



- (1) Reportable: No
- (2) Of interest to other Judges: No
- (3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2025-232887

In the matter between:-

**KEITUMETSE LUCRATIA RAMABOE AND
5 OTHERS**

Applicants

and

RONALD OPPELT

First Respondent

FARO YCL

Second Respondent

CITY OF TSHWANE METROPOLITAN

MUNICIPALITY

Third Respondent

This judgment was handed down electronically by circulation to the parties and legal representatives by email. The date and time for hand-down is deemed to be 27 January 2026.

Summary: Urgent interdict application – principles considered – applicant failing to make out a case for urgency – undue delay in proceedings – urgency self created – applicants can obtain substantial redress in ordinary course – matter not urgent – matter however matter falls to be dismissed

Jurisdiction – s 157(1) and (2) – applicant failing to establish jurisdiction of the Court to grant the relief sought – matter falls to be dismissed for want of jurisdiction

Interdict – clear right – applicant having no right to interdict employer from disciplining employees – no clear right shown

Costs – principles considered – application abuse of process – application dismissed with costs

JUDGMENT

SNYMAN, AJ

Introduction

[1] This judgment brings up a distinct feeling of déjà vu. It is another one of those applications where employee parties in the public service sector seek to scupper disciplinary proceedings on the basis of seeking an urgent interdict against such proceedings. The application is brought despite all that had been said in this Court about the lack of competence of such conduct.¹ As made pertinently clear in *Minya v SA Post Office Ltd and Others*²:

‘From a plethora of such cases that are routinely brought on an urgent basis, it has become increasingly apparent that this court is more often than not called upon to micro-manage these internal proceedings, and that every little complaint about internal disciplinary proceedings, whether real or perceived, has by default, become an ‘exceptional circumstance’. It has long been stated that the powers of this court under the Labour Relations Act (LRA) do not include the micro-management of workplace discipline or every dispute arising out of the workplace. This is so in that the prerogative to maintain discipline

¹ See *Public Allied Workers Union of SA on Behalf of Netshikhudini v Commission for Conciliation, Mediation and Arbitration and Others* (2022) 43 ILJ 2812 (LC) at paras 1 – 2; *National Union of Metalworkers of SA on behalf of Members v BMW (SA) (Pty) Ltd* (2025) 46 ILJ 2712 (LC) 1; *Choko-Choko and Others v Tharisa Minerals (Pty) Ltd* (2025) 46 ILJ 2618 (LC) at paras 38 – 39.

² (2021) 42 ILJ 141 (LC) at para 2.

remains that of the employer, and further since the framework of the LRA is such that it is dispute specific.’

[2] The basis of the applicants’ case, as discussed later in this judgment, is nothing else but asserting that the disciplinary proceedings instituted against them as far back as April 2025, and in which they have fully participated without protest until now, is unlawful, and must thus be interdicted. This is exactly what the aforesaid authorities are critical about.

[3] This matter came before me as an urgent application on 22 January 2026. It was opposed by the respondents. After hearing argument by both parties, and considering the affidavits and heads of argument filed, I granted the following order:

1. The applicant’s application is dismissed.
2. The applicants are ordered to pay the respondents’ costs on the party and party scale A, the one paying the other to be absolved.
3. Written reasons for this order will be provided on 27 January 2026.

This judgment now constitutes the written reasons in terms of paragraph 3 of the above order.

Background facts

[4] The background facts in this case are straight forward, and mostly undisputed. The applicants are employed by the third respondent as metropolitan police officers. They are in the process of being disciplined for a variety of allegations of misconduct, as a result of an incident that occurred on 24 August 2024, the particulars of which need not concern this judgment.

[5] The disciplinary proceedings against the applicants commenced in February 2025. The applicants fully participated in the same without objection. The actual disciplinary hearing first commenced on 8 and 9 April 2025, and continued on several days in the course of 2025 thereafter, with the next set of

hearing dates being scheduled for 11 to 13 November 2025. The applicants were legally represented in and throughout the proceedings.

