



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: **2026 – 002899**

In the matter between:

REDPATH MINING SOUTH AFRICA (PTY) LTD

Applicant

and

MALWANDA PEARL NKUNA

First Respondent

ON THE MOVE POLITICAL PARTY

Second Respondent

VICTOR MOKONYANE

Third Respondent

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

Fourth Respondent

COMMISSIONER ISAIAH NYATHI N.O.

Fifth Respondent

Heard: 20 January 2026

Delivered: 23 January 2026

This judgment / reasons was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 23 January 2026.

Summary:

Jurisdiction – applicant seeking relief against party not involved in employment relationship under LRA – no basis under the LRA to grant relief against party not involved in employment relationship even if party comments on employment matters – party must fulfil actual labour relations functions and involve employees in order for LRA to apply – Court having no jurisdiction to entertain relief sought by applicant against second and third respondent

Jurisdiction – first respondent no longer employee – Court having no jurisdiction to grant relief sought by applicant against first respondent

Jurisdiction – applicant relying on s 157(2)(a) of LRA – applicant required to identify and plead fundamental right being relied on and how such right is violated – applicant failing to do so – applicant failing to make out a case of jurisdiction of the Labour Court

Jurisdiction – in argument applicant asserting reliance on s 23 of the Constitution – direct reliance not permitted as right given effect to by LRA – no basis for the relief sought by applicant under LRA – nature of claim not a case governed by LRA – Labour Court not having general jurisdiction – only High Court having jurisdiction to grant relief sought

***Sub judice* rule – principles considered – would be issue relating to section 34 of Constitution – applicant however did not plead reliance on such right – Labour Court having no jurisdiction – in any event pleaded case not a matter concerning employment and labour relations**

Jurisdiction – Court having no jurisdiction to consider applicant's application – application dismissed for want of jurisdiction

Costs – application constitutes an abuse of process and hopeless – application should never have been pursued and / or persisted with – principles relating to costs considered – costs awarded

JUDGMENT

SNYMAN, AJ

Introduction:

- [1] The applicant has brought an urgent application on 9 January 2026. I must confess that it is a rather novel application, involves parties outside the employment relationship, and seeks relief not ordinarily found in employment disputes. The applicant seeks both interdictory and relief *ad factum praestandum* against the first, second and third respondents. The applicant seeks no relief against the fourth and fifth respondents, and has indicated that such parties were only joined on the basis of having a possible interest in the matter, considering the issues raised.
- [2] Having regard to the notice of motion, the applicant seeks a *rule nisi*, in terms of which the applicant firstly prays for an order that the first, second and third respondents be ordered to refrain from making public statements relating to the merits of an unfair dismissal dispute between the applicant and the first respondent pending in the Commission for Conciliation, Mediation and Arbitration (CCMA) under case number LP 6491-25, whilst such dispute is pending. Next, the applicant seeks relief against the second and third respondents, to the effect that such respondents be ordered to remove any publications on any media relating to the merits of the aforesaid case pending in the CCMA, and then publish a statement on such media that the matter is *sub judice*.
- [3] As will be dealt with in more detail below, central to ultimately deciding the outcome of this matter is the issue of jurisdiction. It is trite that jurisdiction is determined on the basis of the case as pleaded by the applicant.¹ In the founding affidavit, and specifically under the heading of '*Jurisdiction*', the applicant has pleaded the following:

¹ See *Gcaba v Minister for Safety and Security and Others* (2010) 31 ILJ 296 (CC) at para 75; *Mbatha v University of Zululand* (2014) 35 ILJ 349 (CC) at para 157; *Ekurhuleni Metropolitan Municipality v SA Municipal Workers Union on behalf of Members* (2015) 36 ILJ 624 (LAC) at para 21; *Moodley v Department of National Treasury and Others* (2017) 38 ILJ 1098 (LAC) at para 37.

‘This honourable 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 employment and from labour relations;

The dispute resolution mechanisms enacted through the Labour Relations Act No 66 of 1995 include the right to defend, without interference, proceedings before the CCMA; and

This Honourable Court is permitted to intervene where the proceedings before the CCMA are affected and to ensure that the *sub judice* rule is upheld.’

[4] The application was opposed by the first, second and respondents, who filed an answering affidavit. These three respondents will be referred to in this judgment collectively as ‘*the respondents*’. In the answering affidavit, the respondents specifically challenged the issue of this Court having jurisdiction to grant the applicant the relief sought. The respondents also challenged the authority of the deponent to the founding affidavit to bring these proceedings, but this issue was rightly not persisted with when the matter was argued, especially considering that a resolution by the applicant authorising the deponent to bring the proceedings had been provided.² I will therefore not deal with the issue of a lack of authority any further. The respondents also raised a number of other points *in limine*, but considering that this matter falls to be disposed of on the basis of the issue of jurisdiction, I shall not deal with any of these points.

[5] Where it comes to resolving any factual disputes in this matter, the principles enunciated in the well-known judgment of *Plascon Evans Paints v Van*

² The respondents have in any event not competently challenged authority, in line with the provisions of Rule 7(1) of the Uniform Rules of the High Court. In *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at para 19 it was said that: ‘... It must, therefore, be accepted that the institution of the proceedings was duly authorised. In any event, Rule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant ...’. See also *Waco Africa (Pty) Ltd t/a Form-Scaff v Sack and Others* (2020) 41 ILJ 1771 (LC) at paras 8 – 9; *Primedia Outdoor, Division of Primedia (Pty) Ltd v Phala* NO 2013 JDR 0076 (LC) at para 13; *SAMWU obo Nemo and Others v Mopani District Municipality* (J3047/12) [2013] ZALCJHB 34 (9 April 2013) at para 31; *Performing Arts Council of Free State v Commission for Conciliation, Mediation and Arbitration and Others* (JR 82/18) [2021] ZALCJHB 70 (27 May 2021) at para 5; *South African Broadcasting Corporation (SOC) Ltd v Keevy and Others*. [2020] 6 BLLR 607 (LC) at para 17 as to the application of this Rule in the Labour Court.

*Riebeeck Paints*³ find application. In short, it follows that it is the admitted or undenied facts together with the facts as stated by the respondents that must be utilized in deciding this matter. The only exception would be if the respondents simply offer a bald denial, or the facts as stated by the first respondent are patently false, absurd or fanciful.⁴ Fortunately in this case, the bulk of the factual matrix was straight forward, and largely undisputed.

- [6] Having considered all the facts in this matter, as it emanated from the affidavits, and having considered argument by counsel for the applicant and the respondents, I indicated that written judgment will be provided on 23 January 2026. Accordingly, I now hand down judgment, starting with an exposition of the relevant factual matrix.

