



THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Reportable

Case No: 2025-209698

In the matter between:

MTHOKOZISI BASIL SHANGASE

Applicant

And

UMDONI LOCAL MUNICIPALITY

First

Respondent

MAYOR: UMDONI LOCAL MUNICIPALITY

Second Respondent

SPEAKER: UMDONI LOCAL MUNICIPALITY

Third Respondent

Heard: 28 November 2025

Delivered: 10 December 2025

Summary : Jurisdiction of Labour Court to intervene in medias res based on s4(1B) Protected Disclosures Act – Urgency – Requirements for a disclosure to be protected in terms of s6(1) of the Protected Disclosures Act – Resolving disputes of fact in urgent applications – Unconvincing evidence to refute existence of prima facie right - Inferring an occupational detriment ‘on account of’ a protected disclosure – Formalistic approach rejected.

JUDGMENT

RAMJI, AJIntroduction

- [1] This application was set down for hearing on Tuesday, 18 November 2025. The applicant (Mr Shangase) is employed by the first respondent (the Municipality). He was recently placed on precautionary suspension pending a disciplinary investigation. The Protected Disclosures Act 26 of 2000 (PDA) is central to this case.
- [2] Mr Shangase approached this Court after referring an unfair labour practice dispute to the relevant bargaining council for conciliation. He approached this Court on an urgent basis seeking the following relief pending the final determination of his unfair labour practice dispute:
- 2.1. The precautionary suspension be declared an occupation detriment in terms of section 3 of the Protected Disclosures Act.
- 2.2. The respondents be restrained and interdicted '*from further subjecting [Mr Shangase] to occupational detriments by harassing [Mr Shangase] and intimidating [him].*'
- [3] It was apparent from the founding application that Mr Shangase actually sought an order requiring the respondents to uplift the precautionary suspension, alternatively for this Court to set aside that suspension.
- [4] The respondents instructed counsel to appear at the hearing on 18 November 2025 clearly to get the matter postponed: no opposing papers were before the Court and counsel for Mr Shangase confirmed that he had not received any papers. It later emerged that a '*preliminary answering affidavit*' had been filed on the evening of 17 November 2025. It had not been served and the submission to me was that uploading pleadings to Court Online constitutes service. It does not.

- [5] I issued several directives for the filing of further pleadings and postponed the matter for hearing to 28 November 2025.
- [6] The respondents did not file further pleadings and relied on the so-called preliminary answering affidavit, although the application was essentially postponed based on the submission that they were only able to file a preliminary affidavit. Clearly this was a delaying tactic, though this was not apparent to me at the time.
- [7] The applicant filed a replying affidavit on 27 November 2025. The applicant only filed an amended notice of motion on the day of the hearing, while the hearing was underway. The amended notice of motion was served a day earlier, but still out of the time given in my directives, which required that the amended notice of motion be filed by 19 November 2025.
- [8] Mr Shangase's first prayer is now:
- '[P]ending the final determination of [his] dispute instituted in terms of section 186(2)(d) of the [LRA] in the South African Local Government Bargaining Council and/or Labour Court in due course, the precautionary suspension...be and is hereby uplifted forthwith.'
- [9] Mr Shangase's second prayer is for a prohibitory interdict against *'further occupation detriments of whatever nature, including but not limited to harassment, intimidation and threats of intimidation and/or physical violence.'*
- [10] He no longer seeks a declarator.
- [11] The respondents filed written submissions on 27 November 2025.
- [12] In written submissions, the respondents took issue with the amended notice of motion, and the granting of leave to amend. Counsel for the respondent did not pursue this point to any great degree in oral submissions – wisely, because when I was granting Mr Shangase leave to amend the notice of motion on 18 November 2025, the respondents' counsel (a different advocate) did not oppose this in any way. I also do not accept that, in the circumstances of this case, the late service of the amended notice of motion has impaired the

respondents in answering Mr Shangase's case – the founding affidavit was unchanged, and leave was granted in front of the respondents' counsel with clear knowledge of the nature of the amendment that would be made. Leave to amend and the subsequent amendment aligned with the purposes of properly ventilating the real issue between the parties.¹

[13] In short, none of the parties have conducted themselves perfectly in this matter, but it is an urgent application and so cannot always sail smoothly. I am therefore grateful to both legal representatives for not dwelling on technical or procedural points in oral argument.

