THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case No: 2025-177980

In the matter between:

VALUE LOGISTICS PERSONNEL SERVICES (PTY) LTD — **First Applicant**

VALUE LOGISTICS (PTY) LTD — **Second Applicant**

and

WILLIAM JOHANNES KILLIAN — **First Respondent**

EPX COURIERS (PTY) LTD — **Second Respondent**

Heard: 7 November 2025

Supplementary Heads: 12 November 2025

Delivered: 21 November 2025

Labour Court – Jurisdiction – Restraint of trade – Third-party or non-employer entity – enforcement of restraint undertaking by third-party or non-employer company – Labour Court lacks jurisdiction.

This judgment was handed down electronically by circulation to the parties' legal representatives by email and/or by uploading it on *CaseLines*. The date of hand-down is deemed to be 21 November 2025.

JUDGMENT

MAKHURA, J

Introduction

[1] The applicants approached this Court in terms of rule 39[1] for the relief in the following terms:

> '2. that the First Respondent be interdicted and restrained for a period of twenty-four months from the date on which the First Respondent's employment with the Applicant terminated on 31 August 2025, and in the territory of the Republic of South Africa from:
>
> 2.1. being employed by, having an interest in or being engaged by the Second Respondent;
>
> 2.2. soliciting or endeavouring to entice away from the Applicants or any Group Company, the business of a Restricted Customer with a view to providing services to that Restricted Customer in competition with any Restricted Business, as referred to and defined in the Employment Agreement dated 2 August 2017 ("the Employment Agreement");
>
> 2.3. providing services, becoming employed by or otherwise having any business dealings with any Restricted Customer (as defined in the Employment Agreement);

[1] Rules Regulating the Conduct of Proceedings of the Labour Court, GN4775a in GG 50608, 3 May 2024.

2.4 having an interest in or being engaged in any business concern which is in competition with any Restricted Business;

3. interdicting and restraining the First Respondent from disclosing to any third party any confidential information and/or trade secrets acquired by him by virtue of his employment with the Applicants which would be of assistance to such third party to enable it to compete against the Applicant and which would not otherwise be known by such third party.'

<u>The parties and employment relationship</u>

[2] The first and second applicants are described as private companies duly incorporated in accordance with the laws of the Republic of South Africa, with the same registered address. They are further described as subsidiaries of the holding company named Value Group (Pty) Ltd (Value Group). Strydom alleged that:

> 'Although Mr Killian concluded his Employment Agreement with Value Personnel, in effect throughout his employment he worked for Value Logistics. <u>Value Logistics has accepted the benefits in terms of the restraint clause of the Employment Agreement, alternatively, hereby accepts the benefits in terms of the restraint clause of the Employment Agreement</u>. To the extent, therefore, that I refer below to the first respondent being "in the employ" of or "employed by" Value Logistics, that is in effect short hand to reflect that the entity for whom the First Respondent performed his daily duties was Value Logistics, albeit that his contract was signed with Value Personnel.
>
> The business whose proprietary interests are sought to be protected in this application is Value Logistics...'

[3] The deponent to the affidavits on behalf of the applicants is Jessica Lynne Strydom (Strydom), who describes herself as the Group Legal Advisor. The resolution authorising her to launch these proceedings was signed by the directors of Value Logistics (Pty) Ltd (Value Logistics), the second applicant. The

first applicant, Value Logistics Personnel Services (Pty) Ltd, the first applicant, will be referred to as Value Personnel in this judgment.

[4] Value Personnel and Value Logistics are subsidiaries of Value Group. Value Group has a 100% shareholding in each of these two applicants. Strydom states that:

> 'Value Personnel employs the personnel, and all business activities (except Key Distributors) are undertaken by Value Logistics, commonly known in the industry as Value Logistics.'

[5] Per Strydom's allegation above, the first respondent (Killian) was employed by Value Personnel until 31 August 2025. He has now taken up employment with EPX Couriers (Pty) Ltd (EPX).

[6] Killian was employed by Value Personnel with effect from 1 August 2017. The terms and conditions regulating the employment contract between Killian and Value Personnel are set out in the letter of appointment signed by Killian on 2 August 2017. The letter of appointment also constitutes and contains the terms and conditions of the contract of employment. Killian was employed by Value Personnel as an *"IT Support Technician or in such other capacity of a like status as the Company may require from time to time"*. In terms of the contract of employment, the "company" refers to Value Personnel. At the date of appointment, Killian was required to report to a specific supervisor or to any other manager appointed to supervise him from time to time. The letter also regulated hours of work, duties and responsibilities, including a requirement to *"comply with all lawful and reasonable instructions"* given to him by the Value Personnel, remuneration, bonus, membership to provident fund and medical aid, retirement and leave.

