



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025 - 087858

In the matter between:

IVAN GIVEN RAMOGALE

Applicant

and

**NATIONAL EDUCATION, HEALTH AND
ALLIED WORKERS UNION (NEHAWU)**

First Respondent

**NEHAWU PROVINCIAL
EXECUTIVE COMMITTEE (PEC)**

Second Respondent

SELLO MAFELA, PROVINCIAL CHAIRPERSON

Third Respondent

MZIKAYISE TSHONTSHI, PROVINCIAL SECRETARY

Fourth Respondent

ZOLA ZAPHETHA, GENERAL SECRETARY

Fifth Respondent

Heard: 13 June 2025

Delivered: 19 June 2025

Summary: Application to declare conduct by the respondents to be unlawful, including the alleged unlawful suspension of the applicant.

JUDGMENT

DANIELS J

Introduction

- [1] This is a dispute between the applicant, a member and regional office bearer, of the National Education, Health and Allied Workers Union (“NEHAWU” or “the Union”) concerning the alleged unlawful conduct of the respondents arising from their allegedly incorrect interpretation of the constitution. The court’s jurisdiction is engaged through the provisions of section 158(1)(e) of the Labour Relations Act No. 66 of 1995 as amended.
- [2] The applicant seeks an order: (1) declaring his suspension to be unlawful and invalid, (2) suspending his disciplinary hearing pending a review application (to be filed) challenging the unlawfulness of his suspension and the disciplinary charges, and (3) interdicting the Gauteng Provincial Executive Committee (the “PEC”) from disbanding the Tshwane Regional Executive Committee (the “REC”). Interestingly, at this stage, the applicant does not seek an order declaring that the charges against him are unlawful and invalid.

Urgency

- [3] It is clear from the authorities¹ that any party seeking urgent relief must sufficiently, and in detail, set out the circumstances which render the

¹ *Jiba v Minister: Department of Justice and Constitutional Development and Other* (2010) 31 ILJ 112 (LC) at para 18; *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2012] JOL 28244 (GSJ) at para 6; *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited* (081473/2023) [2023] ZAGPPHC 709 (21 August 2023) at para 18; *Public Servants Association of SA and Another v Minister of Home Affairs and Others* [2016]

matter urgent, and the reasons why substantial redress cannot be obtained at a hearing in due course. The degree to which the ordinary rules should be relaxed is dependent on the degree of urgency, and the applicant is not entitled to rely on urgency that is self-created. An applicant must approach the court with the necessary haste, or as soon as the cause of discontentment arises.² The more immediate the reaction by the litigant, to remedy the situation by way of instituting litigation, the better for establishing urgency. Equally important is the interests of the respondent party and any prejudice it may suffer.

[4] The respondents do not contend that the application is not urgent at all. They contend that the application is not so urgent that it must be heard immediately that it cannot be heard at some other date.

[5] On the facts, I accept that the application is urgent, and must be resolved without delay. The applicant acted expeditiously as soon as he was suspended, and charged. On the applicant's version, his suspension and the disciplinary charges impact on his ability to stand for election, and to canvass for a leadership position, at the upcoming Provincial Congress. On this version, the applicant cannot achieve substantial redress in due course.

Material facts

[6] The applicant, the regional chairperson of the Tshwane Region, intends contesting the position of provincial chairperson at the Provincial Elective Congress, which, at the time the application was launched, was scheduled for 17 June 2025. The applicant contends that his suspension, and the disciplinary charges, are a mechanism to purge him from leadership race and pave the way for the current provincial chairperson to maintain his position.

[7] The applicant maintains that the PEC is conducting a similar campaign against other regional office bearers in the Tshwane Region, and the Ekurhuleni region³ - which has close ties to the Tshwane regional leadership.

[8] On 20 March 2025, the applicant was appointed to serve on the Provincial Executive Task Team to investigate whether certain regional office bearers had committed misconduct by breaching policies of NEHAWU. In particular, the Task Team was required to investigate whether the office bearers had brought the name of the Union into disrepute by posting material and comments, about internal dissent and factionalism, on (public) social media platforms. The applicant was unhappy with the manner in which the Task Team was established, its terms of reference, the manner it operated, and the various other issues. He addressed a letter of complaint to the national office bearers on 9 April 2025. In the letter, the applicant contended, among other things, that the regional office bearers were being victimized for breaching a social media policy when no such policy existed. The applicant indicated that he had requested a copy of the policy but this was never provided to him.