[14] I deal with the issues in the following order:

14.1. Background facts.

14.2. Jurisdiction.

14.3. Urgency.

14.4. The second prayer.

14.5. The first prayer.

Facts

[15] Mr Shangase is employed as a General Manager: Technical Services for the Municipality. He is an employee falling within the scope of the Local Government: Disciplinary Regulations for Senior Managers, 2010 (the Disciplinary Regulations).²

[16] On 17 October 2025, the municipal council resolved to '*commence a disciplinary process against* [Mr Shangase]' On 21 October 2025, the acting municipal manager, issued Mr Shangase with notice of the resolution, and that the council was contemplating placing him on precautionary suspension. The letter stated that the council '*has reasons to believe that* [Mr Shangase's]

¹ *Registrar of Labour Relations v Chemical, Energy, Paper, Wood and Allied Workers Union and Others* (J815/2015) [2015] ZALCJHB 362 (9 October 2015) at para 13; *Harley v Bacarac Trading 39 (Pty) Limited* (2009) 30 ILJ 2085 (LC) at para 5.

² GN 344 in GG34213 (21 April 2011).

presence in the workplace may be detrimental to the stability of the municipality and further, [Mr Shangase's] presence in the workplace may interfere with potential witnesses and that [Mr Shangase] may commit further acts of misconduct.'

- [17] On 27 October 2025, Mr Shangase made detailed representations on why he should not be suspended, which included addressing the fact that some of the charges relate to event before he started working for the Municipality, or to procurement in which he was not involved. The merits of these charges are not for this Court to decide.
- [18] Within a mere two days of receiving Mr Shangase's representations on why he should not be suspended, on 29 October 2025, the municipal council resolved to put Mr Shangase on precautionary suspension with immediate effect.³
- [19] Mr Shangase has now been on precautionary suspension for six weeks.
- [20] The suspension notice stated that the council had considered the Mr Shangase's representations '*and is not satisfied with [his] response on the allegations of misconduct levelled against [him] as submitted by unions, IMATU and SAMWU, respectfully*' (sic). It then cited Disciplinary Regulations 6(1)(a)(i), and 6(1)(b)(i) and (ii), i.e. an apprehension that he would jeopardise the investigation, interfere with potential witnesses and commit further acts of misconduct.
- [21] On 31 October 2025, the applicant referred an unfair labour practice dispute to the relevant bargaining council. The applicant alleges that his precautionary suspension is an unfair labour practice in terms of section 186(2)(d). The subsection provides that an unfair labour practice includes '*an occupational detriment, other than dismissal, in contravention of the [PDA], on account of the employee having made a protected disclosure defined in [the PDA]*'.

³ The council is entitled to seven days to consider the representations.

[22] The applicant indicated in his founding application that he intends to exercise his right to refer the alleged unfair labour practice dispute to the Labour Court for adjudication in terms of section 191(13)(a) of the LRA which provides:

‘An employee may refer a dispute concerning an alleged unfair labour practice to the Labour Court for adjudication if the employee has alleged that the employee has been subjected to an occupational detriment by the employer in contravention of section 3 of the [PDA] for having made a protected disclosure defined in [the PDA].’

[23] It is in these circumstances that the applicant approaches this Court to uplift his precautionary suspension so that he can return to work pending a final determination by the Labour Court as to whether the precautionary suspension is an unfair labour practice.

[24] The only change since the hearing on 28 November 2025 is that now, the 30-day conciliation period has expired, and a referral to arbitration or adjudication may be made (if one has not already been made).

Jurisdiction

[25] The applicant is asking the Court to exercise its powers in terms of section 158(1)(a)(i) and (ii), alternatively (iii) of the LRA and to uplift his precautionary suspension pending the final determination of his unfair dismissal dispute. The applicant made it clear in his founding papers that he is not asking this Court to fast-track the determination of his unfair labour practice dispute and to decide finally if he suffered an unfair labour practice. He seeks interim relief in the form of an interdict interfering with the employer's chosen disciplinary process.

[26] I raised the question of jurisdiction in the light of the Labour Appeal Court's (LAC) recent decision in *Cibane and Another v Premier of Province of Kwazulu-Natal (Cibane)*.⁴

[27] *Cibane* affects the ability of an employee seeking to interdict an ongoing disciplinary process from applying for an interdict based on section 157(2) of

⁴ (2025) 46 ILJ 2587 (LAC).

the LRA, exceptional circumstances and grave injustice, i.e. the requirements set out in *Booyesen v Minister of Safety and Security & others (Booyesen)*⁵

[28] The LAC in *Cibane* has interpreted *Booyesen* restrictively:

