



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-104750

In the matter between:

BOJANALA PLATINUM DISTRICT MUNICIPALITY

Applicant

and

LEOPOLD LETLHOGONOLO FOURIE

First Respondent

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Second Respondent

ANDRIES KGOLOLO MOKALA N.O.

Third Respondent

Heard: 17 July 2025

Delivered: 22 July 2025

This judgment was handed down electronically by circulation to the applicant's representatives and the first respondent by email. The date for hand-down is deemed to be 22 July 2025.

JUDGMENT

MAKHURA, J

[1] On 29 May 2025, the third respondent commissioner, acting under the auspices of the second respondent, the Commission for Conciliation, Mediation and Arbitration (CCMA), issued a jurisdictional ruling, which *inter alia* found that the CCMA has jurisdiction to arbitrate the unfair dismissal dispute between the applicant and the first respondent (Fourie). Relevant to this application is that the commissioner also refused the applicant's application for legal representation. This ruling was sent to the applicant on 30 May 2025.

[2] In reaction to the ruling, the applicant, through its attorneys of record, sought a legal opinion from counsel on the reviewability of the ruling. It is not stated when this instruction was given, but counsel provided oral legal opinion on 20 June 2025, advising that the ruling was reviewable. Consequently, counsel was instructed to draft the review application. Earlier that day, the CCMA had informed the applicant's attorneys that the arbitration would proceed on 4 and 5 August 2025.

[3] The applicant then launched these urgent proceedings for the following relief: 'Staying the arbitration proceedings between the first respondent and the applicant before the CCMA under case number NWRB 3070-24 which is to resume on 4 and 5 August 2025 pending the final outcome of the applicant's review application of the ruling by the third respondent, Commissioner Kgololo Andries Mokala NO of the CCMA (Rustenburg), declining the applicant's application in terms of Rule 25 of the CCMA Rules for legal representation in the matter between LL Fourie v Bojanala Platinum District Municipality under case number NWRB 3070-24 included in paragraph [91] of the Jurisdictional Ruling dated 29 May 2025 which review application will be instituted within two (2) weeks after launching this application.'

[4] At the commencement of the proceedings, Mr Manchu, appearing for the applicant, provided the Court with an answering affidavit which was served on the applicant's attorneys by Fourie. This affidavit was not uploaded onto the Court Online system, as required by item 3.2 of Practice Directive 1 of 2024: Implementation of the Court Online system for Urgent Applications in the Labour Court of South Africa. Fourie was not present in Court, nor did he apply for indulgence from compliance with the Practice Directive 1. Having considered the non-compliance with the Practice Directive and the absence of any request for indulgence, I have decided to disregard Fourie's answering affidavit and deal with the application as unopposed.

[5] Legal representation before the CCMA is governed by Rule 25(1)(c) of the Rules for the Conduct of Proceedings before the Commission for Conciliation, Mediation and Arbitration, GG 48445, 21 April 2023. This rule provides that:

'If the dispute being arbitrated is referred in terms of section 69(5), 73 or 73A of the BCEA or is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or capacity, a party is not entitled to be represented by a legal practitioner or a candidate attorney in the proceedings unless:

- (i) the commissioner and all the other parties consent;
- (ii) the commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering –
 - (a) the nature of the questions of law raised by the dispute;
 - (b) the complexity of the dispute;
 - (c) the public interest; and
 - (d) the comparative ability of the opposing parties or their representatives to deal with the dispute.'

[6] The commissioner considered and determined the application for legal representation at paragraphs 76 to 87, which was made in writing. The parties presented oral arguments on 19 May 2025. The dealt distinctly, and in my view

comprehensively, with the factors in rule 25(1)(c)(ii)(a) – (d) and concluded that *“the nature of the questions of law raised by the dispute - misconduct allegations - is not so complex to require legal representation”*, that the fact that there are several witnesses to be called and voluminous bundles to be used do not raise complex legal issues, that any public interest that might be raised does not warrant legal representation and that the applicant did not put forward the reasons why its internal officials could not represent the case on its behalf at the arbitration. Furthermore, the commissioner considered that at the first scheduled arbitration proceedings on 17 January 2025, both parties appeared with their respective legal representatives. He found that the commissioner’s consent is required and that on that day, the presiding commissioner granted postponement only without considering or determining the issue of legal representation. Based on the above, the commissioner found that it was not in the interest of justice to allow legal representation.