Background facts

- [7] It was common cause that the first respondent had been employed by the applicant and that she was dismissed. The applicant has failed to set out, in its founding affidavit, the reason why it contends the first respondent was dismissed, and has instead referred to the first respondent's CCMA referral which gave the reason for dismissal as being incapacity due to illness, with date of dismissal being 1 July 2025. The first respondent also alleged, in such referral, discrimination on the basis that the applicant did nothing to accommodate her illness. This dispute was referred to the CCMA under case number LP 6491-25, which dispute was unsuccessfully conciliated on 30 July 2025⁵, and then proceeded to arbitration. Following some initial delays, the matter was ultimately set down for arbitration on 20 and 21 November 2025, where the first respondent was represented by an attorney, Shemane Lincoln

³ 1984 (3) SA 623 (A) at 634E-635C, where the Court said: '*... in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order ...*'. See also *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others* 2005 (2) SA 359 (CC) at para 53; *Jooste v Staatspresident en Andere* 1988 (4) SA 224 (A) at 259C – 263D; *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) paras 26 – 27; *Gbenga-Oluwatoye v Reckitt Benckiser SA (Pty) Ltd and Another* (2016) 37 ILJ 902 (LAC) at para 16; *Molapo Technology (Pty) Ltd v Schreuder and Others* (2002) 23 ILJ 2031 (LAC) para 38.

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

⁵ A certificate of failure to settle was issued on 30 July 2025, reflecting that the dispute was a dismissal due to incapacity.

Molobela (Molobela). The second and third respondents were not in any manner involved in these proceedings before the CCMA.

- [8] In the arbitration on 20 November 2025, Molobela, in an opening address, summarized the case of the first respondent. According to the first respondent, she submitted a grievance settling out instances of bullying and victimisation and requested a meeting, however the applicant failed to address her difficulties. This resulted in the first respondent developing a mental health problem, and this was the cause for her being subsequently dismissed for incapacity. She also complained that she was not afforded a fair and proper incapacity enquiry process, prior to being dismissed. The actual arbitration proceedings commenced with testimony being led by Anika Groenewalt (Groenewalt), the applicant's HR manager. The arbitration however could be concluded, as the first respondent was admitted to hospital, resulting in a postponement of the matter to 24 and 25 February 2026.
- [9] Where it comes to the second respondent, it is political party registered with the Independent Electoral Commission on 28 March 2025. It principally aims to garner support within the Limpopo Province and seems to operate primarily in the Mogalakwena region which includes Mokopane where the applicant conducts its operations. The president of the second respondent is the third respondent. It appears that at some point towards the end of 2025, the second respondent was approached by the first respondent, ostensibly to complain about her situation.
- [10] The third respondent has a Facebook page that he uses to promote and provide communication relating to the second respondent. On 29 December 2025, the third respondent posted a video on this Facebook page, featuring the first respondent. The video was accompanied by a statement, reading *inter alia* as follows:

‘... A formal complaint of psychological abuse and unfair discrimination has been raised against Redpath Mining at the Valtterra Platinum Mine regarding the treatment of a long-standing Procurement Department employee. Ms. Malwandla Nkuna, who has served the company since 2022, was allegedly subjected to a targeted campaign of marginalization following the hiring of a new male colleague to assist with her workload.

Despite performing the same duties, the new employee was reportedly granted a private office and decision-making powers, while Ms. Nkuna was relegated to sharing space with juniors and assigned menial tasks such as purchasing sugar, coffee, and milk. The complainant alleges that this systematic exclusion from professional duties and meetings led to a severe mental health breakdown.

Ms. Nkuna was subsequently admitted to a psychiatric facility for clinical depression directly attributed to the workplace environment at Redpath Mining. "The shift from a professional procurement role to being treated as a runner for office supplies is a clear violation of labour dignity" says Victor Mokonyana President of the OTM Political Party. "We are calling on Redpath Mining and the owners of Vafterra Platinum Mine to investigate these allegations of 'quiet firing' and toxic management practices"...

The video received over 12 000 views on Facebook and 22 000 views on TikTok, where it was also posted.

- [11] In the video, the first respondent herself purports to be interviewed, and she made a number of statements. This included that she was employed in the procurement department at the applicant, and her job was overwhelming. She states that the applicant advertised a position as a buyer which was the same position that she had, as a result of her workload, however this appointed person was white and not from the local community. She believed the applicant wanted to move her out, but she did not know why. She stated that local suppliers complained about the new buyer who was not using them, whilst she was working for her community and was sharing the pie that she was given with the community. She also complained that the new buyer was given his own office whereas she shared her office with her junior, she was excluded from procurement meetings, and her line manager told her that she would now only be responsible for menial purchases. She viewed the appointment of the new buyer as suggesting that people from her community could not do the job, she believed that her community was being undermined and this extended to the treatment given to her by her juniors, and what happened affected her mentally. She finally claimed to be discriminated

against. She however said nothing about the merits of the pending CCMA case.

- [12] A second video on Facebook by the third respondent followed on 31 December 2025. This video was also accompanied by another statement from the third respondent, reading:

‘... The OTM Political Party is taking a firm stand for our community. More members have now come forward to confirm a disturbing pattern of bullying, psychological abuse, and unfair discrimination at Valterra Platinum Mine and other contractors, including Redpath Mining

What we are fighting against

Fear and Job Losses: Many workers are living in constant fear of losing their livelihoods, while some have already been dismissed. Many believe these actions are based solely on the color of their skin

Marginalization of Locals: While our qualified and experienced local residents are told they "lack skills," we are seeing people with no experience or qualifications being hired into positions that should belong to our community

Workplace Hostility: Recent reports highlight cases where long-standing employees are sidelined, stripped of their professional duties, and subjected to treatment that violates their basic labor dignity

Our Action Plan

The OTM Political Party has officially served a formal letter to the management of Redpath Mining and Valterra Platinum Mine. We have given them exactly 7 days to respond to these serious allegations Failure to provide a satisfactory response will lead to:

Legal Action: We will take this matter to court to fight for workplace justice

Community Mobilization: We will organize a 5-day mass march to ensure our voices are heard by the mine leadership and the Department of Employment and Labour

We will no longer stay silent while our people are exploited on their own land. Our fight is for fairness, dignity, and jobs for the residents of Mogalakwena ...' (sic)

The video attracted over 3 300 views on Facebook and 833 views on TikTok.

[13] Similar to the first video, the first respondent also appeared in the second video and made some statements. She asked the community if it was true that "we" are not that educated and allow people from outside to come into their own space and steal from us while they are "not from here". She called on the community to unite to that "these things" do not happen. She stated that labour laws need to be followed, and that "a buyer is a buyer" and this type of thing needs to be stopped.

