

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 086260/2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
26 JUNE 2025	
DATE	SIGNATURE [REDACTED]

In the matter between:

COLLINS PHUTJANE LETSOALO

Applicant

and

ROAD ACCIDENT FUND

First Respondent

THE BOARD OF THE ROAD ACCIDENT FUND

Second Respondent

***Delivered:** This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 26 June 2025.*

Summary: The Board of the Road Accident Fund (Board) is contractually empowered to place the Chief Executive Officer of the Road Accident Fund on a precautionary suspension. The Board is a statutory body and once cited as a decision maker, it is entitled to oppose any application seeking to impugn its

decision. Where rule 7(1) of the Uniform Rules is invoked, a person acting on behalf of a party, whose authority is disputed is only required to satisfy the Court that he or she is authorised so to act. The fact that the resolution seeking to prove authorisation has errors regarding dates is of no moment. As such, an application contemplated in rule 6(5)(e) is not necessary. What is required is an interpretation of the document to establish the intentions of the author.

When the Board took a decision to suspend, it exercised contractual power. A suspension does not amount to an administrative action within the contemplation of section 33(1) of the Constitution read with the provisions of the Promotion of Administrative Justice Act (PAJA), thus the requirements of reasonableness do not find application. Similarly, a suspension in the context of the present application is not an exercise of public power, thus the requirement of rationality finds no application.

The Disciplinary Policy approved by the applicant in his capacity as the Chief Executive Officer of the Road Accident Fund (RAF) does not apply to him as part of his conditions of employment as determined by the Board of the RAF. What finds application is the provisions of clause 21 of the Fixed Term Contract of employment. There is no dispute that the provisions of clause 21 has been complied with, as such, there is no basis in law to demonstrate unlawfulness. Accordingly, this Court cannot declare the suspension to be unlawful.

The applicant has no legal right to be appointed as the Chief Executive Officer of the RAF. Speculative evidence that the Board resolved to re-appoint him, is not sufficient to establish a *prima facie* right even one open to doubt. Absent *prima facie* right, an interim interdict cannot be issued. Speculative evidence that the position is about to be advertised is not sufficient to establish an apprehension of harm.

Regarding costs, the principle in *Biowatch* finds no application. The applicant is not seeking to enforce a constitutional right. This is purely a contractual

dispute where the applicant is seeking to protect his pecuniary interests, which were contractually acquired. Held: (1) The application is heard as one of urgency. Held: (2) The application is dismissed. Held: (3) The applicant must pay the costs of this application on a party and party scale to be settled or taxed at scale C, which costs include the costs of employment of two counsel and the costs occasioned on 17 June 2025.

JUDGMENT

MOSHOANA, J

Introduction

[1] The present application is concerned with a suspension from work. The term suspension literally means an act of interruption or temporary cessation and/or temporary prohibition or exclusion from enjoying a particular privilege. In employment context there are two types of suspensions namely, (a) precautionary suspension; and (b) punitive suspension. Involved herein is a precautionary suspension, often referred to as holding operation. All a precautionary suspension does is to hold the operation of the employment contract pending the outcome of disciplinary steps. In the present application, which emerged before this Court as one of urgency, both parties, in the Court's view, presented evidence that is not necessary to resolve the relevant dispute. In this judgment, this Court shall focus its attention to the impugned decision taken by the Board of the Road Accident Fund ("Board") on 3 June 2025. Differently put, this Court shall to a greater degree be guided by the applicant's notice of motion.

[2] The above said, the present is an application launched in terms of rule 6(12) of the Uniform Rules. The application first emerged before Court on 17 June 2025. On that day, Acting Justice Nthambeleni issued an order simply postponing the present application to 24 June 2025. Reasons of such a postponement order are not apparent anywhere. The issue whether the present

application meets the requirements of rule 6(12) was not entertained. It must be assumed by this Court that had the application not commanded any urgency, it would have been struck off the roll by the Acting Justice. Howbeit, counsel for the respondents, wisely, conceded that the application may be entertained by this Court as one of urgency. Accordingly, this Court shall not in this judgment consider whether the requirements of rule 6(12) have been met or not. This Court shall forthwith entertain the present application as one of urgency.

