



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: **2025 – 179697**

In the matter between:

VANGUARD OF ORGANISED LABOUR (VOOLA)

Applicant

and

SIPHO MAHLANGU AND OTHERS

Respondents

Heard: 21 October 2025

Delivered: 4 November 2025

This judgment / reasons were handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 4 November 2025

Summary: Urgency – applicant must establish compelling considerations of urgency – proper case of urgency not shown – urgency self-created – other means to deal with dispute available – matter not urgent

Jurisdiction – Court not having general jurisdiction to determine dispute just because it involves a trade union constitution – jurisdiction must be founded

on particular provision of LRA – no such jurisdiction possible save for s 158(1)(e) of the LRA – applicant however not pleading reliance on such section

S 158(1)(e) of LRA – jurisdiction considered – Court having jurisdiction in dispute between trade union and members – dispute exists between individual trade union functionaries (officials) or between trade union and its employees – not dispute between trade union and members inter se – Court not having jurisdiction in terms of s 158(1)(e)

Jurisdiction – jurisdiction determined on case as pleaded – applicant pleading breach of trade union constitution – applicant not indicating on what basis Court has jurisdiction to consider such claim for breach – dispute between branch of trade union and trade union – Court has no jurisdiction to determine such dispute

Trade union – branch not separate legal entity but part of trade union – respondents employed as officials – may fulfil trade union functions whilst still employed – internal dispute that does not engage Court's jurisdiction

Jurisdiction – application dismissed for want of jurisdiction

JUDGMENT

SNYMAN, AJ

Introduction

[1] This judgment concerns an urgent application by the applicant, in which the applicant seeks final relief against two of its officials who are also its employees (being the respondents), which respondents are currently operating and conducting a branch of the applicant in the North West Province. According to the applicant, the operating of this branch constitutes a violation of its constitution, and as such, the respondents must be interdicted, in a variety of respects, from perpetrating conduct that would be tantamount to operating such branch.

- [2] It is unclear on what basis the applicant has brought the application, and in particular, why this Court would have jurisdiction to entertain the same. It is of course trite that jurisdiction is determined on the basis of the case as pleaded by the applicant.¹ In the case of motion proceedings, such pleadings would constitute the notice of motion and founding affidavit. The notice of motion gives no indication on what basis the application is brought, and simply prays for relief. Where it comes to the founding affidavit, the applicant pleads that the respondents unlawfully operate a branch of the applicant, and then refers to the provisions of the constitution of the applicant that has been breached, in substantiation of this allegation of unlawful behaviour. The applicant certainly does not indicate on which of the provisions in the LRA it does rely upon, in bringing this application.
- [3] But what is at least clear is that the applicant is seeking final interdictory relief. This means the applicant must satisfy three essential requirements, being: (a) the existence of a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the absence of any other satisfactory remedy.² Also, and because the applicant is seeking such final relief in motion proceedings, any factual disputes between the parties must be determined on the basis of the principles set out in the judgment of *Plascon Evans Paints v Van Riebeeck Paints*.³ In short, it means that it is the admitted or undenied facts together with the facts as stated by the respondents that must be utilized in deciding this matter. The only exception would be if the respondents simply

¹ See *Gcaba v Minister for Safety and Security and Others* (2010) 31 ILJ 296 (CC) at para 75; *Mbatha v University of Zululand* (2014) 35 ILJ 349 (CC) at para 157; *Ekurhuleni Metropolitan Municipality v SA Municipal Workers Union on behalf of Members* (2015) 36 ILJ 624 (LAC) at para 21; *Moodley v Department of National Treasury and Others* (2017) 38 ILJ 1098 (LAC) at para 37; *Mohlomi v Ventersdorp/Tlokwe Municipality and Another* (2018) 39 ILJ 1096 (LC) at para 42; *Public Servants Association on behalf of Members v Minister of Health and Others* (2019) 40 ILJ 193 (LC) at para 15.

² *Setlogelo v Setlogelo* 1914 AD 221 at 227; *V & A Waterfront Properties (Pty) Ltd and Another v Helicopter & Marine Services (Pty) Ltd and Others* 2006 (1) SA 252 (SCA) at para 20; *Royalservice Cleaning (Pty) Ltd v Democratic Union of Security Workers and Others* (2012) 33 ILJ 448 (LC) at para 2; *Van Alphen v Rheinmetall Denel Munition (Pty) Ltd* (2013) 34 ILJ 3314 (LC) at para 7.