[7] Strydom explains Killian's employment as follows:

> 'Mr Killian was employed by Value Personnel during or about 1 August 2017, <u>in effect to work for Value Logistics</u> as explained above…

> As mentioned above, whilst Mr Killian was employed by Value Personnel, his services… were rendered on behalf of Value Logistics and the Value Group.' (Emphasis added)

[8] Killian was subsequently transferred to the role of Applications Consultant and was promoted to the position of Intermediate Structured Query Language (SQL) Developer with effect from 1 October 2024. He signed a job profile that set out his duties under the Value Group letterhead titled *"Value Group Job Profile"* on 28 October 2024. He held this role until his resignation with effect from 31 August 2025.

The restraint undertakings

[9] The contract of employment incorporates a restraint of trade clause. In terms of clause 16.1, Killian agreed that in his employment, he would have access to confidential information of Value Personnel and that he may develop relations with its customers. Clause 16.2 defines *"Group Company"* to mean *"any subsidiary of the Value Group Limited and/or any subsidiary of Value Logistics Limited"*. Clause 16.3 provides that:

> '16.3 During your employment and for a period of 24 (twenty-four) months after the termination of your employment for any reason, you will not:
>
> 16.3.1 solicit or endeavour to entice away from the Company or any Group Company the business of a Restricted Customer with a view to providing services to that Restricted Customer in competition with any Restricted Business;
>
> 16.3.2 provide services to, become employed by or otherwise have any business dealings with any Restricted Customer;
>
> 16.3. have an interest in or be engaged in any business concern which is in competition with any Restricted Business.'

[10] In addition to the contract of employment with the restraint clause, Killian signed annexure M, titled Confidentiality Policy. It is the above undertakings that the applicants now seek to enforce.

<u>The Court's directives</u>

[11] Having considered the papers in preparation for the hearing, at approximately 15h43 on 6 November 2025, I directed the parties *mero motu* to prepare and address the Court at the hearing on 7 November 2025 on *"[w]hether this Court has jurisdiction to entertain the application insofar as it is brought by the second applicant against the first respondent, in the absence of an employment contract between the two parties?"*. Indeed, per the Court's directive, the parties were prepared to address the Court on the issue.

[12] At the commencement of the proceedings, I brought to the parties' attention a judgment of this Court in *Canize Trading (Pty) Ltd and Another v Theron and Others*[2] *(Canize)*, which I penned over six months ago and published on 22 April 2025. The parties were able to consider the judgment and address the Court. However, at the end of hearing, I requested the parties, considering the directive having been issued on such an extremely short notice and the *Canize* judgment which was only brought to the parties' attention at the hearing, to file written supplementary heads of argument. The parties have complied with the directive, and I am grateful for their concise and incisive arguments on the issue.

[13] The parties have agreed to separate this jurisdictional issue from the merits because the applicants intended to file a further affidavit. Accordingly, this judgment addresses only the jurisdictional issue.

<u>The Court's jurisdiction insofar as it relates Value Logistics' application</u>

[14] The applicants rely on five arguments. First, they rely on section 77(3) of the Basic Conditions of Employment Act[3] (BCEA). They argue that the matter

[2] [2025] ZALCJHB 183.
[3] Act 75 of 1997.

between Value Logistics and Killian arises from an employment contract and refer the Court to various provisions of the contract of employment between Value Personnel and Killian. Second, the applicants rely on the transfer provision in the contract of employment between Value Personnel and Killian to argue that Killian acknowledged his employment with Value Logistics. Third, the applicants argue that the agreement between Value Personnel and Killian was concluded for the benefit of Value Logistics and that Value Logistics is entitled to enforce the contract in terms of the *stipulatio alteri* principle. The fourth argument is based on the contractual terms between Value Personnel and Killian. The applicants submit that because Killian undertook not to act contrary to the Group Company, which includes Value Logistics, there is nothing jurisdictionally objectionable in Value Personnel holding Killian to the promise. The final argument sought to distinguish this matter from *Canize*.