- [6] On 7 November 2025, the applicants' counsel advised the chairperson and the parties that he intended raising a preliminary point at the hearing on 11 November 2025. This point arose from the applicants' counsel's interpretation of the third respondent's Corporate System of Delegations (CSD) of 2020, promulgated as contemplated by part 3 of Chapter 7 of the Local Government: Municipal Systems Act (Systems Act)³. In terms of section 59(1) of the Systems Act, a municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances.
- [7] The substance of the point raised was that the disciplinary proceedings were instituted by the first respondent, who is the Divisional Head: Labour Relations Management at the third respondent, when he had no authority to do so. On the undisputed facts, it was the first respondent that acted as the representative of the Municipal Manager of the third respondent in instituting the proceedings, by virtue of a delegation of authority to the first respondent under the OSD, dealt with in more detail below. According to the applicants, the delegation relied on by the first respondent did not empower him to institute disciplinary proceedings. It was argued that a reading of the OSD, and the particular the delegation document relied on by the first respondent, did not contemplate or provide for such authority. In summary, it was the contention of the applicants that the first respondent was not lawfully the Municipal Manager's representative, and as a result, the disciplinary proceedings were unlawful.
- [8] A consideration of the OSD shows that the 'power to institute' disciplinary hearings against any official rests with the City Manager. This power however can be subdelegated. Part D of the OSD specifically deals with delegation of powers relating to Human Capital Management. In general, it delegates all managerial powers in this respect from the Executive Mayor to the City Manager. It then specifically allows for further sub delegation, in line with best practice, to responsible Departments. In terms of Power 2E26, the power to

³ Act 32 of 2000.

discipline any official of the third respondent is part of these powers susceptible to sub delegation. On 23 March 2022, the Acting City Manager, in writing, subdelegated the power to institute or defend any court or similar process to the first respondent as Divisional Head: Labour Relations Management, and to sign any process relating to the same.

- [9] According to the applicants, this did not constitute a valid and lawful sub delegation to institute disciplinary proceedings against them. They argue that a notice to disciplinary hearing cannot be regarded as an affidavit or document emanating from a legal matter. They further contend that if the sub delegation was intended to include discipline, as categorically referred to in power 2E26, the sub delegation would have said so. The applicants finally contend that the power and those related to it, seem to reside with the Legal Department rather than with the Labour Relations Department, of which the first respondent was the Head.
- [10] On the other hand, and according to the respondents, the document relied on to establish the authority of the first respondent is a proper written sub-delegation issued by the Acting City Manager in terms of the powers vested in him by the CSD, which authorises the Divisional Head: Labour Relations (the first respondent) to institute disciplinary proceedings. The respondents contend that it must be considered that this sub delegation specifically relates to human capital / employment matters, and it would thus have to include disciplinary proceedings as a 'similar process'. The respondents argue that this document expressly empowers the first respondent to sign documents emanating from legal matters within Labour Relations' mandate, which includes discipline. And finally, it is said that this is not a Legal Department issue, as the sub delegation specifically refers to the fact that this power is exercised in 'consultation' with the Legal Department.
- [11] The actual disciplinary proceedings against the applicants are conducted in terms of clause 7 of the Disciplinary Procedure Collective Agreement adopted in the South African Local Government Council (the Disciplinary Procedure). It is a collective agreement binding on all parties. The purpose of the Disciplinary Procedure is to give effect to the right to procedural fairness in disciplinary proceedings against employees in local government, in terms of the Labour

Relations Act (LRA)⁴. Clause 7.1 provides that an allegation of misconduct against an employee shall be brought before the Municipal Manager or his authorised representative for consideration and decision. In terms of clause 7.3, where the Municipal Manager or his/her authorised representative is satisfied that there is *prima facie* cause to believe that an act of misconduct has been committed, he may institute disciplinary proceedings against the employee concerned.