[14] A further statement from the second respondent followed, in which the following was *inter alia* stated:

'The OTM Political Party is taking a firm stand for their community. According to OTM Party more members from both Valterra and Redpath Mines come forward to confirm disturbing pattern of bullying, psychological abuse, and unfair discrimination at Valterra Platinum Mine and other contractors such as Redpath Mining. OTM alleging that people with no experience and qualifications being hired into positions that should belongs to community around the mine. Marginalization of locals: while our qualified and experienced local residents are told they lack skills, OTM is alleging seeing people without experience or qualifications being hired into positions that should belongs to local community members

The OTM Political Party has officially served a formal letter to the management of Redpath Mining and Valterra Platinum Mine. OTM have given the mine exactly 7 working days to respond to these serious allegations.

Failure to provide a satisfactory response will lead to legal action. OTM Explain that they will mobilize with surrounding communities around the mine for a 5 days mass march to ensure their voices are heard by the mine leadership and the department of employment and labour ...' (sic)

[15] Separately to the above, and on 29 December 2025, a letter authored by one advocate Setseta, who appears to be the general secretary of the second

respondent, was sent to the applicant. In this letter, the author states that the letter was sent '*... on behalf Of the OTM Political Party and as a representative of the Mogalakwena community to express our profound concern and formal protest regarding the unlawful and Inhumane treatment of Ms. Nkuna, a procurement professional previously stationed at Valterra Platinum Mine*'. The letter recorded a complaint that the first respondent's case was '*a distressing example of procedural unfairness and a blatant disregard for the Labour Relations Act and the fundamental rights of employees*'. Further in this letter, it is said that the first respondent was dismissed while on medically supported leave for a professionally diagnosed psychological condition (Major severe depression), and this dismissal occurred without a fair hearing or meaningful engagement. It was also stated that this dismissal took place without attempts to accommodate her condition. The remainder of this letter seems disassociated from the current matter, as it refers to the first respondent having already been reinstated, when that was not the case. It also refers to compensation being due following reinstatement, which does not make sense. Overall, the demands made in the letter makes little sense. In any event, it is separate from the video posts and statements made therein, which is the actual subject matter of this application, and which forms the basis of the relief sought.

- [16] Following the video postings and statements made pursuant thereto, the applicant then instructed its attorneys on 5 January 2026 to send a letter of demand to the second respondent. In this letter, it is stated that the first respondent appears not to have informed the second respondent that she has filed an unfair dismissal dispute with the CCMA in Polokwane, which matter was part heard. It was stated that because of this, the allegations the second respondent was making was *sub judice*. It was further stated that it was inappropriate that the first respondent litigates this matter through a political party and through media releases and press conferences and the Facebook posts of the second and third respondents. The applicant demanded a number of undertakings by 8 January 2026, which included that the second respondent withdraws its threat to lead community-led protests at the Valterra Platinum Mine, undertakes not to make any further statements on the matter which was *sub judice*, allow the proceedings before the CCMA to proceed

unhindered; and withdraws publicly any and all statements relating to the conduct of the applicant and its client, Valterra, in respect of the matter related to the first respondent. A similar letter was sent to the first respondent's attorneys.

- [17] The second respondent answered the letter of demand on 7 January 2026. In this answer, it was stated that the second respondent is a duly constituted political party with a constitutional mandate to advocate for the rights, dignity, and socio-economic Interests of workers and communities, particularly where powerful corporate entities operate within local communities. With reference to its earlier letter of 29 December 2025, it was stated that *'... Our correspondence of 29 December 2025 was issued openly, transparently, and in good faith in our capacity as a political organisation and community representative, and not as a litigant or legal representative in any forum ...'*. It was also made clear that: *'... OTM is not a party to any proceedings before the CCMA involving Ms Mafwandla Nkuna, nor does it purport to act on her behalf in those proceedings ...'*. As to the applicant's reliance on the *sub judice* rule, the second respondent contended that reliance on the same was misplaced, as the mere existence of proceedings before the CCMA did not operate as a blanket prohibition against ordinary political advocacy, public discourse on labour practices and peaceful community mobilisation. In particular, it was said that: *'... At no stage has OTM commented on evidence, pleadings, or the merits of the CCMA proceedings, nor has OTM sought to influence or undermine that process in any manner ...'*. Suffice it to say, the second respondent refused to comply with the demands put forward by the applicant and refused to provide the undertakings sought.

- [18] Dissatisfied with this answer, the applicant then proceeded to institute the current application.

Urgency

- [19] I intend to first deal with the issue of urgency, as the respondents have contended that the matter is not urgent. The catalyst for the current application was the second respondent's letter of 29 December 2025, as well as the videos posted on 29 and 31 December 2025 and statements given pursuant

thereto. All said, the application ultimately filed on 9 January 2026 followed just more than a week later, which I believe, considering the time of year when all this happened, is prompt action. Further, the applicant first attempted to secure undertakings by way of a letter of demand on 5 January 2026, and so avoid litigation, which I believe is an appropriate course of action to pursue. The application then followed two days after the answer emanating from the second respondent on 7 January 2026, pursuant to such letter. This, I believe, is clearly prompt and immediate action, which I consider to be sufficiently expeditious to satisfy the requirements of urgency. The respondents were afforded sufficient opportunity to oppose and answer the application. And when the matter was argued, urgency was not really placed in issue. In line with the principles set out in *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another*⁶, I will accept that the applicant took sufficiently prompt and urgent action, satisfies the requirement that the application was in effect brought at the earliest appropriate opportunity, and that this is not a case of self-created urgency. It is in any event in my view important that this matter be disposed of on the merits, considering that it concerns an issue of jurisdiction. I will thus decide the application as one of urgency.

Analysis

[20] In *Gcaba v Minister for Safety and Security and Others*⁷, the Court described the concept of 'jurisdiction' as follows: '*... The specific term 'jurisdiction', which has resulted in some controversy, has been defined as the 'power or competence of a court to hear and determine an issue between parties ...'*'. And in *Makhanya v University of Zululand*⁸, the Court also dealt with the meaning of jurisdiction as being: '*... Judicial power is the power both to uphold and to dismiss a claim. It is sometimes overlooked that the dismissal of a claim is as much an exercise of judicial power as is the upholding of a claim. A court that has no power to consider a claim has no power to do either (other than to*

⁶ (2016) 37 ILJ 2840 (LC) at paras 21 – 26. See also *Jiba v Minister: Department of Justice and Constitutional Development and Others* (2010) 31 ILJ 112 (LC) at para 18; *Transport and Allied Workers Union of SA v Algoa Bus Co (Pty) Ltd and Others* (2015) 36 ILJ 2148 (LC) at para 11.

⁷ (2010) 31 ILJ 296 (CC) at para 74.

⁸ (2009) 30 ILJ 1539 (SCA) at para 23.

dismiss the claim for want of jurisdiction).' In short, as held in *Du Plessis v Public Protector and Others*⁹:

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

- [21] As I have touched on above, jurisdiction is determined on basis of the case as pleaded by the applicant. It is clear from the case as pleaded by the applicant, that it relies on the provisions of section 157(2)(a) of the LRA as basis for jurisdiction, which section reads:

'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 ...'

