



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 553 /2024

In the matter between:

SOLIDARITY OBO FC KEYTER & 3 OTHERS

Applicant

and

JUANITO DOMANS NO

First Respondent

ANOOSH ROOPLAL

Second Respondent

SOUTH AFRICAN POST OFFICE

Third Respondent

Heard: 27 May 2025

Delivered: 13 June 2025

Summary: Special Plea – Respondent in business rescue. Section 133 (a) of the Companies Act is not a jurisdictional issue. Held that the Court had the jurisdiction to adjudicate the dispute but that it is suspended until the uplifting of the Business Rescue proceedings.

JUDGMENT

KRUGER, AJ

Introduction

[1] The Applicants in this matter filed a statement of case on 1 October 2024. In the statement of case, they allege that their dismissals were unfair in that the Respondent did not comply with section 189 (1) d of the Labour Relations Act¹ (LRA). They furthermore alleged that their dismissals were based on their age and this amounted to discrimination based on age.

[2] The Respondent raised a special plea and pleaded that the Court did not have jurisdiction to adjudicate this matter because the Respondent was under business rescue.

[3] In their response the Applicants conceded that this matter could not proceed until such time as the business rescue proceedings terminates.

[4] The Respondent asked for an order that the Court did not have jurisdiction to adjudicate this dispute until the business rescue proceedings are uplifted and the Applicant asked that this matter be postponed until the business rescue proceedings are uplifted.

Applicable legal principles

[5] One of the innovations introduced by the Companies Act² is the mechanism of business rescue proceedings in South Africa. In particular, chapter 6 of the Companies Act was inserted to “*provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders*”.³ In order to achieve this balance, a legal moratorium was provided for in section 133 of the Companies Act.

¹ Act 66 of 1995.

² Act 71 of 2008.

³ See: section 7(k) of the Companies Act.

[6] The relevant parts of this section read as follows:

‘133. General moratorium on legal proceedings against company

(1) During business rescue proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except –

- (a) with the written consent of the practitioner;
- (b) with the leave of the court and in accordance with any terms the court considers suitable;...

(3) If any right to commence proceedings or otherwise assert a claim against a company is subject to a time limit, the measurement of that time must be suspended during the company’s business rescue proceedings.’

[7] In 2013 the Labour Court in *Fabrizio Burda v Integcomm (Pty) Ltd*⁴ held that unfair dismissal proceedings may not be commenced or proceeded with, without the written consent of the business rescue practitioner or leave of the High Court that has jurisdiction.

[8] In *Cloete Murray and Another NNO v Firstrand Bank Ltd t/a Wesbank*⁵ the Court explained that the moratorium on legal proceedings against a company under business rescue is of fundamental importance because it provides a crucial breathing space for the company to restructure its affairs.

[9] The Supreme Court of Appeal interpreted section 133 of the Companies Act in *Chetty t/a Nationwide Electrical v Hart and another*⁶ in that the relevant section places a moratorium, not only on legal proceedings in court but also on arbitration proceedings. The court however further stated that the requirement in section 133 (1)(a) is not a jurisdictional condition, and the non-compliance did not render the proceedings void.

⁴ Unreported decision. Case no: JS 539/12. Delivered: 29 November 2013.

⁵ 2015 (3) SA 438 (SCA).

⁶ 2015 (6) SA 424 (SCA).

Analysis

[10] The purpose of Section 133 (1)(a) is to provide the business rescue practitioner with some breathing space and to prevent the company that is financially distressed to be dragged through litigation while it tries to recover from its financial woes.

[11] Section 133 is however not a jurisdictional issue to prevent the institution of legal proceedings, but its effect is to stay the legal proceedings.

[12] The Court does have jurisdiction to adjudicate this dispute however the proceedings are suspended until the uplifting of the business rescue proceedings.

Costs

[13] Costs should be considered against the requirements of the law and fairness. It would not be appropriate to award costs in this matter.

[14] In the premises the following order is made:

Order

1. The special plea is dismissed.
2. The claim is suspended until the upliftment of the business rescue proceedings.
3. No order as to costs

W. Kruger

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: I Stockenstrom

Instructed by: Solidarity

For the Respondent: Mr. Nziane of Nziane Inc

LABOUR COURT