28.1 *Booyesen* does not give the Labour Court jurisdiction ‘to interdict or otherwise intervene in incomplete disciplinary proceedings, limited only by the consideration of exceptionality’ with the effect of the Labour Court usurping an arbitrator’s powers to determine fairness of disciplinary proceedings.⁶

28.2 *Booyesen* does not create a general rule that the Labour Court has jurisdiction to intervene ‘to restrain any alleged illegalities, irregularities or unfairness’ midway through disciplinary proceedings.⁷

28.3 The Court’s jurisdiction ‘must be determined from the pleadings (and not the substantive merits of the case), and by reference to a provision of the LRA (or other legislation) that specifically confers jurisdiction on the Court in relation to the dispute disclosed by the pleadings.’⁸

[29] What then is the applicant’s pleaded case and what are the specific provisions of the LRA that confer jurisdiction on this Court to hear his matter?

[30] In *Fisher v Ngcuka N.O. and Others (Fisher)*,⁹ the Labour Court was concerned with an application to interdict disciplinary proceedings pending a decision by an arbitrator as to whether a disciplinary hearing should rather be conducted externally, in terms of section 188A(11) of the LRA.

[31] Applying *Cibane*, Snyman AJ held:

‘[T]he applicant has a right, under section 188A(11) of the LRA, to refer a dispute to the CCMA for determination because she has alleged her being disciplined constitutes an occupational detriment as a result of a protected disclosure she has made.’¹⁰

⁵ (2011) 32 ILJ 112 (LAC).

⁶ *Cibane* above at para 22.

⁷ *Cibane* above at para 27.

⁸ *Cibane* above at paras 28 and 32.

⁹ (2025/189683) [2025] ZALCJHB 514 (28 October 2025).

¹⁰ *Fisher* above at para 11.

[32] The respondents' counsel argued that this was a matter to be resolved in terms of the unfair labour practice referral already made. Mr Shangase's counsel argued that the objection was no longer relevant because Mr Shangase was no longer seeking a declarator. The respondents' counsel accepted this.

[33] My concern was whether the new *Cibane* jurisdictional requirement of there being a statutory provision conferring jurisdiction on the Labour Court to grant Mr Shangase the relief he sought.

[34] In my view, the requirement is satisfied. Mr Shangase's claim to relief lies in sections 4(1) read with 4(1B) of the PDA. Section 4(1) provides:

'Any employee who has been subjected, is subjected or may be subjected, to an occupational detriment in breach of section 3, or anyone acting on behalf of an employee who is not able to act in his or her own name, may –

(a) approach any court having jurisdiction, including the Labour Court established by section 151 of the Labour Relations Act, 1995 (Act 66 of 1995), for appropriate relief; or

(b) pursue any other process allowed or prescribed by any law' (own emphasis).

[35] Section 4(1B), which was added in 2017 after years of Parliamentary debate arising from concerns that the wording of 4(1) of the PDA was not specific enough in identifying which courts had jurisdiction over the PDA, and a view that the Labour Court should have jurisdiction over instances of occupational detriments. Section 4(1B)(c) provides:

'If the court or tribunal, including the Labour Court is satisfied that an employee or worker has been subjected to or will be subjected to an occupational detriment on account of a protected disclosure, it may make an appropriate order that is just and equitable in the circumstances, including-

...

(c) an order directing the employer or client, as the case may be, to take steps to remedy the occupational detriment' (own emphasis).

[36] Counsel for Mr Shangase referred me to *Grieve v Denel (Denel)*,¹¹ a judgment pre-dating the 2017 amendments where Pillemer AJ confirmed this Court's jurisdiction to grant urgent interim relief:

'The powers conferred upon this court are expressed in wide terms so that any employee who has been subjected, is subject or may be subjected to an occupational detriment in breach of section 3 may approach the Labour Court for appropriate relief. Since conciliation is a pre-requisite before this court can grant final relief, in matters of urgency where the occupational detriment will occur unless the employer is interdicted and restrained, "appropriate relief" must therefore include the power to grant an interim interdict pending the resolution of the underlying dispute. The court only has jurisdiction to determine the underlying dispute once the conciliation process has run its course. This is nonetheless the type of case where the court clearly has the power to order the *status quo* to be preserved or restored pending determination of the main dispute.'¹²

[37] *Denel*, while helpful for other reasons, does not assist in satisfying the *Cibane* requirement.

[38] I am, however, satisfied that this Court has jurisdiction to consider the application to uplift the suspension of Mr Shangase because (a) section 4(1B)(c) of the PDA specifically confers jurisdiction on the Labour Court to intervene in incomplete disciplinary proceedings, and (b) Mr Shangase has alleged that disciplinary proceedings were instituted against him, and he was placed on precautionary suspension because he made a protected disclosure.

