THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C469/2024

In the matter between:

UNIVERSITY AND ALLIED WORKERS UNION Applicant

and

UNIVERSITY OF CAPE TOWN First Respondent

COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION Second Respondent

Heard: **14 August 2025**

Delivered: **2 October 2025**

JUDGMENT

MacKENZIE, AJ

Introduction

[1] On 14 August 2025, I dismissed this application with costs and indicated that my reasons would follow. They are as follows.

[2] The applicant, the University and Allied Workers Union (UAWU) acting on behalf of certain of its members, sought an order directing the first respondent, the University of Cape Town, to consult with the applicant regarding the relocation of its members forming part of the first respondent's Campus Protection Services. The affected members were to be relocated from the first respondent's Graduate School of Business (GSB) campus to its Rondebosch campus.

[3] The first respondent opposes the application.

The facts

[4] The background facts are uncomplicated and almost entirely undisputed.

[5] On 27 April 2018, the applicant and first respondent concluded a Recognition and Procedural Agreement ("**the Recognition Agreement**") which effectively regulated the applicant's organisational rights. Clause 3.1 frames the qualifying criteria for the applicant's enjoyment of organisational rights with the first respondent. In particular, clause 3.1.1 requires the applicant to have a minimum of 300 members for it to remain a recognised union by the first respondent.

[6] On 25 October 2022, the first respondent informed the applicant that, according to the first respondent's membership statistics for September 2022, the applicant no longer met the required representivity threshold under the Recognition Agreement. Accordingly, the first respondent withdrew certain of the applicant's organisational rights. That was confirmed by the first respondent in writing to the applicant on 25 January 2023.

[7] On 27 January 2023, the first respondent cancelled the Recognition Agreement. It did so in the wake of embarking upon a process of creating a single bargaining unit with a single bargaining forum for all professional, administrative and support services (PASS) employees. The first respondent likewise cancelled its recognition agreements with other trade unions, namely the National Education, Health and Allied Workers' Union

(NEHAWU), the Democratised Transport Logistics and Allied Workers' Union (DETAWU) and the University of Cape Town Employees' Union (UCTEU). Pursuant thereto, the first respondent engaged with those unions regarding its proposal of forming a single bargaining unit. Since it no longer recognised the applicant, the first respondent did not invite the applicant to participate in that process.

[8] Nevertheless – and significantly – pursuant to a written settlement agreement concluded on 11 October 2023 in respect of an altogether separate dispute, the first respondent nevertheless afforded the applicant certain organisational rights.

[9] On 18 January 2024, the first respondent concluded a collective bargaining agreement with NEHAWU, DETAWU and UCTEU, which established the envisaged single bargaining unit forum. Since it was no longer recognised, the applicant was not a party to that agreement.

[10] Several months later, during May 2024, the first respondent resolved to relocate the thirty-six members of its campus security staff from its GSB campus to its Rondebosch campus. It did so to improve the visibility and availability of security at the Rondebosch campus. The relocation was intended to be effected on 1 January 2025.

[11] On 9 September 2024, the first respondent met with representatives of NEHAWU, DETAWU and UCTEU to discuss the proposed relocation.

[12] On 16 September 2024, the applicant wrote to the first respondent, seeking to participate in the consultation process regarding the proposed relocation. Again, since it no longer recognised the applicant, the first respondent unsurprisingly declined that request, in writing, on 18 September 2024.

[13] On 20 September 2024, the applicant referred a dispute to the second respondent concerning the first respondent's refusal to allow the applicant to participate in the consultation process. On 18 October 2024, the first respondent was given notice to attend a conciliation hearing.

[14] On 8 November 2024, the parties attempted conciliation. At that meeting, the parties agreed for the conciliation process to be postponed for thirty days. However, the purpose of that postponement is disputed.

14.1 The applicant alleges that the parties agreed to a postponement to allow the applicant to take part in the consultation process. There is nothing in the founding affidavit bearing out that assertion.