The section 77(3) of the BCEA

[15] The applicants submit that in terms of his contract of employment, Killian accepted the responsibility to perform duties associated with his position or any other related duties, that Group Company is defined in the contract as any subsidiary of the Value Group Ltd and/or any subsidiary of Value Logistics, that *"restricted business"* contained in the restraint clause is the business of Value Personnel or any Group Company at the time of the termination of his employment, that Killian undertook not to have interest in or be engaged in any business concern which is in competition with any restricted business and accepted that the restraint undertaking was reasonable to protect Value Personnel and any Group Company's proprietary interests. The applicants further relied on the transfer clause in terms of which Killian agreed that he could be transferred to any company within the Value Group as required by the business and based on the operational requirements of Value Logistics or Value Group.

[16] In addition, the applicants relied on the fact that Value Personnel's signature on the contract of employment stated that it was signed for and on behalf of Value Personnel and Value Group. The applicants then relied on the provisions of a confidentiality policy which was signed and annexed to the contract of employment, which refers to Value Personnel, Value Logistics and Value Group and/or its subsidiaries. The confidentiality policy provides that:

> 'The prosperity and reputation of Value Group Limited, its subsidiaries ("the Company") and of its employees depends to an extent on their ability to achieve and maintain high standards of confidentiality.
>
> The Company respects the confidentiality of information that is confidential to competitors and wishes its employees to do likewise.
>
> It is expected that all employees of the Company will maintain the highest standards of confidentiality. However, the Company recognises that it is necessary to set out a policy regarding confidentiality and to identify what conduct is expected of all of its employees so that no employee may plead ignorance in this regard. Additionally, there may be grey areas where employees are unsure of what actions would or would not be a breach of confidentiality and this policy is intended to remedy that problem.'

[17] Finally, the applicants rely on Killian's confirmation on the signature page. The confidentiality policy stated that:

> 'I confirm that I am employed by ______ (company name) and agree to be bound by the confidentiality policy of Value Group Ltd and/or any of its subsidiaries.'

[18] On the space provided, Killian wrote that he was employed by Value Logistics. For this reason, the applicants conclude that *"when one considers the employment agreement and the provisions contained therein, it is submitted that this Court does have jurisdiction in terms of Section 77(3) of the BCEA both in terms of the First Applicant, as well as the Second Applicant"*.

[19] In his answering affidavit, Killian confirmed his employment relationship with Value Personnel and that:

> 'At no stage prior to the termination of my employment did I enter into any 'other' employment agreement, with any 'other' entity within the Holding Company, being the Value Group (Pty) Ltd.
>
> … the applicants were required to plead the factual and legal basis upon which they seek to 'protect' the alleged propriety interests of the second applicant, through a written restraint of trade clause, not concluded between the second applicant and I, but rather, concluded between the first applicant and me.'

[20] This Court is a creature of statute, and its jurisdiction is specifically circumscribed. It therefore does not enjoy general jurisdiction. Section 157 of the Labour Relations Act[4] (LRA) provides that:

> '(1) Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.
>
> (2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from –
>
> (a) employment and from labour relations…'

[21] For contractual claims such as the present, this Court's jurisdiction is derived from section 77 of the Basic Conditions of Employment Act[5] (BCEA). Section 77(3) provides that:

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[4] Act 66 of 1995, as amended.
[5] Act 75 of 1997.

> 'The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.'

[22] In *Passenger Rail Agency of South Africa & others v Ngoye & others*[6], the Labour Appeal Court (LAC) explained the jurisdiction of this Court as follows:

> 'The Labour Court acquires its jurisdiction from s 157(1), which authorises it to deal with matters emanating from the LRA, except where the LRA provides otherwise. One such instance is where jurisdiction is assigned to the CCMA. Furthermore, the Labour Court is afforded jurisdiction in terms of s 77(1) read with s 77(3) of the Basic Conditions of Employment Act (BCEA). The last-mentioned sections authorise the Labour Court to hear and determine any matter concerning a contract of employment, irrespective of whether a basic condition of employment constitutes a term of the contract.'[7]

[23] The contract of employment was concluded between Value Personnel and Killian. The Court cannot simply extend its jurisdictional scope and deal with matters where there is no employment contract between the parties simply because there is reference to the matter concerning the contract of employment and that the contract refers to a third-party company or entity. The phrase concerning a contract of employment must be read to mean that it is a matter that concerns a contract of employment entered between the parties. To read it otherwise would lead to an absurdity and a contradiction of this Court's mandate.