The relevant factual matrix

- [3] Given the relief sought, it is obsolete for this Court to punctiliously narrate all the facts appertaining the dispute between the parties. The facts proving or disproving the alleged misconduct of insubordination shall not be traversed in this judgment. It is not the duty of this Court at this stage to determine whether the applicant is guilty or not guilty of insubordination or any form of misconduct. Differently put, it is not the duty of this Court to decide whether the suspicion held by the Board is valid or invalid.
- [4] Pertinent facts are that on or about 10 December 2020, the applicant, Mr Collins Phutjane Letsoalo (Mr Letsoalo) and the Road Accident Fund (RAF) duly represented by Ms Thembelihle Msibi in her capacity as the acting chairperson of the Board, concluded a fixed term contract of employment (FTC). Relevant to the present application, Mr Letsoalo and the RAF specifically agreed as follows:

“21. SUSPENSION OF EMPLOYMENT

21.1 if the Fund **suspects** that the employee is/has *prima facie*:

21.1.1 engaged in any conduct which may, if proved, justify his dismissal; or

21.1.2 committed a breach of any terms of this Agreement,

It may, pending a duly constituted enquiry into the alleged conduct in question and without giving rise to any claim for damages or otherwise against it, suspend the Employee for a period of not exceeding 90 (ninety) days.

21.2 During such period, the Employee shall:

21.2.1 not be entitled to attend at work premises of the Fund; and

21.2.2 be entitled to his normal remuneration.”

[5] More importantly, the FTC defined conditions of service to mean the following:

“Conditions of Service means the conditions of service of the Fund, set in this agreement, the performance agreement as entered into by the Parties from time to time and policies and procedures **in place** and as amended from time to time by the Fund in its discretion.”

[6] In terms of clause 4.4 of the FTC, the appointment of Mr Letsoalo is subject to the conditions of service as defined. On or about 12 November 2021, almost a year after the parties had concluded the FTC, Mr Letsoalo exercised delegated powers of the Board as contemplated in section 11(1)(d) of the Road Accident Fund Act (RAFA)¹ and approved a category B policy. That policy is known as “Disciplinary Policy” (DP). The DP replaced the Disciplinary Policy which came into effect on 1 August 2013². In terms of clause 4.1, the purpose of the DP is to establish a framework to promote orderly conduct to manage the interaction between the RAF and its employees. In terms of clause 6.1, the scope of application of the DP is to apply to “all employees”³. In clause 7.9, the DP dealt with the issue of precautionary suspension (with pay). It is not necessary for the purposes of this judgment to extract the entire text of clause 7.9 herein, given the basis of the impugn of the suspension decision. The relevant clause read as follows:

7.9.2 The precautionary suspension of an employee with pay will be considered if and when:

¹ Act 56 of 1996 as amended.

² This Court was not favoured with a copy of this policy, and it is unclear to this Court as to what it provided for.

³ The DP does not define the term “employee”. It is for that reason that Mr. Letsoalo as the person who approved the policy contended that the DP applies to him.

- (a) An employee's continued presence may pose a threat to life; property; or a risk, financial or otherwise.
- (b) An employee may influence witnesses in a disciplinary investigation, tamper with evidence or records or interfere with the FDH⁴; and or
- (c) An employee may have a disruptive effect on other employees and, or workplace.

[7] I interpose to mention that it is Mr Letsoalo's case that since the DP finds application to him, the Board in exercising the right in clause 21 of the FTC, breached the provisions of clause 7.9.2 of the DP, thus the actions of the Board are unlawful, irrational and unreasonable, liable to be declared as such and set aside by this Court.

[8] On 27 May 2025, Mr Letsoalo was placed on special leave. Subsequently, on 3 June 2025, the said leave was withdrawn. On 3 June 2025, Ms Zanele Lorraine Francois, in her capacity as the Chairperson of the Board communicated to Mr Letsoalo the decision of the Board. The relevant parts of the letter from the Chairperson read as follows:

"RE: NOTICE OF YOUR PRECAUTIONARY SUSPENSION

1. The Board of the Road Accident Fund... at an Emergency Meeting held on 2 June 2025, resolved to place you **on precautionary suspension as contemplated in clause 21.1 of your fixed term contract of employment** with the Road Accident Fund... dated 10 December 2020 **on the basis of the circumstances set out in paragraph 2 hereunder.**
2. The Board of the RAF has a *prima facie* view that you, on or about 27 May 2025, defied the authority of the Board by refusing to attend the Standing Committee on Public Accounts... Meeting in Parliament scheduled for

⁴ This refers to Formal Disciplinary Hearing.

