



(1) Reportable: Yes/NO
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 202744/2025

In the matter between:

SOLIDARITY obo RIAAN NEL

Applicant

and

THE NATIONAL METROLOGY INSTITUTE OF SOUTH AFRICA Respondent

Heard: 25 November 2025

Delivered: 05 January 2026

JUDGMENT

HARVEY, AJ

Introduction

[1] This is an application brought on an urgent basis by trade union Solidarity on behalf of its member, Mr Nel, an employee of the respondent employer and a person with a disability.¹ The union seeks the issuing of a *rule nisi* granting interim relief pending a return date.

¹ As defined in section 1 of the Employment Equity Act 55 of 1998 (EEA).

- [2] The interim relief sought includes orders compelling the employer to implement reasonable accommodation measures identified by Mr Nel's treating practitioners as reasonably necessary to accommodate his disability, and restraining the employer from (a) requiring Mr Nel to undergo further medical assessment, (b) subjecting him to formal performance management, and (c) engaging in harassment or coercion linked to the disability.
- [3] The employer opposes the application. It has raised points *in limine* including challenges to jurisdiction and to urgency. It has also brought a counter-application seeking orders compelling Mr Nel to submit to further medical assessments, and striking out portions of the union's affidavits that rely on an allegedly improperly obtained recording.

Background Facts

- [4] Mr Nel has been employed by the employer since 1 November 2002 and currently works as Principal Metrologist: Acoustics, a specialised technical role within the employer's laboratory environment. In early 2024, following a period of mental ill-health, Mr Nel was formally diagnosed with autism spectrum disorder (level 1) and major depressive disorder with anxious distress.
- [5] During September and November 2024, Mr Nel furnished the employer with medical and occupational therapy reports prepared by his treating practitioners. Those reports addressed the functional impact of his condition and made recommendations concerning appropriate 'reasonable accommodation' measures in the workplace, including a gradual 5-week return-to-work program, time off to continue meeting with his treating team, relief from committee duties and large social events, the clarification of his job responsibilities and reporting lines, permission to work from home when his presence in the laboratory was not required, and adjustments to the workplace environment to mitigate his various sensory sensitivities.
- [6] On 6 December 2024 Mr Nel signed a 'consent to inspect medical and psychological reports' form which records his agreement to the employer inspecting his medical information for the purpose of providing reasonable accommodations to assist him to continue to perform his duties. In the same

form he consented, conditionally, to undergo an employer-initiated psychological and medical evaluation *'only after written evidence by appropriately qualified and experienced medical, psychological [sic] is provided by the employer which clearly indicates the already provided reports by the employee from appropriately qualified and experienced medical, psychological, occupational therapist whom are [sic] professionally registered experts, are inadequate and which clearly describes any such possible inadequacies [sic]'*.

- [7] On 28 January 2025 Mr Nel raised a grievance against a colleague alleging workplace harassment. He was permitted to work from home in the period that followed, until the end of July 2025, when he was informed that the colleague had retired and he should report for duty the following day.
- [8] The union wrote to the employer on 31 July 2025 stating that the employer had failed to respond meaningfully to Mr Nel's request for reasonable accommodations in line with his treating doctors' reports and recommendations, despite its obligation to do so under the EEA and the 2016 Code of Good Practice on the Employment of Persons with Disabilities.² The union demanded a formal response within 5 days.
- [9] On 4 August 2025 the employer wrote back, asserting that it had accommodated Mr Nel by permitting him to attend meetings virtually and to work from home for 6 months, as well as by exercising 'disciplinary forbearance' by not proceeding with an undisclosed 'grievance matter'.
- [10] To this, the union replied that any accommodations fell short of those recommended by Mr Nel's medical practitioners. The union pointed out that workplace communications remained ambiguous and that Mr Nel had recently been required to attend a large staff meeting in person. Relying on a recent (15 July 2025) educational psychologist's report, the union requested an engagement so that appropriate accommodations be agreed, formalized and reduced to writing. The union furthermore acknowledged that the employer had requested that Mr Nel undergo medical testing at its instance, and asked for clarity concerning the purpose and scope of the proposed tests, who would

² GN 1085 in GG 39383 of 9 November 2015, hereinafter 'the Code'.

conduct them, and why the employer felt that Mr Nel's existing reports were inadequate.