[39] In *Fisher*, Snyman AJ treated both the *Cibane* and *Booyesen* factors, respectively, as jurisdictional requirements. I do not agree that the *Booyesen* factors are relevant at the stage of jurisdiction, but rather that they go to the merits, and I deal with these later in the judgment.

Urgency

[40] Van Niekerk J (as he then was), held that the Labour Court '*has a wide discretion to determine the urgency with which applications should or should*

¹¹ (2003) 24 ILJ 551 (LC).

¹² *Denel* above at para 9.

*not be treated.*¹³ I am satisfied that the matter requires urgent attention and that Mr Shangase has not delayed in bringing the application.

Relief cannot be sought in due course

[41] An assessment of urgency turns on whether an applicant will obtain substantial redress in an application in the ordinary course.¹⁴ Mr Shangase has been placed on precautionary suspension. If the Municipality follows the Disciplinary Regulations, as it ought to, then it must commence the Mr Shangase's disciplinary hearing within three months after the date of suspension, subject to any extension by the municipal council.¹⁵ His suspension will likely be extended for the duration of the disciplinary hearing, in whatever forum this takes place.

[42] Mr Shangase cannot bring this matter on the ordinary motion roll given that he is fighting a suspension that ought, unless lawfully extended, to last three months. Any relief granted in the ordinary course will be no relief at all when Mr Shangase argues that he ought to be permitted to resume his duties at the Municipality now.

[43] This is not yet a pronouncement that he should be permitted to resume his duties now.

Applicant acted with urgency

[44] Mr Shangase was suspended on Wednesday 29 October 2025. Two days later, he referred his suspension as an unfair labour practice dispute to the bargaining council with a view to ultimately referring the dispute over the fairness of his suspension to this Court in terms of section 191(13)(a) of the LRA. On 5 November 2025, his attorneys filed this application, i.e. within a period of three days following the referral to the bargaining council.

¹³ *Harley* above at para 11.

¹⁴ *East Rock Trading 7 (Pty) Ltd & another v Eagle Valley Granite (Pty) Ltd & others* at para 6.

¹⁵ Disciplinary Regulation 6(6).

- [45] Mr Shangase afforded the respondents a reasonable, if not generous, period to file answering papers (a full week). The respondents did not comply with the deadline set by the applicant.
- [46] Mr Shangase has clearly acted with haste, while balancing the need for the full exchange of pleadings. Counsel for the applicant directed me to authorities that provide that the applicant generally has an entitlement to prescribe the time periods for filing papers in urgent matters. The respondents did not comply with the timeframes. I decided to allow the respondents to file a late answering affidavit on the basis that having the matter fully ventilated would assist this Court in coming to a decision.
- [47] I turn now to Mr Shangase's second prayer – to dispose of it.

The second prayer: An interdict against all future occupational detriments

- [48] Mr Shangase's second prayer is to interdict the respondents from subjecting him to any future occupational detriments, none of which he has specified.
- [49] In *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw*,¹⁶ the Supreme Court of Appeal (SCA) set out the established position that –

'[a]n interdict... is appropriate only where future injury is feared. Where a wrongful act giving rise to the injury has already occurred, it must be of a continuing nature or there must be a reasonable apprehension that it will be repeated' (own emphasis).

- [50] While this case concerned conduct that had already taken place and whether it was fair to infer from past conduct whether an applicant for an interdict had a reasonable apprehension of future harm, it also speaks to the duty of an applicant for an interdict to plead that future injury is feared.
- [51] Mr Shangase may well fear future injuries in the form of occupational detriments, but he did not plead to this. Even if he had made a general averment, granting the second prayer would extend as far as interdicting the

¹⁶ 2008 (5) SA 339 (SCA) at para 20.

Municipality from charging or dismissing Mr Shangase. Given the limited circumstances in which this Court can interfere with an employer's disciplinary activity, the application papers give no basis for the far-reaching relief sought in the second prayer.

[52] The second prayer is not granted.

[53] It is really the first prayer that is being contested.

The first prayer: Uplifting the precautionary suspension

Prima facie right

[54] Mr Shangase avers a prima facie, if not clear, right not to be subjected to an unfair labour practice. He has such a right. This is not in dispute. Of serious contention is whether the Municipality subjected him to an unfair labour practice because it placed him on precautionary suspension during a disciplinary investigation on account of him making a protected disclosure.

