



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: 2025-112503

In the matter between:

MARULE, PABALLO

Applicant

and

HLABA NONCEBA NO

First Respondent

**COMMISSIONER FOR CONCILIATION, MEDIATION
AND ARBITRATION**

Second Respondent

TELESURE INVESTMENT HOLDINGS (PTY) LTD

Third Respondent

Heard: 23 July 2025

Delivered: 26 August 2025

Summary: Reasons for order issued on 23 July 2025.

REASONS FOR ORDER

DANIELS J

Introduction

[1] On 23 July 2025, I heard this application on the urgent motion roll. I issued an order dismissing the application. Reasons have been requested for my order. I see no need to canvass urgency. I considered the applicable principles and accepted that the dispute at the heart of this matter cannot be resolved in the normal course.

Material facts

[2] The applicant was employed by the third respondent as a sales consultant until her dismissal on 18 March 2025.

[3] The applicant was required to pass her regulatory exams by 28 February 2025, in order to comply with regulatory requirements under the Financial Advisory and Intermediary Services Act No 37 of 2002.

[4] The applicant failed to take her exams before 28 February 2025. She alleges that she experienced mental health issues, and struggled with raising her child.

[5] On 27 February 2025, the applicant applied to the Financial Services Conduct Authority ("FSCA") for an exemption from the regulatory exams. On 4 April 2025, the FSCA granted the applicant an exemption. However, by this time, the applicant had already been dismissed, on the grounds of incapacity.

[6] The applicant referred a dispute concerning the fairness of her dismissal to the second respondent for conciliation, and when conciliation failed, she requested arbitration. The CCMA enrolled the dispute for arbitration on 12 August 2025.

[7] The applicant applied for representation through Rule 25(6) of the CCMA Rules, which permitted the commissioner to grant representation by a person other than one identified¹ in subrule (1). The applicant wished to be represented by her

¹ For example, a legal practitioner or union official.

husband because, according to her, his knowledge of the industry and his knowledge of labour law are superior to hers. Her husband is not a union official, nor a legal practitioner.

[8] The commissioner issued a ruling on 26 June 2025, in which he or she ruled that the applicant could not be represented by her husband but may be represented by a legal practitioner. The applicant has failed to attach the ruling to the urgent application.

[9] The applicant sought to interdict the continuation of the arbitration proceedings pending the outcome of an application she intends to file to review and set aside the ruling on representation.

Legal principles and analysis

[10] The Labour Court has always been loath to intervene in incomplete arbitration proceedings² primarily because that would undermine the effective resolution of labour disputes, one of the primary objects of the Labour Relations Act No. 66 of 1995 as amended (the “LRA”).

[11] This led to the amendment of the LRA and the inclusion of section 158(1B) which provides as follows:

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

² *Trustees for the time being of the National Bioinformatics Network Trust v Jacobson & others* (2009) 30 ILJ 2513 (LC) at para 4; *Jiba v Minister: Department of Justice & Constitutional Development & others* (2010) 31 ILJ 112 (LC) at para 11; *EOH Abantu (Pty) Ltd v CCMA & others* (2010) 31 ILJ 937 (LC) at para 16.

the opinion that it is just and equitable to review the decision or ruling made before the issue in dispute has been finally determined." (own emphasis)

[12] Section 158(1B) of the LRA only permits the court to intervene where it is just and equitable to do so. The precise meaning of the "just and equitable" depends on the circumstances of each matter. However, given the purpose of the amendment, it makes sense that the court will only intervene in 'exceptional circumstances,' in the 'interests of justice' or to avoid a 'grave injustice.' Following the amendment, the court has intervened in relation to jurisdictional issues which can easily dispose of a matter.³ In deciding whether or not to intervene, the court will consider *inter alia* the stage of the proceedings, and the prejudice to the parties.⁴

[13] In my view, the applicant has not made out any case for the existence of exceptional circumstances requiring the intervention of this court in the incomplete arbitration. A review of the ruling would not have the effect of disposing of the dispute. If the court were to intervene at this stage, the review could delay the finalisation of the arbitration for years. Thereafter, an appeal could further delay the finalisation of the dispute. In the circumstances, it is not in the interests of justice to intervene at this stage. In any event, following the ruling, the applicant was (and remains) entitled to instruct and consult with a legal practitioner. Even if the applicant chooses not to instruct an attorney, the commissioner is duty bound to employ the 'helping hand' approach - applicable to lay litigants.⁵

[14] The requirements for granting an interim interdict are set out in *Setlogelo v Setlogelo*⁶ and refined in *Webster v Mitchell*.⁷ An applicant who seeks interim relief

³ *Ntombela & others v United National Transport Union & others* (2019) 40 ILJ 874 (LC) at para 42

⁴ *Minister of the Department of Correctional Services v Mpiko NO & others* (2018) 39 ILJ 2038 (LC); *Payne v Department of Transport Public Works (Western Cape Provincial Government) and Others* (C22/2024) [2024] ZALCCT 32 (24 July 2024); *PSA obo Jhupsee v Ngako NO and Others* (JR1956/15) [2017] ZALCJHB 437 (24 November 2017)

⁵ *Lyttelton Dolomite (Pty) Ltd v National Union of Mineworkers on behalf of Lekgau & others* (2020) 41 ILJ 2871 (LC)

⁶ 1914 AD 221 at 227

⁷ 1948 (1) SA 1186 (W)

must establish: (a) *prima facie* right even if it is open to some doubt; (b) a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted; (c) the balance of convenience must favour the grant of the interdict and (d) the applicant must have no other remedy.

[15] The *prima facie* right that must be established is more than simply the right to approach a court for review. The Constitutional Court has stated:

*“[u]nder the Setlogelo test, the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm. The right to review the impugned decisions did not require any preservation pendente lite.”*⁸ (own emphasis)

[16] It is my considered view, that the applicant has failed to make out a *prima facie* right. The applicant was required to demonstrate more than its right to bring a review. In the absence of attaching the ruling to its papers, the applicant cannot claim that it has a ‘right’ to any ruling other than the one actually issued. In the circumstances, there is simply no basis for the court to consider, on a preliminary basis, that the ruling is either unreasonable or irregular.

[17] The applicant must also fail in relation to the second and third requirements. As previously mentioned, the commissioner is duty bound to apply the helping hand approach. The applicant can therefore not demonstrate any reasonable apprehension of irreparable harm. In any event, on review, any harm suffered can be remedied. Nor does the balance of convenience favour the applicant. The review of

⁸ *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others* (CCT 232/19; CCT 233/19) [2020] ZACC 10; 2020 (8) BCLR 916 (CC); 2020 (6) SA 325 (CC) (29 May 2020) para [42].

a ruling on representation might take years to resolve, during which time the third respondent is deprived of certainty as to its affairs. Finally, as the third respondent correctly pointed out, the applicant has an alternative remedy. She can proceed with the arbitration and she may review the ruling upon receipt of the arbitration award.

Conclusion

[18] In the circumstances, for the reasons set out above, the applicant failed to satisfy the requirements for interim relief, nor has she established that it is just and equitable for the court to intervene in the incomplete arbitration proceedings.

RN Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Applicant

Self-represented

For the Third Respondent

Employer's Organisation