³ 1984 (3) SA 623 (A) at 634E-635C; See also *Jooste v Staatspresident en Andere* 1988 (4) SA 224 (A) at 259C – 263D; *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at paras 26 – 27; *Molapo Technology (Pty) Ltd v Schreuder and Others* (2002) 23 ILJ 2031 (LAC) at para 38.

offer a bald denial, or the facts as stated by the respondents are patently false, absurd or fanciful.⁴

- [4] The matter first came before me for argument on 9 October 2025. On that day, the respondents referred to some or other earlier / other proceedings in this Court, which were not before me, in which they purportedly presented proof that they were lawfully conducting the North West branch of the applicant, with the knowledge and agreement of the general secretary of the applicant, Patrick Tshabalala (Tshabalala), and had been doing so for some time. I pointed out that this proof was not before me, however I did say that I considered it important that I be provided with such proof, so as to decide this matter on a properly informed basis and in a fair manner. I then postponed the matter to 21 October 2025 for final argument, and afforded the respondents leave to file a supplementary answering affidavit with supporting documents, and to the applicant to file a supplementary replying affidavit should it consider it necessary to do so. The respondents subsequently did file a supplementary answering affidavit and supporting documents on 17 October 2025. The applicant elected not to file a further replying affidavit. After hearing argument by the parties on 21 October 2025, I reserved judgment.
- [5] In my view, this matter can be disposed of on two grounds, without even becoming embroiled in deciding the merits of the case. These grounds are the lack of urgency, and an absence of jurisdiction. I will first deal with the issue of a lack of urgency.

Urgency

- [6] Urgent applications are governed by Rule 38 of the Labour Court Rules, being the successor to the erstwhile Rule 8. The Court in *Jiba v Minister: Department of Justice and Constitutional Development and Others*⁵ applied Rule 8 as follows:

⁴ See *Minister of Justice and Correctional Services and others v Tshifhango and Another* [2019] 7 BLLR 627 (LAC) at para 26; *TIBMS (Pty) Ltd t/a Halo Underground Lighting Systems v Knight and Another* (2017) 38 ILJ 2721 (LAC) at para 29; *SA Football Association v Mangope* (2013) 34 ILJ 311 (LAC) at para 12.

⁵ (2010) 31 ILJ 112 (LC) at para 18.

‘Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self created when seeking a deviation from the rules.’

These same considerations, in my view, equally apply to Rule 38.

- [7] When considering whether urgency has been established, it must be considered whether an applicant would not be afforded substantial redress in due course, and the applicant must provide proper reasons in support of a case that this would not be possible.⁶ As succinctly described by the Court in *Maqubela v SA Graduates Development Association and Others*⁷:

‘Whether a matter is urgent involves two considerations. The first is whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. In all instances where urgency is alleged, the applicant must satisfy the court that indeed the application is urgent. Thus, it is required of the applicant adequately to set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary. ...’

- [8] Where an applicant in effect seeks final relief, the Court must be even more circumspect when deciding whether or not urgency has been established.⁸ In *Tshwaedi v Greater Louis Trichardt Transitional Council*⁹ the Court said:

‘... An applicant who comes to court on an urgent basis for final relief bears an even greater burden to establish his right to urgent relief than an applicant who comes to court for interim relief.’

⁶ *Mojaki v Ngaka Modiri Molema District Municipality and Others* (2015) 36 ILJ 1331 (LC) at para 17; *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2012] JOL 28244 (GSJ) at para 6.

⁷ (2014) 35 ILJ 2479 (LC) at para 32. See also *Transport and Allied Workers Union of SA v Algoa Bus Co (Pty) Ltd and Others* (2015) 36 ILJ 2148 (LC) at para 11.

⁸ [2002] JOL 9452 (LC) at para 8.

⁹ [2000] 4 BLLR 469 (LC) at para 11.

- [9] The Court must also further consider the interests of the respondent party, and in particular, the prejudice the respondent may suffer if the matter is urgently disposed of. In *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another*¹⁰ the Court held as follows:

‘But it is not just about the applicant. Another consideration is possible prejudice the respondent might suffer as a result of the abridgement of the prescribed time periods and an early hearing.’

- [10] Finally, urgency must not be self-created by an applicant, as a consequence of the applicant having not brought the application at the first available opportunity.¹¹ As the Court said in *Northam Platinum supra*¹²:

‘... the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to Court immediately, or risk failing on urgency. ...’

- [11] When the above considerations with regard to urgency are then applied to applicant’s application and its case of urgency *in casu*, I am compelled to conclude that there simply exists no basis on which to urgently intervene in this matter. As a point of departure, the applicant has actually made out no case of urgency at all, an issue properly pointed out by the respondents when the matter was argued. I believe that the applicant considered itself entitled to bring this application on the basis of urgency, simply because of the fact that it was alleging a violation of its constitution by the respondents. Such an approach would of course be patently wrong. No matter what the underlying cause of action may be, where an urgent application is brought, the prescribed considerations of urgency must always be satisfied. If not, this Court could be turned into a free for all by any litigant who believes it has

¹⁰ (2016) 37 ILJ 2840 (LC) at para 26. See also *IL & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Another* 1981(4) SA 108 (C) at 113D-114C.

¹¹ See *Golding v HCI Managerial Services (Pty) Ltd and others* [2015] 1 BLLR 91 (LC) at para 24; *National Union of Mineworkers v Lonmin Platinum Comprising Eastern Platinum Ltd and Western Platinum Ltd and Another* (2014) 35 ILJ 486 (LC) at para 50.