[55] In his founding papers, Mr Shangase clearly set out the chronology of events:

- 50.1. He was asked to sign off on an invoice so that payment could be released to a service provider by another municipal employee (Mr X).
- 50.2. On 24 July 2025, he requested proof from Mr X that the work had been done prior to signing an invoice to release payment, specifying the documents that he needed.
- 50.3. He did not receive a response to his request and followed up on 11 August 2025, 17 August 2025 and on 23 September.
- 50.4. On 9 October 2025, he alleges that the acting municipal manager 'sought to force him to sign the invoice.' He claims that he refused to do so unless instructed to in writing to which the acting municipal manager allegedly responded that he 'does not want to be arrested.' (This is denied by the acting municipal manager.)

50.5. On 18 October 2025, the applicant formally reported Mr X to the acting municipal manager in his capacity as accounting officer of the municipality.

50.6. On 21 October 2025, he forwarded the report to the second respondent, the mayor of the Municipality.

50.7. The applicant then, on the very same day, received correspondence (referred to above) that the municipal council had resolved to institute disciplinary proceedings against him and that was contemplating placing him under precautionary suspension.

[56] The suspension is an occupational detriment. Further, the respondents did not challenge that this was a disclosure as defined in section 1 of the PDA.¹⁷ They also did not appear to dispute that the disclosure was made in good faith.

[57] Instead, the respondents' case is that the disclosure was not protected in terms of section 6 of the PDA, as Mr Shangase alleges. Second, they argue that if the disclosure was protected, the suspension was not on account of Mr Shangase making the protected disclosures.

First argument: disclosure was not protected

[58] Mr Shangase claims that he made a protected disclosure in terms of section 6(1) of the PDA, provides:

'(1) Any disclosure made in good faith-

(a) and substantially in accordance with any procedure authorised by the employee's or worker's employer for reporting or otherwise remedying the

¹⁷ A "disclosure" is defined as '[a]ny disclosure of information regarding any conduct of an employer, or an employee of that employer, made by any employee who has reason to believe that the information concerned shows or tends to show one or more of the following:

(a) That a criminal offence has been committed, is being committed or is likely to be committed;

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;

...

(g) that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed.'

impropriety concerned and the employee or worker has been made aware of the procedure as required in terms of subsection (2) (a) (ii); or

(b) to the employer of the employee or worker, where there is no procedure as contemplated in paragraph (a),

is a protected disclosure.’

[59] The respondents’ answer was that the disclosure was not protected because Mr Shangase failed to comply with the Municipality’s whistleblowing policy. Therefore, the disclosure had not substantially complied with the procedure established for the reporting of disclosures.

[60] The respondents provided a copy of what purports to be a whistleblowing policy, which Mr Shangase in reply denied was a valid and effective policy. They also provided an agenda and attendance register which they claim shows that Mr Shangase was aware of the alleged whistleblowing policy.

[61] The approach to disputes of fact when interim relief is sought differs from that when final relief is sought. *Webster v Mitchell*,¹⁸ provides that, to resolve disputes of fact in cases for interim relief, a Court is required –

‘to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant he could not succeed in obtaining temporary relief, for his right, prima facie established, may only be open to “some doubt”. But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief’ (own emphasis).

[62] The question is therefore whether the respondents’ averments that the Municipality has a whistleblowing policy, and the supporting documents annexed in support of the claim throw ‘*serious doubt*’ on Mr Shangase’s case,

¹⁸ 1948 (1) SA 1186 (W) at 1189 read with *Gool v Minister of Justice & another* 1955 (2) SA 682 (C) at 688C-F.

or whether they only leave his case open to '*some doubt*'. If they cast serious doubt on his claim (that he approached the acting municipal manager and then the mayor in the absence of a whistleblowing policy), then his disclosure is not protected, and his claim must be dismissed. If, however, they only cast some doubt on Mr Shangase's claim that the Municipality does not have any whistleblowing policy in operation, then he must be granted his interim interdict for he is only required to prove a *prima facie* right, and not a clear right.

[63] The respondents' averment and annexures that the Municipality has a whistleblowing policy cannot cast serious doubt on Mr Shangase's claim. On a very generous interpretation of the supporting documents, it casts only some doubt.

