



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR1518/23

In the matter between:

INNOVATIVE STAFFING SOLUTIONS (PTY) LTD

Applicant

and

MINISTER OF EMPLOYMENT AND LABOUR

First Respondent

**NATIONAL BARGAINING COUNCIL FOR
THE ROAD FREIGHT AND LOGISTICS INDUSTRY**

Second Respondent

ROAD FREIGHT ASSOCIATION

Third Respondent

NATIONAL EMPLOYERS' ASSOCIATION OF SA

Fourth Respondent

CONSOLIDATED EMPLOYERS ORGANISATION

Fifth Respondent

**SOUTH AFRICAN TRANSPORT
AND ALLIED WORKERS UNION**

Sixth Respondent

**MOTOR TRANSPORT WORKERS
UNION OF SOUTH AFRICA**

Seventh Respondent

**PROFESSIONAL TRANSPORT & ALLIED
WORKERS UNION**

Eighth Respondent

TRANSPORT AND ALLIED WORKERS UNION

Ninth Respondent

Heard: 20 March 2025

Delivered: 8 December 2025

Summary: Application to review and set aside decision of Minister to extend the period of operation of the Main Collective Agreement of the Bargaining Council, and its extension to non-parties. Application dismissed, no costs.

JUDGMENT

DANIELS J

Introduction

- [1] This judgment relates to an application brought to review and set aside the decision of the first respondent (“the Minister”) to both extend the period of the Main Collective Agreement (“the MCA”) of the second respondent (“the Bargaining Council”) and to extend the MCA to non-parties, published in GG 492029 GN 3727 on or about 28 July 2023. The applicant seeks a declaration that such extensions are invalid.
- [2] This application was heard together with two applications, under case numbers JR668/22 and JR2749/22. For simplicity, separate judgments are handed down.
- [3] The judgment in respect of the matter under case number JR2749/22 was handed down on 3 April 2025. The court dismissed the application to review and set aside the determination of representativeness, issued by the deputy registrar in terms of section 49(2) of the Labour Relations Act No. 66 of 1995 (“the LRA”) on 9 December 2021. The findings of both fact and law, made in the application under JR2749/22, are also applicable to this matter. The judgment JR2749/22 was handed down on 3 April 2025.

- [4] The judgment in respect of case number JR668/22 was handed down on 4 December 2025. The court dismissed the application to review and set aside the Minister's extension of the period of operation of the Main Collective Agreement from 1 March 2022 to 29 February 2024. Once again, the findings of both fact and law, made in the application under JR668/22, are also applicable to this matter.

Mootness

- [5] As previously mentioned, this application seeks to set aside the Minister's decisions: (i) to extend the period of the MCA from 1 March 2024 to 28 February 2025, and (ii) furthermore to extend such MCA to non-parties. By the time the consolidated application was argued, on 20 March 2025, the period of the extension had passed. It is therefore necessary to first consider whether the application is moot.
- [6] A case is moot, and therefore not justiciable, if it "*no longer presents an existing or live controversy which should exist if the court is to avoid giving advisory opinions on abstract propositions of law.*"¹ The issue is whether the decisions will have no practical effect or result.²
- [7] Mootness is not decisive of whether the court ought to hear the application. The court retains a discretion, and it must be guided by the interests of justice.³ Factors relevant to the discretion include the nature and extent of the practical effect that any possible court order might have either on the parties or on others, the importance of the issue, the complexity of the issue, the fullness or otherwise of the argument advanced, and the need to resolve disputes between different courts. In my view, this judgment may impact on the conduct of the parties to the

¹ *National Coalition for Gay and Lesbian Equality and others v Minister of Home Affairs and others* [2000] JOL 5877 (CC)

² *Agribee Beef Fund (Pty) Ltd and another v Eastern Cape Rural Development Agency and another* [2023] JOL 57428 (CC)

³ *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC) at para 11; *MEC for Education, Kwa-Zulu Natal and Others v Pillay* 2008 (1) SA 474 (CC) at para 32

Bargaining Council, the conduct of the Minister, and the conduct of the registrar or deputy registrar, in similar disputes.

- [8] I do not believe that the dispute is moot. However, even if this is incorrect, the interests of justice demand that the application be decided. The dispute raises issues of importance to the parties, as well as the labour fraternity more generally. The extension of the collective agreements of Bargaining Councils is essential to one of the primary objects of the LRA - namely the promotion of collective bargaining at sectoral level.

Factual matrix

- [9] The factual background to the dispute is as follows:

9.1 The Bargaining Council referred a demarcation dispute to the CCMA on 30 October 2018 requesting an award that the applicant fell within its registered scope. On 2 March 2021, the CCMA commissioner found that the applicant was a temporary employment service and part of its operations fell within the scope of the Bargaining Council. As a result, the applicant was required to register with the Bargaining Council and comply with collective agreements of the Council which had been or would be extended to non-parties. The applicant launched an application to review and set aside the demarcation award under case number JR510/2021.

9.2 The applicant launched a further application, under case number JR482/21, to stay the demarcation award pending the review. A court order was granted by agreement (on 11 May 2021) between the parties in terms of which the demarcation award would be stayed, pending the determination of the review application under JR510/2021, but the applicant would comply with certain provisions

of the MCA and submit returns to the Council demonstrating compliance.

9.3 The applicant launched a further application, under case number J1428/2021 seeking an order *inter alia* declaring that it had complied with the court order of 11 May 2021.

