpreted to mean that the Labour Court will be able to determine constitutional issues which arise before it, in the specific jurisdictional areas which have been created for it by the LRA, and which are covered by s 157(2)(a), (b) and (c).

[73] Furthermore, the LRA does not intend to destroy causes of action or remedies and s 157 should not be interpreted to do so. Where a remedy lies in the High Court, s 157(2) cannot be read to mean that it no longer lies there and should not be read to mean as much. Where the judgment of Ngcobo J in Chirwa speaks of a court for labour and employment disputes, it refers to labour- and employment-related disputes for which the LRA creates specific remedies. It does not mean that all other remedies which might lie in other courts, like the High Court and Equality Court, can no longer be adjudicated by those courts. If only the Labour Court could deal with disputes arising out of all employment relations, remedies would be wiped out, because the Labour Court (being a creature of statute with only selected remedies and powers) does not have the power to deal with the common-law or other statutory remedies.

[74] The specific term 'jurisdiction', which has resulted in some controversy, has been defined as the 'power or competence of a Court to hear and determine an issue between parties'. This court regularly has to decide whether

it has jurisdiction over a matter, because it may decide only constitutional matters and issues connected with decisions on constitutional matters. If a litigant raises a constitutional issue, this court has jurisdiction, even though the issue may eventually be decided against the litigant.

[75] Jurisdiction is determined on the basis of the pleadings, as Langa CJ held in Chirwa, and not the substantive merits of the case. If Mr Gcaba's case were heard by the High Court, he would have failed for not being able to make out a case for the relief he sought, namely review of an administrative decision. In the event of the court's jurisdiction being challenged at the outset (in limine), the applicant's pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the court's competence. While the pleadings - including, in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits - must be interpreted to establish what the legal basis of the applicant's claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognisable only in another court. If, however, the pleadings, properly interpreted, establish that the applicant is asserting a claim under the LRA, one that is to be determined exclusively by the Labour Court, the High Court would lack jurisdiction. An applicant like Mr Gcaba, who is unable to plead facts that sustain a cause of administrative action that is cognisable by the High Court, should thus approach the Labour Court.

Conclusion

[76] In view of the above the application for leave to appeal must succeed, but the appeal must fail. The order of the High Court was correct. The applicant's complaint was essentially rooted in the LRA, as it was based on conduct of an employer

towards an employee which may have violated the right to fair labour practices. It was not based on administrative action. His complaint should have been adjudicated by the Labour Court.”

- [6] The question of the infringement of a constitutional right in this matter we are seized with does not arise, nor was it raised or pleaded, neither does the question of a contractual obligation arise and it was also not raised. If therefore, on the facts of this case, which I will examine shortly, it is found that we lack jurisdiction **Makhanya v University of Zululand** 2010 (1) SA 62 (SCA) at p 83B-D (para 83) prescribes that:

“[83] The High Court, once having found that it had no jurisdiction, as the majority found, would not have been capable, by its own decision, of making any further orders in the matter. The only course open to it would have been to dismiss the claim, on the ground that it lacked the power to make any further orders.”

- [7] Demonstrably, the applicant and her legal representatives saw the preliminary challenges coming and anticipated them comprehensively in the following manner in the Founding Affidavit (paras 52-61):

“52. I am advised that the issue of whether this application should serve before this Honourable Court or whether same should have been referred to the Labour Court instead might become an issue and I therefore deem it necessary to shortly address this aspect, before dealing with the remainder of the issues at hand.

Full legal argument pertaining to the above will be submitted on date of the hearing of this application,

should it be deemed necessary by the Honourable Court.