14.2 The first respondent alleges that the process was postponed for it to obtain a mandate whether or not to allow the applicant to participate in the consultation process. Importantly, the first respondent's version is borne out by a contemporaneous e-mail dated 11 November 2024 by Mr Mpe Ngcosane, who is an employment relations specialist employed by the first respondent. It is evident from that e-mail that the first respondent elected not to engage with consultations with the applicant as a non-recognised union.

14.3 Given the lack of evidence by the Applicant, and since it is clearly neither untenable nor far-fetched, I consider that the first respondent's version on this score must prevail.[1]

[15] Aggrieved, the applicant launched this application on 20 November 2024.

<u>Analysis and discussion</u>

<u>Preliminary objection: jurisdiction</u>

[16] The first respondent raised two preliminary (*in limine*) objections: jurisdiction and the absence of a certificate of outcome.

[17] The first respondent argues that the Court lacks jurisdiction to hear this matter for two reasons.

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[1] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E–635C; *Association of Mineworkers and Construction Union and Others v Anglo Gold Ashanti Limited t/a Anglo Gold Ashanti and Others* (2022) 43 ILJ 291 (CC) at fn 103–104.

[18] Firstly, this dispute is not justiciable since it is an '*interest'* dispute and not a '*rights'* dispute. Indeed, the applicant, in its referral to the second respondent, characterised the dispute as one of '*mutual interest'* and not one concerning any cognisable or enforceable rights. I agree with the first respondent. The facts bear out that the applicant had no right to participate in the collective bargaining process with the other recognised unions. At best, the applicant had only an interest in that process. In *HOSPERSA & another v Northern Cape Provincial Administration,* Mogoeng AJA (as he then was) held that a dispute of interest is not arbitrable, but must be dealt with in terms of collective bargaining structures. This is so, he held, since allowing an '*interest dispute'* to be adjudicated would subvert the collective bargaining process itself.[2] The applicant's response to this contention is that the Labour Relations Act, 1995 (LRA) does not speak of '*rights disputes*' or '*interest disputes*'. While that may be so,[3] the absence of such a distinction in the LRA is neither here nor there. Nor does it derogate from the authority binding upon me in *HOSPERSA*. Since it concerns a mere interest, it is not one that engages this Court's jurisdiction. Accordingly, the first respondent's objection on this score is well-taken.

[19] Secondly, the applicant failed to furnish a certificate of outcome issued by the second respondent under section 135(5) of the LRA, certifying the outcome that the dispute has not been resolved. Section 135(3) is peremptory.[4] It has been described as conferring upon the aggrieved party '*immediate entrée to the Labour Court*'.[5] The applicant failed to deal substantively with this point. Instead, it dismissed it as '*over-technical and not constructive*'. It relied upon the oft-quoted *dictum* of Schreiner JA in *Trans-Africa Insurance Co. Ltd v Maluleka,*[6] namely that '*technical*

[2] *HOSPERSA & another v Northern Cape Provincial Administration* (2000) 21 ILJ 1066 (LAC) at para 10.

[3] *Department of Home Affairs v Public Servants Association and Others* (2017) 38 ILJ 1555 (CC) at para 13.

[4] *Louw v Micor Shipping* (P86/98) [1999] ZALC 188 (14 June 1999) at para 8.

[5] J Grogan, *Labour Litigation and Dispute Resolution*, 2nd ed, at p 142.

[6] 1956 (2) SA 273 (AD).

objections to less than perfect procedural steps should not be permitted'.[7] The applicant's reliance is misplaced. Jurisdiction determines the court's competence to adjudicate upon a dispute between parties.[8] Either it exists or it does not. It is therefore hardly a mere technical objection. This is the more so since the Court's jurisdiction is framed in and limited by section 157 of the LRA. Accordingly, this objection is likewise well-taken.

[20] Yet even if I am wrong in this regard, the applicant's case lacks merit.