- [22] In this context, the applicant then relies, squarely, on the application of the *sub judice* rule, which it contends applies because of the pending arbitration concerning the unfair dismissal dispute between the applicant and the first respondent pending in the CCMA, which case is currently part heard and which is set down for conclusion on 24 and 25 February 2026. The applicant pleads that it has the right to ensure that such proceedings before the CCMA is not interfered with, by way of parties making defamatory statements or media postings about the pending dispute, in the public domain, when that case has not been finally decided. According to the applicant, it is competent to seek this kind of intervention from this Court, and that this Court is '*permitted to intervene where the proceedings before the CCMA are affected and to ensure that the sub judice rule is upheld*'.

- [23] But it is not as simple as all that. The applicant actually faces a number of considerable jurisdictional obstacles. First and foremost, it is clear that the

⁹ (2020) 41 ILJ 919 (LC) at para 20. See also *Makhanya v University of Zululand* (2009) 30 ILJ 1539 (SCA) at para 23; *SA Maritime Safety Authority v McKenzie* (2010) 31 ILJ 529 (SCA) at para 8.

second and third respondents are not party to any employment relationship with the applicant and is not involved in any labour relations at the applicant. In fact, as pertinently pleaded by the second and third respondents in the answering affidavit:

‘... OTM and Mr Mokonyane are complete strangers to that labour relationship.

They are not employers, employees, trade unions, employers' organisations, or parties contemplated by the LRA.

No contract of employment, statutory duty, or labour-law nexus exists between the Applicant and either of them ...’

And:

‘In this matter, the constitutional rights implicated - freedom of expression, political activity, and peaceful protest - arise independently of any employment relationship, they are exercised by OTM and Mr Mokonyane in their capacity as political actors, not as participants in the Applicant's labour relations ...’

[24] Added to the above, it must also be considered that the first respondent is no longer an employee of the applicant, having been dismissed in July 2025. There is therefore no employer / employee relationship in existence, which could clothe the Labour Court with jurisdiction to grant the kind of relief sought against her in the notice of motion.

[25] The jurisdiction of the Labour Court is circumscribed in section 157 of the LRA. It is critical to appreciate that section 157(1) does not establish a general jurisdiction that the Labour Court can exercise, in all instances where a litigating party approaches the Labour Court and pleads the dispute is one related to an employment law matter.¹⁰ In order for the Labour Court to have jurisdiction, the issue for determination must be specifically provided for in the LRA, or in any other related employment law, such as for example the

¹⁰ In *Baloyi v Public Protector and Others* (2021) 42 ILJ 961 (CC) at para 24, it was held: ‘... Crucially, s 157(1) does not afford the Labour Court general jurisdiction in employment matters ...’ See also *Soobedar and Another v Minister of International Relations and Cooperation and Another* (2021) 42 ILJ 1761 (LC) at para 12; *Booyesen v Beaufort West Municipality and Another* (2021) 42 ILJ 2415 (LC) at para 5.

Employment Equity Act (EEA)¹¹ or Basic Conditions of Employment Act (BCEA)¹², to be decided by the Labour Court. The applicant must also indicate on what provision in any of these items of legislation the applicant relies.¹³

- [26] The whole issue of the lack of general justification of the Labour Court in what may be termed any employment related dispute was recently revisited in *Cibane and Another v Premier of Province of Kwazulu-Natal*¹⁴, where the Court pertinently held, in the context of the Labour Court intervening in incomplete disciplinary proceedings in an employer:

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

- [27] Section 157(1) cannot serve to confer jurisdiction on the Labour Court *in casu*, considering that the matter raised by applicant is not a matter to be determined by the Labour Court in terms of the LRA or any employment law. This is because there is no employer / employee relationship in existence between the applicant, and the first, second and third respondents. The issue in dispute is also not one contemplated by the various dispute resolution processes under the LRA, and the LRA does not contemplate the kind of remedies the applicant is asking for. That is obviously why the applicant did not plead reliance on this section, and instead sought to instead rely on section 157(2)(a).

- [28] I now turn to section 157(2) (a), in order to consider when it would be competent, by virtue of such provision, to confer jurisdiction on the Labour

¹¹ Act 55 of 1998 (as amended).

¹² Act 75 of 1997 (as amended).

¹³ In *SA Medical Association Trade Union on Behalf of Rikhotso v Member of the Executive Council, Department of Health, Limpopo Province and Others* (2023) 44 ILJ 1779 (LC) at para 6, the Court said: ‘... an applicant must necessarily identify the statutory provision that confers jurisdiction on the court ...’. In *Booyesen* (*supra*) at para 5, it was held that: ‘... A party referring a dispute to this court for adjudication must thus point to a provision of the LRA or some other law to establish that the matter is one over which this court has jurisdiction ...’. See also *Shezi v SA Police Service and Others* (2021) 42 ILJ 184 (LC) at para 10.

¹⁴ [2025] 10 BLLR 1004 (LAC) at para 27.

Court. Section 157(2)(a) is intended to cover those instances where, ordinary, the High Court would have jurisdiction to decide the dispute, however this cover, for the want of a better description, is specifically limited to narrowly defined and prescribed instances. In short, the High Court is not deprived of jurisdiction, and the Labour Court would simply have the same jurisdiction the High Court would have when considering and deciding the matter, but only if the matter can be shown to resort within the defined confines of section 157(2)(a).

- [29] As a general proposition, what the applicant is asking for this case would clearly be relief the High Court would be competent to consider and grant. The High Court would have jurisdiction to decide whether statements and videos published by a political party or a former employee of an employer would be defamatory and / or would compromise or prejudice pending legal proceedings, and thus be interdicted or expunged. The High Court would certainly have the jurisdiction to decide whether the application of the *sub judice* rule must prevent comment on a particular case that still pending before any forum. But the question is whether this jurisdiction could also be conferred on the Labour Court, by virtue of section 157(2)(a).
- [30] In order to succeed with any reliance on section 157(2)(a) to confer jurisdiction on the Labour Court, two things must be shown to exist. First, there must be a violation of a fundamental right as contemplated by Chapter 2 of the Constitution. And secondly, this violation must arise from '*employment and from labour relations*'. These words must be conjunctively applied. And what may be considered to be '*employment and labour relations*' must be narrowly construed. As pertinently held in *Gcaba supra*¹⁵:

'Furthermore, the LRA does not intend to destroy causes of action or remedies and s 157 should not be interpreted to do so. Where a remedy lies in the High Court, s 157(2) cannot be read to mean that it no longer lies there and should not be read to mean as much. Where the judgment of Ngcobo J in *Chirwa* speaks of a court for labour and employment disputes, it refers to labour- and employment-related disputes for which the LRA creates specific remedies.' (emphasis added)

¹⁵ Id at para 73.