[12] There is no dispute between the parties of any contravention of the Disciplinary Procedure other than the issue of the authority to institute the proceedings, limited only to the issue of the first respondent allegedly not being the authorised representative of the Municipal Manager as contemplated by the Disciplinary Procedure. It is equally common cause that the applicants have been participating in the disciplinary proceedings from its institution, and never raised any objection concerning the institution of the same, until the applicants' counsel came up with this point much later.

[13] When the applicants' counsel then raised the point *in limine* before the chairperson on 11 November 2025, it was refused. That then led to the institution of the current urgent application, which was only brought on 8 December 2025. As said, the application was opposed by the respondents, who raised a number of points *in limine*. However, and considering the conclusion I have come to in this judgment, it is not necessary to decide on any of these points.

[14] I will now turn to deciding this matter, by first dealing with the issue of urgency.

Urgency

[15] Urgent applications are governed by Rule 38 of the Labour Court Rules, being the successor to the erstwhile Rule 8. The Court in *Jiba v Minister: Department of Justice and Constitutional Development and Others*⁵ applied Rule 8 as follows:

⁴ Act 66 of 1995 (as amended).

⁵ (2010) 31 ILJ 112 (LC) at para 18.

‘Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self created when seeking a deviation from the rules.’

These same considerations, in my view, equally apply to Rule 38.

- [16] When considering whether urgency has been established, an important consideration, which is particular application *in casu*, would be whether an applicant would not be afforded substantial redress in due course, and the applicant must provide proper reasons in support of a case that this would not be possible.⁶ As succinctly described by the Court in *Maqubela v SA Graduates Development Association and Others*⁷:

‘Whether a matter is urgent involves two considerations. The first is whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. In all instances where urgency is alleged, the applicant must satisfy the court that indeed the application is urgent. Thus, it is required of the applicant adequately to set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary. ...’

- [17] Where an applicant seeks final relief, the Court must be even more circumspect when deciding whether or not urgency has been established.⁸ In *Tshwaedi v Greater Louis Trichardt Transitional Council*⁹ the Court said:

‘... An applicant who comes to court on an urgent basis for final relief bears an even greater burden to establish his right to urgent relief than an applicant who comes to court for interim relief.’

- [18] The Court must also consider the interests of the respondent party, and in particular, the prejudice the respondent may suffer if the matter is urgently

⁶ *Mojaki v Ngaka Modiri Molema District Municipality and Others* (2015) 36 ILJ 1331 (LC) at para 17; *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2012] JOL 28244 (GSJ) at para 6.

⁷ (2014) 35 ILJ 2479 (LC) at para 32. See also *Transport and Allied Workers Union of SA v Algoa Bus Co (Pty) Ltd and Others* (2015) 36 ILJ 2148 (LC) at para 11.

⁸ [2002] JOL 9452 (LC) at para 8.

⁹ [2000] 4 BLLR 469 (LC) at para 11.

disposed of. In *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another*¹⁰ the Court held as follows:

‘But it is not just about the applicant. Another consideration is possible prejudice the respondent might suffer as a result of the abridgement of the prescribed time periods and an early hearing.’

[19] Finally, urgency must not be self-created by an applicant, as a consequence of the applicant having not brought the application at the first available opportunity.¹¹ As the Court said in *Northam Platinum supra*¹²:

‘... the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to Court immediately, or risk failing on urgency. ...’

[20] When the above considerations with regard to urgency are then applied to the applicants’ application *in casu*, I am compelled to conclude that there simply exists no basis on which to urgently intervene in this matter. As a point of departure, the applicants have actually made out no case of urgency at all, an issue properly pointed out and pertinently by the respondents in the answering affidavit.

