



- (1) Reportable: Yes
- (2) Of interest to other Judges: Yes
- (3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026-000760

In the matter between:-

DOCTOR MASHABANE

Applicant

and

PROF. T. MADIMA SC

First Respondent

THE MINISTER OF JUSTICE AND

CONSTITUTIONAL DEVELOPMENT

Second Respondent

THE DEPARTMENT OF JUSTICE AND

CONSTITUTIONAL DEVELOPMENT

Third Respondent

THE MINISTER OF TRANSPORT

Fourth Respondent

THE PRESIDENT OF THE REPUBLIC OF

SOUTH AFRICA

Fifth Respondent

This judgment was handed down electronically by circulation to the parties and legal representatives by email and by uploading onto CaseLines. The date and time for hand-down is deemed to be 28 January 2026.

Summary:

Jurisdiction – s 157(1) – applicant failing to establish jurisdiction of the Court to grant the relief sought – Court not having general jurisdiction as relied on by applicant – applicant not pleading reliance on rights under the LRA or employment laws – *Cibane and Another v Premier of Province of Kwazulu-Natal* considered – Court having no jurisdiction to intervene in incomplete

disciplinary proceeding under section 157(1) – Court having no jurisdiction to consider case based on unlawfulness – matter falls to be dismissed for want of jurisdiction

Jurisdiction – s 158(1)(a) considered – section does not confer jurisdiction but only conveys powers on Court – jurisdiction must be conferred on other provisions under LRA / other employment laws for s 158(1)(a) to apply – applicant's reliance on s 158(1)(a) misplaced – section cannot be used to confer jurisdiction to consider applicant's application

Jurisdiction – s 158(1)(h) considered – Court does have review jurisdiction under s 158(1)(h) – requires application of ordinary principles / processes relating to review applications – urgent and final intervention on basis of review not competent – review also not competent where real issue in dispute resorts under ordinary LRA remedies – applicant non-suited on such basis

Review jurisdiction – urgent review application *in medias res* – principles considered – requires exceptional circumstances for intervention to be shown – applicant failing to establish exceptional circumstances – applicant's review *in medias res* not competent

Suspension – applicant pleading case of unlawful suspension – Court having no jurisdiction to consider unlawful suspension – matter can be pursued as unfair suspension based on case raised by applicant – such dispute must be referred to bargaining council – Court having no jurisdiction

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

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

SNYMAN, AJ

Introduction

[1] Where it comes to disciplinary proceedings against senior officials in the public service, it is clear to me that Stalingrad tactics are the appropriate means of defence and often the order of the day. This tactic involves either obstructing the proceedings as far as possible, or even seeking to prevent the same from taking place *per se*. I believe that there is simple reason for this, being a reluctance to answer the misconduct charges raised, for ulterior reasons. The judgments of this Court are replete with applications by Municipal Managers, Heads of Department and other senior officials in the public service seeking to interdict disciplinary proceedings against them. Most of these applications are unsuccessful, and often result in a costs award, with some costs awards even being on a punitive basis. Yet the message still does not sink in. Just for example, and in the week I spent in the urgent Court when this matter was heard, I was seized with three such applications seeking to interdict disciplinary hearings in the public service. This conduct is pursued despite all that had been said in this Court about the lack of competence of such conduct.¹ As made pertinently clear in *George v Nyoka and Others*², which I consider can be hardly better said, where it comes to the aforesaid undesirable state of affairs:

‘The Court deems it necessary to outline all of the above for the simple reason that these antiquated shenanigans, exhausting as they are, in the end come back to bite the employees when claiming urgency in this Court. This Court has consistently rebuked such truant like antics, which are in most instances aided and encouraged by legal representatives. My colleague Van Niekerk J recently delivered a trio of judgments¹ that concerned attempts at halting internal disciplinary hearings, and in all instances, costs were awarded against

¹ See for example *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) at para 1; *Choko-Choko and Others v Tharisa Minerals (Pty) Ltd* (2025) 46 ILJ 2618 (LC) at paras 38 – 39.