- 53. I am advised that the Labour Relations Act, Act 66 of 1995 (hereinafter the LRA) defines an unfair labour practice inter alia as any unfair act or omission that arises between an employer and an employee involving unfair conduct by the employer relating to the provision of benefits to an employee.*
- 54. I am advised that the Labour Court has held that the reach of the term “benefits” as mentioned above, stops short of remuneration as defined in the LRA.*
- 55. Although no specific authorities on whether deductions of over-paid salary fall within the reach of the term “benefits”, it has been found that disputes concerning overtime pay do not constitute benefits for purposes of the definition of an unfair labour practice and I respectfully submit that my matter should be found to be analogous to the above.*
- 56. Authorities on the subject of unfair labour practices do suggest that, in order to succeed in an action based on an alleged unfair labour practice, employees must prove that the conduct or practice complained of, fall within the terms of one of the forms expressly listed in the definition of an unfair labour practice as set out in the LRA.*
- 57. In view of all of the above, I therefore respectfully submit that the decision by the Respondents to make deductions from my salary and the resultant deductions thus made, does not fall within the definition of an unfair labour practice and should therefore be deemed to be an administrative decision and action.*

58. *In view of the above, I respectfully submit that the above Honourable Court does have jurisdiction to hear this application.*
59. *I submit that, in terms of section 7 of PAJA, this application had to be instituted within 180 days after I became aware of the reasons for the decision to deduct the money from my salary, provided that I have first exhausted all of my internal remedies.*
60. *I submit that I have exhausted all of my internal remedies on 30 October 2014, upon receipt of the letter by the PSC to which I have referred therein above.*
61. *In view of the above I submit that this application was brought within the time limits set by PAJA."*

THE HISTORICAL BACKGROUND TO THIS MATTER

- [8] Strictly speaking, more pertinently anchored on the **Makhanya-judgment** (above), should we find that we lack jurisdiction to adjudicate on this dispute the necessity of ruling on the second objection taken, viz that the application serves prematurely before us because all the internal processes have not been followed or all the internal remedies have not been exhausted, would fall out. This must be so because the substratum would have fallen away. Put differently, our order would lack authority or it would be a *brutum fulmen*.
- [9] The applicant claims to have taken sick leave for the period 25 July 2011 to 26 September 2011 (two months); and thereafter from 27 September 2011 to 31 December 2011, another two months. She was, on this evidence, absent from work, rightly or wrongly, for an uninterrupted period of four months.

- [10] The applicant states in her founding affidavit that *“due to the fact that the abovementioned periods of sick-leave exceeded the periods of sick-leave which I would have been entitled to under normal circumstances, I was expected to apply for temporary additional sick leave in terms of the Policy and Procedure on “Incapacity Leave and ILL-Health Retirement” (hereinafter referred to as PILIR) and more specifically in terms of clause 7.1.2 of PILIR.”*
- [11] The applicant goes on to state that in Kuruman, where she was a principal of a school, she was treated by Dr H Scheepers on seven occasions (specific dates supplied) between 01 June 2011 to 09 January 2012. She maintains that on each consultation she furnished the PILIR forms to the doctor to complete *“but he unfortunately neglected”* to do so. Appended to the applicant’s papers, marked **“JAC1”**, is what she terms *“a copy of pages 18-30 of the PILIR form which pertains to me and which was completed by Dr Scheepers.”*
- [12] **“JAC1”** is pro-forma. At p18 thereof is reflected *“CONFIDENTIAL”* and *“Part C: Statement by Attending doctor”* and importantly, for present purposes, in brackets: *“The employee is responsible to obtain this statement from the doctor.”* The form purports to have been completed and signed by Dr Scheepers on 18 November 2012. **“JAC1”** reflects all seven consultation dates the applicant alluded to, the last being 09 January 2012.
- [13] The applicant is aggrieved by the fact that on 12 March 2012, when she was already stationed in Upington, she *“received a visit from two officials of the Department, Mr Gordon and Mr*

Demas, who requested me, apparently upon instruction of 2nd Respondent [the HOD of the Department] to submit the relevant PILIR forms within 2 (two) working days.”

[14] On the same date (12/03/2012) the two emissaries delivered this letter, “JAC2”, dated 09 March 2012 to the applicant the receipt whereof she signed for:

“Re: Non submission of PILIR Applications Forms

Purpose

To highlight the PILIR submission procedure and consequences of non-compliance thereof.

Discussion

Despite multiple attempts to persuade you into submission of your PILIR application forms the PILIR office still has not received your application forms.

Application forms are the following temporary incapacity leave periods:

- *28 July 2011 – 26 September 2011 (45 days).*
- *27 September 2011 – 31 December 2011 (45 days).*
- *Total 90 days.*

Decision

We draw your attention into Section 9.1.11 and 9.1.12 of our PILIR Procedural Manual and section 7.1.8 and 7.1.9 of our PILIR Policy.