28 May 2025 which refusal to attend the said meeting is a conduct which may, if proved, justify your dismissal.”

- [9] Disenchanted by the precautionary suspension, on 6 June 2025, Mr Letsoalo launched the present application and enrolled it for hearing on 17 June 2025. On or about 6 June 2025, the cited respondents gave notice of their intention to oppose the application and appointed Renqe FY Inc (Renqe) as their attorneys of record. On 9 June 2025, Mr Letsoalo invoked the provisions of rule 7(1) of the Uniform Rules. He called upon the respondents to provide as proof of authority of Renqe to act on behalf of the cited respondents, copies of the resolutions taken by the Board authorizing Renqe attorneys to act on behalf of the respondents. Indeed, as requested the respondent availed a resolution signed by the Chairperson of the Board on 12 June 2025 as an annexure to the answering affidavit. Pertinent to the dispute squarely raised by Mr Letsoalo, the resolution, in parts, read as follows:

“(b) The appointment of the firm of attorneys, RENQE FY Incorporated (Attorneys), **to act comprehensively on behalf of the RAF and the Board** in all legal matters, whether current, future, or incidental arising from or connected to the issues involving the CEO.

- [10] It is common cause that at the heading of the resolution, a date of 27 May 2025 was recorded to be the date on which the resolution requested on 9 June 2025 was taken. Based on this, Mr Letsoalo alleged fraud and went to the extend of opening a criminal case against the Chairperson of the Board. Concerned about the allegations of fraud which were only revealed in a replying affidavit, the respondents launched a rule 6(5)(e) application for leave to file a further affidavit seeking to explain the date error on the resolution. Surprisingly, Mr Letsoalo fiercely opposed the rule 6(5)(e) application.

- [11] As indicated earlier, on 17 June 2025, the present application was postponed. On 24 June 2025, the application emerged before me. At the commencement of the hearing of the application, the rule 6(5)(e) application was moved. This Court pointed out to counsel for the respondents, Mr Van Graan SC that the application is unnecessary since the issue of dates may be resolved by a proper interpretation of the resolution. Adroitly, counsel relented. That

notwithstanding, counsel for Mr Letsoalo, Mr Molotsi SC, persisted with the narrative that the date was not an obvious error but a fraudulent misrepresentation because in his and Mr Letsoalo's ebulliently held view, the date vacillated from 27 May to 30 May and 9 June 2025. Having listened to submissions, this Court delivered an *ex-tempore* ruling with presence of mind at that time to augment the reasons, should the need arise, in this judgment.

[12] I must point out that on proper reflection; it is unnecessary for this Court to augment its reasons exposed extemporaneously. Of significance, this Court was satisfied that Renqe, as challenged in terms of rule 7(1), sufficiently dealt with the disputed mandate to the satisfaction of this Court. The issues relating to the alleged fraud are better left for the criminal Court, should the National Prosecution Authority (NPA) develop an appetite to prosecute. Nevertheless, Mr Letsoalo has not mounted any attack seeking to review and set aside the resolution. As such, the resolution factually exists with legal consequences until set aside by a Court with competent jurisdiction⁵.

[13] The resolution even with an obvious erroneous date serves the legal purpose awaited in rule 7(1). It confirms that Renqe has the necessary mandate to act⁶. The mischief of rule 7(1) is to avoid a situation where a party's name may be used to litigate without its consent and knowledge. It is not a rule to be cunningly used to deflate a hoisting of a defence in law. If so used, the usage amounts to an abuse of the rule. Herein, the Board and the RAF has not disputed that Renqe is acting for them in the present application. This is not a situation where the respondents initiated a litigation. They are dragged into the present application by Mr Letsoalo. Regard being had to section 34 of the Constitution, they must defend themselves. The argument that section 15 of RAFA prevents the Board to defend itself as a cited statutory body is completely without merit. The Board did not magically land itself as a party in the present litigation. It was cited, correctly so, as the decision maker. It cannot be legally

⁵ See *Oudekraal Estates (Pty) Ltd v City of Cape Town and others* 2004 (6) SA 222 (SCA).

