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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 051806/24

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: NO

DATE: 22 October 2025

SIGNATURE:

In the matter between:

IMMANUEL MANGANYI

First Applicant

MEMBERS LISTED IN SCHEDULE "A"

Second to Further Applicant

and

TSHWANE METROPOLITAN MUNICIPALITY

Respondent

ORDER

It is ordered that:

1. *Lis pendens* is upheld
2. The application is dismissed with costs.

JUDGEMENT

FLATELA J,

Introduction

[1] This is an opposed application. The Applicants seek an order in the following terms:

1. The Respondent's failure and/or refusal to place the Applicants in the grading scheme of B1/C1/C2 of 13 February 2006 during the respective appointments of the Applicants shall be declared unlawful.
2. The Respondent be ordered to apply the grading scheme of B1/C1/C2 of 13 February 2006 on the Applicants, read with the Respondent's grievance dated 18 November 2020 and the grading scheme of the Respondent dated 13 February 2006, with benefits thereto, applying retrospectively.
3. The Respondent be ordered to calculate the monetary benefits that would have been due to the Applicants had the Respondent appointed the Applicants in accordance with the grading scheme of B1/C1/C2 of 13 February 2006 from their respective dates of appointments.
4. The Respondent be ordered to quantify the respective amounts that are due to each Applicant within a period of 5 (five) days from the date of this order.
5. That the Respondent be ordered to pay the Applicants the said monies and benefits due as results of the Respondent's failure and/or refusal to place the Applicant on the grading scheme of B1/C1/C2 of 13 February 2006, calculated from the Applicants' respective dates of appointment to the date of this order, with interest.

6. The said money be paid into the trust account of the Applicants' attorneys of record, Xabendlini & Associates, with following banking details:

N. V. Xabendlini T/A Xabendlini Attorneys and Associates

First National Bank

Account No: 6[...]

Branch Code: 270350

7. Ordering Respondent to pay the costs of this application.

8. Such further and/or alternative relief.

[2] The Respondent opposes the application and raises two points *in limine*, namely the defence of *lis pendens* and the dispute of facts. The Respondent contends that the same dispute is pending before the Labour Court on review arising from the Bargaining Council proceedings. The Respondent claims that on 22 June 2023, IMATU, representing over 900 employees, including some Applicants in this case, referred the dispute to the South African Local Government Bargaining Council (SALGBC).

[3] The Respondent contends that on 23 February 2024, an arbitrator dismissed the dispute. IMATU, on behalf of approximately 900 employees of the Tshwane Metro Police Department (TMPD), launched a review application in the Labour Court, registered under case number JR514/2024.

[4] The Respondent disputes that it refused to implement the grievance's outcomes. It asserts that the dispute was referred to the South African Local Government Bargaining Council (SALGBC), where the parties concluded a main collective agreement for the period from 2015 to 2020. The Respondent states that the implementation of the grading scheme was halted following a resolution by the Local Labour Forum, and the matter was referred to the Basic Conditions Committee, which has yet to reach a decision on the grading that should be applied.

Parties

[5] The Applicants are all employees of the Respondent who are also employed as Metro police officers, listed in Schedule A. The Respondent is the Tshwane Metropolitan Municipality, a municipality established under the Municipal Systems Act 32 of 2000, and conducts its business at 2[...] M[...] Street, Pretoria, Gauteng Province.

Factual Background

[6] The facts are largely a common cause. On 1 December 2015, the Applicants were appointed as Constables Grade III by the Tshwane Metropolitan Municipality (the Respondent), subject to a one-year probationary period. On 1 December 2016, they were confirmed in their positions.

[7] The Applicant contends that in 2004, the Respondent approved a grading scheme which included provisions for promoting Constables to the rank of Lance Sergeant. Although the grading scheme was amended in 2006, it remains the Respondent's policy. The Applicant contends that the grading scale for the Respondent's constables ranges between R69,960 and R91,380, or R95,688 and R117,084, in terms of grading B3/C1 and C2, respectively, effective from 1 July 2004.