[9] The PEC placed the applicant on precautionary suspension on 1 June 2025. The applicant did not attach the notice of suspension to his founding papers. Instead, he attached a letter issued by the PEC to another office bearer, in which that individual was granted an opportunity to make representations prior to his suspension. The applicant complains that he was granted no opportunity to make representations and this is an indication that he is being targeted, and victimized. The applicant does not, however, refer to any provision of the constitution which requires the Union to allow him to make representations.

³ The regional secretary for Ekurhuleni, Mr Sibusiso Valashiya, who intends contesting for the position of provincial secretary at the Provincial Congress, brought a similar application, which was heard by this court, on an urgent basis, on 22 May 2025. On 13 June 2025, the interim order, which had been issued on 22 May, was varied when the court lifted the interdict against the disciplinary hearing against Mr Valashiya.

- [10] The applicant attaches, to his founding affidavit, the minutes of a meeting of the Central Executive Committee (“CEC”) held on 11 to 13 December 2022. Those minutes reflect, in closing statements made by the President of NEHAWU, that the CEC adopted as its political message “Unity, Discipline and Cohesion”. In addition, the CEC directed that all of the Union’s structures must cease from discussing “*leadership egos, squabbles, and gossip as they are detrimental to organisational unity and cohesion as espoused by the NEHAWU constitution and Strategic Policy Framework of the national union.*” The CEC supported the task of the national office bearers in ensuring unity and cohesion in the structures.
- [11] The PEC notified the applicant of the disciplinary charges against him on 5 June 2025. The charges included an allegation that, on 10 May 2025, the applicant posted divisive comments on Facebook in which he stated that the regional leadership was being victimized by the provincial leadership while the national office bearers remained silent and “*enjoyed spectating*”. The PEC alleged that the applicant posted comments of a similar nature on 3 June 2025. The PEC alleged that the applicant associated himself with a campaign, conducted on social media, in preparation for the Provincial Congress when such campaigning was not permitted. The PEC alleged that the applicant led a march of members to the head office, in protest against the PEC. The PEC alleged that the applicant had used social media platforms to raise his grievances with the provincial leadership, and had implied the PEC was autocratic. The charges also mentioned NEHAWU’s policies on leadership orientation, and communication. The charges makes mention of the directive issued by the national office bearers on 25 April 2025. However, importantly, the charge sheet makes no mention of a “social media policy”.
- [12] At the time he launched the application, on 9 June, the applicant’s disciplinary hearing was scheduled for 13 June. However, on 11 June, the respondents agreed to postpone the disciplinary hearing until it could secure an appropriate chairperson.

[13] Though he seeks no order in relation to the disciplinary charges, the applicant suggests that the charges are unlawful because he may only be disciplined by the Regional Executive Committee. This contention is based on his understanding of clause 62(1) of the Union's constitution which provides:

"(1) Where a branch, regional or provincial office bearer fails to comply with any terms of this constitution, or acts in such a manner that is detrimental to the interests of the union and its members, or who is alleged to have committed misconduct may be disciplined by the BEC, REC, PEC, NEC, CEC as the case may be."

[14] In their answering affidavit, respondents make the following allegations:

14.1 The disciplinary hearing has been postponed (to a date to be fixed in due course) to allow the PEC to find a suitable chairperson. The Provincial Congress has also been postponed, though no date was provided in the affidavit.⁴

14.2 Clause 62, read with clause 63(2)(a), of the constitution empowers the PEC to charge a member, or a regional office bearer, for alleged misconduct.

14.3 Clause 41(1)(f) of the constitution grants to the PEC the powers to:

"exercise the management of the affairs of the union between the meetings of the PC within the provincial sphere and has the necessary powers usual for such an executive body to give effect to the aims of and objectives of the union, including the powers to do all things as it considers are in the interest of the union and which are not in conflict with the decisions of and policy of the NC,

⁴ At the hearing, upon enquiry from the court, the respondents' counsel advised that the Provincial Congress had been postponed to 29 July 2025. The applicants did not contest this.

CEC, NEC and PC, nor inconsistent with the provisions of the Constitution”.

14.4 Clause 63(1) does not entitle a member, shop steward, or office bearer to make representations before being placed on precautionary suspension.

14.5 Under clause 63(1) the precautionary suspension of the applicant will lapse after thirty days and may only be extended by the chairperson of the disciplinary hearing. Accordingly, absent any extension, the suspension of the applicant will lapse on 1 July 2025.