These sections stipulate that, upon receipt of this document, you will have 2 working days to provide the requested documents or valid reasons for not doing so. Failing that, the PILIR office shall be left with no option but to institute unpaid leave for 90 days as per above.

Yours Faithfully: V Phetlho: Deputy Director: COS.”

[15] The applicant avers that she queried the two-day deadline and was told and assured by Mr Gordon that her default to comply with the PILIR policy and prescripts will be condoned if cogent reasons are furnished. She has appended “JAC3” dated 16 March 2012, “JAC4” dated 27 March 2012 and “JAC5” dated 28 March 2012 which purport to be handwritten letters and reminders to Dr Scheepers to complete the PILIR forms and hand them to one Titus and/or John. “JAC6” purports to be transmission confirmations of such communications to her doctor. The applicant maintains that she copied “JAC3” to “JAC6” to the Department and also communicated telephonically with certain of its officials. The Departments disputes this. There is no need to resolve this dispute because its resolution will not contribute any essence to the outcome of this judgment.

[16] The complainant feels betrayed that notwithstanding all the assurances given to her and the representations that she made she was contacted telephonically by a Mr Burger of the Department at the end of March 2012 who informed her that a decision has been taken to deduct R108 432.00 from her salary in 12 monthly instalments. In reaction she wrote to none other the HOD of the Department (2nd Respondent) on 02 April 2012 in “JAC7” that (my translation):

*“LEAVE WITHOUT SALARY (PAY): MS JAC DAVIDS-PAULSE:
5179--- [last digits omitted]:*

- (a) Leave without pay on my salary has currently been instituted by the Department in the amount of R108 432.76.*
- (b) I hereby request that the amount be deducted over a period of 12 months, but if possible over a period of 24 months.*

(c) *My current financial position is such that I cannot afford the envisaged deduction over a period of 12 months. I am the sole breadwinner who has to see to the maintenance of my son and aged parents.*

(d) *I further have to inform you that I have lodged a dispute/grievance which I am confident will be decided in my favour.*

I [will] appreciate your speedy handling of the matter."

(Own emphasis)

[17] Under Part B of the "Details of Grievance" form marked "JAC8" an applicant is asked: What are you aggrieved about?" She states: *"Acceptance of PILIR submission, because Dr completed it,"* and further: *"What solution do you propose?"* She answered: *"Install my salary."* Under her signature she has supplied only the year "2012" but omitted the day and month. However, below the applicant's signature is reflected B.I Mathupi's signature, whose designation is "AD: Labour Relation" and dated 10 April 2012. Accordingly, after she wrote the letter to the HOD on 02 April 2012.

[18] On 21 February 2014 Fletcher's Attorneys, the applicant's attorney, wrote a 6-page letter to the Department largely rehashing the history of this matter already covered hereinbefore. However, the following extract points to the gravament of applicant's case:

"Section 7(2)(a) of PAJA however precludes our client from approaching a Court for the determination of her dispute, unless all internal remedies have been exhausted.

In terms of Schedule I, Part F, Item 8 of the Rules for Dealing with Grievances of Employees in the Public Service (herein after the Rules), a grievance by an employee must be dealt

with within 30 days after it has been lodged, unless the period of 30 days has been extended by mutual and written agreement (which was not done in this instance).

Schedule I, Part F, Schedule 11 (a) of the Rules determines that in the event of a failure by the Department to respond to the grievance within the above-mentioned period of 30 days, the grievance may be forwarded to the Public Service Commission directly.

We have advised our client, despite the fact that her grievance has not been attended to by the Department, she will have to refer the matter to the Public Service Commission first, before proceeding to Court.

Our client's dispute with the Department is therefore herewith referred to your offices for your kind attention."

- [19] JAC13 is a letter written by the Director General of the Public Service Commission (the PSC) dated 29 October 2014 to Fletcher's Attorneys warning or advising them that the applicant had not, amongst other things exhausted her internal remedies. JAC13 reads in part:

"According to the said Notice of Motion, the applicant intends to approach the Labour Court for an order against the 1st Respondent, Regional Director: Public Service Commission: Northern Cape, for failing to finalise the investigation into her grievance relating to the alleged unlawful deductions from her salary by the Department of Education.