[7] It is common cause that Fourie was dismissed after the finding of guilt on seven allegations of misconduct. The disciplinary hearing was presided over by Mr AS Sethene, counsel from the Johannesburg Bar. The disciplinary proceedings were prosecuted by Mr J Hlongwane, counsel from the Pretoria Bar who later withdrew and was substituted by Mr T Manchu, counsel from the Johannesburg Bar.

[8] As already indicated above, the CCMA subsequently scheduled the arbitration for 4 and 5 August 2025, prompting the applicant to launch these urgent proceedings for an interdict pending the determination of the review application to be launched within two weeks.

[9] That review application, if launched, would be determined in terms of section 158(1B) of the Labour Relations Act¹ (LRA), which provides that:

‘The Labour Court may not review any decision or ruling made during conciliation or arbitration proceedings conducted under the auspices of the Commission or

¹ Act 66 of 1995, as amended.

any bargaining council in terms of the provisions of this Act before the issue in dispute has been finally determined by the Commission or the bargaining council, as the case may be, except if the Labour Court is of the opinion that it is just and equitable to review the decision or ruling made before the issue in dispute has been finally determined.'

[10] The review court would have to determine whether it is just and equitable to review the ruling.

[11] In considering whether to intervene in the uncompleted arbitration proceedings, the purpose of section 158(1B) and its enactment is of importance. The purpose is set out in the *Memorandum of Objects on the Labour Relations Amendment Bill, 2012*, as to:

'provide that only in exceptional circumstances the Labour Court may deal with review applications against decisions or rulings of the [CCMA or bargaining council] before a matter has been finalised by the [CCMA or bargaining council]... to limit the use of piece-meal review applications during arbitration proceedings as a mechanism to delay a matter that is with the Labour Court in terms of subsection 158(2).'

[12] The purpose of section 158(1B) is consistent with an earlier decision of this Court in *Trustees for the time being of the National Bioinformatics Network Trust v Jacobson & others*² (*Jacobson*), where Van Niekerk J (as he then was), provided two reasons why this Court should not readily intervene in uncompleted arbitration proceedings. He said: 'The first is a policy-related reason - for this court routinely to intervene in uncompleted arbitration proceedings would undermine the informal nature of the system of dispute resolution established by the Act. The second (related) reason is that to permit applications for review on a piecemeal basis would frustrate the expeditious resolution of labour disputes. In other words, in general terms, justice would be advanced rather

² (2009) 30 ILJ 2513 (LC); [2009] ZALC 35.

than frustrated by permitting CCMA arbitration proceedings to run their course without intervention by this court.’³

[13] In urgent proceedings to intervene in uncompleted arbitration proceedings, the test is one of exceptional circumstances, as articulated by the Labour Appeal Court (LAC) in *Booyesen v The Minister of Safety and Security & others*⁴ (*Booyesen*) and most recently in *Moolman v Commission for Conciliation, Mediation and Arbitration and Others*⁵ (*Moolman*).

[14] In *Moolman*, the LAC held that this court may intervene in uncompleted arbitration proceedings where, if allowed, the ruling would cause irreparable harm to the other party. The LAC held further that the Court would be justified in intervening where the damage caused by the ruling, if allowed to stand, could not be adequately remedied after the finalisation of the arbitration proceedings.⁶ A review of a jurisdictional ruling or any ruling which, if upheld on review the consequence of which is to dispose of the matter in its entirety would justify the intervention of this Court.⁷

[15] The applicant contends that it has:

‘a prima facie right to request for the stay of the arbitration proceedings. On the basis that the counsel who had appeared as initiator felt intimidated and on the basis that the Chairperson received a death threat, there exists a real apprehension that the officials of the Applicant who has to be selected to appear on behalf of the Applicant in the resumption of the arbitration proceedings on 4 August 2025 may be subjected to similar intimidatory steps which may result not only in traumatic suffering by such officials, but something more lethal which may

³ Ibid at para 4; see also post-enactment of s 158(1B) decisions of this Court in *Ngobeni v Passenger Rail Agency of SA Corporate Real Estate Solutions & others* (2016) 37 ILJ 1704 (LC); *Technology Corporate Management (Pty) Ltd v Mouse and Others* [2023] ZALCJHB 122.