14.6 Clause 63(4)(f) prohibits the applicant from standing for election if disciplinary proceedings are pending against him. However, suspension, on its own, does not prevent the applicant from standing for election. As a member in good standing, the applicant is permitted to attend the Provincial Congress, and participate therein, provided he is a delegate.

14.7 The PEC has not disbanded the REC of the Tshwane Region but, on 9 June, it resolved to dissolve the regional office bearers. The attached PEC resolution relates specifically to the regional office bearers.

14.8 The Union has both a Communication Policy, as well as a Policy on Leadership, Orientation, Conduct and Elections. These documents, attached to the answering affidavit, deal *inter alia* with the conduct expected from union leaders. Among other things, the policies discourage members and leaders from secretly lobbying and canvassing for positions, and from mudslinging. The policies also require leaders to ensure that organisational matters are kept in the strictest of confidence, to instil respect in the organisation.

14.9 The PEC met on 29 and 30 September 2023, and resolved that members must desist from using social media to discuss internal union issues. At that meeting, solely for the sake of unity, the PEC resolved not to investigate or discipline the applicant for his use of social media.

Legal principles

[15] A trade union constitution is a contract between the members of the union setting out the terms on which they associate. Accordingly, the interpretation of the terms of a union constitution is an exercise of contractual interpretation.⁵

[16] The leading case on the interpretation of legislation, as well as contracts, is *Natal Joint Municipal Pension Fund v Endumeni Municipality*.⁶ The judgment neatly summarized the contemporary approach to interpreting documents as follows:

“The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to

⁵ *General Industries Workers Union of SA v Maseko & others* (2015) 36 ILJ 2874 (LC) at para 23

⁶ 2012 (4) SA 593 (SCA)

one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made.” (Own emphasis)

[17] In *Mcoyi and Others v Inkatha Freedom Party*⁷ it was held that:

“Where certain provisions in a constitution are fairly open to two constructions, the one having the more convenient result will be followed.”

[18] In *Garment Workers Union v De Vries and others*⁸ the applicable principles were described as:

“In considering questions concerning the administration of a lay society governed by rules, it seems to me that a Court must look at the matter broadly and benevolently and not in a carping, critical narrow way. A Court should not lay down a standard of observance that would make it always unnecessarily difficult – and sometimes impossible to carry out its own constitution. I think that one should approach such enquiries as the present in a reasonable common-sense way, and not in the fault finding spirit that would seek to exact the uttermost farthing of meticulous compliance with every trifling detail, however unimportant and unnecessary, of the constitution. If such a narrow and close attention to the rules of the constitution are demanded, a very large number of administrative acts done by lay bodies could be upset by the Courts. Such a state of affairs would be in the highest degree calamitous – for every disappointed member would be

⁷ 2011 (4) SA 298 (KZP)

⁸ 1949 (1) SA 1110 (W)

encouraged to drag his society into Court for every trifling failure to observe the exact letter of every regulation.” (Own emphasis)

[19] Accordingly, where provisions in a constitution are open to two constructions, an interpretation which would throw the association into disarray should be avoided.

Application of the law to the facts

[20] The parties raised the following constitutional provisions in their papers:

20.1 Clause 60(2)(c) which states that any office bearer or elected official, who holds any position in the Union, no longer holds that position if the Union suspends or expels them. The applicant states that this clause impacts on him because he is suspended. The respondents state that the clause applies only as a disciplinary sanction, and the applicant has not been suspended following a disciplinary process. Instead, the applicant is on *precautionary* suspension pending a disciplinary process. The outcome of the disciplinary process could, potentially, lead to the applicant's suspension under clause 60(2)(c). The interpretation of the respondents is plainly correct. This is consistent with the interpretative triad of language, context and purpose.

20.2 The court was referred to clause 61(1). In my view, the clause is irrelevant. The applicant is a regional office bearer, as contemplated by clause 29(1)(a). The applicable clause is therefore clause 62(1).

20.3 It is clear from clause 62(2) that the higher structure disciplines the office bearers of the lower structure. This clause makes it clear that the national office bearers are disciplined not by the NEC but by the CEC. The same logic must be applicable to clause 62(1).