⁶ See *ANC Umvoti Council Caucus and Others v Umvoti Municipality* 2010 (3) SA 31 (KZP).

correct that a party cites one party in a litigation process and once that party defends, it is told that it cannot defend itself.

Evaluation

[14] As indicated at the dawn of this judgment, this Court shall be beacons by the notice of motion of Mr Letsoalo. In parts, the motion reads as follows:

- i. Non-compliance with the timelines, forms and service provided for in the rules of the above Honourable Court be condoned and that the matter be heard as an urgent application in terms of the provisions of Rule 6(12) of the Uniform Rules of Court.
- ii. Declaring the decision of the second respondent taken on 3 June 2025 to suspend the Applicant to ***be unlawful, irrational, unreasonable*** and be set aside.
- iii. Ordering the Applicant to immediately resume his duties as the Chief Executive Officer of the first respondent.
- iv. ***Interdicting and restraining the respondents from advertising the position*** of the Chief Executive Officer of the first respondent pending the finalization of the process to re-appoint the Applicant as the Chief Executive Officer of the first respondent.

[15] Regard being had to the notice of motion, it is perspicuous that Mr Letsoalo impugns the decision to suspend him on the basis that the decision is (a) unlawful; (b) irrational; (c) unreasonable. Below, this Court addresses the following question.

Is the suspension unlawful, irrational or unreasonable?

[16] As a departure point, a thing is unlawful if it is not authorised by the law. Before considering the lawfulness of the suspension, this Court must address the issue of the source of the power to suspend. Mr Letsoalo does not take issue with the contents of the letter of 3 June 2025, communicating his suspension. Section 12(1) of RAFA pertinently provides that the Minister shall upon recommendation of the Board, appoint the Chief Executive Officer of the Fund on such terms and

conditions of employment as the Board may determine. It is thus clear that the terms and conditions of employment of Mr Letsoalo were to be determined by the Board, as it did in 2020.

[17] Indisputably, the suspension of Mr Letsoalo was carried out by the Board. In so doing, it perspicuously stated that it is exercising contractual powers. Nowhere did the Board state that it was exercising powers located in clause 7.9 of the DP. This Court takes a view that the DP finds no application over Mr Letsoalo. Firstly, when Mr Letsoalo agreed to the terms of the FTC, as encapsulating clause 21, the DP was not in place as a condition of service. Secondly, in approving the DP, Mr Letsoalo was exercising delegated powers. Nowhere in section 11 of RAFA is the Board empowered to determine the terms and conditions of a Chief Executive Officer, to a point that the Board may delegate such powers in terms of section 11(1)(h) back to the Chief Executive Officer. What is apparent from section 11(1)(b) is that the power to determine the conditions of employment of staff of the Fund on managerial level lies with the Board and not the CEO. It is bizarre to accept that using delegated powers Mr Letsoalo may determine his own terms and conditions of employment contrary to the terms and conditions determined in an employment contract.

[18] Regarding suspension of employment, long before 12 November 2021, Mr Letsoalo had agreed to clause 21 of the FTC. Nowhere in clause 21 does one find the provisions like clause 7.9 of the DP. Accordingly, this Court concludes that clause 21 is the applicable clause. This conclusion puts paid to an argument so passionately and forcefully pursued by Mr Letsoalo's counsel that the principle established in *MEC for Education, Northwest Provincial Government v Gradwell (Gradwell)*⁷ that the suspension must be justified as required by the provisions of the SMS Handbook, a collective agreement, finds application as "the law". Simply put, clause 7.9 of the DP finds no application. This is so, even in an instance where the respondents who bear no onus had accepted that clause 7.9 of the DP was read in conjunction with clause 21. Interpretation is a matter of law and not of evidence. Therefore, it remains the

⁷ (2012) 33 ILJ 2033 (LAC)

duty of a Court to interpret any document having regard to text, context and purpose⁸. *Gradwell* is in any event distinguishable from the facts of this case. In *Gradwell*, the MEC invoked the provisions of a collective agreement (SMS Handbook), which in terms of section 23 of the LRA acquires legal force. In *casu*, the Board invoked the contractual power.