⁴ [2011] 1 BLLR 83 (LAC); (2011) 32 ILJ 112 (LAC) at para 54.

⁵ [2024] ZALAC 339.

⁶ *Moolman* at para 46.

⁷ *Passenger Rail Agency of South Africa (Pty) Ltd v Mathobela and Others* [2024] ZALCJHB 446 at para 12.

result in irreparable harm. I have no other alternative but to approach the Honourable Court for relief to stay the arbitration proceedings until the final outcome of the Applicant's review application against the Third Respondent's ruling...'

[16] The applicant has no right, even a *prima facie* right open to doubt, to legal representation at arbitration for misconduct and capacity disputes, hence, it had to apply to attain it. Contrary to the applicant's contention, it is not its right to launch an application to stay the proceedings that must be shown, but the right to legal representation before the CCMA in arbitration for an unfair dismissal dispute relating to misconduct. Where the applicant has no right or a *prima facie* right, it means that no right has been infringed or is likely to be infringed if an interdict is not granted. Absent a *prima facie* right, the other requirements for an interim interdict⁸ are of no consequence.

[17] However, we know from *Booyesen* and *Moolman* that the applicant must show exceptional circumstances. The case for exceptional circumstances must be made out in the founding papers. The applicant must show that intervening in the uncompleted arbitration proceedings would not undermine the purpose of the LRA in general and section 158(1B) in particular. Intervening in the uncompleted proceedings must advance the purpose of the LRA of expeditious resolution of the disputes without causing any injustice that may not be cured at a later stage.

[18] In *casu*, the applicant puts forward three grounds for seeking the Court's intervention. The first is that the matter is scheduled for arbitration on 4 and 5 August 2025. The second is framed as follows:

⁸ To obtain an interim interdict, they must establish that he has a *prima facie* right, demonstrate irreparable harm, lack of adequate alternative remedy and balance of convenience; see *Setlogelo v Setlogelo* 1914 AD 221 at 227; *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton and Another* 1973 (3) SA 685 (A); [1973] ZASCA 38 at 691D-E.

‘the safety of the Applicant's personnel or any official from another municipality who might have to appear on 4 and 5 August 2025 before the CCMA on behalf of the Applicant;’

[19] The third ground is that the applicant has no senior legal officer and *“Mr. Tshepo Hlahla since the Third Respondent's ruling became available, is currently busy trying to find a suitable and available official to appear in this arbitration on behalf of the Applicant”*.

[20] The first and third grounds have been scantily addressed in the papers. The applicant confirmed that after the ruling (which was sent to the applicant on 30 May 2025), it has been trying to find an official to represent it at the arbitration proceedings. No further details are provided. What is significant, however, is that the applicant has not claimed that no official is available to represent it. Further, there is no evidence that the absence of a senior legal officer would hinder its presentation of the case. In any event, besides the fact that this issue was not sufficiently addressed in these proceedings, it was not part of the applicant's case before the CCMA, which suggests that it is not a serious factor. The fact that the arbitration is scheduled to proceed on specified dates does not constitute an exceptional circumstance.