¹² (*supra*) at para 26. See also *Sihlali and Others v City of Tshwane Metropolitan Municipality and Another* (2017) 38 ILJ 1692 (LC) at para 18.

been subjected to unlawful behaviour. In *Northam Platinum supra*¹³ the Court had the following to say:

‘Whilst it may be so that a dismissal could in particular circumstances, and where the LRA is not relied upon, be considered to be unlawful and consequently invalid because of a specific provision in a contract of employment which has been breached, this cannot per se serve to jump the queue of all other dismissed employees relying on the provisions of the LRA waiting for their turn in court. This kind of situation is merely another cause of action upon which the termination of a contract of employment can be challenged in the Labour Court. But other than that it holds no particular magic.’

[12] *In casu*, the dispute is nothing else but a dispute concerning an agreement, albeit in the form of the applicant’s constitution.¹⁴ It is clear from the affidavits filed that the applicant (in particular Tshabalala) and the respondents have differing views on how the applicant’s constitution must be interpreted and applied. To describe it as simply as possible, it is about whether the conduct of the respondents is in breach of such agreement. The same sentiments expressed in *Northam Platinum supra* would in my view equally apply where it comes to deciding this matter, in this context, as one of urgency. The applicant has presented no reason at all why such a dispute concerning the interpretation of an agreement cannot be pursued to finality in the ordinary course. There has been absolutely no case made out by the applicant of any exceptional circumstances that would substantiate urgent intervention in this dispute on a final basis, as the applicant is not even seeking interim relief.

[13] The situation is made worse by the applicant failing to bring this application at the earliest available opportunity. It is clear from the documentary evidence put up by the respondents, whose version must prevail, that the applicant was

¹³ Id para 6. See also *National Education Health and Allied Workers Union and others v University of South Africa and Another* (2022) 43 ILJ 2351 (LC) at para 8; *Maphalle v National Heritage Council and Others* (2023) 44 ILJ 579 (LC) at paras 2 – 3.

¹⁴ In *National Union of Metalworkers of SA v Lufil Packaging (Isithebe) (A Division of Bidvest Paperplus (Pty) Ltd) and Others* (2020) 41 ILJ 1846 (CC) at para 53 said that a trade union constitution is: ‘... a voluntary association with rules and annexures that collectively form the agreement entered into with its members. The constitution must be interpreted in accordance with the ordinary rules of construction applying to contracts in general ...’.

fully aware as far back as April 2023 that the respondents were operating a branch of the applicant in Lichtenburg in the North West province. In fact, there is a resolution signed by the general secretary (Tshabalala himself) dated 7 April 2023 confirming the establishment of the branch. Then there are several items of correspondence in the course of 2024 relating to the conducting of trade union business at the branch, between the respondents and Tshabalala. What appears to have actually happened is that in the course of 2025, a dispute developed between Tshabalala and the respondents with regard to trade union affairs and expenses, and this prompted Tshabalala to write to the respondents on 15 September 2025, to the effect that their complaints were not recognised by the applicant and that no valid branch had been established. In what was called a final notice on 25 September 2025, the respondents were informed by Tshabalala that they were operating the branch unlawfully and that they had to cease and desist from doing so within 24 hours.

[14] The point is that nothing changed between April 2023 when it was resolved to establish the North West branch, and September 2025 when Tshabalala demanded that the respondents cease operating the branch, other than the fact that there was now a dispute between Tshabalala and the respondents with regard to trade union affairs, the details of which need not concern this judgment. If the branch was unlawfully established and operated, for want of compliance with constitution of the applicant, it should have been remedied as far back as 2023. There is no explanation by the applicant why steps in this regard were only taken in September 2025. This delay is simply undue, and excessive, and required a proper explanation to justify it. None exists, which leaves an unexplained excessive delay, which must be destructive of urgency.

[15] For the applicant to write some letters in September 2025 in which the respondents are instructed to 'cease and desist' from operating the branch because it was not lawful to do so for want of compliance with the applicant's constitution, and then allege this establishes urgency, is in my view a classic case of self-created urgency. The point is simple. The basis for the relief sought in this case must have been apparent as far back as April 2023. If it

was such a problem that urgent intervention is required, it could and should have been done back then.¹⁵ However, and back then, it was not a problem, because everyone was friends. But now, in the latter half of 2025 when a dispute had arisen and everyone was no longer friends, then the issue had to be urgently resolved. This is simply not on.

[16] As part of any case of urgency, the interests of the respondents must also be considered. They have been dragged to Court on an urgent basis to finally justify their conduct, when there is no reason why this could not be presented and assessed in the ordinary course. It is quite unfair to expect the respondents to finally answer such case, on an urgent basis, which is actually evident from what came out when I afforded them an opportunity to put forward evidence to substantiate their position. I am quite sure that there is substantially more evidence that would come out in the wash, if this matter is conducted in the ordinary course, as it should.