[24] For the above reasons, Value Logistics has no standing in this Court against Killian and in the absence of the employment relationship, this Court lacks jurisdiction to entertain its claim.

Clause 19 of the employment contract and the "transfer"

[25] Clause 19 of the contract of employment states that:

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[6] [2024] ZALAC 18; (2024) 45 ILJ 1228 (LAC).
[7] Ibid at para 5.

‘19.1 By your signature to this letter of appointment you:

19.1.1 accept and agree to transfer between contracts or positions as required by the business from time to time. The aforesaid includes that employees may be required to be transferred to work on different premises and at different locations;

19.1.2 understand and accept that you could be transferred to any division, department or section within the Company should the operational requirements of the Company necessitate it;

19.1.3 understand and accept that you could be transferred to any company within the Value Group, should the operational requirements of the Group or a Group Company necessitate it.’

[26] The applicants submit that in terms of the above provision, there was no need for Killian to agree, and possibly to be consulted, for the transfer of his contract to be effective. In essence, the argument is that Value Personnel and Value Logistics could unilaterally decide to transfer Killian’s contract and not even communicate this decision to him. Killian need not be consulted nor agree because he had already agreed to the transfer in advance. For this submission, the applicants relied on the judgment of the Full Court in *Value Logistics (Pty) Limited and Another v Oosthuizen and Another*[8] *(Oosthuizen)*. Mr Whitcutt, for the applicants, quoted in detail from the judgment[9] and summarised the Court’s decision as follows:

’17.1. The Court accepted that Value Logistics had accepted the benefits of the restraint of trade provision as contained in the employment agreement;

17.2. The Court accepted that the restraint provision applied to the Value Group as a whole including its subsidiaries;

[8] [2022] ZAGPJHC 626.
[9] The supplementary heads of argument quoted paras 12 – 17, 26 – 30, 42 and 47 of the judgment.

> 17.3. The Court accepted that the employee therein had been transferred between subsidiaries and that there was no requirement for the employer to have pleaded this in their application to enforce the restraint provision.'

[27] *Oosthuizen* does not advance the applicants' case insofar as the issue of jurisdiction is concerned. The High Court, with its general jurisdiction, did not have to concern itself about the issue. Further, the employee in *Oosthuizen* did not dispute an employment contract with Value Logistics, in contrast with the facts of this case. The employee in *Oosthuizen* had accepted that he was employed by Value Logistics, *albeit* on a series of verbal contracts, and that his original employment with Value Personnel fell away when he moved up the ranks. Even if the employee had disputed the employment contract, that would not have ousted the jurisdiction of the High Court.

[28] In the proceedings instituted in this Court where there is no general jurisdiction, the applicants were enjoined to plead their case with specific reference to the provision upon which Value Logistics has legal standing in this Court to enforce the right created between Value Personnel and Killian. All that is before the Court in terms of evidence is an unequivocal acknowledgement that Killian was employed by Value Personnel, though rendered services at Value Logistics, and the allegation that Value Logistics accepted or accepts the benefits of the restraint clause contained in the contract between Killian and Value Personnel.

[29] The applicants seek to hold Killian to certain allegations in his answering affidavit where he acknowledged that his eight-year tenure was *"with"* Value Logistics, that he resigned from the *"applicants"*, and his continued reference to the applicants to conclude that his contract was transferred to Value Logistics. They submit that Killian never disputed that he was employed by Value Logistics. The applicants, whilst stating that the contract of employment is between Killian and Value Personnel, did not plead when the transfer took place. I asked Mr Whitcutt this question during the hearing, and his answer was unconvincing. He said that the transfer took place on the date of signature of the contract.

[30] There was no allegation that Killian was employed by Value Logistics for Killian to admit or dispute. The material common cause fact is that Killian was employed by Value Personnel and placed at Value Logistics. For eight years, Killian rendered his services at Value Logistics. Killian's contract of employment was never transferred. That is not the case borne out in the founding affidavit and to hold otherwise would be to contradict the applicants' own case, which is that Value Personnel employed Killian and placed him at Value Logistics, that Value Logistics *"accepted the benefits in terms of the restraint clause"* or *"hereby accepts the benefits"* and that the reference in the papers to Killian being employed by or in the employ of Value Logistics *"is in effect short hand to reflect that the entity for whom [Killian] performed his duties was Value Logistics, albeit that his contract was signed with Value Personnel"*.