9.4 The applicant launched a further application, under case number J1380/2021, seeking a court order *inter alia* interdicting the Council from representing to any of the applicant's clients that it was acting in breach of the 11 May 2021 court order and that a writ of arrest had been issued for the director of the applicant regarding his alleged refusal to register the applicant with the Bargaining Council. The Council opposed the application and brought a counter application seeking a court order *inter alia* interdicting the applicant from holding out to any employers in the road freight industry that it is entitled not to comply with the MCA and that if they engage the services of the applicant their employees would not longer be subject to the MCA. The application came before my sister, Mahosi J, on 16 November 2021 who dismissed the application and pending the final determination of the application under JR510/21, granted the relief sought by the Bargaining Council. In effect, the applicant was ordered to comply with the MCA, and to refrain from advising employers in the road freight industry that the applicant was entitled not to comply with the MCA. The applicant's application for leave to appeal was dismissed, and its petition to the Labour Appeal Court was also dismissed.

9.5 Earlier the Minister issued a letter to Ms Ngwetjana appointing her as the deputy registrar and requested her "*to perform all functions assigned to this position in the absence of the Registrar of Labour*

*Relations.*⁴ In these proceedings, we are concerned with the conduct of the deputy registrar and the determinations made by her. Accordingly, in what follows, any reference to registrar includes the deputy registrar. On 9 December 2021, the deputy registrar signed a certificate, in terms of section 49(2) of the LRA, which reads:



9.6 It bears noting that the certificate relates to the representativeness of the parties, to the Bargaining Council, in relation to the scope of the MCA. The certificate does not refer to the registered scope of

⁴ Section 108(2) of the LRA states: (a) The minister may designate any number of officials in the Department as deputy registrars of labour relations to assist the registrar to perform the function of the registrar in terms of this Act. (b) A deputy registrar may exercise any of the functions of the registrar that have been generally or specifically delegated to the deputy.

the Bargaining Council though, of course, the scope of the MCA and the registered scope of the Council frequently coincide.

Legal basis for review

- [10] This application is brought under section 158(1)(g) of the LRA read with section 6 of the Promotion of Administrative Justice Act, 2000 (hereafter “PAJA”) alternatively the principle of legality. The principle of legality extends to the exercise of all public power. Though more limited than the grounds of review in PAJA⁵ the principle of legality permits review of public power on the grounds of irrationality and on the basis that the decision-maker did not act in accordance with the empowering statute.⁶ Rationality requires that the exercise of public power must not be arbitrary. Such decisions must be rationally related to the purpose for which the power was given and calls for an objective enquiry.⁷

⁵ Section 6(1) of PAJA permits the review of administrative action if the administrator: (a) (i) was not authorised to do so by the empowering provision; (ii) acted under a delegation of power which was not authorised by the empowering provision; or (iii) was biased or reasonably suspected of bias; (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with; (c) the action was procedurally unfair; (d) the action was materially influenced by an error of law; (e) the action was taken - (i) for a reason not authorised by the empowering provision; (ii) for an ulterior purpose or motive; (iii) because irrelevant considerations were taken into account or relevant considerations were not considered; (iv) because of the unauthorised or unwarranted dictates of another person or body; (v) in bad faith; or (vi) arbitrarily or capriciously; (f) the action itself - (i) contravenes a law or is not authorised by the empowering provision; or (ii) is not rationally connected to - (aa) the purpose for which it was taken; (bb) the purpose of the empowering provision; (cc) the information before the administrator; or (dd) the reasons given for it by the administrator; (g) the action concerned consists of a failure to take a decision; (h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function; or (i) the action is otherwise unconstitutional or unlawful.

⁶ *Democratic Alliance and Others v Acting National Director of Public Prosecutions and Others* 2012 (3) SA 486 (SCA) paras 28 – 30

⁷ *Pharmaceutical Manufacturers Association of SA and Another: In Re Ex Parte President of the Republic of South Africa and others* 2000 (2) SA 674 (CC) at paras 85 and 86

Grounds for review

The first ground

[11] The applicant contends that, properly interpreted, section 32(8) of the LRA requires that the notice and comment procedures contemplated by section 32(5) of the LRA would be applicable whenever a collective agreement of a Bargaining Council is “amended, amplified or replaced”. The applicant contends that, when the period of the MCA is extended, or the MCA is extended to non-parties, this constitutes an amendment, amplification or replacement of the MCA. This court considered and dismissed such submissions in its judgment under JR2749/22. The submissions are again rejected, for the same reasons.

[12] The applicant also contends that section 32 requires that the fair procedures contemplated by section 4 of PAJA are applicable when the Minister extends collective agreements. This court considered and rejected those contentions in its judgment under JR2749/22. The contentions are again rejected, for the same reasons.

The second ground

[13] The applicant contends that the registrar or deputy registrar made no determination of representativeness as contemplated by section 49 of the LRA. This proved to be factually incorrect. The Minister attached, to its answering affidavit, a delegation duly authorising the deputy registrar to perform the functions and duties of the registrar. Accordingly, this ground of review has no merit.

The third ground

[14] The applicant contends that the Minister was required to interrogate the figures in the determination of the registrar or deputy registrar. It contends that the Minister cannot simply accept the figures in the certificate any decision to do so is irrational. This court considered and rejected such submissions in the judgment under JR2749/22. The submissions are again rejected, for the same reasons.

Costs

[15] It is trite that costs in labour matters do not follow the result. Furthermore, the submissions were novel. No costs order is made.

Conclusion

[16] In the circumstances, for the reasons set out above, I make the following order:

16.1 The review application is dismissed,

16.2 There is no order as to costs.

Reynaud Daniels
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:
Adv Boda SC with Adv Itzkin and Adv Karim
Instructed by Hanelle Vrey Inc

For the First Respondent:
Adv L Kutumela
Instructed by State Attorney

For the Second Respondent:
Adv H Barnes SC
Tricker Inc

LABOUR COURT