[17] Therefore, the applicant has failed to make out a case of urgency. The requirements of Rule 38 have thus not been satisfied. In sum, there is actually a delay of more than two years which is completely unexplained. For the applicant to in essence rely on letters of demand sent to the respondents only in September 2025 as a basis to substantiate urgency, is clearly a matter of self-created urgency. There is a complete absence of any exceptional circumstances justifying urgent intervention, and no such case has even been made out by the applicant. And finally, the applicant should pursue this matter in the ordinary course. For these reasons alone, the application falls to be struck from the roll, or be dismissed. The Court in *February v Envirochem CC and Another*¹⁶ accepted that urgency was not established, but the Court nonetheless proceeded to dismiss the matter. For the reasons to follow, I believe that this is a similar situation where the matter must be finally

¹⁵ Compare the examples found in *Coetzee and Others v Knysna Presbytery of the Dutch Reformed Church and Others* 2025 JDR 3962 (WCC) at paras 11 – 14; *Vumatel (Pty) Ltd v Majra and Others* (2018) 39 ILJ 2771 (LC) at paras 16 – 18.

¹⁶ (2013) 34 ILJ 135 (LC) at para 17. See also *National Union of Metalworkers of SA and Others v Bumatech Calcium Aluminates* (2016) 37 ILJ 2862 (LC) at para 33; *Bethape v Public Servants Association and Others* [2016] ZALCJHB 573 (9 September 2016) at para 53; *Rail Refurb CC v South African National Road Agency* 2023 JDR 3545 (GP) at para 22; *National Association of SA Workers on Behalf of Members v Kings Hire CC* (2020) 41 ILJ 685 (LC) at para 32.

disposed of and dismissed, because of a want of jurisdiction to even grant the applicant the relief sought.

Jurisdiction

[18] In *Du Plessis v Public Protector and Others*¹⁷ the Court said:

‘Jurisdiction cannot be assumed or implied. It either exists or it does not. Jurisdiction is the power of the Court to decide a matter that has been brought before it. If the Court does not have the power to do so, it cannot consider the matter, no matter what the merits or equities may be ...’

[19] In *Gcaba v Minister for Safety and Security and Others*¹⁸, the Court described the concept of ‘jurisdiction’ as follows: ‘... *The specific term ‘jurisdiction’, which has resulted in some controversy, has been defined as the ‘power or competence of a court to hear and determine an issue between parties ...’.* And in *Makhanya v University of Zululand*¹⁹, the Court also dealt with the meaning of jurisdiction as follows: ‘... *Judicial power is the power both to uphold and to dismiss a claim. It is sometimes overlooked that the dismissal of a claim is as much an exercise of judicial power as is the upholding of a claim. A court that has no power to consider a claim has no power to do either (other than to dismiss the claim for want of jurisdiction).*’

[20] The jurisdiction of the Labour Court is defined in section 157 of the Labour Relations Act (LRA)²⁰. It is critical to appreciate that section 157(1) does not establish a general jurisdiction that the Labour Court can exercise, in all instances where a litigating party approaches the Labour Court and pleads the dispute is one related to an employment law matter.²¹ In order for the Labour Court to have jurisdiction, the issue for determination must be

¹⁷ (2020) 41 ILJ 919 (LC) at para 20. See also *Makhanya v University of Zululand* (2009) 30 ILJ 1539 (SCA) at para 23; *SA Maritime Safety Authority v McKenzie* (2010) 31 ILJ 529 (SCA) at para 8.

¹⁸ (2010) 31 ILJ 296 (CC) at para 74.

¹⁹ (2009) 30 ILJ 1539 (SCA) at para 23.

²⁰ Act 66 of 1995 (as amended)

²¹ In *Baloyi v Public Protector and Others* (2021) 42 ILJ 961 (CC) at para 24, it was held: ‘... *Crucially, s 157(1) does not afford the Labour Court general jurisdiction in employment matters ...*’ See also *Soobedar and Another v Minister of International Relations and Cooperation and Another* (2021) 42 ILJ 1761 (LC) at para 12; *Booyesen v Beaufort West Municipality and Another* (2021) 42 ILJ 2415 (LC) at para 5.

specifically provided for in the LRA, or in any other related employment law, such as for example the Employment Equity Act (EEA)²² or Basic Conditions of Employment Act (BCEA)²³, to be decided by the Labour Court. The applicant must also indicate on what provision in any of these items of legislation the applicant relies.²⁴

- [21] The whole issue of the lack of general justification of the Labour Court in what may be termed any employment related dispute was recently revisited in *Cibane and Another v Premier of Province of Kwazulu-Natal*²⁵, where the Court pertinently held, in the context of the Labour Court intervening in incomplete disciplinary proceedings in an employer:

‘In the absence of any statutory provision conferring jurisdiction on the Labour Court both in respect of employer conduct alleged to be unlawful and in employment-related matters generally, there can thus be no general rule, as the judgment in *Booyesen* might be construed, to the effect that the Labour Court has jurisdiction to intervene *in medias res* to restrain any alleged illegalities, irregularities or unfairness in incomplete disciplinary proceedings.’