[31] In their supplementary heads of arguments, the applicants put forward a further version regarding the employment contract. They submit that:

> 'When one considers the First Respondent's acknowledgement of having been employed by the Second Applicant as already addressed above, as well as the First Respondent's list of duties and responsibilities at JLS8 which clearly show that same were to be rendered to the Value Group and not only to the First Applicant, <u>it cannot be gainsaid that the First Respondent was employed by the First and Second Applicant</u>. There is nothing, in law, that precludes the recognition of this reality.' (Emphasis added)

[32] Killian had expressly pleaded in his answering affidavit that Value Personnel was his employer and that he did not enter into any other employment contract with another entity within the Value Group. Therefore, the argument that he was transferred on the date of signature of the contract or any date thereafter was rejected upfront.

[33] The applicants' argument is unsustainable. The argument developed from Killian being employed by Value Personnel with Value Logistics benefiting from the restraint clause in the founding affidavit, to the contract of employment being

transferred from Value Personnel to Value Logistics on an uncertain date but probably on the date of signature of the contract of employment and Killian being employed by Value Logistics, and to Value Personnel and Value Logistics both being employers of Killian in the supplementary heads of argument. Only one version could be true. The true version, borne out of the applicants' founding affidavit, is that until 31 August 2025, Killian was an employee of Value Personnel, and not an employee of Value Logistics.

[34] For the above reasons, I conclude that there was no transfer of the contract of employment from Value Personnel to Value Logistics.

The stipulatio alteri

[35] In *Crookes, NO and Another v Watson and Another*[10], the Appellate Division (AD) (as it was then called), per Schreiner JA in a dissenting judgment, said the following about the *stipulatio alteri*:

> 'But in the legal sense, which alone is here relevant, what is not very appropriately styled a contract for the benefit of a third person is not simply a contract designed to benefit a third person; it is a contract between two persons that is designed to enable a third person to come in as a party to a contract with one of the other two... <u>the typical contract for the benefit of a third person is one where A and B make a contract in order that C may be enabled, by notifying A, to become a party to a contract between himself and A</u>…'[11] (Emphasis added)

[36] In *Total South Africa (Pty) Ltd v Bekker NO*[12] *(Toyota South Africa)*, the AD held that:

> 'The second argument advanced was that clauses 1 and 2 of the agreement constituted a stipulation for the benefit of Van Vuuren (a *stipulatio alteri*), and that he became a party to the agreement by accepting the benefit offered. As was pointed out by Schreiner JA in *Crookes NO and Another v Watson and Others*

[10] 1956 (1) SA 277 (A).
[11] Ibid at 291B-F; see also *Loggenberg and Others v Maree* [2018] ZASCA 24 at para 22.
[12] 1992 (1) SA 617 (A).

1956 (1) SA 277 (A) at 291B-C, 'a contract for the benefit of a third person is not simply a contract designed to benefit a third person; it is a contract between two persons that is designed to enable a third person to come in as a party to a contract with one of the other two'. The mere conferring of a benefit is therefore not enough; what is required is an intention on the part of the parties to a contract that a third person can, by adopting the benefit, become a party to the contract. (*Joel Melamed and Hurwitz v Cleveland Estates (Pty) Ltd; Joel Melamed and Hurwitz v Vorner Investments (Pty) Ltd* 1984 (3) SA 155 (A) at 172D-F.) The agreement itself does not disclose any intention on the part of Total or Fourie that Van Vuuren could become a party thereto. There is no express wording to such effect, nor is there any provision in the agreement for the acceptance by Van Vuuren of any benefit thereunder. Furthermore, the terms of the agreement (leaving aside the possible effect of clause 8.3) do not support a necessary implication to that effect. Total and Fourie would have been at liberty to cancel the agreement at any time without reference to Van Vuuren. Apart from these considerations, Van Vuuren does not specifically allege in either his founding or his replying affidavit (as one would have expected him to do) that the parties to the agreement intended a stipulation in his favour. But even if there was an intention to benefit Van Vuuren, there is no evidence, direct or circumstantial, that Van Vuuren ever accepted such benefit at a time when it was open to him to do so. He himself does not allege that he accepted any such benefit, or that a contract came into being between himself and Total. It follows that Van Vuuren has not made out a case for a *stipulatio alteri* in his favour, the benefit of which he accepted.'[13] (Emphasis added)