² [2023] 7 BLLR 654 (LC) at paras 3 – 4. See also *Minya v SA Post Office Ltd and Others* (2021) 42 ILJ 141 (LC) at paras 2 – 3.

recalcitrant applicants. These judgments are amongst numerous others delivered in this Court from the urgent roll, which have consistently set out the law and the difficulties the applicants face when approaching the court on an urgent basis with applications to stay internal proceedings. These frivolous applications have caused strain on the limited judicial resources of this Court. This message has clearly not filtered through to employees or their legal representatives.

These antics are truly exhausting, not only to the court's resources but also because in the end, they turn out to be financially draining for the already financially depleted municipalities or government departments and its entities. This is particularly so since in most internal disciplinary enquiries held in all spheres of government, legal practitioners are engaged to act as initiators or chairpersons in those enquiries. I am not even taking into account all the other officials who are taken away from their real work, in order to attend to these stop-start disciplinary enquiries. These antics are an antithesis of the primary purpose and objectives of the Labour Relations Act ("LRA"), primary of which is to have labour disputes resolved expeditiously. They do not have a place either in the workplace or in this Court, if the primary objectives of the LRA are to be achieved.'

- [2] The basis of the applicant's case, as discussed later in this judgment, is nothing else but asserting that the disciplinary proceedings instituted against him is unlawful and null and void, due to, in essence, an alleged lack of authority to institute the same, and must thus be finally 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 fourth respondent. The first and fifth respondents chose to abide by the outcome. The fifth respondent however did file an explanatory affidavit. After hearing argument by all parties, and considering the affidavits and heads of argument filed, I indicated that judgment will be given on 28 January 2026. This judgment is now handed down accordingly.
- [4] For ease of reference in this judgment, I will refer to the second respondent as '*Minister Kubayi*' and the fourth respondent as '*Minister Creecy*'. The fifth respondent will be referred to as '*the President*'. The first respondent will be

referred to as ‘*the Chairperson*’ and finally, the third respondent will be referred to as ‘*the Department*’.

Background facts

- [5] The background facts in this case are straight forward, and mostly undisputed. But where factual disputes do exist, I shall decide those in line with the principles enunciated in the well-known judgment of *Plascon Evans Paints v Van 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 respondents are patently false, absurd or fanciful.⁴ The background as set out below is arrived at based on the application of these principles.
- [6] The applicant’s founding affidavit contains a wealth of information pertaining to all the events leading up to the decision being made to discipline him. Whilst this may be called background, it is actually not relevant and it was in my view unnecessary to have included the same in the founding affidavit. I shall therefore not deal with these facts in this judgment, save for simply stating that it was clear that the working relationship between the applicant and Minister Kubayi had materially deteriorated in the time period leading up to the institution of disciplinary proceedings against the applicant.⁵

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 The applicant inter alia said: ‘I was under no illusion that Minister Kubayi would desire that my contract be renewed for another term. This was based on what I had experienced over the past seven months since her appointment. My working conditions had become unbearable and no longer conducive’.

- [7] On 1 March 2021, the applicant was appointed as the Director-General of the Department, for a fixed term of five years, with his contract due to expire on 28 February 2026. The applicant has been in the Public Service for over 20 years.
- [8] On 13 July 2025, the President announced the appointment of a Commission of Enquiry to be chaired by Justice Madlanga after his retirement as a Justice of the Constitutional Court at the end of July 2025 (the Commission). The Commission was constituted because of Lieutenant General Nhlanhla Mkhwanazi having held a media briefing at the South African Police Service (SAPS) Provincial Headquarters in Durban, where he made far-reaching allegations about *inter alia* political interference in the criminal justice system. The applicant was tasked with setting up the Commission, and he was responsible for all the logistics relating thereto.
- [9] It is undisputed that several challenges arose with the establishment and setting up of the Commission, by the contemplated deadline for it to commence executing its functions. These included challenges relating to costs, the venue and certain logistics. On 26 August 2025, the Commission itself issued a public statement informing the Nation that the Commission will not commence with the public hearings on 1 September 2025 due to the Department failing to finalise the procurement of ICT Infrastructure.
- [10] On the same day, Minister Kubayi then met the applicant in her office. In this meeting, she informed the applicant that the President had authorised that the applicant be subjected to a disciplinary hearing for delaying the Madlanga Commission. This authorisation was in the form of a delegation issued to Minister Kubayi by the President, under President Minute No: 198 of 2025, on 26 August 2025, which *inter alia* read:

