THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-134143

In the matter between:

EDWARD OUPA MAHOSI	**First Applicant**
DERICK MAKHUBELE	**Second Respondent**
and	
THE DEPARTMENT OF FORESTRY, FISHERIES AND ENVIRONMENT	**First Respondent**
THE DIRECTOR-GENERAL: DEPARTMENT OF FORESTRY, FISHERIES AND ENVIRONMENT	**Second Respondent**
THE MINISTER OF PUBLIC SERVICE AND ADMINISTRATION	**Third Respondent**
THE GENERAL PUBLIC SERVICE AND ADMINISTRATION	**Fourth Respondent**

Heard: 21 August 2025

Delivered: 26 August 2025

This judgment was handed down electronically by uploading it on *CaseLines* and/or *Court Online*.

JUDGMENT

MAKHURA, J

[1] The applicants approached this Court on an urgent basis, seeking a declaratory order that they are permanent employees of the first respondent on the same terms and conditions of employment as were agreed between them and the first respondent in their current fixed-term contracts of employment that expire on 31 August 2025. They also seek to interdict and restrain the first and second respondents from interviewing and/or placing candidates in their current positions or any other equivalent positions within the first respondent, advertising, processing, or filling their current positions.

[2] Finally, the applicants seek to interdict and restrain the first and second respondents from terminating their employment on 31 August 2025 or any date thereafter, pending the final determination of the unfair dismissal dispute referred to the fourth respondent, the bargaining council, under GPBC1108/2025.

[3] At the commencement of the proceedings, Mr Goosen, who appeared for the applicants, submitted that the applicants no longer seek a final declaratory order, but seek this order on an interim basis pending the determination of their unfair dismissal dispute referred to the bargaining council. Mr Goosen further submitted that the applicants also seek interim interdictory relief to restrain the first and second respondents from advertising, processing, interviewing, filling or placing candidates in

their current or equivalent positions pending the determination of their unfair dismissal dispute.

[4] The applicants are currently employed on fixed-term contracts, the fixed-term of which is due to expire or lapse on 31 August 2025. They are respectively employed as the Control Environment Officer Grade A: Energy and Waste Authorisations and Director: Air Quality Authorisations. They were first employed on fixed-term contracts approximately 10 years ago, in 2015. They alleged that when they were interviewed in 2015, they were informed that their posts had been advertised as contract posts due to a moratorium on permanent posts and that they would be made permanent once the moratorium was lifted, in the alternative, their contracts would be extended.

[5] In 2019, their contracts were renewed for three years. In May 2022, the Chief Director of the first respondent, Dr Patience Gwaze, allegedly reiterated the assurances or representations that they would be made permanent or have their contracts renewed. They allege further that:

> 'In January 2023, Dr. Gwaze updated us on efforts to establish a permanent structure and again assured us that if the process wasn't finalised before contract expiry, contracts would be renewed.
>
> In October 2023, Dr. Gwaze requested us to agree to a lesser contract term of eighteen (18) months, on the understanding that a submission would be made to the Department of Public Service and Administration (DPSA) to convert the D: AQA structure and posts into permanent ones. We agreed in good faith, as it meant absorption if approved. These are the contracts that expire on 31 August 2025.
>
> Despite these assurances, in March 2024, our enquiries about the progress of the permanent structure were met with no response. Later, in November 2024, we were informed that the CFO had rejected the establishment of a new structure.'

[6] Dr Gwaze deposed to the answering affidavit on behalf of the first and second respondents. She denied having made the representations or assurances. Alternatively, she argues that even if these representations were made, they were subject to two conditions: first, the lifting of the moratorium, and second, the approval of the permanent structure and posts. Dr Gwaze admits that the Chief Financial Officer did not approve of the establishment of the new permanent structure and posts.

[7] In addition to the above opposition to the application, the first and second respondents raised three preliminary points: urgency, jurisdiction and *lis pendens*. The first and second respondents contend that the matter is not urgent and that this Court has no jurisdiction to declare that the applicants are permanent employees before the unfair dismissal dispute is referred for conciliation and arbitration. The defence of *lis pendens* is inextricably linked to the requirement of an alternative remedy, which is that the applicants have already referred their unfair dismissal to a forum with competent authority to determine the matter. This latter defence was not pressed by Mr Cassim, who appeared for the first and second respondents.