[37] The *Toyota South Africa* judgment above has set out the requirements for a *stipulatio alteri.* The parties' intention must be clear from the contract that they are contracting for the benefit of a specific third party; the third party must accept the benefit offered by the contracting parties, either expressly or by implication; and the third party obtains, immediately or in future, the right to enforce the contract. In *casu*, there is no issue about the validity and binding nature of the contract between Value Personnel and Killian. Killian has however disputed that

[13] Ibid at 625D-J.

the contract meets the requirements for *stipulatio*. He submitted that there was no such intention to contract for the benefit of Value Logistics.

[38] I am aware that this issue borders on the merits of the restraint application. I therefore do not intend to pronounce on whether the applicants have made out a case for *stipulatio* or not. Nevertheless, for the purpose of this judgment, even if the *stipulatio alteri* is established, that does not amount to a transfer of the contract of employment from Value Personnel to Value Logistics. Value Personnel, under the Value Group, elected, for the purpose known to it and possibly the Value Group, to structure the employment arrangement as it did, and Killian accepted the terms thereof. A finding that Killian was employed by Value Logistics would amount to an unnecessary and irregular interference in the rights and freedom of the parties to contract.

[39] On this basis alone, the Court's jurisdiction remains disengaged. On the facts before this Court, Killian, though rendering services at Value Logistics, remained an employee of Value Logistics.

[40] Even if it is found that a benefit was created in favour of and accepted by Value Logistics, that benefit on the applicants' pleaded case is limited to the restraint of clause, not the whole contract of employment. The working days and hours, payment of remuneration and bonus, leave, pension, retirement, and medical aid, were retained by Value Personnel and therefore Killian remained an employee of Value Personnel.

The terms of the employment agreement as they apply to Value Personnel

[41] The applicants submit that the Court has jurisdiction insofar as the application is brought by Value Personnel against Killian. For this reason, the applicants submit that there is nothing objectionable in Value Personnel enforcing the terms of the restraint undertaking.

[42] The applicants are correct. Whether Value Personnel has made out a case in its papers to enforce the restraint undertaking made in its favour (if any) is a

question to be determined at a later stage when the merits of the application are adjudicated, where Value Personnel would have to demonstrate its protectable proprietary interest. Likewise, if Value Personnel has no protectable proprietary interest, whether it can enforce the restraint undertaking in favour of Value Logistics is an issue that relates to the merits of the application. What Value Logistics cannot do is to assume the role of Value Personnel as an employer and approach this Court to enforce the contract of employment.

Canize distinguished?

[43] The applicants submit that *Canize* is distinguishable because, unlike in the present case, the restraint clause was not incorporated in the contract of employment, and the employees entered into a separate agreement with the third-party entity, and the applicants in this case are subsidiaries of a holding entity.

[44] It is not accurate that the restraint clause in *Canize* was not incorporated in the contract of employment. Three of the four employees' restraint undertakings were incorporated in their contract of employment, whilst only one employee had separate restraint undertakings with the third-party entity. Regardless, the principle enunciated in *Canize* is that this Court has no business involving itself in the parties' transactions or issues, for as long as those parties are not an employer-employee relationship.

[45] The applicants in this case are two separate legal entities, as it was the case in *Canize*. The fact that the applicants are both subsidiaries of a holding entity does not change their status as separate legal entities such that one entity can enforce the rights of the other in this Court. Accordingly, this case is on all fours with *Canize*.

<u>Conclusion</u>

[46] For the reasons set out above, this Court has no jurisdiction over the second applicant's application against Killian. The Court has jurisdiction over the first

applicant's application. The first applicant is free to re-enrol the matter to be adjudicated on the merits.

[47] The parties have agreed that a losing party must pay the costs. I have no reason to deviate from the parties' submissions in this regard.

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

Order

1. This Court lacks jurisdiction to entertain the application insofar as it is brought by the second applicant.

2. The application, insofar as it relates to the second applicant, is dismissed for lack of jurisdiction.

3. The second applicant is ordered to pay the costs.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Mr C. Whitcutt SC (with Ms R. Adams)

Instructed by: Ridgway Merry & Weldhagen Attorneys

For the 1st Respondent: Mr C. Goosen

Instructed by: Serfontein Viljoen and Swart Attorneys