The relief sought is moot

[21] I was informed from the bar by the first respondent's attorney that its relocation decision was implemented several months ago, on 1 January 2025. That fact has overtaken this matter and has accordingly rendered this dispute moot.

[22] Nevertheless, in its heads of argument the applicant maintained that there is nothing precluding the Court from reversing the first respondent's decision. No authority is cited for that contention. The applicant neither amended its notice of motion to ask for that relief, nor did it allege any facts in support thereof. There is simply no basis upon which the Court can '*reverse*' the first respondent's decision. The applicant's contention on this score is thus without merit.

[23] Significantly, from the bar, the first respondent's attorney indicated that the applicant has referred a dispute to the second respondent regarding the implementation of the first respondent's decision. That being so, the applicant has implicitly conceded its submission on this score lacks merit.

The merits

[24] The applicant seeks an order compelling the first respondent to allow the applicant's participation in the consultation process regarding the (implemented) relocation of the applicant's affected members. In other

[7] 278F–G.

[8] *Graaff-Reinet Municipality v Van Ryneveld's Pass Irrigation Board* 1950 (2) SA 420 at 424.

words, the applicant seeks, in substance, a positive or mandatory interdict (*mandamus*).

[25] However, the applicant's case is opaque. It appears to ground its right to relief upon two bases.

25.1 The first is the Constitutional Court's decision in *NUMSA & others v Bader Bop (Pty) Ltd & another*.[9] Its contention appears to be that the Constitutional Court affirmed that any trade union, regardless of the extent of its representivity, is entitled to participate in consultations with an employer in relation to organisational rights. However, as the first respondent's attorney correctly pointed out, that contention is misconceived. What the Constitutional Court held in *Bader Bop* is that a trade union, even one with a minority of members, is entitled to the organisational rights framed in Chapter 1 of Part A of the LRA.[10] Yet, those rights were conferred upon the applicant under the agreement of 11 October 2023. This contention thus lacks merit.

25.2 The second basis is the alleged agreement in relation to the continuation of the consultation process on 8 November 2024. As found above, the applicant's allegation is untenable, not borne out by the evidence and is, as it must be, trumped by the first respondent's version.

25.3 No other right was alleged. Accordingly, the applicant failed to establish any right to the relief sought.

[26] Secondly, the applicant's case for prejudice was not one based upon fact, but rather upon generalised and sweeping statements of prejudice. It did not make even a single factual averment bearing out the alleged prejudice. That, as the first respondent argued, is demonstrably deficient.

[27] Thirdly, the founding affidavit is entirely silent regarding any adequate alternative remedy. Again, as the first respondent's attorney correctly pointed out, the relocation has no substantive effect upon the affected

[9] (2003) 24 ILJ 305 (CC).

[10] *Bader Bop,* at paras 39–40.

members. Clause 4 of the Minimum Services Agreement retained all affected employees' rights under section 74 of the LRA.

[28] In sum, this application lacks all semblance of merit. It must fail.

Costs and the conduct of the applicant's attorney

[29] The first respondent's attorney correctly pointed out that the Court's jurisdiction regarding costs is governed by section 179 of the LRA. The ordinary rule that costs follow the result does not apply in this Court.[11] However, in this matter, the Court considers that the patent lack of merit in this application in itself justifies that the applicant be ordered to pay the first respondent's costs.

[30] Regrettably, it is also necessary to comment upon the conduct of the applicant's attorney, Mr Ramabu of Ramabu Attorneys. Despite being informed by the Registrar per e-mail that this matter would commence at 09:00 instead of 10:00, and despite an additional 30 minutes – as well as the best efforts by the first respondent's attorney to contact him – Mr Ramabu failed to appear when this matter was finally called at 10:30.

[31] The first respondent's attorney submitted that Mr Ramabu ought to pay the costs of this application personally (*de bonis propriis*). She made the following submissions in support thereof.