The Court in *Gcaba* was referring to the following dictum in *Chirwa v Transnet*¹⁶:

‘While s 157(2) remains on the statute book, it must be construed in the light of the primary objectives of the LRA. The first is to establish a comprehensive framework of law governing the labour and employment relations between employers and employees in all sectors. The other is the objective to establish the Labour Court and the Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the LRA. In my view the only way to reconcile the provisions of s 157(2) and harmonize them with those of s 157(1) and the primary objects of the LRA is to give s 157(2) a narrow meaning. ...’

- [31] The Court in *Vodacom (Pty) Ltd and Others v National Association of SA Workers and Another*¹⁷ pertinently deal with now ‘labour relations’ in section 157(2)(a) should be construed, finding as follows:

‘The term ‘labour relations’ is also wide in ambit, but in the context of the LRA must at least encompass collective labour issues and dispute resolution, which are described in the preamble to the LRA. There is an employment relationship between Bidvest Services and the employees the union wants to meet with and have access to. The union is clearly attempting to exercise organisational rights which is a labour relations matter. The demand it is making to Vodacom, to employ the cleaners directly, is also an employment related matter and the presentation of the demand is a bargaining issue falling squarely within the sphere of labour relations.’

- [32] An apposite articulation of the point is found in *CCI SA (Pty) Ltd v African National Congress Youth League and Others*¹⁸, where the Court was dealing with a protest march organised by a political party at an employer, and held as follows:

¹⁶ (2008) 29 ILJ 73 (CC) at para 123. See also *SA Municipal Workers Union and Others v Mokgatla and Others* (2016) 37 ILJ 1317 (SCA) at para 14, where it was held: ‘In *Macun*, this court lamented the persistent attempts by practitioners to fashion cases to suit their clients’ choice of forum. Navsa JA emphasised that s 157(2) must be narrowly construed in the light of the primary objectives of the LRA to establish a comprehensive framework regulating labour relations’. The Court in *Mokgatla* was referring to *Motor Industry Staff Association v Macun NO and Others* (2016) 37 ILJ 625 (SCA) at para 18.

¹⁷ (2019) 40 ILJ 1882 (LC) at para 24.

¹⁸ (2024) 45 ILJ 969 (LAC) at para 25.

‘Therefore, it is settled that if protest action falls within the ambit of the LRA, the Labour Courts have jurisdiction, while if it does not, the RGA applies and the High Courts would have jurisdiction. The appellant would have been within its rights to seek an interdict whether the protest action was in contravention of the LRA or the RGA. What is important is the forum in which it sought that interdict. The essence of the cases considered in the preceding paragraphs is clear — if the dispute does not revolve around an employer, employees and their union, the LRA does not apply.’

- [33] It therefore is apparent that for section 157(2)(a) to apply, the matter must concern a dispute between an employer and its employees, in which the employees are actually involved, and that the dispute must involve issues concerning the employment of the employees and the labour relations between the parties. Further, the dispute must concern the violation of a fundamental right in the Bill of Rights in this specific respect, and not just any dispute. The fact that the dispute may concern what could generally be described as employment or labour matters in an employer is not sufficient to establish jurisdiction. Again, the judgment in *CCI supra* succinctly illustrates the point, there the Court said:¹⁹

‘Applying these principles to this case, it is difficult to see how a conclusion that the LRA applies in this matter can be reached. This is a situation where the appellant had no labour relationship with the respondents, the march was sanctioned by the municipality in terms of the RGA (whether under false pretences or not) and none of its employees approached a political party for help nor did they agree to obstruct or retard the productivity of their work. The fact that the reason for the protest was almost exclusively about labour issues at the appellant does not automatically make it into a matter governed by the LRA. In terms of s 17 of the Constitution, any person can protest about perceived violations of labour rights, so long as it is done lawfully in terms of the RGA. Where it is employees and their union doing so, they must do so in terms of the LRA; if it is other members of the public like political parties, to the exclusion of employees, they can do so in terms of the RGA.’

- [34] Further, it is incumbent on any applicant to specifically identify what fundamental right is being violated, and then make out a case that that

¹⁹ Id at para 26.

violation arises from employment and from labour relations. As made clear in *Besani v Maquassi Hills Local Municipality*²⁰:

‘The first enquiry relates to whether an allegation is made that a fundamental right has been infringed or whether a threat to violate such a right has been made. ...

The applicant has to tell this court what fundamental right as entrenched in chapter 2 of the Constitution has been violated or is being threatened. In casu no allegations are made that a fundamental right had been infringed and, in the absence of such averments, this case does not fall within the ambit of s 157(2) of the LRA.’

[35] A conspectus of the applicant’s founding affidavit unfortunately shows a number of material shortcomings. The applicant, in essence, has simply pleaded reliance on section 157(2)(a), but has failed to plead what fundamental right was being violated, and how this violation arises from employment and labour relations as contemplated by section 157(2)(a). In argument, the applicant suggested that the fundamental right it relies on was the right to a fair labour practice as contemplated by section 23(1) of the Constitution. The problem is that the applicant did not refer to this in the founding affidavit and did not illustrate how this right was being violated. The following dictum in *Public Servants Association on behalf of Members v Minister of Health and Others*²¹ appositely illustrates the kind of difficulties the applicant has *in casu*:

‘To the extent that the applicant relies on s 157(2) of the LRA and submits that its complaint implicates a chapter 2 right in the Constitution (in the form of a right to an environment that is not harmful to the health or the well-being of its members), this is not a claim foreshadowed by the founding affidavit. The founding affidavit states no more than that the applicant’s members have a clear right to work in an environment that is not harmful to their health and well-being, and that compelling them to continue working in an environment that is harmful to their health and well-being is a violation of that right. The

²⁰ (2016) 37 ILJ 1386 (LC) at paras 33 and 37. See also *Malinga and Others v KwaZulu-Natal Provincial Department of Education and Others* (2020) 41 ILJ 228 (LC) at para 8; *Tshepo v South African Police Service and Others* (J 656/21) [2021] ZALCJHB 155 (25 June 2021) at para 26.

²¹ (2019) 40 ILJ 193 (LC) at para 23.

applicant does not identify the fundamental right on which it relies with any greater specificity; it is not clear, for example, whether the right relied on is that established by s 24 (environment), or s 23 (labour relations), or both. This is not something I need attempt to discern from the founding affidavit — the authorities are clear. ...'

[36] It is true that the first respondent has referred an unfair dismissal dispute to the CCMA, and this dispute is pending for final determination. The applicant, as correctly pointed out by the second and third respondents, has not provided any substantiation or even an indication that these pending proceedings before the CCMA would be compromised or prejudiced by what has happened where it came to the publication of the statements and videos by the second respondent at the end of December 2025. There is no indication that the fifth respondent as commissioner, was even aware of it or would somehow be compromised by it. It is difficult to discern what fundamental right is being violated. In any event, whether a party has received a fair hearing before the CCMA is ultimately something must be determined by the Labour Court in terms of the dispute resolution processes prescribed by the LRA, with the current matter being irreconcilable with such processes.

