THE LABOUR COURT OF SOUTH AFRICA
AT JOHANNESBURG

Of interest to other judges

Case no: 22025-169524

In the matter between:

VINCENT MATLALA	**Applicant**
and	
FOSKOR PROPRIETARY LIMITED	**First respondent**
ADV HENNO VILJOEN *N.O.*	**Second Respondent**
THE COMMISSION FOR CONCILIATION, MEDIATION & ARBITRATION	**Third Respondent**

Heard: 23 September 2025

Delivered: 21 October 2025

Summary: (Urgent – Application to interdict disciplinary proceedings and ordering proceedings to be conducted as an inquiry under s 188A(11) of the LRA or, alternatively until arbitrator makes jurisdictional ruling - Employee acting promptly in requesting statutory enquiry and in launching application when employer refused to halt the enquiry pending the outcome of the request – statutory enquiry a unique remedy – only requirement for granting the

request is whether employee's allegation of suffering an occupational detriment is made in good faith – determination of that question belongs to the arbitrator - court should not usurp that function by granting declaratory relief in urgent proceedings – the existence of a bona fide belief on a *prima facie* level, not the entire gamut of an unfair labour practice claim relating to an occupational detriment is the threshold for conducting the statutory enquiry)

JUDGMENT

LAGRANGE, J

Nature of the application

[1] On 18 September 2025, this application was launched on an urgent basis and enrolled for hearing on 23 September.

[2] The applicant, Mr V Matlala ('Matlala'), is the Vice President: Human Capital and Corporate Affairs of the first respondent ('Foskor').

[3] He seeks an order on an urgent basis to:

1. interdict Foskor's disciplinary proceedings against him, and
2. require the disciplinary inquiry to be conducted by an arbitrator under section 188A (11) of the Labour Relations Act, 66 of 1995 ('the LRA') or, alternatively,
3. to interdict the disciplinary proceedings pending a jurisdictional ruling by the third respondent ('the arbitrator').

[4] On 21 August 2025, Matlala applied to the CCMA under section 188A(11) of the LRA for disciplinary proceedings instituted against him by Foskor to be conducted under the auspices of an arbitrator because he claimed the

disciplinary action amounted to an occupational detriment for maki*ng a protected disclosure under the Protected Disclosure Act, 26 of 2000 ('the PDA').

[5] Following this request, Foskor indicated it intended to raise a jurisdictional objection to the CCMA proceedings. However, at the CCMA hearing on 19 September 2025, the parties agreed that both the CCMA proceedings and the internal disciplinary hearing would be held in abeyance pending the outcome of this application.

[6] The application was heard virtually on the MS-Teams platform.

Summary chronology of events

[7] All the material events occurred in 2025.

[8] On or about 14 March, Matlala instituted disciplinary action against the Group Manager, Total Rewards and Benefits, Mr C Kharidhza, on charges concerning, *inter alia*, malfeasance and irregular expenditure.

[9] On 12 April, Kharidzha submitted a complaint to Foskor claiming Matlala had pointed a firearm at him at the workplace. He advised he had also reported the incident to the police. On 5 May, police came to Foskor offices, interviewed Matlala, and accompanied him to his residence where they inspected his firearm. Thereafter, he was detained overnight at Midrand Police Station. Ms R Moodley, Foskor's Vice President: Legal, Risk and Compliance was involved in the police visit to the premises and Matlala surmises that it was at her instigation he was detained by police, after she had spoken privately with them.

[10] On or about 7 May, Foskor appointed Nexus Forensics to investigate Mr Kharidzha's complaint. Matlala obtained medical certificates booking him off work from 6 May to 30 June.

[11] On 10 May, Matlala emailed the CEO registering what he described as his 'complaints' against Moodley. In short, he alleged she had interfered with the performance of police duties by requesting they detain him and ignored Foskor's procedures for investigating allegations against employees. He

claims she acted in a discriminatory fashion because she would not have done the same to another employee and she violated his rights to privacy and his rights under the Protection of Personal Information Act, 4 of 2013 ('POPIA') in her interaction with the police. Foskor took his email to be a lodging of a grievance against Moodley, but in his founding affidavit, Matlala claims this was the first protected disclosure he made.