The same, in my view, clearly applies to any situation where urgent intervention by the Labour Court is sought under section 158(1) of the LRA.

- [22] That then brings me neatly to a consideration of section 158(1) itself. This is the section that deals with the powers of the Labour Court. Whilst it must generally be said that the powers of the Labour Court under section 158(1) can only be exercised if the Labour Court is first conferred with jurisdiction by virtue of other provisions in the LRA or any employment law, and that section

²² Act 55 of 1998 (as amended).

²³ Act 75 of 1997 (as amended).

²⁴ In *SA Medical Association Trade Union on Behalf of Rikhotso v Member of the Executive Council, Department of Health, Limpopo Province and Others* (2023) 44 ILJ 1779 (LC) at para 6, the Court said: ‘... an applicant must necessarily identify the statutory provision that confers jurisdiction on the court ...’. In *Booyesen* (*supra*) at para 5, it was held that: ‘... A party referring a dispute to this court for adjudication must thus point to a provision of the LRA or some other law to establish that the matter is one over which this court has jurisdiction ...’. See also *Shezi v SA Police Service and Others* (2021) 42 ILJ 184 (LC) at para 10.

²⁵ [2025] 10 BLLR 1004 (LAC) at para 27.

158 in itself cannot be said to afford the Labour Court jurisdiction²⁶, it is in reality not as simple as that. It has been recognised that there are in essence two categories of powers envisaged by section 158(1). The first category is those powers that can only be exercised if it is first found that the Labour Court has jurisdiction on another basis. The second category is what can be described as jurisdiction conferring powers, meaning that the power itself establishes jurisdiction. This was made clear in *South African Municipal Workers Union and Others v Mokgatla and Others*²⁷, as follows:

‘... While s 157(1) and (2) relate, broadly, to the jurisdiction of the Labour Court, s 158(1) both lists specific remedial powers and provides substantive jurisdictional bases of that court. ...’

And as held in *Du Plessis supra*:²⁸

‘This then only leaves s 158. Even though this provision on face value appears to deal with powers that are conveyed to the Labour Court only once jurisdiction is first established to exist, this section must be read in conjunction with s 157 as a source of jurisdiction as well ...’

[23] This duality, for the want of a better description, where it comes to the nature of the powers of the Labour Court under section 158(1), was pertinently dealt with in *Merafong City Local Municipality v SA Municipal Workers Union and Another*²⁹. In that judgment, the Court accepted that section 157 is the primary provision in the LRA which deals with the Labour Court's jurisdiction,³⁰ however the Court added that section 157(1): ‘... *directs the reader of that section to the sources of the Labour Court's exclusive jurisdiction, albeit in very vague and general terms ...*’. Because of this, the

²⁶ See *National Union of Metalworkers of SA v Tshwane University of Technology* (2020) 41 ILJ 2686 (LC) at paras 18 – 19; *Natal Sharks Board v SA Commercial Catering and Allied Workers Union and Others* (1997) 18 ILJ 1324 (LC) at 1327G-I; *Besani v Maquassi Hills Local Municipality* (2016) 37 ILJ 1386 (LC) at para 19; *Strydom v Arcelormittal SA* (2024) 45 ILJ 931 (LC) at para 42; *Moropane v Gilbeys Distillers and Vintners (Pty) Ltd and Another* (1998) 19 ILJ 635 (LC) at 638E-F.

²⁷ 2016 (5) SA 89 (SCA) at para 11.

²⁸ *Id* at para 24.

²⁹ (2016) 37 ILJ 1857 (LAC).

³⁰ *Id* at para 28.

Court expressed the view that:³¹ ‘... As a result, the interpreter is saddled with the difficult task of having, for example, to distinguish purely jurisdictional provisions from general empowerment provisions. This difficulty is exacerbated by sections which purport to contain mere empowerment provisions, whereas they, on proper construction, also actually contain provisions which are sources of the Labour Court's jurisdiction’. That all being said, the Court then concluded:³²

‘Section 158 is such a section. Its introductory wording specifically states that it deals with the powers of the Labour Court. Because the introductory words of the previous section, that is s 157, state that it deals with the jurisdiction of the Labour Court, the immediate expectation is that s 158 is not a source of jurisdiction, but merely contains provisions defining the powers of the Labour Court in respect of matters, which, in terms of some other provision in that Act, fall under the jurisdiction of the Labour Court. However, a close reading of the entire s 158 dispels that initial notion. It does deal with powers (post jurisdiction), but also with powers which cannot but be construed and understood as sources of jurisdiction.’