[11] The employer did not respond to the union's letter. Instead, it called Mr Nel to 'performance management' meetings on 2 and 19 September 2025. Those meetings were recorded by Mr Nel, and a transcript placed before the Court. The employer contends that the transcripts, as well as the averments referring thereto in the affidavits, fall to be struck out because the meetings were held in confidence and the recordings were unauthorised. The union, on the other hand, contends that the transcripts of the meetings evidence inappropriate conduct by the employer including intimidation, harassment and bullying.

[12] The union and Mr Nel met with the employer on 13 October 2025 to discuss Mr Nel's request for reasonable accommodations. On 14 October 2025 the union wrote to the employer again requesting its urgent response to its formal written demand letter sent in August 2025.

[13] On 16 October 2025 Mr Nel was reassessed by his educational psychologist who authored a report warning that, if the prevailing situation persisted without appropriate workplace accommodation measures being implemented, there was a serious risk to his mental health extending to self-harm, including suicide.

[14] On 22 October 2025 the union wrote to the employer recording that:

14.1 the employer had confirmed at the 13 October meeting that it does not dispute Mr Nel's medical diagnosis;

14.2 however, the employer had refused to implement reasonable accommodation measures until or unless Mr Nel undergoes further medical evaluations;

14.3 the employer had stated that the purpose of the employer-initiated medical evaluations is to assess Mr Nel for potential medical boarding;

14.4 the ER manager had interacted with Mr Nel in an overtly hostile manner and had made discriminatory and demeaning remarks linked to his disability;

14.5 Mr Nel was now being subjected to performance management processes despite the lack of response concerning the required reasonable accommodations; and

14.6 the most recent educational psychologist's report urged immediate intervention to mitigate the risk of severe psychological harm.

[15] The union accordingly demanded that the employer now confirm in writing that:

15.1 reasonable accommodation measures would be implemented immediately;

15.2 workplace bullying, victimization and harassment would be investigated and steps taken to eliminate it; and

15.3 the demand for further medical testing would be withdrawn unless properly motivated.

[16] The union indicated that unless such undertakings were received it would approach the Labour Court for urgent relief. The employer responded to the union on the same day, but as its response failed to provide the undertakings sought, the union launched the present application.

[17] The employer opposes the urgent application, in the process raising 6 points in limine - as follows:

17.1 first, that the union lacks *locus standi* as it has no organisational rights;

17.2 second, that the court lacks jurisdiction because Mr Nel has not exhausted the internal grievance process, nor has he referred his disputes concerning his grievances to the CCMA;

17.3 third (although this is really two points), that the union's application is countenanced by Mr Nel's consent to undergo medical testing, and is premised on inadmissible evidence;

17.4 fourth, that it is not possible to accommodate Mr Nel by permitting him to stay at home;

17.5 fifth, that the relief sought is incompetent because it is contrary to a company policy; and

17.6 sixth, that the claimed urgency is self-created.

[18] The employer, in its counter-application, also seeks orders striking out the transcript material, and compelling Mr Nel to undergo medical testing at its instance.

Jurisdiction

[19] In its affidavit, the employer's asserts that the Court lacks jurisdiction because the dispute concerns an unresolved grievance, which ought to be referred to the CCMA. That argument is without merit. It is trite that jurisdiction is determined on the pleadings. The union's application is for urgent interim relief to prevent imminent harm to Mr Nel in consequence of the employer's failure to observe his right to reasonable accommodations necessitated by his disability, not to intervene in an unresolved grievance (for which type of dispute there exists no CCMA mechanism in any event).

[20] In argument, although the point was not raised on the affidavits, counsel for the employer contended that the union ought to have referred the dispute concerning medical testing to the CCMA in terms of section 10 of the EEA, which provides for disputes concerning Chapter II of the EEA to be referred for conciliation. Counsel for the union responded that the Labour Court is both empowered and obliged to intervene in circumstances where the employer's conduct poses a serious, documented and imminent threat to Mr Nel's dignity, equality, health and psychological integrity.