[12] On 12 May, Matlala was placed on precautionary suspension. Foskor avers it had prepared the suspension letter prior to his expected return to work on 9 May following his initial period of sick leave was supposed to have ended on 8 May according to the medical certificate he had submitted. Hence the letter of suspension was dated 9 May. However, on 9 May, Matlala submitted a second medical certificate extending his absence from that day until the end of June so it could not be given to him that day. The suspension letter did not particularize any charges of misconduct, but merely advised him that Foskor *"… intends to investigate various allegations of serious misconduct against you that have recently been brought to its attention relating to your behavior and conduct, and the manner in which you have carried out your role as Vice President Human Capital"*.

[13] On 20 May, Foskor appointed Nexus to investigate Matlala's complaint against Ms Moodley and on 25 May criminal charges against him lodged by Kharidzha, were withdrawn. Nexus completed its investigation into Matlala's complaint. It found he had been dishonest, and recommended Foskor take disciplinary action against him.

[14] On 7 July Foskor's CEO emailed Matlala proposing a meeting to discuss mutual separation. A meeting was held the following day attended by Matlala, the CEO and COO. At the meeting the CEO informed Matlala that a loss of trust had arisen between Foskor and Matlala and that the company intended to take disciplinary action against him. From 8 to 14 July, emails were exchanged between Matlala and Foskor dealing with the issue of a mutual separation and Matlala's challenge to his suspension.

[15] On 17 July, Matlala referred an unfair labour practice dispute to the CCMA concerning his suspension. On 21 July, the CEO sent Matlala an email

terminating the mutual separation talks and confirmed that the disciplinary action would proceed.

[16] On 21 and 22 July Matlala submitted allegations to Foskor's official whistleblower hotline by email, which he claims amounted to his second protected disclosure. His allegations essentially comprise three components. Firstly, they concern Moodley's alleged facilitation of his arrest at Foskor's premises, which he claims had negative ramifications for the company and himself. Secondly, he identifies several incidents of what he considers to be ill-judged or unjustified disciplinary action being taken against other individuals or, in the case of another person, inexplicably not being pursued. Thirdly, he suggests threats had been made to the effect that he was not wanted in Foskor.

[17] On 7 August, Foskor issued Matlala with charges of misconduct. Broadly speaking, the charges concerned: Matlala making allegations against Moodley, without substance and in bad faith in an apparent attempt to target her or to defend himself against the complaint by Kharidza; him breaching the terms of his suspension and misleading a staff member to believe that he was still on sick leave rather than on suspension, and making dishonest representations to the investigators of the firearm incident about the safe storage of his weapon. The factual allegations and the related charges were set out in considerable detail in the notification of the charges, and Matlala was invited to respond both to the factual allegations and whether he conceded or disputed that if he were found guilty on any of them he could justifiably be dismissed.

[18] In response, on 19 August, Matlala made lengthy representations to Foskor on regarding the allegations. He prefaced his response by claiming that the disciplinary steps were motivated because he had lodged disciplinary steps against Kharidzha two years before and because he had lodged "grievances/complaints" against his fellow executive and lodged a protected disclosure on the company's whistleblower hotline.

[19] On 21 August, Matlala referred the matter to the CCMA under section 188A(11) of the LRA. The provision allows an employee who alleges *"in good*

faith" that the holding of an inquiry contravenes the Protected Disclosures Act, 2000 (Act 26 of 2000), to require that an internal inquiry of the employer concerning the employee's alleged misconduct or incapacity can be replaced with an arbitration hearing presided over by a bargaining council arbitrator or CCMA commissioner, as the case may be.

[20] In summarising the facts of the dispute on the referral form Matlala stated *"Received disciplinary charges after I made protected disclosure using employer's whistleblowing online platform. I was cleared of misconduct by external forensic investigators appointed by employer, where report was probably issued to employer"*.

[21] The following day, Foskor gave him notice of a further disciplinary charge which related to him speaking to a newspaper during the week of 11 August after he had been issued with the initial misconduct charges. It was alleged that the article that was published had disclosed confidential information and was likely to impair the firm's image.

[22] On 27 August, Matlala duly responded to this letter restating his objections to Foskor's motives for initiating the disciplinary action as well as addressing the new charge.

[23] On or about 3 September, Foskor sent letters to Matlala and the CCMA raising jurisdictional objections to the s 188A(11) process. The same day, the chairperson advised Foskor and Matlala, after considering the charges and Matlala's written responses to the charges, that he intended to conduct the inquiry in the form of an investigation and he identified a preliminary list of six individuals involved in the alleged events, whom he intended to interview in the course of his investigation. Matlala advised the chairperson that his referral to the CCMA had been set down before the CCMA on 19 September and, in his view, the disciplinary hearing should end as the matter was now before a commissioner.