‘NOW THEREFORE in terms of section 42A (3), read with sections 12(1)(a), 16A, 16B, 17(1) and 17(2)(d) of the Act, I hereby delegate to the Minister of Justice and Constitutional Development, the power to

(a) initiate disciplinary processes against the Director-General, in terms of the Disciplinary Code applicable to heads of department as envisaged in Chapter 7 of the Senior Management Service Handbook;

(b) If necessary, and in compliance with Chapter 7 of the Senior Management Service Handbook, place the Director-General on precautionary suspension; and

(c) deal with all matters pertaining to the disciplinary hearing and its outcome, including, but not limited to, in the event of a guilty finding at the hearing, inform the President immediately of the finding and the sanction pronounced by the chairperson of the hearing.’

- [11] On the same date, being 26 August 2025, the applicant was given notice by Minister Kubayi of the intention to suspend him because of the delays of commencement of two Commissions of Inquiry, one chaired by Justice Khampepe, and the other by Justice Madlanga, and he was given 10(ten) working days to respond. The applicant duly made submissions as to why he should not be suspended to Minister Kubayi. Next, and on 12 September 2025, the President gave a press briefing indicating the applicant had been suspended. Following this announcement by the President, and on 13 September 2025, Minister Kubayi announced the applicant’s suspension in a WhatsApp group discussion. And finally, on 15 September 2025, the applicant was issued with a formal notice of suspension, which was dated 12 September 2025. The suspension was imposed in terms of clause 7.2 contained in Chapter 7 of the Senior Management Service Handbook (Disciplinary Code and Procedures), as contained in PSCBC Resolution 1 of 2003, commonly known as the ‘*SMS Handbook*’. This meant the suspension could only be for a maximum period of 60 days and that disciplinary proceedings had to commence prior to the expiry of such period.
- [12] On 16 September 2025, the applicant’s attorneys wrote to Minister Kubayi, expressing serious concerns about the pre-suspension process relating to the applicant. But that was not all. Because of what the applicant described as the ‘... *extent of escalating concerns about impartiality, particularly as Minister Kubayi would likely be a key witness in any disciplinary hearing while also overseeing the process* ...’ his attorneys wrote to the President on 23 September 2025, detailing these alleged irregularities and requesting that the President delegate the matter to a neutral Minister to ensure fairness, impartiality, and objectivity. The applicant, in this letter, also emphasised his problematic working relationship with Minister Kubayi.

[13] On 7 October 2025, the President withdrew the earlier delegation given to Minister Kubayi on 26 August 2025. In a covering letter on the same date, the President explained that he had done so at the request of the applicant. The President however gave no reasons why he decided to do so, in this letter. The letter further recorded that the delegation would now be given to Minister Creecy, and Minister Kubayi was asked to do a handover to Minister Creecy and to assist her with the further handling of the matter.

[14] The delegation to Minister Creecy itself is contained in the Presidential Minute 233 of 2025 dated 7 October 2025, which indicated that the applicant had already been placed on precautionary suspension, and *inter alia* recorded that:

‘NOW THEREFORE in terms of section 42A (3), read with sections 12(1)(a), 16A, 16B, 17(1) and 17(2)(d) of the Act, I hereby delegate to the Minister of Transport, the power to:

(a) initiate disciplinary processes against the Director-General, in terms of the Disciplinary Code applicable to heads of department as envisaged in Chapter 7 of the Senior Management Service Handbook; and

(b) deal with all matters pertaining to the disciplinary hearing and its outcome, including, but not limited to, in the event of a guilty finding at the hearing, inform the President immediately of the finding and the sanction pronounced by the chairperson of the hearing.’