[8] The Applicants aver that, despite the existence of the memorandum and Annexure A, they were not appointed under the 2006 grade. Dissatisfied with the Respondent's failure to follow its policy, the First Applicant and 309 others filed a dispute claiming unfair labour practice related to promotions and demotions. They submitted a grievance on 18 October 2019 in accordance with the Grievance Procedure.

[9] On 18 November 2020, the Respondent, per Ronald Oppelt, the Divisional Head of Labour Relation Management, issued the outcomes of the grievance in the Applicant's favour. He held as follows:

- i. "The 13 February 2006 grading scheme is the only valid grading scheme that must be applied to the aggrieved employees; and

- ii. The employer must apply this grading scheme for the purpose of the progression for the aggrieved employees.”

[10] The Applicants claim that, despite the outcome of the grievance, the Respondent failed to carry out this recommendation.

[11] The Respondent is affiliated with the South African Local Government Bargaining Council, and the parties to the SALGBC concluded the Main Collective Agreement for the period 2015 to 2020 (MCA), which also included a Grievance Procedure. The procedure is also deemed to be a condition of service. Clause 13.1.2 provides the following:

“The objective of this grievance procedure is to ensure substantive and procedural fairness to resolve problems as quickly and as close to their source as possible and to deal with conflict through procedural and consensual means.”

[12] In these proceedings, the Applicants seek a declaratory order that the Respondent’s failure to place the Applicants on the Respondent’s grading scheme approved on 13 February 2006, when they were employed, is unlawful. The Applicants also seek an order that the Respondent be ordered to implement the grading scheme retrospectively from 18 November 2020, being the date of the outcome of the grievance they lodged, for an order that their monetary entitlements be recalculated based on this scheme from their date of appointment. They seek payment of these amounts and the costs of this application to be deposited into their attorney's bank account.

The Parties contentions

The Applicants’ contentions

[13] The Applicants state that on 1 December 2015, they were appointed to a non-existent Grade III scheme despite meeting the requirements outlined in the Respondent’s memorandum.

[14] The Applicants argue that, according to the Respondent's memorandum, the grading scale for the Respondent's constables ranges between R69,960 and R91,380, or R95,688 and R117,084, in terms of grading B3/C1 and C2, respectively, effective from 1 July 2004.

[15] The Applicants assert further the remarks on annexure A of the Respondent's memorandum, provided as follows:

- i. Recruits appointed on a contract basis on the minimum notch of the B1 level and remain on that notch until such time that they comply with the appointment's requirements.
- ii. Recruits will only be appointed as constables on a permanent basis once they comply with all the appointment requirements.
- iii. Members who comply with the requirements are pointed directly on the second notch of the battery scale on the First day of the month following final compliance,
- iv. And notch per year is given for recognition as a fully qualified Metropolitan Police member and is calculated from the second notch of the B3 scale to a maximum of five notches, and
- v. Notch increments are subject to the passing of a proficiency test as described by the chief of police.

[16] The Applicants contend that they have the right to be assigned to the appropriate grading schemes of B1/C1/C2, as confirmed by the Respondent's regulations and the grievance decision from February 2006, as well as the back-payment of monies and benefits owed. They argue that the Respondent have infringed upon their right to be assigned to the appropriate grading scheme by failing to act lawfully, resulting in financial harm.

[17] The Applicant asserts that on 17 May 2021, Valentine Matlala, the former deputy regional secretary of SAMWU, sent a letter to the Respondent, raising concerns about the delay in implementing the outcomes and referencing numerous meetings on the matter.

[18] The Applicants assert further that on 16 April 2024, the Applicants' attorney caused a letter of demand to be drafted, urging the city to implement the outcome of 18 November 2020. Failing which, the Applicants would bring this application. Despite the demand, the Respondent failed to implement the grievance outcome.

[19] The Applicant submits that the Respondent made the decision and undertook to implement step 3 of the grievance process. The decision stands and constitutes a binding agreement between them and the Respondent.

[20] The Applicants also seek a punitive costs order against the Respondent due to its alleged unreasonable attitude, despite a demand letter, and failure to comply with its prescripts. The Applicants assert that it is in the interests of justice to relieve the Applicants from the inconvenience and cost implications caused by the Respondent's conduct.