[24] On 12 September, Foskor responded to Matlala's representations to the chairperson. It pointed out that it had advised Matlala and the CCMA of its objections to the section 188A (11) process. The basis on which it objected to the arbitration process replacing the disciplinary inquiry was that it alleged

Matlala had not demonstrated he had made a protected disclosure in good faith nor that he had provided proof of having made such a disclosure. Further, it contended that Matlala had not demonstrated that it had subjected him to an occupational detriment after such an alleged disclosure was made and had not shown that there was any causal connection between that disclosure and the alleged occupational detriment. It contended that the CCMA arbitrator could not proceed with the arbitration until the arbitrator was satisfied all these requirements have been met, and that it intended to raise these issues at the CCMA hearing on 19 September. In its view, until the arbitrator had pronounced on these issues, it was fully entitled to proceed with the disciplinary inquiry.

[25] On 14 September, the chairperson of the enquiry, Mr H Viljoen, an advocate, issued a ruling that the internal disciplinary inquiry could proceed, notwithstanding Matlala's request that it be conducted by the CCMA. The chairperson held that the internal disciplinary inquiry remained distinct from the s 188A inquiry, and the former was neither invalidated nor suspended by Matlala's referral. He also decided that in terms of his mandate as chairperson of the enquiry, he could not consider whether the alleged disclosure Matlala made to Foskor's whistleblower platform on 20 July was a protected disclosure and Matlala's rights under the PDA remained unaffected by the continuation of the internal enquiry. He indicated that he was available to continue the internal inquiry on 22 or 23 September by affording Matlala an opportunity to provide his evidence, preferably by way of an interview.

[26] On 16 September, Foskor confirmed it intended challenging the CCMA's jurisdiction to conduct the disciplinary enquiry, on the basis that Matlala had not alleged the jurisdictional facts necessary to invoke section 188A (11) of the LRA.

[27] Thereafter, on 18 September Matlala filed this application at court. On 19 September, at the CCMA, the parties agreed to hold both the internal and CCMA proceedings in abeyance pending the court's decision on the application.

Urgency

[28] Foskor disputes the urgency of the application, arguing that Matlala should have launched the application as soon as he was served with the charges, citing other decisions where this court has dismissed similar applications for lack of urgency[1].

[29] Matlala received the main charges on 7 August and referred the matter to the CCMA under section 188A (11) on 21 August Matlala. He also submitted his responses to the charges before he was advised of the chairperson's identity. As as soon he knew of the chairperson's identity on 2 September, he advised the chairperson of his section 188A (11) referral and called on the chairperson not proceed with the inquiry, on the apparent assumption that having made the referral it automatically halted the internal inquiry. On 14 September the chairperson dismissed his objection and the urgent application was launched four days later.

[30] Matlala can hardly be faulted for first attempting to persuade the chairperson not to proceed with the inquiry, instead of rushing to court without having done so. He raised the objection with the chairperson promptly and when the chairperson dismissed his objection filed the application shortly thereafter. The facts of this application are distinguishable from the authorities relied on by Foskor[2]. In the circumstances, I am satisfied that Matlala acted promptly and did not approach the court without exhausting other procedural alternatives. Accordingly, he has established that he acted with the necessary degree of alacrity required.

[31] Further, there is no equivalent 'alternative' to invoking s 188A(11), which Matlala has a right to exercise. While there is a possibility of the provision being abused to delay or avoid an internal hearing, it must be remembered that procedure initiated by the employer does not disappear if an employee

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[1] See *Mtweta v Transnet Freight Rail and Operating Division of Transnet (SOC) Limited* (J 58/2024) (2024) ZALCJHB 17 (29 January 2024) and *Lindokuhle Tsibani v The Estate Agency Affairs Board and Others* (2021) ZALCJHB 150 (24 June 2021), in which the applicants in those matters had launched urgent proceedings two months and more than three months, respectively, after receiviing charges.

[2] footnote1 *supra*.

successfully invokes the provision. It simply relocates the subject matter of the internal enquiry to arbitral proceedings.

Pre-requisites for acceding to a request to proceed under s 188A(11)

[32] There is no dispute that Matlala does have a right to request that the disciplinary proceedings should be conducted by an independent third-party under section 188A(11). The crux of the dispute between the parties is whether he met the prerequisites for that process to replace the disciplinary inquiry, and which forum should determine that in the first instance.