[21] On the applicants’ own version, the disciplinary proceedings started as far back as April 2025, without objection. By the time the proceedings reconvened in November 2025, the first respondent had already led the evidence of its first witness, and the applicants were in the process of cross-examining that witness. Only then, also on the applicants’ own version, did they allegedly come to realise the authority point. There is no indication or explanation why this point could not have been realised or appreciated earlier. Surely it would be the easiest thing in the world for the applicants to have enquired about the

¹⁰ (2016) 37 ILJ 2840 (LC) at para 26. See also *IL & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Another* 1981(4) SA 108 (C) at 113D-114C.

¹¹ See *Golding v HCI Managerial Services (Pty) Ltd and others* [2015] 1 BLLR 91 (LC) at para 24; *National Union of Mineworkers v Lonmin Platinum Comprising Eastern Platinum Ltd and Western Platinum Ltd and Another* (2014) 35 ILJ 486 (LC) at para 50.

¹² *Id* at para 26. See also *Sihlali and Others v City of Tshwane Metropolitan Municipality and Another* (2017) 38 ILJ 1692 (LC) at para 18.

issue of authority when the proceedings started, and with minimal effort could have secured the OSD, which is a matter of public record. This is, as the respondents correctly say, '*quintessential eleventh-hour litigation*', and a prime example of self created urgency.

- [22] The applicants' only attempt to justify the delay is that the applicants allegedly only came across the authority point, shortly before the disciplinary hearing on 11 November 2025, when the applicants' counsel came across the OSD in another unrelated matter. As a matter of principle, this is not an acceptable explanation. As I have said, and with minimal effort, the OSD could have been obtained from the outset. If the applicants truly believed authority was an issue, they needed to raise it at the start of this case. It is an untenable position to participate in the disciplinary proceedings for more than six months, and then only purportedly realise this issue and raise it. These kinds of points must be raised at the outset. Anything else is self created.
- [23] The applicants' explanation also does not account for several pertinent facts. As the respondents correctly point out, the applicants' counsel requested the OSD as far back as on 25 August 2025, and it was discovered and shared with all parties on 26 September 2025. This meant that the applicants waited from 26 September 2025 until 8 December 2025 to launch these proceedings. Other than deciding to raise this as a point *in limine* in the disciplinary hearing on 11 November 2025, this entire delay is unexplained. In particular, there is no explanation why it took almost a month following the chairperson's ruling on 11 November 2025, until the application was brought on 8 December 2025.
- [24] I am convinced that this application was brought with the idea to scupper the disciplinary hearing set to proceed on 27 to 29 January 2026. The urgency in this matter is nothing short of self created, for ulterior purposes.
- [25] The applicants, considering they elected to participate in the disciplinary proceedings, will be able to obtain substantial redress in the ordinary course. The issue of a lack of authority can be raised as a ground of unfairness in any unfair dismissal proceedings in the Bargaining Council, which is actually the proper manner in which to resolve employment issues. A finding in their favour in this respect could lead to a finding of unfair dismissal which in turn could

lead to fully retrospective reinstatement. There is simply no need to approach this Court on an urgent basis.

- [26] It is clear to me, when considering the founding affidavit, that the applicants approach this Court effectively on the basis of a purported entitlement. It appears that the approach adopted by the applicants is that because they rely on the contended unlawfulness of the disciplinary proceedings based on an alleged lack of authority to institute the same, it effectively affords them the right to urgent relief. Such an approach is patently wrong. No matter what the underlying cause of action may be, where an urgent application is brought, the prescribed considerations of urgency must always be satisfied. If not, this Court could be turned into a free for all by any litigant who believes it has been unlawfully treated. In *Northam Platinum supra*¹³ the Court had the following to say:

‘Whilst it may be so that a dismissal could in particular circumstances, and where the LRA is not relied upon, be considered to be unlawful and consequently invalid because of a specific provision in a contract of employment which has been breached, this cannot per se serve to jump the queue of all other dismissed employees relying on the provisions of the LRA waiting for their turn in court. This kind of situation is merely another cause of action upon which the termination of a contract of employment can be challenged in the Labour Court. But other than that it holds no particular magic.’