[8] Rule 38(2) of this Court's rules requires an urgent applicant to clearly state the reasons for the urgency and why the court should grant the relief sought. The rule mandates that applicants not only include in their founding papers an explanation of why the application is urgent but also specify why the relief should be granted immediately rather than later. In other words, applicants must demonstrate that they would not receive adequate or substantial redress if the matter is heard in the normal course. This procedure is not there for the taking. The Court will not enroll and determine the matter based solely on the applicant's say-so in his affidavit. Notshe AJ in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*[1] put it this way:

> 'An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course.

[1] [2011] ZAGPJHC 196; 2011 JDR 1832 (GSJ) at para 6.

The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.'

[9] In their motivation for urgency, the applicants contend that they would not obtain substantial redress in due course because their contracts are set to terminate on 31 August 2025. In their pleadings, the applicants relied on two judgments of this Court in *Nowalaza and Others v Office of the Chief Justice and Another*[2] *(Nowalaza)* and *Kapari and Another v Office of the Chief Justice and Another*[3] *(Kapari)*. At the commencement of the hearing, Mr Goosen correctly and upfront conceded that *Nowalaza* is distinguishable, and abandoned any reliance on it. He submitted that *Kapari* applies and referred to the judgment extensively in his address.

[10] The facts in *Kapari* are that the employees had engaged their employer in writing through correspondence and by lodging a grievance regarding their permanent appointment. At the time of the urgent application, the employees had already escalated their grievance by lodging an unfair labour practice dispute to the bargaining council, though their referral was found to be premature by the bargaining council. The employees returned to pursue internal remedies, and their grievance had already been escalated to the Public Service Commission as part of the procedure.

[11] When the employer advertised their posts, the employees applied urgently to this Court for an interim order to remain employed and to interdict and restrain the employer from interviewing and/or appointing candidates to the advertised positions pending the outcome of their grievance by a dispute resolution agency with the necessary jurisdiction, which had already been lodged in terms of a grievance procedure and escalated to the Public Service Commission. The Court granted the order.

[2] [2017] ZALCJHB 234.
[3] [2020] ZALCJHB 268; (2020) 41 ILJ 2473 (LC).

[12] In *casu*, there is no evidence of any engagement between the parties, other than what is already set out above. In November 2024, the applicants were informed that the Chief Financial Officer had declined to approve the establishment of the new permanent structure and posts. They elected not to pursue the matter until July 2025. The applicants referred an unfair dismissal dispute to the bargaining council. The right to refer the unfair dismissal dispute to the bargaining council survives the expiry of the contract, whereas the right to lodge a grievance may be rendered nugatory by the termination of the contract. For the above reasons, the facts in *Kapari* are distinguishable from the current matter.

[13] Other than reliance on *Kapari*, that they were on fixed-term contracts for approximately 10 years and that these contracts are due to terminate (or *expire* or *lapse*) on 31 August 2025, the applicants have not placed any facts why they cannot be afforded substantial redress in due course. In addition, the applicants have acted at their own leisure. Assuming, without making a finding that Dr Gwaze made the representations or assurances that they would be permanently employed upon the two conditions materialising, the applicants were aware in November 2024 that the Chief Financial Officer had declined to approve the establishment of the permanent structure and post. They did not engage the first and second respondents on this issue, nor did they seek to pursue their rights until July 2025.

[14] The applicants' challenges are compounded by the nature of the right they seek to assert. They contend that they have a *prima facie* right to relief based on their right not to be unfairly dismissed in terms of section 185 of the LRA and their right to be involved or consulted in decisions that affect them. Further, they argue that the reason for the *"dismissal"* is *"glaringly unfair"*. The alleged duty of consultation is unsubstantiated. Nothing in the fixed-term contracts suggests that the applicants would be consulted before the end of their contract. The assurances allegedly made do not form part of their contracts.