[33] It is apparent that Foskor has adopted the prerequisites from this court's judgment in *Mamodupi v Property Practitioners Regulatory Authority and Another*[3]. The applicant in that matter had launched an urgent application to declare her summary dismissal by the employer unlawful and that the termination was in breach of s 188A of the LRA. The application was struck off the roll for lack of urgency.

[34] In the judgment the court deprecated a tendency of employees to bring applications for specific performance on an urgent basis, in the belief that establishing the court's jurisdiction to entertain applications for specific performance of the employment contract under s 77(3) was sufficient reason to entertain the application regardless of whether or not it was urgent. The court also discerned a strategy that employees were using to stall internal disciplinary proceedings by invoking the section.

[35] Shortly after being issued with disciplinary charges, the applicant in the matter had invoked subsection 188A (11) by requesting the inquiry be conducted by an arbitrator. In a note attached to the CCMA referral form she baldly alleged *"in good faith"* that the disciplinary inquiry contravened the PDA because it amounted to subjecting her to an occupational detriment on account of having made a protected disclosure. As the court observed, the note was completely lacking in any details about the specifics of the alleged protected disclosure, namely as to whom it was made, how it was made and when it was made. At her request, the chairperson of the internal inquiry had issued a ruling

[3] (J68/23) (2023) ZALCJHB 19 (13 February 2023), unreported.

postponing the inquiry, pending a decision from the CCMA that it would conduct the hearing under s 188A(11). However, the CCMA hearing was then repeatedly postponed without a ruling being made whether the arbitrator accepted jurisdiction to act under the section. Eventually, the employer decided to proceed on its own by giving the applicant an opportunity to make a written representation, following which she was dismissed for misconduct.

[36] The court decided that it was important to determine whether it was authorised to order parties to continue with the CCMA enquiry process even where one party decided to abandon it, and that, because of the stalling strategy previously identified, it was important to determine "*the proper jurisdictional facts that should exist before an employee may invoke the provisions of subsection 188A (11)*".[4]

[37] The court then embarked on a discussion of the circumstances in which specific performance of an employment contract might be obtained on an urgent basis, which is not relevant to this application.

[38] In determining the prerequisites for an arbitrator to chair the enquiry, the court stated:

> *"(43) A casual and sloppy reading of the subsection suggests that an employee may make a simple allegation of contravention of the PDA in order to invoke the subsection. Not, the allegation must be one made in good faith. This requirement illuminates the fact that the legislature was alive to the fact that an employee may make a wild allegation and thereby gain the right to an inquiry by an arbitrator. This is an instance where an abuse of the subsection creeps in easily. The legislature must have carefully chosen the phrase good faith because in section 9 of the PDA any disclosure made in good faith is protected. <u>It becomes so protected if an employee reasonably believes that the information disclosed and an allegation contained in it are substantially true and the disclosure is not made for the purposes of personal gain</u>. The phrase good faith, when used as a noun, means honesty or sincerity of intention.*
>
> *(44) It must follow that the allegation of contravention must have an element of honesty and sincerity. The veritable question is how*

[4] At paragraph 13.

does a Court faced with an application of this nature test honesty and sincerity of the allegation of contravention? <u>To my mind a contravention must not only be alleged it must prima facie factually exist.</u> I say so because in terms of section 1 of the PDA an occupational detriment in relation to the working environment of an employee means amongst others being subjected to any disciplinary action."

(emphasis added)

[39] In conclusion, the court held the provision could only be invoked if the following jurisdictional facts were present:

"46.1 The employee <u>must</u> <u>make</u> a protected disclosure;

46.2 Thereafter, the employer must subject the employee who already made a protected disclosure to an occupational detriment;

46.3 Once so subjected, an employee must allege honestly and sincerely so that a causal connection does exist between his or her protected disclosure and the occupational detriment. Differently put, it is because of having made a protected disclosure that an employer chose to respond by an occupational detriment."

(emphasis added)

[40] Turning to the facts of that case, the court held that the applicant had not satisfied these jurisdictional requirements. Although the court did not expressly issue a declarator that the resumption of the internal enquiry by the employer was not a breach of s 188A(11), the court reasoned that because the jurisdictional prerequisites the section 188A (11) inquiry had not been met, and since the internal enquiry did not automatically terminate when the statutory enquiry was been requested, the internal enquiry had not yet been terminated by virtue of the operation of s 188A(11). By implication, there was no legal bar to the employer continuing with its own inquiry[5].