63.1. The professed whistleblowing policy annexed to the answering affidavit lists the following on the cover:

63.1.1. Department: [Blank]

63.1.2. Policy name: Whistle Blowing Policy (sic)

63.1.3. Status: Policy

63.1.4. Date: [Blank]

63.1.5. Approved by: Council

63.1.6. Date approved: [Blank]

63.1.7. Date last amended: New Policy

63.1.8. Date for next review: [Blank]

63.1.9. Date published on intranet and website: [Blank]

63.2. It bears no signatures and if it was approved by the council, the council resolution was not provided to fill in the gaps (literal gaps) on the cover of the document.

63.3. If this was a final policy, this information would have been supplied as the content of the policy provides details, for example, the date of next review could have been completed because the document states that it will be reviewed annually or as and when the need arises. The responsible department could also have been provided because the

document states that the '[t]he Accounting Officer has the overall responsibility for the implementation, maintenance and operation of this policy and will be supported by Internal Audit Unit, Legal Services and Human Resource Management and all General Managers.'

[64] This is not what valid and binding policy documents look like. This is what a draft policy that is far from being adopted looks like.

[65] I therefore find that the respondents' have not cast serious doubt on Mr Shangase's claim that he made a protected disclosure in terms of section 6(1) of the PDA.

Disclosure to an alleged wrongdoer

[66] The respondents argued that Mr Shangase's disclosure to the acting municipal manager could not have been a protected disclosure because in these papers, the acting municipal manager is among the officials who he accuses of serious misconduct. The argument is that his claim that this was a protected disclosure is therefore '*far-fetched*'.

[67] On the evidence, the disclosure to the acting municipal manager does not prevent the disclosure from being protected. The argument misconstrues his averment in respect of the acting municipal manager. Mr Shangase states that the acting municipal manager told him to sign off on the invoice, and that when he asked for the instruction in writing, the acting municipal manager simply declined to write out the instruction. It is not alleged that he took things further by threatening Mr Shangase in any manner. Ultimately, the acting municipal manager, like Mr Shangase, refused his written approval for payment to be released.

[68] I therefore find that Mr Shangase's disclosure to the acting municipal manager, (and even to the mayor, had this been pleaded¹⁹) constitutes a protected disclosure for purposes of section 6(1) of the PDA and for purposes of showing a prima facie right.

¹⁹ See: *Radebe and Another v Premier, Free State and Others* (2012) 33 ILJ 2353 (LAC) at para 28.

No link between disclosure and discipline

[69] The respondents also argue that if the disclosure/s is/are considered protected, then the disciplinary investigation and the related precautionary suspension were not ‘*on account of*’ any disclosure because both disclosures were made after the decision to suspend Mr Shangase was taken by the council. The council resolved to suspend Mr Shangase on 17 October 2025. Mr Shangase only e-mailed the acting municipal manager and the mayor on 18 October 2025 and 21 October 2025 respectively.

[70] Counsel for the respondent argued that ‘it does not matter’ that the notice of suspension was issued after the disclosure, and that it matters only that the decision by the council to suspend was taken before the disclosure. I accept this argument.

[71] However, the relevant municipal officials, Mr X, and those within their circles, would have known for months, from Mr Shangase’s conversations and e-mails, that Mr Shangase was refusing to sign off on the invoice and that he was effectively investigating the procurement of services related to the invoice. The response was that these were not disclosures for purposes of the PDA. In my view, this is a formalistic approach that is at odds with previous decisions of the Labour Court.

[72] Most recently, in *Bangeni v Local Government SETA (Bangeni)*,²⁰ Daniels J rejected as ‘*far-fetched*’ the employer’s contention that it was unaware of the disclosure at the time of charging the employee. Although the disclosure to his attorney took place after the employee was charged, Daniels J had regard to the earlier actions taken by the employee in collecting and safeguarding the evidence, and inferred that the employer would have both seen the employee’s e-mails containing information relating to the intended disclosure, and have known why the information was being collected.²¹

[73] Unfortunately, there was no meaningful discussion of the case or request to make further submissions on the approach in *Bangeni*.

²⁰ (2025-096639) [2025] ZALCJHB 116 (28 August 2025).

²¹ *Bangeni* above at para 7.

[74] Another aspect of the respondents' opposition on this point is that the disciplinary investigation and the related precautionary suspension were not caused by the disclosure because the disciplinary processes emanated from complaints against Mr Shangase by two recognised trade unions made in August 2023. The respondents provided a copy of the alleged complaint of the trade unions.

[75] In *Bangeni*, Daniels J held that '*the court must remain alive to the possibility that an unscrupulous employer could create another pretext for the occupational detriment.*'²² Daniels J also placed weight on the fact that the employer '*decided to continue with the hearing even after it became aware of the disclosure*' and concluded that this '*indicates that the disciplinary action is a retaliatory measure motivated by the protected disclosure.*'²³ An occupational detriment is prohibited even when it is '*partly on account of*' the employee having made a protected disclosure.