[21] Having considered the issue, I am persuaded that, where Mr Nel's diagnosis, the existence of professional recommendations concerning reasonable accommodation, and the employer's failure to implement those recommendations in the face of the applicable provisions of the EEA and the Code are undisputed, and where the medical evidence indicates a real risk of serious harm, including self-harm, this Court may intervene. The Labour Court is empowered to order compliance with any employment law (which includes the EEA) and to grant urgent interim relief. That power must be exercised sparingly where an alternative dispute-resolution pathway is prescribed, and

only where the Court is satisfied that the prescribed pathway will not afford effective relief in time to prevent the harm in question.

[22] On the papers before the Court, I am satisfied that intervention is required, such intervention to be confined to interim protective relief directed at averting imminent harm, pending the invocation of the prescribed statutory processes, and to stop short of the final determination of any dispute contemplated in Chapter II of the EEA.

Urgency

[23] The employer challenged urgency on the papers but did not persist in that challenge in oral argument, leaving the issue for determination by the Court. Counsel for the employer accepted in argument that the matter required determination as soon as possible. The employer itself sought urgent relief by way of counter-application.

[24] I am satisfied that urgency arose when, after being advised in the union's letter of 22 October 2025 of the educational psychologist's report warning of a serious risk of self-harm in the absence of immediate intervention, the employer declined to provide the undertakings sought.

[25] The central enquiry is whether effective substantive relief could be obtained in due course through ordinary processes. In the circumstances described above, and having regard to the background facts, I am satisfied that the matter is urgent.

Striking out

[26] The employer seeks the striking out of the transcript material on the basis that the recorded meetings were confidential, were recorded without its knowledge or consent, and form part of without-prejudice engagement. It contends that the evidence is therefore inadmissible and ought not to be relied upon.

[27] Evidence is admissible if it is relevant, unless there is a recognised legal basis for its exclusion. The transcript material is relevant because it records contemporaneous workplace engagements addressing the subject matter of this dispute.

[28] The employer has not established inadmissibility. The recordings were made by a participant to the recorded meetings, and were not unlawfully obtained on that account. The meetings which were recorded were performance-management and union-engagement meetings in the ordinary course of the employment relationship. They were not without-prejudice settlement negotiations attracting privilege.

[29] The striking-out application is refused.

Remaining points *in limine*

[30] The *locus standi* point lacks merit. Section 200(1)(b) of the LRA entitles any registered trade union to act in the interests of its members in proceedings of this nature. It is nowhere required that such union must have 'recognition' or organisational rights as a prerequisite to enjoying such standing.

[31] The contention that the union's application is countenanced by Mr Nel's consent to undergo medical testing is similarly without merit. The consent relied upon is expressly conditional, and on the papers those conditions have not been met.

[32] The remaining objections raised by the employer are not points *in limine*. The assertion that it is not possible to accommodate Mr Nel by permitting him to work from home goes to the merits of the dispute. So too does the contention that the relief sought is incompetent because it is inconsistent with a company policy. The application is grounded in statutory obligations, and the accommodation measures and weight to be attached to internal employer policies are matters for determination on the merits.

[33] The employer contended that the request for a *rule nisi* was inappropriate because the application was not brought *ex parte* and the employer has been heard. That contention is without merit. A *rule nisi* is not confined to *ex parte* proceedings. It is an interim order that operates provisionally, subject to reconsideration on a return date. In circumstances such as the present, where the Court is concerned to grant temporary protective relief without determining the merits finally, the use of a *rule nisi* is appropriate notwithstanding that both parties have been heard.