[41] Although the court's views on the jurisdictional prerequisites for holding an inquiry under the section are, strictly speaking, *obiter* because the application was dismissed for lack of urgency, nevertheless, they obviously bear

[5] See paragraph 55.

consideration when determining the pre-requisites for conducting the enquiry under the chairpersonship of an arbitrator.

[42] At this juncture it is perhaps important to note that, in *Mamodupi*, the relief sought in relation to section 188A(11) was a final declaratory order that the applicant's dismissal was in breach of that provision. The factual scenario and the relief sought were not the same as in this case. In this application, Matlala seeks an order compelling the CCMA to proceed with the enquiry. That is an invitation for the court to determine if the referral satisfies the requirement for the CCMA holding the enquiry. In the alternative, Matlala seeks an order to stay the internal proceedings, pending a decision by the appointed arbitrator on whether to entertain the request.

[43] I agree with the court in *Mamodupi* that the starting point for identifying the requisites for holding an enquiry under s 188A(11), must be the wording of the section, which states that an employee is entitled to require an enquiry into their conduct or capacity to be conducted under s 188A if the employee "*<u>alleges in good faith</u> that the holding of an inquiry contravenes the Protected Disclosures Act, 2000"* (emphasis added).

[44] If the request for a statutory hearing is successful, it merely means that the internal incapacity or misconduct inquiry is substituted with an arbitration presided over by a completely independent chairperson. In *Tsibani v Estate Agency Affairs Board and Others*[6], this court emphasised the limited scope of the s 188A(11) procedure:

> *"(72) Section 188A(11) is not designed or intended to determine whether the facts constitute a protected disclosure as contemplated by the PDA or not, and if not, for an internal disciplinary hearing to proceed. The section provides for an inquiry into allegations pertaining to the conduct or capacity of an employee."*

(emphasis added)

[45] Accordingly, unless the employee has also referred an unfair labour practice claim that the internal inquiry constituted an occupational detriment under the

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[6] (J642/2021) (2021) ZALCJHB 150 (24 June 2021) unreported

PDA under section 186 (2) (d) and that matter is somehow heard jointly with the s 188A(11) enquiry, the enquiry conducted by the arbitrator will be concerned only with whether the employer proves the allegations of incapacity or misconduct and any consequences which might flow from that. In the absence of such an arrangement, the arbitrator conducting the misconduct or incapacity inquiry has no authority to determine if the employee has suffered an occupational detriment because they made a protected disclosure. Therefore, the employee cannot use the procedure to vindicate their claim that the disciplinary action of the employer amounts to an occupational detriment under the PDA.

[46] Because the section 188A(11) enquiry is simply a misconduct or incapacity hearing, whether the employee had actually suffered an occupational detriment is not within the remit of the arbitrator in that forum. Nevertheless, the arbitrator is not obliged to proceed with the inquiry regardless of the circumstances under which the disciplinary action arose. The threshold requirement that must still be met is that the employee's allegation that the disciplinary steps taken by the employer amounts to an occupational detriment under the PDA must be one made in good faith.

[47] In assessing the existence of good faith, it must be recognised that it possible that the allegation of being subjected to an occupational detriment might be made in the sincere belief it is correct, when objectively speaking it is wrong. An employee's belief they have been subjected to an occupational detriment, might be mistaken on several grounds, both concerning the legal interpretation of the PDA and the factual basis for their belief. Plainly, if an employee relies on a factual assertion which they know to be false the allegation cannot be *bona fide* because it relies on an intentional misrepresentation. In instances where the allegation is not plainly false, there must at least be a tenable or plausible basis for them holding that belief. Accordingly, if there are undisputed facts that are irreconcilable with their belief, which the employee could not be unaware of, their belief cannot be accepted as *bona fide* one.

Equally, if the belief is one that nobody in the position of that person could reasonably hold in the circumstances, it could not be held in good faith[7].

[48] Difficult though it is to make the distinction between determining if the disciplinary action taken by the employer does amount to an occupational detriment and whether the employee honestly believes it does, the employee has to show that *their belief* is *bona fide*, not that the disciplinary action taken does amount to an occupational detriment. It is important not to collapse the enquiry into whether an occupational detriment in the form of disciplinary action was imposed on employee for the purpose of determining an unfair labour practice claim with an enquiry into the existence of a *bona fide* belief that it was. Sometimes there will be indisputable known facts, which are such that, objectively speaking, the alleged disclosure could not have triggered the disciplinary steps, and which would preclude the employee from honestly believing that it did. In that instance, the objective circumstance negates the possibility of an employee genuinely believing the opposite. Under such circumstances determining the existence of a bona fide belief will be relatively easy, but this will not always be the case.