- [27] In summary *in casu*, the dispute is based on the notion that the first respondent was not authorised to institute disciplinary proceedings against the applicants. But what is quite bizarre is that the applicants were charged as far back as February 2025 with the proceedings commencing in April 2025, and have been participating in the proceedings, without protest, since. Yet they wait to raise the point of the proceedings being unlawful, in the disciplinary hearing continuing on 11 November 2025 as a part heard matter, and after that, they waited almost a further month until 8 December 2025 to bring this application, saying it must be heard urgently simply because the proceedings are unlawful, null and void. In my view, the same sentiments expressed in

¹³ Id para 6. See also *National Education Health and Allied Workers Union and others v University of South Africa and Another* (2022) 43 ILJ 2351 (LC) at para 8; *Maphalle (supra)* at paras 2 – 3.

Northam Platinum supra would equally apply. There is no reason why the applicants' dispute should be determined other than in the ordinary course, if it is even competent to be considered by this Court.

- [28] The situation is made worse by the applicants failing to bring this application at the earliest available opportunity. The applicants, on their own version, should have been aware of the possible existence of the authority issue as far back as 25 August 2025. Yet the application was only brought on 8 December 2025, in excess of three months later. There is no explanation why it took this period of time to bring an application which was so urgent that it had to be heard immediately. This delay is simply undue, and excessive, and required a proper explanation to justify it. None exists, which leaves an unexplained excessive delay, which must be destructive of urgency.
- [29] As part of any case of urgency, the interests of the respondents must also be considered. They have been dragged to Court on an urgent basis to defend disciplinary proceedings that have been instituted, as said, as far back as April 2025 and has been running unhindered ever since. It is highly prejudicial for the respondents to have to finally abort such proceedings, at this late stage, pursuant to urgent proceedings. What makes this worse is that the applicants are effectively seeking final relief in the form of permanently interdicting any disciplinary proceedings against them, considering how the notice of motion is couched. I believe this kind of relief the applicants seek, on a final basis, would be an undue interference with the respondents' rights to conduct internal discipline free from unjustified hindrance.
- [30] Therefore, the applicants have dismally failed to make out a case of urgency. The requirements of Rule 38 have thus not been satisfied. In sum, there is at best a delay of more than three months which is completely unexplained. This is clearly a matter of self-created urgency. There is a complete absence of any exceptional circumstances justifying urgent intervention, and no such case has even been made out by the applicants. The applicants are able to obtain substantial redress in the ordinary course. For these reasons, the application falls to be struck from the roll, or be dismissed.¹⁴ The Court in *February v*

¹⁴ See *Radebe and Others v Aurum Institute* (2024) 45 ILJ 876 (LC) at paras 26 – 28.

*Envirochem CC and Another*¹⁵ accepted that urgency was not established, but the Court nonetheless proceeded to dismiss the matter. For the reasons to follow, I believe that this is a similar situation where the matter must be finally disposed of and dismissed, and not just struck from the roll.

Jurisdiction

- [31] Jurisdiction is determined on the basis of the case as pleaded by the applicants, which pleaded case in motion proceedings is determined by reference to the notice of motion and founding affidavit.¹⁶ The only case pleaded by the applicants is reflected as follows in the founding affidavit:

‘The above Honourable Court has jurisdiction to hear this matter as the dispute and the cause of action arose within the jurisdiction of the above Honourable Court. The application is brought in terms of section 157 (2) of the Labour Relations Act 66 of 1995.’