[21] The applicant's main case is centred on the second ground, which it calls the safety of its personnel or any official from another municipality who might be required to appear on 4 and 5 August 2025. To support its alleged safety concerns, the applicant pleaded that:

‘During the disciplinary proceedings of Mr. Fourie, on 21 April 2024, Adv. Jimmy Hlongwane, who acted as the Applicant's initiator, was approached by two male strangers at the Anew Hotel (Rustenburg) where Mr. Fourie's disciplinary hearing was held. These two strangers identified themselves to Adv. Hlongwane as intelligence operatives from the State Security Department. They asked Adv. Hlongwane questions about how the disciplinary hearing against Mr. Fourie was proceeding. Adv. Hlongwane felt intimidated by these questions and decided to

stop acting as the initiator against Mr. Fourie. Adv. Hlongwane was substituted by Adv. Tebogo Manchu SC. Mr. Fourie's former counsel, Adv. Molefe Kgomongwe was present when the strangers approached Adv. Hlongwane. Mr. Tshepo Hlahla of De Swardt Myambo Hlahla Attorneys (Pretoria), Applicant's attorney of record, after Adv. Hlongwane had discussed the issue with him, permitted Adv. Hlongwane to withdraw as initiator and appointed Adv. Manchu SC to act further as the Applicant's initiator.

Adv. Manchu SC, also received phone calls from persons who identified themselves as officials from State Security. These events were reported to Mr. Tshepo Hlahla.'

[22] The applicant attached a letter from Mr Sethene, which was addressed to the chairperson of the Johannesburg Society of Advocates, dated 22 July 2024. It continued to plead as follows:

'Adv. Alhajj Smanga Sethene who acted as the Chairperson in Mr. Fourie's disciplinary hearing, on 21 July 2024, received a death threat telephonically from a person who had identified himself as Mr. Msibi. Mr. Msibi informed... Adv. Sethene that he (Adv. Sethene) is charged with the responsibility of chairing a hearing involving the Municipal Manager, Mr. "Lucky" Fourie and that Adv. Sethene's picture had been circulated amongst hitmen ordered to kill him should he find Mr. Fourie charged with seven charges guilty. Mr Msibi told Adv. Sethene he personally called Ms. Zanele Nkosi (the late Rustenburg attorney) who had been gunned down outside her office in Rustenburg to take a certain decision who dismissed his call as a scam. I attach hereto a copy of Adv. Sethene's signed memorandum to the Chairperson of the Johannesburg Society of Advocates, Chairperson of the Pan African Bar Association Bar Association of South Africa and the Legal Practice Council, marked as ANNEXURE "BM16". Adv. Sethene did not disclose the death threat during the disciplinary proceeding, Mr. Tshepo Hlahla, Applicant's attorney of record in this application, was aware of the threat to Adv Sethene.'

[23] The letter from Mr Sethene stated that he would not be attending chambers whilst sorting out the issue of his security and reporting the matter to the law enforcement agencies. He also stated that he had informed the Minister of Police of the incident and had forwarded him a voice recording between him and Mr Msibi. Nothing is pleaded insofar as what happened to the reporting of the matter to the law enforcement agencies since 21 July 2024.

[24] On the first sitting of the arbitration before the CCMA on 17 January 2025: 'Mr. Tshepo Hlahla of De Swardt Myambo Hlahla Attorneys (Pretoria) arranged armed bodyguards to accompanying (sic) Adv. Van Graan SC, Mr. Thokozane Mnisi and Ms. Khanyisile Khanyi when they attended the commencement of the arbitration before Commissioner Patel on 17 January 2025...'

[25] The allegations on behalf of Mr Sethene, Mr Hlongwane and Mr Manchu constitute hearsay evidence as no confirmatory affidavits have been signed. Confirmatory affidavits were not signed because "*it is not customary for practising advocates to depose to affidavits used in litigation*". Whilst it may not be customary for legal practitioners holding the title of advocates not to sign affidavits, the Court has to decide the application based on the material before it.

[26] The applicant requested that the hearsay evidence of Mr Sethene and Mr Hlongwane be admitted in terms of section 3 of the Law of Evidence Amendment Act⁹ (LEAA) on the basis that it is in the interest of justice to do so. The interest of justice is allegedly underpinned by the fact that these are urgent stay proceedings, the purpose of the evidence is required to establish urgency and to explain the basis on which the stay application is requested, the probative value of the evidence is high and if the evidence is not permitted, the applicant's stay application will be prejudiced.