31.1 Firstly, this application clearly lacks merit and is fundamentally ill-conceived.

31.2 Secondly, the applicant's heads of argument were filed considerably out of time and at any rate after the first respondent had delivered its heads of argument.

31.3 Thirdly, Mr Ramabu's failure to appear in accordance with the Court's directive.

31.4 Finally, the Court was informed form the bar that the applicant had ostensibly launched an urgent application to interdict the first

[11] *Union for Police Security and Corrections Organisation v South African Custodial Management (Pty) Ltd and Others* [2021] 12 BLLR 1173 (CC).

respondent from implementing its relocation decision. The first respondent acted prudently by preparing its opposition thereto. However, on attempting to deliver its answering papers, the first respondent was informed that the Registrar had no record of the urgent application.

[32] The first respondent's attorney also directed the Court's attention to the unreported judgment of the Western Cape Division of the High Court in *Van Louw v Nedbank Limited*[12] which also condemned Mr Ramabu's conduct. The Honourable Mr Acting Justice Montzinger granted costs *de bonis propriis* against Mr Ramabu. However, those circumstances are altogether distinguishable to those at hand. There, Mr Ramabu had failed to comply with a court order, sought the last-minute withdrawal of counsel and condonation for the submission of irrelevant heads of argument and had acted unprofessionally in the conduct of the court appearance.

[33] I do not consider that Mr Ramabu's conduct in this matter justifies costs *de bonis propriis*. Significantly, the notice of motion was signed by a representative of the applicant, and not by Mr Ramabu. Mr Ramabu was only appointed after the matter was ripe for hearing. Yet, one might nevertheless criticise Mr Ramabu for persisting with this application after coming on record. It may well have been withdrawn had Mr Ramabu properly considered this matter and advised the applicant accordingly. Likewise, one might criticise the late filing of the applicant's heads of argument. However, unless there is negligence to a serious degree, mere ineptitude or incompetence on the part of a legal practitioner does not *per se* warrant costs *de bonis propriis*.[13] Nor for that matter did Mr Ramabu's absence affect the Court's determination of this matter. It was ripe for hearing with heads of argument from both parties. The Court was therefore not disadvantaged in its adjudication hereof.

[34] Finally, while the applicant's conduct regarding the urgent application is *prima facie* concerning, it is not a matter that is before the Court. But for the submissions from the bar by the first respondent's attorney, there is

[12] (21341/243) [2024] ZAWCHC 241 (3 September 2024).

[13] *Mathimbane and Another v Normandien Farms (Pty) Ltd* [2014] JOL 32048 (LCC) at para 28.

nothing before the Court upon which this submission can be properly considered and an order made.

[35] At any rate, fairness dictates that Mr Ramabu would had to have been given a chance to explain his conduct. At a time when the rolls are already overly-burdened, I consider that Courts should guard against wasting precious judicial time and resources in dealing with matters that do not genuinely merit consideration of such an extraordinary costs order.

[36] However, lest I be misunderstood, Mr Ramabu's conduct in this matter is to be deprecated. Legal practitioners have a duty to the Judiciary to ensure the efficient and fair administration of justice.[14] Mr Ramabu's conduct as a legal practitioner is clearly a cause for some concern. While the Court is ultimately responsible for determining whether a legal practitioner is fit and proper, the day-to-day regulation of legal practitioners is a task falling to the Legal Practice Council.

[37] In the circumstances, a copy of both this judgment and that in *Van Louw* will be transmitted to the offices of the Western Cape Legal Practice Council for its attention and, if necessary, further action.

<u>Order</u>

[38] In the result, the following order is made:

1. The application is dismissed.

2. The applicant will pay the first respondent's costs of suit.

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PS MacKenzie

Acting Judge of the Labour Court of South Africa

[14] *Toto v Special Investigation Unit and Others* 2001 (1) SA 673 (E) at 683A–F.

<u>Appearances:</u>

For the applicant:	No appearance
Instructed by:	Ramabu Attorneys
For the first respondent:	M Cogger of Bowman Gilfillan Inc