- [24] The Court in *Merafong supra* provided examples of provisions found in section 158(1) that conferred jurisdiction, as opposed to those that could only be exercised if jurisdiction was first established elsewhere under the LRA. In this regard, the Court said:³³ ‘Section 158(1)(a) is clearly an example of the powers the Labour Court may exercise in respect of a matter falling within its jurisdiction, and it does not purport to grant the Labour Court jurisdiction, in the sense of the power to hear and determine the matter in the first place. On the other hand, s 158(1)(i) clearly bestows on the Labour Court jurisdiction in the latter sense’. The Court also referred to section 158(1)(h) as being a source of conferring jurisdiction and then empowering the Labour Court to hear and determine applications to review any decisions taken or acts performed by the State in its capacity as employer.³⁴

³¹ Id at para 30.

³² Id at para 31.

³³ Id at para 33.

³⁴ Id at para 34.

- [25] So, a proper conspectus of section 158(1) is necessary. This is because, as held in *Public Servants Association on behalf of Members v Minister of Health and Others*³⁵:

‘... the distinction between jurisdiction and powers as they are drawn by ss 157 and 158 is not necessarily cast in Manichean terms. It remains for the court to determine whether the statutory provision on which an applicant relies to found jurisdiction is indeed one that confers jurisdiction (as the LAC decided in *Merafong* in relation to s 158(1)(h) and applications to judicially review decisions taken or acts performed by the state in its capacity as employer), or whether it is no more than the expression of a power that may be exercised once jurisdiction has been established. ...’

- [26] It follows that each individual provision in section 158(1) must be carefully scrutinised in order to ascertain whether the provision confers jurisdiction on the Labour Court in addition to providing it with the power, or is only a provision providing the Labour Court with powers to exercise once it has jurisdiction established by other means in the first place. In this regard, the Court in *Merafong supra* has clearly said that the powers in terms of section 158(1)(a) do not serve to confer jurisdiction, and can only be exercised if jurisdiction exists in the first place. Using a simple example relevant to the case *in casu*, the Labour Court has the power to grant an interdict under section 158(1)(a)(ii), but can only exercise this power if it already has jurisdiction to entertain the dispute. In *Public Servants Association supra*, the Court held that section 158(1)(b): ‘... cannot be interpreted to mean that in the absence of any provision in the LRA or any other law conferring jurisdiction on this court to so order, the court may nonetheless compel compliance with any provision of the LRA or any other employment law ...’.³⁶ In my view, the same would apply to sections 158(1)(c) and 158(1)(f), as the Court can only make an arbitration award or settlement agreement an order of Court, or grant condonation for late filing of documents, if the Court has jurisdiction in respect

³⁵ (2019) 40 ILJ 193 (LC) at para 13.

³⁶ *Id* at para 19.

of the dispute forming the subject matter of these instruments in the first place.

- [27] On the other hand, it seems to me that the wording in section 158(1) that involves the descriptive phrases of '*review*' and '*determine*' contemplate a power that also confers jurisdiction. In this respect, the Court in *Merafong supra* has said that section 158(1)(h) does confer jurisdiction on the Labour Court as it has been given the power to '*review*' conduct of the State in its capacity as employer on grounds permitted in law.³⁷ Section 158(1)(e) is another example, as it affords the Labour Court the power to '*determine*' a dispute between a trade union / employers organization and its members pertaining to non-compliance with such body's constitution, and this also confers jurisdiction on the Court to do so.³⁸ The same would also apply to section 158(1)(g) which affords the Labour Court power to '*review*' the performance or purported performance of any function provided for in the LRA. And lastly, section 158(1)(i) also confers jurisdiction, as it affords the Labour Court the power to determine an appeal provided for under that section.
- [28] There is an important reason for my exposition of the legal position where it comes to jurisdiction, as set out above. This is because the applicant has not specified or pleaded, as it was actually required to do, on what source of jurisdiction it relied for this Court to grant it the relief sought. However, and adopting a generous approach, I will apply the facts as pleaded in the founding affidavit in order to determine if this Court has any jurisdiction based on any of the aforesaid empowering provisions. The case pleaded in the founding affidavit, as touched on above, is that the respondents are operating a branch of the applicant in breach of the constitution of the applicant, and this

³⁷ In *Booyesen (supra)* at para 10, the Court held: '... *The only way the Labour Court is able to review is by hearing and determining an application for review of the acts and/or decisions contemplated in s 158(1)(h). That section should be read as not only conferring a power, but also jurisdiction upon the Labour Court ...*'.

³⁸ See *SA Transport and Allied Workers Union v Zondo and Others* (2015) 36 ILJ 2348 (LC) at para 6; *Pule on Behalf of Public Servants Association of SA, Department of Home Affairs Branch and Others v Public Servants Association of SA and Others* (2020) 41 ILJ 488 (LC) at para 3.

case is brought by the applicant against the respondents not as members of the trade union, but as officials of the trade union.