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[7] See e.g, *He and She Investments (Pty) Ltd v Brand NO and Others; He and She Investments v Brand NO and Others* 2019 (5) SA 492 (WCC) at paragraphs 28 and 29. The judgment is also refers to the test applied to determine if a defendant has provided a *bona fide* defence to a summary judgment application, which may usefully find application in the context of s 188A(11). In *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426A-D, Corbett JA stated:

Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the Court by affidavit that he has a bona fide defence to the claim. Where the defence is based upon facts, in the sense that material facts alleged by the plaintiff in his summons, or combined summons, are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. All that the Court enquires into is: (a) whether the defendant has 'fully' disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is both bona fide and good in law. If satisfied on these matters the Court must refuse summary judgment, either wholly or in part, as the case may be. The word 'fully', as used in the context of the Rule (and its predecessors), has been the cause of some Judicial controversy in the past. It connotes, in my view, that, while the defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he must at least disclose his defence and the material D facts upon which it is based with sufficient particularity and completeness to enable the Court to decide whether the affidavit discloses a bona fide defence.

(emphasis added)

While this might, by analogy, be a useful way of approaching the determination of an employee's bona fide belief in a s 188A(11) request, an employee is not required to set out a full disclosure of their claim to be subjected to an occupational detriment. It must also be noted that, in any event, the Appellate Division, took a narrow view of what full disclosure of a bona fide defence under R 32(3)(b) of the Uniform Rules of the High Court entails.

[49] In *Mamodupi* the court articulated the test for proceeding with the enquiry as being whether the employee has established the *prima facie factual* existence of a contravention. I agree in general with this formulation, but not if it is interpreted to mean that every element required to establish an unfair labour practice relating to an occupational detriment must be established on a *prima facie basis* to pass the threshold of s 188A(11). That dispute falls outside the remit of an arbitrator deciding whether to hear the disciplinary or incapacity case. The assessment of the employee's *bona fide* belief as a precursor to the statutory enquiry also does not require that level of scrutiny, because the issue the arbitrator will decide is not the merits of their occupational detriment claim, but the merits of the employer's case of misconduct or incapacity.

[50] The next issue is whether it is appropriate for the Labour Court to determine whether or not the statutory enquiry can proceed? The request is made to the CCMA or relevant bargaining council. It is the commissioner or panellist who is called upon to preside in the enquiry and therefore is first seized with the question whether the request has been properly made. As far as possible, this court should not be usurping that primary role by determining the jurisdictional question in the form of issuing a declarator before the request has even been considered by the arbitral forum. This is exactly what this court would be doing if it considered whether Matlala is entitled to the primary relief he seeks.

[51] Should the court then grant interim relief by suspending the internal inquiry pending the decision of the CCMA commissioner whether to proceed with the s 188A(11) enquiry? If the court does not stay the internal enquiry, Matlala could be denied the opportunity of exercising his right to request the statutory enquiry because, unless the request for the statutory enquiry is accepted, the employer can proceed with the internal one in the meantime.

[52] Matlala has acted with speed in bringing this application, the prejudice to the employer of the delay must be balanced against Matlala's lost opportunity of an inquiry before an arbitrator. Matlala has no other suitable way of effectively preserving his right to have his request considered. Whatever the merits of his request are, that should be determined by the forum considering it and granting interim relief would facilitate that.

<u>Conclusion</u>

[53] For the reasons set out above, I am satisfied that the applicant is entitled to relief in the form of his alternative prayer. There being an ongoing employment relationship between the parties, an order of costs would not be appropriate in this case.

<u>Order</u>

1. The application is heard as one of urgency in terms of Rule 38 of the Labour Court and any non-compliance with time periods and forms of service in the Rules is condoned.
2. The disciplinary enquiry into the charges of misconduct against the Applicant, set out in the First Respondent's notice of 7 and 22 August 2025, is suspended pending a decision by the arbitrator appointed by the Third Respondent, whether the disciplinary enquiry should be conducted in accordance with Section 188A(11) of the Labour Relations Act, 66 of 1995.
3. No order is made as to costs.

[redacted]

R Lagrange

Judge of the Labour Court of South Africa

<u>Appearances</u>

For the Applicant: M Moolla instructed by Dockrat Incorporated

For the Respondents: M Sibanda accompanied by AN Nkabinde (Pupil) instructed by Bowman Gillfillan Inc.