[37] The applicant further argued that the Labour Court has general and inherent jurisdiction, just like the High Court, and on this basis can entertain the application, in the form of ensuring the integrity of the CCMA proceedings, conducted under the LRA. But this contention is simply not correct, as I have already indicated above. The Labour Court only has jurisdiction in respect of matters specifically allocated to it by statute to decide. The same has been said specifically in the context of section 157(2)(a) as well. In *Mphahlele v Ephraim Mogale Municipality*²² the Court held as follows:

'In other words, s 157(2) does not confer a general jurisdiction on this court to entertain a claim simply because a party asserts that the claim is one that concerns a violation of a fundamental right. Further, where there is legislation that gives expression to fundamental rights, any claim must be brought in terms of that legislation; an applicant is not entitled to seek the direct enforcement of the fundamental right concerned. In any event, and to the extent that the applicant's counsel relies on the enforcement of a fundamental

²² (2018) 39 ILJ 879 (LC) at para 10. See also *Besani (supra)* at para 36.

right to found jurisdiction, the statement of claim makes no reference to the Constitution let alone any particular fundamental right.’

- [38] In the end, the point must be that section 157(2)(a) be narrowly construed. The purpose of this section is not to effectively allow the Labour Court to decide any matter the High Court can decide, as long as the applicant attaches an employment stamp to it. It would mean that the Labour Court would be called to determine any dispute where any third party may comment on or take issue with employment practices in an employer. That is not what is intended by the LRA. What is intended by the LRA is that the Labour Court should only be seized with a matter where it can bestow remedies as contemplated by the LRA, and where it specifically involves the employees and labour relations at the employer.
- [39] I accept that there are instances where the dispute may involve a third party that is not a trade union under the LRA, such as a political party, and this Court would nonetheless have jurisdiction to intervene and afford relief against such a third party.²³ Importantly however, this would only be competent where the dispute also directly involves the actual relationship between the employer and its employees, the conduct complained of in respect of which the relief is sought applies in that context as well, and it involves issues regulated and remedies prescribed by the LRA. Examples of this can be found in the case law.
- [40] In *Calgan Lounge (Pty) Ltd v National Union of Furniture and Allied Workers of SA and Others*²⁴ the Court dealt with unprotected strike action and unlawful conduct embarked upon by the employees of an employer, which conduct was actually instigated and supported by a political party, being the EFF, in support of a variety of demands, including employment matters. The Court held that:²⁵

‘What the EFF did in this case was to undermine orderly collective bargaining and dispute resolution, which are cornerstones of the LRA. As an employer,

²³ *Vodacom (supra)* at para 23 it was said, referring to section 157(2)(a): ‘However, the section does not specify that the parties to the litigation must be in an employment relationship. If the legislature wanted to restrict the interpretation solely to disputes concerning infringement of fundamental rights arising between employers and their employees, it would surely have stated this explicitly, rather than using a phrase which essentially describes a context from which the alleged infringement arises ...’.

²⁴ (2019) 40 ILJ 342 (LC).

²⁵ *Id* at para 44.

the applicant is entitled to expect its employees to comply with these objectives of the LRA when seeking to resolve any disputes they may have with the applicant as employer. And for the EFF simply to negate all of this based on some misguided view of what the Constitution allows it to do, is simply unacceptable, and cannot be permitted. ...'

[41] Next, and in *Boomerang Fruits (Pty) Ltd v Umkhonto WeSizwe and Others*²⁶ the Court dealt with similar behaviour by the MK Party, which also involved a strike by employees, instigated and throughout supported by the MK party. In granting relief against the MK party, the Court *inter alia* reasoned:²⁷

'Considering the above, I am satisfied that, for all intents and purposes, MKP and its labour desk were performing the function normally performed by a trade union, without being one, irrespective of how it and its labour desk portrayed their role. The fact that the strikers were content to allow it to perform this function only strengthens the conclusion that it was not a bystander or adviser on the sidelines of the dispute. From the inception of the strike it was at the forefront of the interface between management and the strikers playing a representative role. When the picket took place outside the farm premises, its members and Gana stood with the members and played an active role in confronting the management representatives who approached the picket. It also played a major role in channelling the way in which the dispute was handled.'

[42] And finally, in *Langplaas Boerdery CC and Others v Matshini and Others*²⁸ the Court also dealt with unprotected strike action and violent conduct by employees, as supported by the EFF. In this instance, the Court said:²⁹

'By however entering the arena, and actively participating in and/or instigating the strike and the accompanying violent conduct, the EFF made itself party to a labour dispute which it had no business with. ...'

[43] The judgment of the Labour Appeal Court in *CCI supra*, where it was found, as discussed earlier, that the Labour Court did not have jurisdiction to grant relief

²⁶ (2025) 46 ILJ 2599 (LC).

²⁷ Id at para 56.

²⁸ (2021) 42 ILJ 1210 (LC)

²⁹ Id at para 19

against the political party concerned, aptly illustrates the difference between that case and the judgements in *Calgan Lounge* and *Langplaas*, as follows:³⁰

‘There were similar outcomes in the other cases relied upon by the appellant. In *Calgan Lounge (Pty) Ltd v National Union of Furniture & Allied Workers of SA & others (NUFAWSA)*, the employees in that case had joined the protest action instigated by the political party, that is not the case in this matter. In both *Langplaas Boerdery* and *Brightstone Trading 3 CC t/a Gordon Road Spar v Economic Freedom Fighters & others (Brightstone)*, interdicts were granted after the employees in those cases approached a political party, which then intervened on their behalf. The political party was found to be instrumental in instigating strike action that was joined by the employees. This too was not the case in the current matter. ...’

[44] A central theme emerges. The Court would have jurisdiction to grant relief against a third party, outside the employment relationship, where such party actually involves itself in the employment of the employees and the labour relations at the employer, and seeks to conduct itself in a manner that would normally be associated with a trade union or employee representative. Added to that, the employees must be involved in the conduct as well. And even in this instance, the remedies available would be the remedies available under the LRA itself.