[15] All employees have the right not to be unfairly dismissed. If this *prima facie* right could be used to sustain an interdict and order a temporary appointment of employees to their lapsed contracts or to their dismissed employment, then all employees could approach the court after they had referred their unfair dismissal disputes to the CCMA or relevant bargaining council.

[16] This Court has no jurisdiction to adjudicate an unfair dismissal dispute unless it has been referred for conciliation.[4] It matters not that the relief is sought on an interim basis, as the applicants now seek. The Court cannot assume jurisdiction or exercise powers it does not have simply because the order is sought temporarily. Whilst this Court has the power to grant interim relief, an order to appoint the applicants to their current positions or extend their contracts pending the determination of their unfair dismissal dispute would be untenable. It would create a floodgate of similar applications, where all dismissed employees would feel entitled to a declaratory relief to remain employed and an interdict restraining the implementation of their terminated employment contracts pending the determination of their unfair dismissal disputes before the CCMA or bargaining council, and later this Court and the appeal courts. This would, in my view, encroach on the employers' prerogative to operate their business and divest their powers to, amongst others, discipline, restructure their businesses, or respond to their operational and economic needs.

[17] For these reasons, I agree that this Court lacks jurisdiction to adjudicate the applicants' claim for a declaration that they are permanent employees or an extension or renewal of their fixed-term contracts. The applicants have failed to establish a *prima facie* right not to be unfairly dismissed.

[18] To clarify, employees do not have a right not to be dismissed. The biggest hurdle the applicants must overcome is that in section 186(1)(b) claim or in a reasonable

[4] Sections 157(5) and 191 of the LRA; *National Union of Metalworkers of SA & others v Driveline Technologies (Pty) Ltd & another* 2000 (4) SA 645 (LAC); (2000) 21 ILJ 142 (LAC); *National Union of Metalworkers of SA v Intervalve (Pty) Ltd & others* (2015) 36 ILJ 363 (CC); [2015] 3 BLLR 205 (CC); *National Union of Metalworkers of SA on behalf of Members v SAA Technical SOC Ltd* (2024) 45 ILJ 2524 (LAC); [2024] 12 BLLR 1259 (LAC).

expectation dismissal claim, they bear the onus to prove that they were dismissed. Until dismissal is established, the applicants cannot claim a *prima facie* right not to be *unfairly* dismissed when dismissal itself is in dispute. Having failed on this leg, the other requirements for an interim interdict become moot.

[19] Even if they had established a *prima facie* right, the applicants would fail on the other requirements. They alleged that they would suffer irreparable harm because they are breadwinners and rely on their monthly income to support themselves and their families. They also complain that the first and second respondents have advertised the posts. Their complaints are a natural consequence of the termination of any employment contract. The applicants have not demonstrated that they are an exception to all employees whose contracts are due to expire or terminate. Many employees are breadwinners, and they are currently waiting for their disputes to be processed before the bargaining councils, the CCMA and this Court. The applicants have not demonstrated that the harm that may ensue is different from these other dismissed employees. On the facts of this case, or lack thereof, the applicants have failed to establish the requirement of irreparable harm if the interim order is not granted.

[20] About the alternative remedy, the applicants relied on the *Kapari* judgment, which I have already found to be distinguishable on the facts. Should the applicants succeed in their unfair dismissal dispute by proving that they were dismissed and that they had a reasonable expectation of employment for an indefinite period, the bargaining council may reinstate them and award them back pay retrospectively from the date of the dismissal. The applicants have not addressed this Court in their papers why this would not be adequate. They have accordingly failed to show that the application for declaratory relief is urgent and that it is necessary to obtain the relief now and not later. Accordingly, even if I had decided to enrol the matter, the applicants would have been found wanting on the requirements for an interim relief.

[21] For the above reasons, this Court refuses to enrol and determines the matter because it is not urgent.

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

Order

1. The application is struck off the roll for lack of urgency.
2. There is no order as to costs.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Mr C. Goosen
Instructed by:	Dawie Coetzer Attorneys
For the Respondents:	Mr N. Cassim SC with Ms J. Janse Van Rensburg
Instructed by:	The State Attorney, Pretoria