Respondent's contentions

[21] The Respondent concedes that the 2006 grading scheme constitutes its policy. The Respondents assert that the parties affiliated with the South African Local Government Bargaining Council concluded the Main Collective Agreement (MCA) for the period 2015 to 2020 and that the Local Labour Forum is in place in accordance with the Main Agreement.

[22] The Respondent asserts that the MCA includes the powers and functions of the Local Labour Forum. Clause 11.8.2 states:

- i. The Local Labour Forum shall have the powers and functions of negotiating and or consulting (Clause 11.8.2.1)
- ii. On matters of mutual concern pertaining to the workplace and which do not form the subject matter of negotiations at the Council of its divisions;(Clause 11.8.2.1.1)
- iii. on such matters as may from time to time be referred to such foreground by the Council of its division, (Clause 11.8.2.1.2)

- iv. provided that it may not negotiate on any matter, which has been reserved for exclusive bargaining in the Council of the divisions (Clause 11.8.2.1.3)
- v. concluding of minimum service agreements (Clause 11.8.2.1.4)

[23] The Respondents also assert that on 6 June 2017, the Local Labour Forum raised concerns about the unilateral implementation of the grading scheme without proper consultation with organised labour. As a result, it was resolved that the implementation of the grading scheme by the Respondent be withdrawn, and the matter was referred to the Basic Conditions Committee (BCC), which has yet to decide on a new grading framework.

[24] The Respondent asserts that several groups of employees have submitted numerous grievances. Relevant to this application, the Respondent admits that on 18 October 2019, the First Applicant and 309 others lodged a grievance, and the deponent to the Respondent's answering affidavit was appointed as chairperson. The outcomes of step 3 of the collective grievance in 2020 are not in dispute; however, the Respondent contends that on 6 June 2017, the scheme attached to the Applicant's contracts was withdrawn pending the decision of the BCC.

Referral to Conciliation

[25] The Respondent also states that around 22 June 2023, the Independent Municipal and Allied Trade Union (IMATU), representing over 900 employees employed as Constable III, referred a dispute to the SALGBC. The Respondent maintains that several of the Applicants in this application were also Applicants in the referral made by IMATU on or about 22 June 2023.

Referral to Arbitration

[26] The Respondent asserts that on 18 August 2023, the dispute was referred to arbitration. The dispute was described as follows:

“The failure to progress the members to Sergeant as per the approved grading scheme of 2004/2006 that was applicable when they were appointed”

[27] The Respondent contends that on 29 and 30 January 2024, before Commissioner Evah Ngobeni. The issue in dispute in the arbitration was crystallised in the pre-arbitration minute as follows:

1. The arbitrator is to confirm that the 2004/2006 Grading Scheme is the applicable Grading Scheme.
2. The arbitrator is to confirm that the Applicant should have been appointed as Constable/Sergeant in terms of the approved structure and Grading Scheme.
3. The Applicants must be progressed to Sergeant in terms of the approved Grading Scheme that was applicable when they were appointed with backpay.”

The Arbitration Award

[28] Commissioner Ngobeni issued the Arbitration Award (“Award”) on 23 February 2024, in which the dispute was dismissed.

The Review Application

[29] The Respondent asserts that after the Award was issued on 9 April 2024, IMATU, acting on behalf of 903 TMPD employees, launched a review application in the Labour Court in Johannesburg under case number JR14/2024. In the review application, IMATU, *inter alia*, seeks the following prayer:

- “2. *Substituting the arbitration award with a ruling that:*
 - 2.1 *The 2004/2006 Grading Scheme is the approved Grading Scheme.*
 - 2.2 *The Applicants should and could only have been appointed as Constable/Sergeant in terms of the approved structure and Grading Scheme.*

2.3 *The Applicants must be progressed to Sergeants in terms of the approved Grading Scheme of 2004/2006 that was applicable when they were appointed with back pay.”*

[30] The Respondent contends further that the current dispute concerning some Applicants is subject to the principle of *lis alibi pendens*. The Respondent states that in the current application, the Applicants seek the following remedy:

“2. The Respondent be ordered to apply the grading scheme of B1/C1/C2 of 13 February 2006 on the application read with the Respondent’s grievance outcomes dated 18 November 2020 and the grading scheme of the Respondent dated 13 February 2006, with benefits therefore, applying retrospectively.”