[45] However, I am convinced that the case *in casu* does not concern employment and labour relations between the applicant and its employees. On the facts, the complaints raised by the second respondent, likely off the back of the unfair dismissal dispute between the applicant and the first respondent, does not involve the applicant’s employees. Those employees are not participating in any action and have not been called upon to protest, retard labour or otherwise challenge the applicant as their employer. Added to that, the second respondent is not a trade union and is not involved in labour relations at or with the applicant. The second respondent also does not seek to in any manner engage the applicant’s employees, but seeks to mobilise the local community to protest about labour practices, not only at the applicant, but also at its client, Valterra Platinum Mine. Yes, the first respondent features in the

³⁰ Id at para 22

complaints made, but the applicant, save for the almost out of place letter of 29 December 2025, does not seek to engage the community to come to the aid of the first respondent in her unfair dismissal dispute, and that dispute is hardly referred to at all. In the final statement made in the video of 31 December 2025, it is stated by the second respondent that: *'The OTM Political Party is taking a firm stand for their community. According to OTM Party more members from both Valterra and Redpath Mines come forward to confirm disturbing pattern of bullying, psychological abuse, and unfair discrimination at Valterra Platinum Mine and other contractors such as Redpath Mining. OTM alleging that people with no experience and qualifications being hired into positions that should belongs to community around the mine ...'* (sic). In simple terms, the second respondent is pursuing what it considers to be the interests of the local community, and not that of the applicant's employees, *per se*. It is not a labour relations issue.

[46] When the applicant sought to confront the second respondent about the publications it had made, the second respondent made it clear that it was not involved in any employment relationship at the applicant, and had no role to play the unfair dismissal dispute of the first respondent and was not involved in it at all. The second respondent pertinently stated that: *'... At no stage has OTM commented on evidence, pleadings, or the merits of the CCMA proceedings, nor has OTM sought to influence or undermine that process in any manner ...'*. There is no evidence to indicate the contrary. It is clear from the publications by the second respondent, that forms the basis of the applicant's complaints *in casu*, that it does not really concern the relationship between the applicant and its employees, and rather involved what it perceived was being the prejudicing of the local community. On these facts, which cannot be contradicted, I believe the matter does not concern employment and labour relations. It is conduct purely in pursuit of a political agenda, involving the community. It may be directed at the applicant's employment practices, but that alone is not sufficient to establish jurisdiction.

[47] Let me describe it simply like this. The fact that a political party sits on sidelines and chirps and complains about employment issues in an employer, without actually getting stuck into the issue on behalf of the employees, does

not make such conduct a violation of a fundamental right in the context of employment and labour relations, as contemplated by section 157(2)(a).

- [48] The jurisdictional difficulty in this instance has a further nuance. The first respondent was finally dismissed as far back as July 2025. When the statements and video postings were made at the end of December 2025, she was therefore not an employee, as set out above. It follows that the relief sought against her would face similar jurisdictional issues, because of the absence of the employment relationship. As held in *Norodien v Ajax Cape Town Football Club (Pty) Ltd t/a Ajax Cape Town Football Club and Others*³¹:

‘The applicant may therefore not rely on s 157(2) and allege that the present dispute arises from employment and labour relations because his case is that when he approached this court he was not an employee. There was, therefore, no employment as envisaged in s 157(2)(a). The dispute does not even arise from labour relations. The term ‘labour relations’ does not have a wide interpretation as the applicant argues that it has. The jurisdiction of this court referred to in s 157(2) as enunciated in *Gcaba* does not extend to every dispute arising out of employment relations. It is limited to those disputes for which the LRA creates a remedy. The LRA has not created a remedy for an applicant who approaches this court in the applicant’s circumstances alleging that he or she is not an employee. ...’

- [49] As matters stand, considering the relief sought by the applicant, it is not about protest action or a march by the community, even though the applicant in its letter of demand insisted on an undertaking that this course of action not be pursued. There is no evidence that the second respondent has even initiated an actual call for such community protest action. What it is about in this application is the content of the statements and video postings made by the second respondent.

- [50] According to the applicant, these statements and video postings constitute a violation of the *sub judice* rule. ‘*Sub judice*’ emanates from the Latin phrase for ‘*under judgment*’ or ‘*under consideration*’. Therefore, sub judice means under

³¹ (2015) 36 ILJ 472 (LC) at para 18.

judicial consideration and therefore prohibited from public discussion elsewhere. As described in *Romero v Gauteng Newspapers Ltd and Others*³²:

‘... the correct principle is that a person cannot publish material in such documents in which a litigant disparages or defames a party before the documents are dealt with in open court. By then the victim would have been able to take all steps open to it to deal with the allegations, and the plaintiff, applicant or appellant would have exercised his or her intention of proceeding with the matter. Further, that statements may not be published concerning a matter which is *sub judice* which would affect the administration of justice, ie if the publication could influence the cases. ...’

[51] But even if what the second respondent had done could be seen to constitute a violation of the *sub judice* rule, can this be considered to be a violation of a fundamental right? As I have already said, the applicant has unfortunately not specified what fundamental right, with reference to the contents of Chapter 2 of the Constitution, has actually been violated. It certainly has nothing to do with section 23(1) of the Constitution and the right to fair labour practices. If anything, the *sub judice* rule is intended to give effect to section 34(1) of the Constitution,³³ however the applicant has not pleaded reliance on a violation of this right. As recorded in *Hadjidakis v Independent Newspapers (Pty) Ltd*³⁴:

‘Section 34 of the Constitution of the Republic of South Africa Act No. 108 of 1996 ("the Constitution") provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

In my view, it is this right, *inter alia*, which the *subjudice* rule protects. ...’

[52] The above being said, the incontrovertible point remains that it is not for this Court to decide in this case whether the *sub judice* rule has been violated in this case. This is task left up to the High Court, as it is not an issue that involves employment and labour relations. Obviously, and between the actual parties to

³² 2002 (2) SA 431 (W) at 440G-I. See also *Hadjidakis v Independent Newspapers (Pty) Ltd* 2004 JDR 0281 (C) at pages 35 – 36.

³³ Section 34(1) reads: ‘Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.’

³⁴ 2004 JDR 0281 (C) at page 36.

any dispute resolution process under the LRA itself, the Labour Court would have jurisdiction to decide whether one of the parties to the dispute has violated this rule. But, as said, the second and third respondents are not such parties.

- [53] And finally, the applicant has not sought to make out a case that the actual CCMA proceedings would be compromised or prejudiced. The founding affidavit does contain a bald assertion that the applicant has a prima facie right to have the integrity of the judicial processes upheld, however no case is made out in the founding affidavit how this integrity would be compromised. The applicant has not even said that the fifth respondent, as commissioner, would be compromised by the statements made and videos posted, or how the fairness of the actual proceedings could be inhibited. The applicant's case is squarely founded on the defamation component of the *sub judice* rule. This is reflected in the founding affidavit as follows:

'On the Move and Ms Nkuna have made defamatory comments In relation to Redpath including false allegations of racism and exploitative treatment. They have further sought to create a divide between Redpath and the local community.

The damage to the reputation of Redpath and its standing within the local community could have serious consequences to its commercial interests and the security of employment of its employees should Redpath for whatever reason be unable to continue operating as it has.'

And

'The defamatory statement will irreparably damage Redpath's reputation.'