- [32] Added to the above, the applicants seek final in the form of permanently scuppering the disciplinary hearing, as is evident from the founding affidavit as well, where the applicants say: *‘The purpose of this application is to seek an order on the urgent basis ordering the Third Respondent not to continue with the disciplinary hearing scheduled for 27 -28 January 2026 and further, that the First Respondent does not have any powers to bring disciplinary charges against the members of the Tshwane Metropolitan Police and that such powers and authority vests with the Second Respondent. Further, to order that the disciplinary charges brought against the applicants are unlawful, null and void ab initio...’* (sic). And lastly, where it comes to the existence of exceptional circumstances as justification for this urgent intervention the applicants seek, only one averment is put forward, being that: *‘... the*

¹⁵ (2013) 34 ILJ 135 (LC) at para 17. See also *National Union of Metalworkers of SA and Others v Bumatech Calcium Aluminates* (2016) 37 ILJ 2862 (LC) at para 33; *Bethape v Public Servants Association and Others* [2016] ZALCJHB 573 (9 September 2016) at para 53; *Rail Refurb CC v South African National Road Agency* 2023 JDR 3545 (GP) at para 22; *National Association of SA Workers on Behalf of Members v Kings Hire CC* (2020) 41 ILJ 685 (LC) at para 32.

¹⁶ 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; *Mohlomi v Ventersdorp/Tlokwe Municipality and Another* (2018) 39 ILJ 1096 (LC) at para 42; *Public Servants Association on behalf of Members v Minister of Health and Others* (2019) 40 ILJ 193 (LC) at para 15.

exceptional circumstances required in this regard are the fact that the First Respondent has acted beyond the statutory powers conferred upon him and consequently, his conduct is ultra vires in terms of the applicable legislation and the Constitution’.

- [33] The aforesaid being the case as pleaded, the first issue for consideration is whether this Court has jurisdiction to entertain the applicants’ application and grant them the relief sought. In *Du Plessis v Public Protector and Others*¹⁷ the Court said:

‘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 ...’

- [34] In *Gcaba v Minister for Safety and Security and Others*¹⁸, 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*¹⁹, the Court also dealt with the meaning of jurisdiction as follows: ‘.... *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 dismiss the claim for want of jurisdiction).*’

- [35] The jurisdiction of the Labour Court is defined in section 157 of the LRA, which reads:

‘(1) Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.

¹⁷ (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.

¹⁸ (2010) 31 ILJ 296 (CC) at para 74.

¹⁹ (2009) 30 ILJ 1539 (SCA) at para 23.

(2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from-

- (a) employment and from labour relations;
- (b) any dispute over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and
- (c) the application of any law for the administration of which the Minister is responsible.'

[36] Therefore, the jurisdiction of the Labour Court is specifically circumscribed and determined by statute, being the LRA itself. 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 matter.²⁰ 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 Employment Equity Act (EEA)²¹ or Basic Conditions of Employment Act (BCEA)²². The applicant must also indicate on what provision in any of these items of legislation the applicant relies.²³

[37] It is true that in *Booyesen v Minister of Safety and Security and others*²⁴, the Court propagated a general approach that the Labour Court would have general jurisdiction to intervene to restrain any alleged illegalities, irregularities or unfairness in incomplete workplace proceedings, provided that exceptional circumstances exist that would justify such intervention. The Court in that case had said:²⁵

²⁰ 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.

²¹ Act 55 of 1998 (as amended).

²² Act 75 of 1997 (as amended).

²³ 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 ...'. See also *Shezi v SA Police Service and Others* (2021) 42 ILJ 184 (LC) at para 10.

²⁴ (2011) 32 ILJ 112 (LAC).

²⁵ *Id* at para 54.

‘To answer the question that was before the court a quo, the Labour Court has jurisdiction to interdict any unfair conduct including disciplinary action. However such an intervention should be exercised in exceptional cases ...’