⁹ Act 45 of 1988.

[27] Whilst I see no reason why the above legal practitioners should not have confirmed the allegations under oath, and that the outmoded “custom” for advocates not to sign affidavits should not triumph the application of the law of evidence particularly in an instance where the applicant in this case seeks to establish what it considered serious safety concerns against its “officials” and other officials from another municipality who may represent it at the arbitration proceedings, and having considered the absence of opposition and that the matter was heard on an urgent basis, I have decided that it is in the interest of justice to admit the hearsay evidence.

[28] Having admitted hearsay evidence, the next enquiry is to determine whether the evidence proves exceptional circumstances to justify this Court’s intervention. Mr Sethene was the chairperson and not the initiator. Mr Hlongwane has not detailed why he considered the approach and enquiry from the two individuals to constitute a threat. There is no evidence of the officials or witnesses of the applicant being threatened either during the disciplinary hearing or after Fourie’s dismissal. From the papers, there is no shred of evidence that Fourie was aware of these alleged threats.

[29] Without downplaying the allegations of threats, it would appear that the applicant took seriously the safety of its officials and any other official from another municipality that it hired bodyguards for – *not its officials or those from other municipalities that may represent it at the arbitration proceedings* – but for the legal representatives on 17 January 2025. The threat allegations against legal practitioners are so serious that when the commissioner refuses to permit legal representation (*even though the safety concerns or death threats were not pleaded as part of the application for legal representation*), the applicant insists on having legal representation.

[30] During the hearing, I raised with the applicant’s counsel that what is alleged in the application is limited to the safety of the legal representatives, not that of the applicant’s officials or its potential witnesses. Counsel responded that the target appears to be the person representing and presenting the case on behalf of the applicant. The applicant made a sweeping statement in its affidavit that because the

chairperson and initiator “*received death threats*” there is a real apprehension that its officials who may represent it on 4 August 2025 “*may be subjected to similar intimidatory steps...*”.

[31] This is speculative, which even if accepted, is unsustainable because Mr Sethene was not the initiator. Mr Hlongwane is the only initiator who withdrew from the case, allegedly due to threats stemming from an alleged enquiry made by the two alleged intelligence operatives from the State Security Department regarding how the disciplinary hearing was proceeding. There is no evidence to indicate how this enquiry was received and how Mr Hlongwane understood the enquiries made by these two individuals. These alleged threats against Mr Hlongwane have not been pleaded with sufficient particularity and constitute speculation and conjecture. There are no further details regarding the telephone call received by Mr Manchu.

[32] It is unclear how intervening in the uncompleted arbitration proceedings would avert or minimise the threats, which were allegedly directed at Mr Hlongwane. There is no evidence that Mr Van Graan, who was appointed to lead the applicant’s case and his instructing attorneys, were threatened. The Court was not informed why the bodyguards were necessary on 17 January 2025. Further, there is no evidence that the bodyguards accompanied them on 19 May 2025.

[33] I have also considered the applicant’s application for legal representation before the CCMA. The safety concerns were not a ground upon which the applicant relied. If this were as serious as the applicant wants the Court to believe, this would have been placed before the commissioner for consideration in his determination of the application. In any event, the safety concerns are those of the legal representatives, not the applicant’s officials. It defies logic that after the commissioner refused legal representation, the applicant would insist on legal representation and use the threats against the legal practitioners to argue that legal practitioners should be permitted.

[34] Therefore, the safety concerns do not constitute exceptional circumstances to justify this Court's intervention in uncompleted arbitration proceedings. This application is not about the protection of the applicant's officials, but the applicant's desire and preference to be legally represented. Intervening in these proceedings at this stage would undermine and defeat the purpose of section 158(1B). The applicant would suffer no irreparable harm because if unsuccessful in showing the fairness of the dismissal, it may still raise as a ground for review if it elects to challenge the award, the refusal to grant legal representation. The application falls to be dismissed.

[35] In the premises, the following order is made:

Order

1. The application is dismissed.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mr T Manchu SC

Instructed by:

De Swardt Myambo Hlahla Attorneys