- [54] It should not be for the Labour Court to decide such a defamation case involving a third party outside the employment relationship, as a basis for relief sought. It is simply not a labour relations issue, and has nothing to do with employment.³⁵

³⁵ As to what must be considered in such an instance can be found in *Midi Television (Pty) Ltd v Director of Public Prosecutions* (WC) 2007 (5) SA 540 (SCA) at para 19, where it was held that: 'In summary, a publication will be unlawful, and thus susceptible to being prohibited, only if the prejudice that the publication might cause to the administration of justice is demonstrable and substantial and there is a real risk that the prejudice will occur if publication takes place. Mere conjecture or speculation that prejudice might occur will not be enough. Even then publication will not be unlawful unless a court is satisfied that the disadvantage of curtailing the free flow of information outweighs its advantage. In making that evaluation it is not only the interests of those who are associated with the publication that need to be brought to account but, more important, the interests of every person in

This cannot be what was intended with section 157(2)(a), just because the dispute may be pending before the CCMA as dispute resolution forum. As the second and third respondents in fact correctly say in the answering affidavit '*Were it otherwise, the Labour Court would become a general forum for regulating public discourse whenever a labour dispute exists - a proposition plainly inconsistent with the statutory scheme*' (sic). The applicant should have approached the High Court, being the Court tasked with deciding defamation issues between parties not in an employment relationship. This Court simply has no jurisdiction to come to its aid.

- [55] Therefore, this Court simply has no jurisdiction to grant the applicant the relief it seeks against the first, second and third respondents. There is no source for such jurisdiction to be found in the LRA or any other employment law for that matter, for the remedies sought by the applicant. The dispute does not involve the violation of a firmamental right under Chapter 2 of the Constitution relating to employment and labour relations, which could trigger the application of section 157(2)(a) of the LRA. Worse still, the applicant has not even pleaded what fundamental right has been violated. There is no employment related relationship between the second respondent, the applicant and the employees of the applicant at stake in this case. And finally, the second respondent is not in any manner involved in the pending unfair dismissal dispute between the applicant and the first respondent, or in any labour relations issues with the applicant's employees for that matter. The application falls to be dismissed on these grounds alone, as this Court has no jurisdiction.

Costs

- [56] This then only leaves the issue of costs. I am fully aware of the principles applicable to costs in employment disputes as articulated by the Court in *Zungu v Premier of the Province of KwaZulu-Natal and Others*³⁶. However, *Zungu* is not a blanket immunity against costs orders. The fact is that this Court always retains a discretion, as contemplated by section 162(1) of the

having access to information. Applying the ordinary principles that come into play when a final interdict is sought, if a risk of that kind is clearly established, and it cannot be prevented from occurring by other means, a ban on publication that is confined in scope and in content and in duration to what is necessary to avoid the risk might be considered. See also the further considerations referred to in *Hix Networking Technologies v System Publishers (Pty) Ltd and Another* 1997 (1) SA 391 (A) at 402C – F.

³⁶ (2018) 39 ILJ 523 (CC) at para 24.

LRA, to make a costs award against a party. In *Union for Police Security and Corrections Organisation v SA Custodial Management (Pty) Ltd and Others*³⁷ the Court said:

‘In the labour context, the judicial exercise of a court’s discretion to award costs requires, at the very least, that the court must do two things. First, it must give reasons for doing so and must account for its departure from the ordinary rule that costs should not be ordered. Second, it must apply its mind to the dictates of the fairness standard in s 162, and the constitutional and statutory imperatives that underpin it ...’

[57] In this instance, in my view, the applicant should not have brought this application, especially after the second respondent’s letter of 7 January 2026, considering what such letter contained. A realistic consideration of the facts of this case always showed that the second and third respondents were not in any manner involved in the pending CCMA unfair dismissal dispute between the applicant and the first respondent. The applicant was obviously quite unhappy with what the second and third respondent was saying about it in public, and I believe it sought to artificially construct a case to eliminate and then prevent this conduct. As the applicant was legally represented from the outset, it should have appreciated that this Court was the wrong forum to approach for such relief. I am also convinced that the reliance by the applicant on the sub judice rule was deliberately misconstrued to suit a particular narrative which was unsustainable. The case was, for all intents and purposes, hopeless. In *Children’s Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others*³⁸ the Court had the following to say:

‘Whether a case is hopeless has two aspects. It is hopeless if it is advanced on a basis that is legally untenable. It is also hopeless if it is advanced in the absence of any credible evidence to support it. These are categories that have long been recognised in our law and practice. A case is legally hopeless if it could be the subject of a successful exception. It is factually hopeless if the evidence available and potentially available after discovery and other steps

³⁷ (2021) 42 ILJ 2371 (CC) at para 35.

³⁸ 2013 (2) SA 213 (SCA) at para 35. See also *Mashishi v Mdladla NO and Others* (2018) 39 ILJ 1607 (LC) at para 14.

directed at procuring evidence will not sustain the cause of action on which the claim is based. ...'

[58] All the above considered, I believe that this is a case where a costs order against the applicant is unfortunately justified and warranted. It was at all times legally assisted. It should have known better. Especially after the answering affidavit was filed, which affidavit succinctly set out the correct legal position, it should have rather abandoned a course of action that was patently obviously doomed to fail, rather than persisting with it. The continuous failure by litigants to heed the numerous warnings by this Court where it comes to these kinds of applications, especially on the basis of urgency, must be visited with adverse consequences.³⁹ It constitutes an abuse of process to pursue a case which is for all intents and purposes hopeless. I fully align myself with the following *dictum* in *Mokoena v Merafong Municipality and Others*⁴⁰:

'In casu, the applicant brought a meritless application to this court and fairness dictates that the respondents cannot be expected to endure enormous costs defending litigation where more thought and consideration had to be put in before approaching this court on an urgent basis. ...'

[59] For all the aforesaid reasons, I thus believe it is appropriate to exercise my discretion with regard to costs by making a costs order against the applicant. The respondents have asked for punitive costs, but I do not believe there is any justification for such an order. I consider a party and party costs order on scale B to be appropriate, justified and fair.

[60] For all the reasons set out above, I make the following order:

Order

1. The application is heard as one of urgency.
2. The applicant's application is dismissed for want of jurisdiction.

³⁹ See, for example, *Magoda v Director-General of Rural Development and Land Reform & another* (2017) 38 ILJ 2795 (LC) at para 20; *Botes v City of Joburg Property Company SOC Ltd and Another* (2021) 42 ILJ 530 (LC) at para 50; *Shikwane and Another v Bojanala Platinum District Municipality and Others* (J 774/20) [2020] ZALCJHB 191 (29 August 2020) at para 64; *BMW (supra)* at para 68.

⁴⁰ (2020) 41 ILJ 234 (LC) at para 36.

3. The applicant is ordered to pay the first, second and third respondent's costs, on the party and party scale B.



S Snyman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Advocate M A Lennox

Instructed by:

Harrington Johnson Wands Attorneys

For the First, Second

and Third Respondents:

Advocate T P Matlala

Instructed by:

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