[31] The Respondent contends that the application should be dismissed with costs. The Respondent further accuses the Applicants of engaging in forum shopping. The Respondent points out that several Applicants were involved in a dispute previously adjudicated by the SALGBC, which resulted in a ruling favourable to the Respondent and is currently under review in the Labour Court.

Applicants’ reply

[32] In their replying affidavit, the Applicants deny that their case relies on the outcome of the grievance. The Applicants claim that their case is based on the department's policy; however, the Applicants state that the grievance's outcome was actually a means to compel the Respondents to adhere to its grading scheme.

[33] On *lis alibi pendens*, the Applicant states that the allegations demonstrate that there are ongoing engagements between the Applicant and the City.

[34] I will begin by addressing the preliminary issue of *lis alibi pendens*. As previously outlined in this judgment, the Respondent asserts that the Labour Court is currently seized with the review application stemming from the identical cause of action.

Legal Principles governing the defence of *lis alibi pendens*

[35] The requirements of *lis alibi pendens* are trite. There must be a pending litigation between the same parties or their privies, based on the same action with respect to the same subject matter.

[36] In *Nestle (South Africa) (Pty) Ltd v Mars Inc 2001 (4) SA 542 (SCA) para 16*, this court said the following:

“The defence of lis alibi pendens shares features in common with the defence of res judicata because they have a common underlying principle, which is that there should be finality in litigation. Once a suit has been commenced before a tribunal that is competent to adjudicate upon it, the suit must generally be brought to its conclusion before that tribunal and should not be replicated (lis alibi pendens). By the same token the suit will not be permitted to revive once it has been brought to its proper conclusion (res judicata). The same suit between the same parties, should be brought once and finally.”

[37] In addressing the defence of *lis alibi pendens*, the Applicants contend that the parties involved are not sufficiently analogous and assert that the underlying causes of action differ substantially. The Applicant specifically pleaded as follows in reply:

“Further, the City alleges lis alibi pendens . Although we deny the issue of the lis alibi pendens , we point out to this Honourable Court that the contents of the lis alibi pendens allegations do not sustain the allegation but demonstrate that there are ongoing engagement between us and the City regarding the issue of the grading scheme”.

[38] During the hearing, the Respondent's counsel conceded that IMATU represents certain Applicants in their case before the Bargaining Council and that these Applicants are also part of the workers represented by IMATU in proceedings in the Labour Court. He argued that the matter should continue to be heard,

emphasising that the Applicants would not achieve the same outcomes by pursuing their case in the Labour Court.

[39] Ngcobo J, dealing with the role of Bargaining Council in *Cusa v Tao Ying Metal Industries and Others (CCT 40/07) (2008) ZACC 15* said the following:

“Section 23(5) of the Constitution guarantees to every trade union, employers’ organisation and employer “the right to engage in collective bargaining.” To this end, Parliament is required to enact legislation “to regulate collective bargaining”.¹ The Labour Relations Act, 1995² (the LRA) is the legislation which, among other things, gives effect to this right. The LRA puts in place a scheme for concluding, enforcing and resolving disputes arising from collective bargaining agreements.³ Broadly speaking, this scheme provides for the establishment of a system of bargaining councils in respect of different sectors and areas.⁴

Bargaining councils are established by registered trade unions and employers’ organisations. Parties to a bargaining council are, therefore, indirectly representatives of workers and employers. Bargaining councils constitute forums for negotiating, concluding and resolving disputes concerning collective agreements.

[40] The Applicant has acknowledged that their union acts as their representative within the Bargaining Council and in the Labour Court. However, the Applicant now wishes to clarify that not all of them are involved in the review application before the Labour Court. In the context of the bargaining council, it is well established that employees are represented by their union parties, and the involved parties are the employers' organisations and workers' organisations. I am satisfied that the Applicants are also represented before the Labour Court through their union, IMATU.

¹ Section 23(5) of the Constitution. The interim Constitution contained a comparable provision in section 27.

² Act 66 of 1995.

³ Id at section 28(1)(a)-(c).

⁴ Id at section 27(1).