20.4 Accordingly, the regional office bearers may be disciplined by the PEC. This interpretation accords with the text, the context, and the purpose of the constitution. Any other interpretation would lead to be insensible. The regional office bearers cannot be expected to subject themselves to the authority of a structure, the REC, of which they are part and in which they hold sway. This interpretation is consistent with clause 41(1)(d) which empowers the PEC to supervise the affairs of the regions and branches, and is consistent with clause 41(1)(f) which grants the PEC wide powers. Furthermore, it is consistent with clause 63(2)(c), which provides that a higher executive structure, than the structure to which the charged individual belongs, must appoint a person to preside over the hearing.

20.5 In support of his argument, the applicant referred to the applicable spheres of authority, in clause 7 of the constitution. However, nothing in that clause is destructive of the interpretation set out in paragraphs 20.3 and 20.4 above. Clause 7 recognises the authority of the higher structures in relation to those lower in the hierarchy. Quite apart from the interpretative triad of text, context and purpose, when interpreting a union constitution the court must also seek an interpretation that is sensible, and convenient.

20.6 Precautionary suspension is expressly provided for in clause 63(1). It is clear from that clause that the precautionary suspension can last for a period not exceeding 30 days, unless extended by the chairperson of the disciplinary hearing. There is nothing which suggests that precautionary suspension, by itself, has the effect of preventing the applicant from standing for election, or participation at the Provincial Congress. Any such interpretation is contrived.

20.7 Section 63(4)(f) states that if disciplinary proceedings are pending, a shop steward, office bearer, or elected official cannot stand for election. This applies only when the individual concerned has been charged. Accordingly, in the present instance, the applicant, as an

office bearer, cannot stand for election unless he is exonerated at a disciplinary hearing that is finalised before the Provincial Congress.

Conclusion

[21] For the reasons set out above, the applicant has failed to make out any right to the relief he seeks. His interpretation of the constitution was contrived.

Costs

[22] The respondents argued for costs of the application including the costs of two counsel. I believe costs are warranted. This application is so lacking in merit that it warrants costs on that basis alone. In my view, the application also amounted to an abuse of court process. The application was brought to frustrate NEHAWU and undermine its ability to discipline him. However, like every other member, official and office bearer of the Union, he is not immune to discipline.

[23] The applicant relied, in the main, on allegations of a conspiracy against him but produced no credible proof of this. As “evidence” of the conspiracy, the charges against him do not refer to a policy document relating to social media. This was a calculated misdirection. In any event, clause 62(1) permits disciplinary action against any office bearer who acts “in such a manner that is detrimental to the interests of the Union and its members...” In any event, there were policies of relevance to the charges, which the applicant failed to bring to the attention of the court.

[24] The applicant did not challenge the lawfulness of the charges against him. The charges related, broadly, to bringing the Union into disrepute, acting in a divisive manner, and breaching policies which govern the conduct of leaders in relation to elections, canvassing, social media, communications, internal cohesion and unity. The charges went much

wider than the use of social media, something the applicant was at pains to avoid.

[25] In his papers, and the argument presented on his behalf, the applicant vigorously argued that there was no policy in relation to social media. Yet, less than two years earlier, the applicant had been specifically instructed to desist from using social media to debate internal union issues. The applicant was fully aware that this instruction constituted a policy against the use of social media to debate internal issues. This too, the applicant failed to bring to the attention of the court.

[26] The applicant's case rested upon the alleged unlawfulness of his suspension. In my view, he relied on a deliberate misreading of the constitution. Furthermore, he failed to point out that the precautionary suspension would only be in place for thirty days and could not be extended except by the chairperson of the disciplinary hearing. It is clear that precautionary suspension, by itself, does not prevent the applicant from attending the Provincial Congress, and standing for nomination. The interpretation of the constitution, as contended for by the applicant, was inconsistent with the plain language of the constitution, the context, the purpose, and bordered on the absurd.

[27] While the applicant did not challenge the lawfulness of the disciplinary action as such, he sought an interdict of the disciplinary process. This relief is incompetent, and again called into question his bona fides.

[28] In these circumstances, fairness demands that the applicant bear the costs - including costs of two counsel. The application was completely without merit, and an abuse of court process.

Conclusion

[29] For the reasons set out above, the application is dismissed with costs, including the costs of two counsel.

RN Daniels
Judge of the Labour Court of South Africa

Appearances

For the Applicant:

Adv Matidza and Adv B Monyeke
Instructed by Ledwaba Inc

For the Respondents:

Adv G Hulley SC (with junior counsel)
Instructed by Dominee Ndlovu & Associates

LABOUR COURT