[19] Clause 2.7(2) of the collective agreement involved in *Gradwell* specifically empowered the employer to suspend if the member is alleged to have committed a serious offence; and the employer believes that the presence of a member at the workplace might jeopardise any investigation into the alleged misconduct or endanger the well-being or safety of any person or State Property. These pre-conditions are not provided for in clause 21 of the FTC. In expatiating on the conditions, the learned Justice Murphy AJA, penning for the majority, expressed himself in the following clear terms:

“[27] In the result, the learned judge’s supposition that the suspension was unlawful, because there was no objectively justifiable reason to deny the applicant access to the workplace when no investigation was under way, was both legally and factually incorrect.

[28] Aside from that, the judge erred in his approach to determining the **lawfulness of a suspension in terms of paragraph 2.7(2)**. His choice not to consider the serious allegations against the respondent was mistaken. As a rule, a decision **regarding the lawfulness of a suspension in terms of paragraph 2.7(2) will call for a preliminary finding on the allegations of serious misconduct as well as a determination of the reasonableness of the employer’s belief that the continued presence of the employee at the workplace might jeopardise any investigation etc.** The justifiability of a suspension invariably rests on the existence of a *prima facie* reason to believe that the employee committed serious misconduct...

[20] What the learned Justice referenced above was applicable to clause 2.7(2). The clause itself refers to alleged to have committed a serious offence and the believe to be formed by an employer wishing to suspend. An argument that the

⁸ See *University of Johannesburg v Auckland Park Theological Seminary and another* 2021 (6) SA 1 and *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 539 (SCA).

above is law in respect of every suspension is without merit and ignores the fact that the situation pertained only to clause 2.7(2) of the applicable collective agreement. Accordingly, this Court rejects a submission that a suspension effected in terms of clause 21 of the FTC is unjustifiable or unlawful purely on the principles developed in *Gradwell*, which principles were solely tailored for the provisions of clause 2.7(2) of the SMS Handbook.

[21] Irrationality is a species of a legality review. In *Albutt*⁹, the Constitutional Court defined it to mean acting outside the purpose for which the power was given. In suspending Mr Letsoalo, the Board was not exercising public or statutory power but contractual power. It is not the duty of a Court to suggest route to be followed by the decision maker. All a Court must do is to evaluate the chosen route. Clause 21 of the FTC requires a suspicion that misconduct, if proven, would lead to a dismissal has been committed. Insubordination, if proven may justify a dismissal. Accordingly, the decision to suspend serves the purpose and is not irrational.

[22] Regarding unreasonableness, *Bato Star*¹⁰ informs us that a decision is unreasonable if it is so unreasonable that a reasonable decision maker may not reach it. The decision to suspend Mr Letsoalo is not one that falls outside the bands of reasonableness. Accordingly, the decision is not unreasonable.

Is the applicant entitled to an interdictory relief

[23] An interdict is a special remedy to be granted at the discretion of a Court. What Mr Letsoalo seeks is an interim interdict. The requirements of an interim interdict are well known since the *Setlogelo* case and require no repetition at every turn. The most important requirement is one of demonstrating a *prima facie* right. If a party fails to demonstrate this requirement, *cadit quaesto*. A *prima facie* right essentially relates to *prima facie* proof of facts that establish

⁹ *Albutt v Centre for the Study of Violence and Reconciliation and Others* 2010 (5) BCLR 391 (CC).

¹⁰ *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* 2004 (4) SA 490 (CC).

the existence of a right, in terms of substantive law.¹¹ Mr Letsoalo alleges that he has acquired a right to be re-appointed to the position of the CEO of the RAF. There is simply no factual or legal basis for this allegation.