[29] First and foremost, the applicant cannot rely on a general jurisdiction of this Court on the basis that trade unions are regulated under and provided for in the LRA, which in my view would be exactly the same situation as this Court not having a general jurisdiction just because a matter concerns an employment dispute. There is no provision in the LRA which specifically provides that the Labour Court has jurisdiction to decide the kind of dispute as pleaded by the applicant in the founding affidavit. That puts paid to section 157(1) as a possible basis for conferring jurisdiction. This case does not concern the violation of a fundamental right, hence section 157(2) cannot apply. This is not a case where the applicant seeks to review any decision of the State as employer, or any function performed under the LRA. And it certainly is not an appeal as envisaged by section 158(1)(i). This only leaves section 158(1)(e) as a possible source of jurisdiction. The section reads:

‘(1) The Labour Court may – ...

(e) determine a dispute between a registered trade union or registered employers’ organisation and any one of the members or applicants for membership thereof, about any alleged non-compliance with –

(i) the constitution of that trade union or employers’ organisation (as the case may be); or

(ii) section 26(5)(b).’

[30] When one considers the founding affidavit of the applicant, this is certainly a dispute concerning the non-compliance with the applicant’s constitution, as provided for in section 158(1)(e)(i). But the important question *in casu* is whether it is also a dispute between the applicant as trade union and any of its members.³⁹ It is in this latter regard where the applicant faces an

³⁹ See *Chemical Energy Paper Printing Wood and Allied Workers Union and Another v Zako and Another* (2025) 46 ILJ 305 (LAC) at para 9, where the Court said: ‘A proper analysis of the notice of motion and founding affidavit discloses that the substance of the claim that served before the Labour Court was an alleged failure by the second appellant to comply with the union’s constitution. This, of course, is a matter regulated by s 158(1)(e) of the LRA, where the Labour Court is empowered to determine a dispute between a union and one or more members regarding any alleged non-compliance with the union’s constitution ...’

insurmountable obstacle. It is clear that section 158(1)(e) is limited in its application to disputes between the trade union and its members. This means that a case must be made out that one of the litigating parties is a person that qualifies as a member under the constitution of the trade union, has been admitted to the trade union as a member, and that such membership is extant.⁴⁰ And lastly, what is also required is that there must be a dispute between such member, in the capacity as member, and the trade union itself, inter se, concerning any of the two issues specified in that section. As held in *National Entitled Workers Union v Sithole and Others*⁴¹:

‘... The wording of s 158(1) (e) clearly envisages a conflict between, for example, a registered trade union and its members about any aspect of non-compliance with the union's constitution. ...’

- [31] On the facts, the applicant is represented in the litigation by Tshabalala as its general secretary, which in terms of the applicant's constitution is an official of the applicant. The two respondents are also both employees of the applicant, employed in terms of written contracts of employment signed on 1 March 2023. In terms of these contracts of employment, they fulfil the function of officials. There is no evidence or allegation that they are members of the applicant. In any event, the case is not brought against the respondents on the basis that they are members of the trade union (applicant). Similarly, the opposition by the respondents to the case is not in the capacity of being members of the applicant. In a nutshell, this is a dispute between individual officials of the trade union about the interpretation and / or breach of the constitution of the trade union. This takes section 158(1)(e) off the table. As was made clear in *Elias and Others v Morifi and Others*⁴², where the Court,

⁴⁰ As held in *SA Broadcasting Corporation v Commission for Conciliation, Mediation and Arbitration and Others* (2002) 23 ILJ 1549 (LAC) at para 10, with regard to an expelled member: ‘... His status therefore was then, and still is, one of being a non-member, albeit open to challenge and reversal. The national office was entitled to adopt the standpoint that Papane was not a member, unless and until the expulsion was reversed ...’.

⁴¹ (2004) 25 ILJ 2201 (LAC) at para 10. See also *Zondo and Others v SA Transport & Allied Workers Union* (2015) 36 ILJ 2916 (LC) at para 18; *Tonyela and Others v National Union of Metalworkers of SA*

(2022) 43 ILJ 1895 (LC) at para 1.

⁴² (2022) 43 ILJ 382 (LC) at para 16.

after finding that there is no dispute between the union and its members, but rather a dispute between the office-bearers of the trade union inter se, held:

‘... the applicants have no dispute with the seventh respondent qua trade union. The dispute is one between factions within the union, and not one between any one or more members of the union and the union itself. It follows that the dispute before the court is not one that falls within the jurisdictional footprint established by s 158 of the LRA, and that the application stands to be dismissed on that basis. ...’

The Court in *Pule on Behalf of Public Servants Association of SA, Department of Home Affairs Branch and Others v Public Servants Association of SA and Others*⁴³ similarly reasoned, coming to the following conclusion:

‘The capacity in which the applicant branches’ representatives have filed these proceedings could not be more clearly stated. In their individual capacities, they are union members, but they do not approach the court in that capacity. On the contrary, they disavow that status and act in a representative capacity, on behalf of the three branches that are respectively applicants in these proceedings. It follows that in the absence of any claim by one or more *members* of the PSA (as opposed to one or more of its branches) concerning non-compliance with the PSA’s constitution, the claim is not one that falls within the ambit of s 158(1)(e). This court thus has no jurisdiction to entertain the application.’