- [38] However, this approach was recently revisited by the LAC in *Cibane and Another v Premier of Province of Kwazulu-Natal*²⁶. Relying on how the Constitutional Court dealt with the notion of the Labour Court having jurisdiction to adjudicate and decide unlawful dismissals in *Steenkamp and Others v Edcon Ltd (National Union of Metalworkers of SA intervening)*²⁷, being that the Labour Court in fact had no jurisdiction to determine the lawfulness of a dismissal, the Court in *Cibane* decided:²⁸

‘It is clear from this passage that outside of the scope of any statutory provision that specifically confers jurisdiction on the Court, the Labour Court has no jurisdiction, in any general sense, to make any determination of the unlawfulness of employer conduct.’

The Court in *Cibane* then specifically came to the following two important conclusions:²⁹

‘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.’

And:³⁰

‘In summary: to the extent that *Booyesen* has been interpreted to establish a general rule, qualified only by exceptionality, that the Labour Court has jurisdiction to intervene in uncompleted disciplinary proceedings, this is not an interpretation that can be sustained by section 157(1) of the LRA.’

- [39] In my view, *Cibane* has now clarified the issue of jurisdiction of the Labour Court under section 157(1). The Labour Court does not have any general

²⁶ [2025] 10 BLLR 1004 (LAC).

²⁷ (2016) 37 ILJ 564 (CC) at para 106.

²⁸ Id at para 24.

²⁹ Id at para 27.

³⁰ Id at para 32.

jurisdiction in intervene and / or adjudicate any alleged unfairness, unlawfulness, illegalities or irregularities pertaining to any conduct or failure of any party to the employment relationship. What the applicant in any litigation proceedings, where intervention from the Labour Court is sought, must do, is to substantiate the jurisdiction of the Labour Court by specifically matching the cause of action or issue in dispute, to a specific provision as contained in the LRA itself that affords the Labour Court jurisdiction to intervene. If that cannot be done, then there is no jurisdiction. And in this context, an applicant must specifically plead on what section of the LRA such an applicant relies on to establish jurisdiction. The applicants have not done this at all in this instance. The applicants squarely rely only on unlawfulness in respect of the conduct of the first respondent in convening the disciplinary hearing against the applicants, without any reference to any provision under the LRA. This deprives this Court of jurisdiction.

[40] The applicants at least specifically plead reliance on section 157(2)(a) of the LRA, which, considering the section as quoted above, relates to issues concerning an alleged violation of any fundamental right entrenched in Chapter 2 of the Constitution, provided that alleged violation arises from employment and labour relations. In my view, section 157(2)(a) is intended to cover those instances where, ordinarily, 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).

[41] 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*³¹:

'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)

The Court in *Gcaba* was referring to the following dictum in *Chirwa v Transnet*³²:

'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. ...'

[42] Further, it is incumbent on any applicant to specifically identify what fundamental right is being violated, and then make out a case that that violation arises from employment and from labour relations. As made clear in *Besani v Maquassi Hills Local Municipality*³³:

³¹ Id at para 73.

³² (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.

³³ (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.

‘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.’

- [43] The applicant’s founding affidavit contains no exposition of what fundamental right has been violated. In fact, the applicants do not refer to any fundamental right at all. All the applicants say is that the disciplinary hearing was unlawful, because of a lack of authority. There is no pleaded reliance on any fundamental right that has been violated in this respect. The following dictum in *Public Servants Association on behalf of Members v Minister of Health and Others*³⁴ appositely illustrates the kind of difficulties the applicants have *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 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. ...’

- [44] Insofar as the applicants may rely on a general and inherent jurisdiction of the Labour Court under section 157(2)(a) *per se*, this equally cannot be correct. As I have said, the Labour Court only has jurisdiction in respect of matters

³⁴ (2019) 40 ILJ 193 (LC) at para 23.

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*³⁵ 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 right to found jurisdiction, the statement of claim makes no reference to the Constitution let alone any particular fundamental right.’