[76] It is significant that the unions' alleged complaints against Mr Shangase were made on 20 August 2025, well after he declined to sign the invoice without supporting documents, and after he began asking questions around whether the work had been done.

[77] The approach to sequence or chronology and drawing inferences in *Bangeni* is not an outlier. In *Feni v Pan South African Language Board (Feni)*,²⁴ van Nierkerk J had regard to the '*temporal coincidence between the applicant's lodgement of a formal grievance and the issuing of the letter of suspension*' when making his decision.²⁵

Irreparable harm and balance of convenience/ prejudice

[78] Mr Shangase states that:

²² *Bangeni* above at para 25. See also: *Modika v Industrial Development Corporation of South Africa and Another (Modika)* (2025/212698) [2025] ZALCJHB 529 (13 November 2025) at paras 43 – 44; 46 – 47.

²³ *Bangeni* above at para 31.

²⁴ (J 1010/10) [2010] ZALC 287 (1 June 2010).

²⁵ *Feni* above at para 7. See also: *Denel* above at paras 15 – 16; *Radebe* above at paras 33 – 34.

78.1 He will suffer irreparable harm in the form of stigma and reputational damage, which could endure for years as his unfair labour practice dispute is resolved.

78.2 Based on the irreparable harm that he will suffer, the balance of convenience favours him and not the Municipality.

[79]

[80] The Municipality states that Mr Shangase is on full pay.

[81] It is now well-established that even a precautionary suspension, and paid suspension, causes irreparable harm to the suspended employee.²⁶ This is particularly so given Mr Shangase's senior position in the workplace, which he can only perform effectively when respected by his subordinates and not held in poor regard. Waiting for the expiry of the three-month period will not help him recover from the stigma and reputational harm, but a court intervention may.

[82] Given the established case law, the respondents' contentions are simply inadequate. The Municipality does not explain why, given the nature of the charges against Mr Shangase, and that they are ostensibly unrelated to his disclosure regarding Mr X, why they cannot but in place mechanisms to prevent him interfering with alleged witnesses, the investigator and the documents relating to the investigation (which one assumes are being safely guarded by the investigator).

[83] The respondents made one further sweeping claim on irreparable harm, which relates to the balance prejudice:

'A suspension forms part of the disciplinary processes of, not only the [Municipality], but any public and private entity in the Republic of South Africa. Quite simply, it cannot be alleged that the following of a disciplinary process can ever be suggested to cause irreparable harm to an employee. If this were

²⁶ *South African Post Office Limited v Jansen and Others* (2008) 29 ILJ 2793 (LC) at paras 27 and 39; *Feni* above at para 8; *SA Municipal Workers Union on behalf of Matola v Mbombela Local Municipality* (2015) 36 ILJ 1341 (LC) at paras 28 to 29.

the case, it would be quite impossible to discipline, alternatively, attempt to discipline an employee in the workplace.’

[84] Counsel for the respondents did not pursue this argument in oral submissions – perhaps because the submission is unsustainable and at odds with the constitutional right to fair labour practices and the powers of the Labour Court under section 158 of the LRA. The fact that the respondents saw fit to make such an averment is an indictment on how they view their duties and powers as employers.

[85] I am therefore satisfied that Mr Shangase has shown that he faces irreparable harm in the workplace and his general professional life, and that the balance of convenience favours protecting his interests over the vaguely articulated and frankly unconvincing interests of the respondents.

No effective/suitable alternative remedy

[86] Mr Shangase states that he has no available alternative remedy, having tried in vain to motivate against his precautionary suspension. The referral of an unfair labour practice dispute for conciliation and later for either arbitration (or more likely, adjudication) does not alleviate his current position of not being at work.

[87] The respondents’ case on this point is that being subjected to an occupational detriment on account of having made a protected disclosure is also an unfair labour practice in terms of the LRA. It was argued that this gives Mr Shangase an alternative remedy.

[88] Would an adjudication in the ordinary course, while the applicant remains on suspension, be an effective alternative to the interdict? The answer must be no. First, it would keep him away from the workplace and suffering the harm to his reputation and professional standing, and second, it would effectively prevent this Court playing a part in preventing the mischief which the PDA seeks to stop.

[89] This leaves the *Booyesen* considerations of exceptional circumstances and grave injustice.