[32] The situation is made worse by the fact that the applicant seeks to treat the North West branch of the trade union as some sort of separate legal entity, which must be closed and interdicted. This approach is erroneous. The North West branch is part of the applicant, and has no independent existence as a *persona* distinct from the applicant. In simple terms, it is simply an office of the same trade union at another geographical location. This is also evident from the fact that the respondents are employed by the applicant itself as officials stationed at the branch. In *Pule supra*, the Court has the following to say:⁴⁴

⁴³ (2020) 41 ILJ 488 (LC) at para 5.

⁴⁴ *Id* at para 11.

'In summary: the PSA is a legal entity which is capable of suing and being sued. The branches of the PSA are not in and of themselves self-standing and discrete legal entities and they have no locus standi before the court. Of course, there is nothing to prevent any one or more members of the PSA from approaching this court in their personal capacities under s 158(1)(e) to pursue any grievance related to any alleged non-compliance with the PSA's constitution. But that is not the basis on which the present application has been brought.'

- [33] From the documentary evidence, it appears that the NEC of the applicant adopted a resolution on 20 September 2025 to close the branch. Even if that is so, it still leaves the respondents employed as officials. And in such capacity, in terms of their contracts of employment, they are not only entitled, but in fact obliged to continue to fulfil the tasks of conducting trade union affairs in the name of the applicant, such as recruiting and representing members. That will continue to be the case until their employment is terminated. If they operate some or other clandestine or unauthorised bank account, that is a disciplinary matter to be dealt with by the applicant internally, as a disciplinary infraction. I believe that what the applicant, under the direction of Tshabalala, is in effect attempting to do is to separate itself from the respondents in an improper manner, by relying on this Court to give effect to this stratagem, which is an issue that should not concern this Court at all. In *City of Johannesburg v SA Municipal Workers Union and Others*⁴⁵ the Court held:

'... I am similarly convinced that it was not appreciated, when s 158(1)(e) was enacted, to what extent this court would be called upon to manage internal trade union strife. I have no hesitation in saying that it should not be the function of this court to manage the affairs of trade unions, and even though the Labour Court is competent to do so, the current escalation of the practice of managing internal trade union strife through this court must be discouraged. ...'

⁴⁵ (2017) 38 ILJ 1342 (LC) at para 4.

[34] A comparable view was adopted in *General Industries Workers Union of SA v Maseko and Others*⁴⁶, however with specific reference to a dispute between a union and its employees with regard to compliance with the trade union constitution. This would also apply *in casu*, as the respondents are currently employees of the trade union, employed as officials, and it is relating to these functions being fulfilled by them that the applicant (Tshabalala) has an issue. The Court *Maseko* said:⁴⁷

‘A slightly anomalous issue is that because the Labour Court is confined to determining a dispute between a union and its members, over alleged non-compliance with the union's constitution the court cannot intervene in a dispute over non-compliance with the union constitution solely between the union and an employee of the union under this provision ...’

[35] In summary, the applicant has therefore failed to satisfy me that the Labour Court has jurisdiction to entertain its application for the relief sought. This is in reality an internal dispute between officials of the applicant as trade union, that must be resolved internally and does not engage the jurisdiction of this Court. Importantly, it is not a dispute between the applicant as trade union and any of its members, qua members, which is essential to engage the jurisdiction of this Court. It can even be said to be dispute between the applicant as trade union and its employees, which must equally be resolved in terms of the ordinary dispute resolution mechanisms provided for in the LRA. In all this context, whether or not the constitution of the applicant has been breached would be a subject matter for consideration when deciding, for example, if the ultimate dismissal of the respondents by the applicant for conduct in breach of the trade union constitution would be fair. But even that would be an arbitrable dispute, and would not engage the jurisdiction of this Court as a Court of first instance. The application must therefore fail for want of jurisdiction of this Court to entertain the same, and must be dismissed.

Costs

⁴⁶ (2015) 36 ILJ 2874 (LC).

⁴⁷ *Id* at para 19.

[36] This then only leaves the issue of costs. In this respect, and in terms of section 162(1) of the LRA, I have a wide discretion. Both parties were not legally represented. They still have an ongoing relationship with one another, despite this relationship obviously being quite strained. A costs order will only serve to further strain this rocky relationship, as is apparent from the events pertaining to the wasted costs I granted on 9 October 2025 against the respondents because of their failure to provide a proper answer and seeking the indulgence of a postponement. In any event, any costs that are recoverable relate only to disbursements. Overall considered, and although the applicant was not successful, I believe no order as to costs is appropriate and fair.

[37] I accordingly make the following order:

Order

1. The applicant's application is dismissed.
2. There is no order as to costs.

S. Snyman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mr P Tshabalala of VOOLA (Trade Union)

For the Respondents:

In person