In terms of section 3(2) of the Employment Educators Act, 1998, the Minister of Education determines the salaries and other conditions of service of educators.

- *A grievance procedure for educators is provided for in Chapter H of the Personnel Administration Measures (PAM)*

determined by the Minister of Education in terms of the Employment of Educators Act, 1998.

- *The grievance procedure for educators indicates that-
“The objective of this grievance procedure is to seek to resolve a complaint at the personal level as quickly and as close to the source of the complaint as possible. It is aimed at avoiding a grievance becoming a dispute. In the case where a grievance cannot be resolved through this process and is consequently registered as a dispute in terms of the provisions of the constitution of the Educators Labour Relations Council, such registered dispute shall be dealt with in terms of the dispute resolution procedure as set out in the said constitution.”*

In terms of the above grievance procedure, educators must lodge their grievances departmentally, and should the Department be unable to resolve their grievance, they should lodge a dispute with the ELRC. In view of the prescribed procedures for Educators, Ms Davids-Paulse should have exhausted the internal procedures as provided for in the PAM and the dispute resolution mechanism in terms of the provisions of the Constitution of the ELRC. Her matter was thus not properly before the Public Services Commission and could not be dealt with.” The applicant was therefore properly forewarned.

THE LEGAL SUBMISSIONS

- [20] Counsel on both sides have referred us to numerous cases in respect of which the question whether “salaries” or “wages” constitute “*remuneration*” and “*benefits*” or not within the contemplation of s 186(2)(a) of the Labour Relations Act. None of them referred to **Apollo Tyres South Africa (Pty) Ltd v Commission for Conciliation, Mediation and**

Arbitration and Others [2013] 5 BLLR 434 (LAC) Cagney Musi AJA (JM Hlophe and Patel JJA concurring), which we brought to their attention. We afforded them to file supplementary heads having heard them, which they did.

[21] Ms A Stanton, counsel for the respondents, urged us to follow not only the Apollo Tyres decision but **South African Airways (Pty) Ltd v GJJV** [2014] 8 BLLR (LAC) which followed the Apollo Tyres judgment. Mr AD Olivier, for the applicant, has now shifted ground and submits that, however that may be, the High Court retains jurisdiction by virtue of being clothed with concurrent jurisdiction with the Labour Court and in addition there is a constitutional dimension or element to the applicant's matter which right has been infringed by the Department.

[22] In the **Apollo** judgment at paras 25, 26 and 28 the LAC held:
"[25] The distinction that the Courts sought to draw between salaries or wages as remuneration and benefits is not laudable but artificial and unsustainable. The definition of remuneration in the Act is wide enough to include wages, salaries and most, if not all extras or benefits. Remuneration is defined as:-

'Remuneration means any payment in money or in kind made or owing to any person in return for that person working for any other person, including the State, and remunerate has a corresponding meaning.

[26] Many benefits that are payment in kind form part of the essentialia of practically all contemporary employment contracts. Many extras are given to employees as a quid pro quo for services rendered just as much as a wage is given as

a quid pro quo for services rendered. The cost to employer package has become, for many employees and employers, a standard contract of employment. PAK Le Roux points out that extras are often important issues during the negotiation of contracts of employment and the link between salaries or wages and benefits or extras is illustrated by the fact that contributions to medical aid schemes and pensions and provident schemes are often agreed to on the basis of a 'salary sacrifice' because this is a tax effective way of structuring an employment package.

[28] In Protekon (Pty) Ltd v CCMA and Others, it was correctly, in my view, stated that the concern that a wide definition of 'benefit' might curtail the right to strike needs not persist. According to the learned Judge, one must look at the nature of the benefit dispute in order to decide whether it is a dispute that must be settled by way of industrial action or adjudication. ---."