[24] In the founding affidavit he makes a nude allegation that the Board has resolved to re-appoint him. This the Board denies. In terms of section 11(6)(a) resolutions of the Board are taken based on consensus. Mr Letsoalo failed to avail any resolution taken by the Board in support of the allegation of a re-appointment decision. As such, there is no *prima facie* proof that the Board took a resolution to appoint him. The phrase “although open to some doubt” does not imply that any baseless allegation should be accepted by a Court. The right must exist as a matter of substantive law. The right to re-appoint Mr Letsoalo simply does not exist as a matter of substantive law. It is baseless. In terms of section 12(1)(a) of RAFA, the Board has no power to appoint. It can only recommend to the Minister. For some unsound reasons in law, the Minister has not been joined in the present application. Although a non-joinder point has not been raised by the respondents, it being a point of law, this Court is entitled to raise it *mero motu*. Undoubtedly, the Minister as the repository of statutory power to appoint has a substantial interest in the relief sought by Mr Letsoalo to interdict and restrain an appointment of a CEO of RAF. The failure to join the Minister is fatal to the granting of the interdictory relief.

[25] It is legally implausible for Mr Letsoalo to be re-appointed. In clause 4.6 of the FTC Mr Letsoalo warranted that there is no expectation by him objectively, subjectively or otherwise that the FTC will be renewed or extended beyond 6 August 2025. He also warranted that the non-renewal or non-extension of the FTC beyond 6 August 2025 shall not constitute his dismissal as contemplated in section 186 of the LRA. It is therefore unsurprising that Mr Letsoalo tactically eschewed the provisions of the LRA. In terms of clause 28.1 of the FTC Mr Letsoalo agreed that no amendment of the FTC shall be binding on the parties unless reduced to a written document and signed by them. Certainly, the alleged Board resolution to re-appoint Mr Letsoalo constitute an amendment of

¹¹ See *Webster v Mitchell* 1948 (1) SA 1186 at 1189 an LCT Harms Civil Procedure in the Superior Courts page 40.

clauses of the FTC. Absent a signed written document such an amendment has no binding effect.

[26] On the strength of all the above facts, Mr Letsoalo dismally failed to establish *prima facie* facts establishing a right in terms of substantive law. Even if this Court were to assume, which assumption it is not making, that a *prima facie* right open to some doubt has been established, there is no evidence that such a right to be re-appointed is facing imminent irreparable harm. In a rather rumour mongering style, Mr Letsoalo testified that there is already pressure on the Board from “some quarters” to advertise the position. When counsel for Mr Letsoalo was quizzed about the probative value of this evidence, he from the bar led evidence that some quarters refer to the Deputy Minister. With the greatest respect to the drafters of the founding affidavit, an allegation of pressure from some quarters amounts to reckless pleading, in the circumstances where the source of the pressure is identifiable and known. Nevertheless, on Mr Letsoalo’s own version the Board with sufficient resolute rebuffed the pressure. Therefore, where is the imminent irreparable harm, this Court must ask. On his own version, there is no apprehension capable of being formed that any harm might arise.

[27] I must add, on the strength of section 12(1)(a) of RAFA, a Board only recommends. The enabling section does not spell out any procedure to be adopted by the Board to reach a stage of recommendation to the Minister. This Court is totally bewildered by the alleged advertisement requirement, in the circumstances where an advertisement procedure is not contemplated in the enabling section. On his own version, Mr Letsoalo regarding the alleged resolution to re-appoint him, makes no reference to him having responded to an advertisement first. Finally, assuming that such an advertisement is ultimately made, there is nothing to prevent Mr Letsoalo to respond to the advertisement and compete for the position of the CEO of the RAF.

[28] Because of all the above reasons, Mr Letsoalo failed to make out a case for an interdictory relief even on an interim basis. Accordingly, an application for an interim interdict falls to be dismissed. What then remains is the question of costs, which is the question I now turn to.

The question of costs

[29] This Court was pleasantly surprised to receive an argument that the *Biowatch*¹² principle finds application in the present application. This submission is blissfully not made in the 49 paged Heads of argument submitted on behalf of Mr Letsoalo. On the contrary, a submission was boldly made that a punitive personal cost order must be issued against the chairperson of the Board. The present litigation is aimed at protecting pecuniary interests as opposed to protecting a constitutional right. This Court takes a view that the present application is frivolous and vexatious. Mr Letsoalo for very selfish reason, it seems to appear, disavowed adequate and substantial remedies available to him in terms of the LRA. A litigation in the dispute resolution *fora* contemplated in the LRA does not attract an order of costs. To simply disavow the remedies in the LRA does not mean that such remedies are not adequate and substantial¹³. The fact that Mr Letsoalo disavowed the LRA remedies simply implies that he was aware that such remedies are made available to him by law. A section 186(2)(b) of the LRA referral, would not have amassed costs of the magnitude now amassed. The remedies contemplated in section 193(4) of the LRA are adequate and substantial. Section 138(9) of the LRA empowers a commissioner to make any appropriate award which may include a declaratory order. It must be remembered that a declaratory order is another form of an interdict¹⁴.