Exceptional circumstances and grave injustice

[90] The time sensitivity – that Mr Shangase will suffer irreparable harm before he obtains relief in the ordinary course – speaks to the exceptional circumstances and grave injustice.

[91] The principle established in *Booyesen* inclines a court to avoid granting what amounts to status quo relief for the following reasons articulated by Tlhotlhlalemaje J:

‘[T]his court should respect employers’ prerogative to institute disciplinary proceedings against its employees, and should be wary of unwarranted intrusion, lest the expeditious resolution of internal disputes is frustrated. A second consideration is that the LRA’s dispute resolution system remains intact and should be utilised by employees who are aggrieved by internal disciplinary processes. It has repeatedly been stated that this Court should not be regarded as the first port of call when employees complain about internal disciplinary processes, and it is not its function to micromanage those processes. Most importantly, the court must equally guard against the abuse of its own process by employees whose primary objectives are not noble but are merely intended to frustrate internal disciplinary processes in order to escape from having to answer to allegations of serious misconduct.’²⁷

[92] I agree, but this is not the type of case that these concerns speak to. This is an interdict that has been brought by someone who has shown, *prima facie*, that he has been placed on precautionary suspension, with little to no substantial reasons, coincidentally after he started raising questions around possible irregular expenditure. The reasons for placing Mr Shangase on precautionary suspension were simply pulled from the Disciplinary Regulations, with no further explanation as to why they applied to his case. It is also not, on the face of it, apparent why the reasons quoted are ‘*objectively justifiable*’.²⁸

[93] The exceptional circumstances and grave injustice, considered in the light of the irreparable harm and the absence of an effective alternative remedy, are therefore apparent.

Costs

²⁷ *Madonsela v Legal Practice Council and Others* (2025) 46 ILJ 2664 (LC) at para 24.

²⁸ *Feni* above at para 6.

[94] The respondents' written submissions did not address a specific direction from the Court that the respondents provide submissions on why the respondents should not bear the applicant's wasted costs occasioned by the postponement on 18 November 2025. This came out of a refusal to tender costs.

[95] Costs have been awarded against employers where employees have had to approach this Court to interdict internal disciplinary hearings, and to uplift unfair and unlawful suspensions.

[96] In this case, the disciplinary process and the unfair labour practice dispute are both in their very early stages, with the conciliation period for the unfair labour practice dispute only just having ended.

[97] I make no order as to costs in the hope that the main dispute and all disputes arising from it can be resolved between the parties who currently have an ongoing employment relationship.

Questions from the Court

[98] Having read the papers, I was rigorous in my questioning because I was seeking the assistance of counsel in deciding this matter. I was told several times that I had '*made up [my] mind*' and that the matter therefore could not be taken further. My questions were aimed at taking the matter further in respect of my areas of concern. Counsel could have therefore assisted.

[99] One would also expect legal representatives to be pleased, and not to state that they are '*disappointed*', when the Court shares its initial views or its concerns. This is an opportunity for representatives to advance their clients' cases fully and to persuade the Court, which is the job.

[100] After these statements were repeatedly made, I referred to a recent judgment handed down by Moshoana J in the Gauteng Division of the High Court on the duties of counsel, where he referred the matter to the Legal Practice Council for consideration. I share the relevant portions in the hope that the dicta are useful:

'Counsel makes submissions to a Court with an honest intention to (a) persuade a Court to find in favour of his or her client and (b) assist the Court

to arrive at a just decision. Statements like [the] “judge has made up his or her mind” and “submissions are made for what it is worth” are in direct contradiction with the duties of counsel.

When a Court engages counsel and probes the legal correctness of some of the submissions counsel makes, a Court does not “make up its mind” but a Court seeks to apply the law correctly to the case. It is only when a Court delivers its judgment that a Court makes up its mind. Before then, it is unprofessional and inappropriate for counsel to cast an aspersion that a judge has made up his or her mind.’²⁹

Order

1. The matter is heard as one of urgency.
2. The relief (interdict) sought in paragraph 1 of the amended notice of motion is granted.
3. This interdict shall lapse if the Applicant does not refer the unfair labour practice dispute to the CCMA or Labour Court within 10 days of this order, unless the Applicant has already made the referral.
4. There is no order as to costs.

B Ramji

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv S Luthuli

Instructed by: Siza Inc.

²⁹ *Nkwanyana and Another v Open Mic Productions (Pty) Ltd and Another* (098393/2023) [2025] ZAGPPHC 422 (9 May 2025) at paras 42 to 43.

For the Respondent: Adv J P Pretorius

Instructed by: Mdledle Inc.

LABOUR COURT