[23] At paras 48 – 50 the LAC then decided:

"[48] The facts of this matter clearly illustrate that the Hospersa approach, that the benefit must be an entitlement that is rooted in contract or legislation, is untenable. Hoosen had, in terms of her employment contract, a right to retirement benefits. The contract did not make provision for a right to voluntary early retirement benefits. She would therefore, on the Hospersa approach, be able to challenge, by way of arbitration, any unfairness relating to the ordinary retirement benefits. When the appellant decided to accelerate the existing contractual benefits and retained a discretion to grant the accelerated benefits, the benefits would strangely morph into something less than benefits because according to

the Hospersa approach she does not have a contractual right to the accelerated retirement benefits. The employer would then have a license to act with impunity. She would thus not have recourse in the civil courts, because no contract came into being, nor would she have a remedy in terms of section 186 (2) (a) of the Act to challenge the patent unfairness because there is no underlying contractual right to the benefits. Being a single employee she would in accordance with Schoeman v Samsung not have the right to strike. Clearly the notion that the benefit must be based on an ex contractu or ex lege entitlement would, in a case like this, render the unfair labour practice jurisdiction sterile.

[49] In South Africa Post Office Ltd v CCMA and Others, the Labour Court found the reasoning in IMATU persuasive but considered itself bound by the authority of the Labour Appeal Court with reference to Hospersa, Scheepers and G4S Security Services.

[50] In IMATU obo Venter v Umhlathuze Municipality, the Labour Court followed the Protekon approach. It then concluded that:

‘The more plausible interpretation is that the term “benefits” was intended to refer to advantages conferred on employees which did not originate from contractual or statutory entitlements, but which have been granted at the employer’s discretion.’

It seems to me that the court in IMATU was concerned that if benefits include a statutory or contractual right or entitlement, the right to strike may be curtailed. As pointed

out above employees will have an election to strike or go the arbitration/adjudication route in respect of many rights disputes. In my view, the better approach would be to interpret the term benefit to include a right or entitlement to which the employee is entitled (ex contractu or ex lege including rights judicially created) as well as an advantage or privilege which has been offered or granted to an employee in terms of a policy or practice subject to the employer's discretion. In my judgment "benefit" in section 186 (2)(a) of the Act means existing advantages or privileges to which an employee is entitled as a right or granted in terms of a policy or practice subject to the employer's discretion. In as far as Hospersa, G4S Security and Scheepers postulate a different approach they are, with respect, wrong."

[24] In **South African Airways (Pty) Ltd v GJJV** (supra) the LAC, approved the Apollo decision. What the decisions in **Apollo Tyres** and the **SAA v GJJV** cases convey to employees who find themselves in similar circumstances as the applicant in *casu* is that they would stand on solid ground if they go the Labour Court route. Mr Olivier, belatedly argued in his supplementary heads that the matter does not end there and agitated that we assume jurisdiction by virtue of the the constitutional issue purportedly raised. Counsel relies on **Gcaba v Minister of Safety and Security** (supra) 2010 (1) SA 238 (CC) at pp 248-254. I have already dealt with this aspect.

[25] To avoid forum shopping legal practitioners and litigants would do well to look at the following provisions of the **Basic Conditions of Employment Act 75, of 1997**.

25.1 Section 34(5)(a) and (b) provides that:

“34. *Deductions and other acts concerning remuneration.*

- (5) *An employer may not require or permit an employee to –*
- (a) *repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee’s remuneration; or*
 - (b) *acknowledge receipt of an amount greater than the remuneration actually received.”*

25.2 On Jurisdiction of the Labour Court s 77(1) provides:

“(1) Subject to the Constitution and the jurisdiction of the Labour Appeal Court, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matter in terms of this Act.”

25.3 On Powers of the Labour Court s 77A(d) stipulates:

“(d) reviewing the performance or purported performance of any function provided for in terms of this Act or any act or omission by any person or body in terms of this Act, on any grounds permissible in law.”

[26] I am, in the circumstances, satisfied that the application must fail. The costs will have to follow the result. I therefore make the following order.

ORDER

The point *in limine* is upheld on the jurisdictional challenge. The application is dismissed with costs.

F DIALE KGOMO
JUDGE PRESIDENT
 Northern Cape Division, Kimberley

I concur

B M PAKATI
JUDGE
 High Court of South Africa
 Northern Cape Division, Kimberley

<u>On behalf of the Applicants:</u>	Adv D.A Olivier (Fletcher's Attorneys)
<u>On behalf of the Respondent:</u>	Adv A. Stanton (Office of the State Attorney)