[30] Therefore, a submission that a commissioner cannot issue an interdictory relief is doubtful. In a declaratory order a commissioner may vouchsafe an interdictory relief. During argument, in a rather veiled attempt to bolster a submission that the *Biowatch* principle finds application, counsel for Mr Letsoalo, with respect, ambivalently argued that Mr Letsoalo was seeking to protect his fair labour practices rights guaranteed in section 23(1) of the Constitution. This, in the circumstances where Mr Letsoalo testified as follows:

¹² *Biowatch Trust v Registrar Genetic Resources and Others* 2009 (10) BCLR 1014 (CC).

¹³ See *Passenger Rail Agency of South Africa and others v Ngoye and others* 2025 (2) SA 556 (LAC).

¹⁴ *Naptosa v Minister of Education Western Cape* 2001 (2) SA 112 (C).

“33. The Honourable Court has jurisdiction to determine the application. I disavow any reliance on section 186(2) of the Labour Relations Act 66 of 1995 as amended... as **I do not claim that my suspension was unfair...** I do not claim that the conduct of the respondents **constitutes unfair labour practice...**”

[31] Disavowal in another name is a waiver. An orange and a grapefruit bear similar resemblance. Both are yellow outside and are fruits. However, a grapefruit is not as sweet as an orange. In this case, Mr Letsoalo picked a grapefruit being fully conscious that he is picking up a grapefruit as opposed to an orange. Therefore, he has no reason to complain about the bitterness in the mouth. On application of the subsidiarity principle, Mr Letsoalo cannot place direct reliance on section 23(1) in the face of the LRA. Now that the grapefruit is bitter in the mouth, it does not avail to Mr Letsoalo to take a chameleon approach and want to name the grapefruit an orange for sweetness convenience. The Court in *Biowatch* admonished as follows:

“25 Merely labelling the litigation as constitutional and dragging in specious references to sections of the Constitution would, of course, not be enough in itself to invoke the general rule as referred to in *Affordable Medicines*. The issue must be genuine and substantive, and truly raise constitutional considerations relevant to adjudication...”

[32] Specious reference to unlawfulness, irrationality and unreasonableness did not render this application to be one that truly raise constitutional considerations. Properly described, the present application is nothing but a breach of contract claim. Issues raised herein are different from those raised in *Barkhuizen v Napier (Barkhuizen)*¹⁵.

[33] This Court is satisfied that the *Biowatch* principle finds no application in the present instance. Accordingly, the normal rule of costs following the results must apply.

Conclusions

¹⁵ 2007 (7) BCLR 691 (CC).

[34] In summary, the suspension effected by the Board is lawful, rational and reasonable. There is no factual or legal basis to declare the suspension to be unlawful, irrational and unreasonable. Mr Letsoalo has failed to establish a *prima facie* right, even one open to any doubt. He failed to demonstrate any apprehension of irreparable harm. Thus, he is not entitled to an interdictory relief of any nature be it interim or final. Accordingly, the application although heard as one of urgency falls to be dismissed. Regarding costs, the *Biowatch* principle finds no application and costs must follow the results.

[35] Because of all the above reasons, I make the following order:

Order

- 1. The application is heard as one of urgency.**
- 2. The application is dismissed.**
- 3. The applicant is to pay the costs of this application on a scale of party and party to be settled or taxed at scale C. The costs include the costs of employing two counsel and the costs occasioned on 17 June 2025.**



**GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

APPEARANCES:

For the Applicant:

Mr H Molotsi SC and Mr P Moshoadiba.

Instructed by:

Motalane Inc, Pretoria.

For the Respondents:

Mr ESJ Van Graan SC and Mr Hlongwane.

Instructed by:

Renqe FY Inc, Pretoria

Date of Hearing

17 and 24 June 2025

Date of judgment:

26 June 2025