Evaluation

- [34] On the papers before the Court, the following are either common cause or established on a *prima facie* basis: Mr Nel has been diagnosed with autism spectrum disorder and major depressive disorder; professional recommendations concerning reasonable accommodation have been furnished to the employer; those recommendations have not been meaningfully engaged with or implemented; the employer is requiring Mr Nel to undergo further medical or psychological assessment and has initiated formal performance assessment processes; and recent medical evidence warns of a real risk of serious psychological harm, including self-harm, should the prevailing situation persist without appropriate intervention.
- [35] The application requires the Court to determine whether urgent interim intervention is justified to prevent serious harm to an employee with a disability, in circumstances where the statutory dispute-resolution processes have not yet been engaged. In approaching that enquiry, the Court must balance the need for urgent protective intervention against the limits of interim relief within a statutorily prescribed dispute-resolution scheme.
- [36] On the facts summarised above, interim judicial intervention is justified, but only in a form that preserves the role of the prescribed statutory processes and does not finally determine disputes reserved for those forums.
- [37] The first question is whether interim relief mandating interim reasonable accommodations is warranted. I am persuaded that, unless the Court intervenes – albeit in a restrained and time-limited fashion – there is indeed a material risk of harm to Mr Nel if his working arrangements are not aligned with the arrangements recommended by his treating professionals, at least until the dispute is referred and determined in the appropriate statutory forum.
- [38] The second question concerns the proposed further medical testing of Mr Nel. Medical and psychological testing is inherently intrusive and engages important dignity and privacy interests. It is accordingly expressly prohibited, subject to certain exceptions, under section 7 of the EEA. On the papers, the employer does not dispute Mr Nel's diagnosis and has not shown why further medical testing is justifiable. In particular, it has not explained why the existing reports

of appropriately qualified practitioners are inadequate, nor why further assessment is required at this stage and for what purpose. Interim restraint is accordingly warranted pending determination of the dispute about medical testing in the appropriate statutory forum.

[39] The third issue concerns whether the Court may restrain the employer from performance managing Mr Nel. Performance assessment ordinarily falls within an employer's managerial prerogative. Nevertheless, I am of the view that, in the circumstances, an interim restraint is justified on the evidence before the Court. The professional recommendations address the conditions under which Mr Nel is able to perform his duties, and the employer has not meaningfully engaged with nor implemented those recommendations. In that context, the initiation of formal performance assessment processes would involve evaluating performance in the absence of a settled accommodation framework. On the medical evidence, such processes carry a real risk of exacerbating the harm the interim relief is intended to prevent. A temporary restraint is therefore appropriate to preserve Mr Nel's wellbeing and to ensure that performance is eventually assessed within a lawful and properly contextualised framework. The restraint is limited to formal performance assessment processes arising from the present circumstances, and does not preclude ordinary supervision or engagement consistent with stabilising Mr Nel's working conditions.

[40] Overall, the interim relief is granted conditional upon the prompt referral of the relevant disputes to the appropriate statutory dispute-resolution fora. That condition ensures that the Court's intervention remains time-limited and that the disputes are placed on the statutory track for determination. The *rule nisi* permits reconsideration on the return date in light of compliance with that condition and any developments in the interim.

[41] In the result, the following order is made:

Order

A *rule nisi* is hereby issued calling upon the employer to show cause, on a date to be determined by the Registrar (the return date), why the interim relief set

out below should not be made final as interim relief, pending the final determination of the relevant disputes in the appropriate statutory forum:

1. Subject to paragraph 5 below, the following interim relief shall operate with immediate effect:
 - 1.1 The employer is directed to maintain reasonable interim working arrangements that do not aggravate Mr Nel's medical condition and that are consistent with the recommendations of his treating practitioners, without finally determining the content of reasonable accommodation.
 - 1.2 The employer is interdicted and restrained from requiring Mr Nel to undergo further medical or psychological assessment at its instance, unless and until it has provided a clear and properly motivated basis for such assessment, including why the existing professional reports are inadequate, and such assessment is pursued and conducted in accordance with the applicable law.
 - 1.3 The employer is interdicted and restrained from subjecting Mr Nel to formal performance assessment or performance management processes relating to alleged performance deficiencies arising from or connected to his disability.
 - 1.4 The employer is interdicted and restrained from engaging in conduct towards Mr Nel that constitutes harassment, coercion or victimisation linked to his disability.
2. The employer's counter-application to compel Mr Nel to submit to medical assessment is refused.
3. The employer's counter-application to strike out the transcript material is refused.
4. Costs are reserved for determination on the return date.

5. The interim relief in paragraph 1 above is granted on condition that the union refers the relevant disputes arising from the employer's conduct, including the disputes concerning reasonable accommodation and medical assessment, to the appropriate statutory dispute-resolution forum within five court days of the granting of this order, failing which the interim relief in paragraph 1 above shall lapse.

SJ Harvey

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: D J Groenewald instructed by SVS Attorneys

For the Respondent: K Mvubu instructed by Seanego Attorneys Inc

LABOUR COURT