- [45] Consequently, I am unconvinced that the Labour Court has jurisdiction to entertain the applicants’ case and grant the applicants the relief that they seek. The application must fail for this reason alone.
- [46] Only for the sake of being complete, I in any event do not believe the applicants’ lack of authority case has substance, and I am unconvinced that the applicants have a clear right to the relief sought. There is proper evidence of the delegation of the authority to discipline employees, to the first respondent, who is directly responsible for labour relations in the third respondent. The ascribe to the kind of reasoning propagated by the applicants, namely that the sub delegated authority document relied on by the first respondent must specifically incorporate a reference to disciplinary action, makes little sense considering the broad delegation envisaged by the OSD to ensure efficiency of operations, and flies in the face of the very point of establishing delegated authority in the third respondent to responsible Departments. It simply cannot be expected of the City Manager to have to institute disciplinary action against each and every individual employee in the entire Municipality, and that is why there is a sub delegation to the Labour Relations Department to deal with such issues. I believe this is clearly what is envisaged by the sub delegation of 23 March 2022. But considering this Court has no jurisdiction to afford the applicants the relief they seek, I need not finally decide this issue.

³⁵ (2018) 39 ILJ 879 (LC) at para 10. See also *Besani (supra)* at para 36.

[47] All said, the applicants' application thus stands to be dismissed.

Costs

[48] This then only leaves the issue of costs. In this respect, and in terms of section 162(1), I have a wide discretion. The applicants were legally assisted throughout these proceedings, and thus should thus have known, from the outset, that the current application, especially brought on the basis of urgency, was doomed to fail. I also consider that the application, especially considering the relief sought, was never going to be competent. The kind of approach adopted by the applicants should be frowned upon. The urgency in this case was undoubtedly self created, and I am convinced that it was part of a stratagem to scupper the disciplinary hearing. And finally, the continuous failure by litigants to heed the numerous warnings by this Court where it comes to these kinds of applications must be visited with adverse consequence.

[49] I am mindful of the sentiments expressed by the Constitutional Court in *Union for Police Security and Corrections Organisation v SA Custodial Management (Pty) Ltd and Others*³⁶ concerning costs orders in employment disputes. However, this is not a blanket immunization against costs orders. Costs may still be awarded by this Court, if the facts justify it, and if there are proper substantive reasons for such orders. In this respect, I fully align myself with the following *dictum* in *Mokoena v Merafong Municipality and Others*³⁷:

'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. ...'

[50] And in *Leshabane v Minister of Human Settlements and Others*³⁸ it was said:

'In bringing the application, the applicant took up the valuable time and already stretched resources of this court. In doing so, the applicant compelled the respondents, which is a public institution funded out of the taxpayers virtually

³⁶ (2021) 42 ILJ 2371 (CC) at para 35. See also *Zungu v Premier of the Province of Kwa-Zulu Natal and Others* (2018) 39 ILJ 523 (CC) at para 25.

³⁷ (2020) 41 ILJ 234 (LC) at para 36.

³⁸ (2024) 45 ILJ 833 (LC) at para 58.

empty pocket, to defend the case using these already limited and stretched public funds, which is not acceptable. What in reality happened in this instance as abuse of process. This court has consistently said that this kind of unfounded litigation is deserving of costs orders. The applicant must be told, in no uncertain terms, hopefully also serving as an example to others, that exercising his right of access to the courts must be done in a responsible manner and always in compliance with the rules and processes of the court.'

[51] All said, I believe this is a situation where a costs order against the applicants is certainly earned, and justified. Ordinarily, it would have been my view that a party and party costs order, either on scale B or C would be justified. The respondents however graciously submitted that a costs order on the basis of party and party in scale A was appropriate. I am happy to oblige, which I believe is more than fair. I make a costs order accordingly.

[52] It is for all the reasons as set out above that I made the order that I did as respect in paragraph 3 of this judgment, *supra*.

S Snyman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

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Instructed by:

AMN Attorneys Inc

For the Respondents:

Advocate D Thumbati

Instructed by:

Lekhu Pilson Attorneys