[41] The primary contention in both court cases centres on the 2004/2006 Grading Scheme as the sanctioned Grading Scheme of the Respondent. Notably, the Applicants have failed to respond to all allegations articulated in paragraphs 29 through 41, thereby implying their admission of these claims. In the specified paragraphs of the answering affidavit, the Respondent delineates the internal grievance procedure pursued by the Applicants, encompassing the subsequent referral of the issue to conciliation facilitated by IMATU on behalf of the Applicants, as well as the later referral to arbitration and the resultant arbitration outcome.

[42] Furthermore, the Applicants have not contested the preliminary issue of *lis pendens*; their response has been limited to a mere denial. In *Association of Mineworkers and Construction Union v Ngululu Bulk Carriers (Pty) Ltd (in Liquidation)*⁵ the Constitutional Court held:

“The purpose of lis pendens is to prevent duplication of legal proceedings. As its requirements illustrates, once a claim is pending in a competent court, a litigant is not allowed to initiate the same claim in different proceedings. For a lis pendens defence to succeed, the defendant must show that there is a pending litigation between the same parties, based on the same cause of action and in respect of the same subject matter. This is a defence recognised by our courts for over a century.”

[43] In *Nestle (South Africa) Pty Ltd v Mars Inc*⁶ the court held that:

“the defence of lis alibi pendens shared features in common with the defence of res judicata because they shared the common underlying principles that there should be finality in litigation. Once a suit has been commenced before a tribunal competent to adjudicate upon it, the suit should, generally, be brought to a conclusion before that tribunal and should not be replicated.

⁵ (CCT 15/18) [2020] ZACC 8; 2020 (7) BCLR 779 (CC); (2020) 41 ILJ 1837 (CC); [2020] 10 BLLR 959 (CC)

⁶ [2001] ZASCA; [2001] 4 All SA 315

[44] This position was reaffirmed in *Caesarstone Sdot-Yam Ltd v World Marble and Granite 2000 CC & Others*⁷, where the court held as follows:

“...a plea of lis alibi pendens is based on the proposition that the dispute (lis) between the parties is being litigated elsewhere, and therefore it is inappropriate for it to be litigated in the same court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the same parties, and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions.”

[45] I am satisfied that the requirements of *lis alibi* are satisfied. The court has a discretion to stay or dismiss the proceedings if the balance of convenience favours the applicant (see *Loader v. Dursot Bros (Pty) Ltd* .⁸ I am of the considered view that this case is not suitable for the court to exercise its discretion, as it poses a significant risk of producing conflicting outcomes.

[46] Navsa AJ in *Socrtous v Grindstone Investments 134 (Pty) Ltd (149/10) [2011] ZASCA 8; 2011 (6) SA 325 (SCA)* held :

*“Courts are public institutions under severe pressure. The last thing that already congested court rolls require is further congestion by an unwarranted proliferation of litigation. The court below erred in not holding that against Grindstone when it dismissed the defence of lis pendens without due regard to the facts and on the wrong principle. The court below ought not to have proceeded to consider the merits. Furthermore, in my view, Grindstone’s failure to disclose in its founding papers that it had despoiled Mr S and to fully disclose all of the other litigation referred to above was deserving of censure, at least to the extent of a punitive costs order (see *Trakman NO v Livshitz &**

⁷ [2013](6) SA 499(SCA); [2013] 4 All SA 509(SCA)

⁸ 1948 (3) SA 136

*others).*⁹ *It had come to court with unclean hands. The court below ought to have taken a dim view of that fact.*”

[47] Regarding the views I take on this matter, I make the following order:

1. *Lis pendens* is upheld.
2. The application is dismissed with costs.

FLATELA LULEKA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This Judgment was handed down electronically by circulation to the parties and or parties’ representatives by email and by being uploaded to CaseLines. The date and time for the hand-down are deemed to be 10:00 on 22 October 2025.

Appearances

Counsel for the Applicants: Adv Y Ndamase
Instructed by: Xabendlini Attorneys & Associates

Counsel for the Respondent: Adv V Mndebele
Instructed by: Motsoeneng Bill Attorneys Incorporated

Date of the Hearing: 14 February 2025

Date of the Judgement: 22 October 2025

⁹ 1995 (1) SA 282 (A) at 288E-H.