It is clear that save for the issue of suspension, which had come and gone, the delegation to Minister Creecy was identical to the earlier delegation to Minister Kubayi.

[15] According to the applicant, the President recognised the validity of the concerns he had raised about bias and conflict where it came Minister Kubayi, he withdrew the delegation previously granted to Minister Kubayi as a result of such appreciation, and instead appointed Minister Creecy. As far as the applicant was concerned, this meant that Minister Creecy needed to initiate the disciplinary proceedings ‘*afresh*’. The applicant believed that in order to institute the disciplinary proceedings afresh, the appointment of the

functionaries in the disciplinary proceedings against the applicant which stemmed from the first delegation to Minister Kubayi had to be completely withdrawn, and that Minister Creecy had to make completely new appointments, *de novo*, in terms of the delegation to her. As far as the applicant was concerned, the redelegation of Minister Creecy was not a mere administrative adjustment but a substantive intervention to cure the defects of perceived and actual bias highlighted in his representations to the President.

- [16] Minister Creecy, who filed an answering affidavit, had a different take on matters. She states that it is important to highlight that the applicant does not challenge her authority to institute disciplinary proceedings against him, nor does he dispute that she was authorised to appoint a chairperson and initiator for the disciplinary hearing. Minister Creecy states that the applicant's complaints are based on the meaning that he has attributed to the word '*initiate*' as reflected in the delegation to her, and in terms of that propagated meaning it was unlawful for her to decide to continue with the Chairperson and initiators that were appointed by Minister Kubayi.
- [17] According to Minister Creecy, the applicant's interpretation is incorrect and inconsistent with the proper or actual meaning of the word '*initiate*', particularly considering the employment / workplace context. Minister Creecy argues that to initiate disciplinary proceeding means that she was empowered to commence disciplinary proceedings, which she did, and that she actually exercised a discretion as to the appointment of the chairperson of the disciplinary hearing (the current Chairperson) as well as the legal team that will present the charges in the disciplinary hearing. Minister Creecy explains that when she took over the disciplinary process of the applicant as delegated by the President, she met with the initiators to discuss the disciplinary proceedings, because at the time, the disciplinary hearing charges had not been prepared, and she considered it necessary to meet with the initiators to discuss the allegations of misconduct and the further conduct of the disciplinary hearing. As far as Minister Creecy was concerned, given that the initiators were already steeped in the matter, they had already consulted various witness and had already read all the relevant papers, and thus the appointment of new initiators would have resulted in unnecessary and expensive duplication of legal fees. She accordingly instructed the initiators to

continue to investigate the matter. As far as Minister Creecy was concerned, this conduct was fully in line with the delegation from the President.

- [18] Importantly, the President weighed in by providing an explanation, on affidavit, for his decisions in respect of the withdrawal of the delegation to Minister Kubayi and the redelegation to Minister Creecy. The President has made it clear that he did not make any determination nor came to any conclusion that Minister Kubayi was acting with any bias against the applicant, and that he would in event not be willing to come to such a conclusion based on the applicant's mere *ipse dixit*.
- [19] The President further stated that the withdrawal of the delegation from Minister Kubayi did not constitute any finding that steps previously taken by Minister Kubayi were unlawful or unfair. The President records that: '*... the re-delegation was a step that I took out on abundance of caution, and to ensure that there could not be any questions of independence, impartiality and fairness. I was also aware that Minister Kubayi may be a witness in the disciplinary hearing and I wanted to ensure that she does not end up in an awkward position of being the main witness and the initiator ...*'. According to the President, because he was not of the view that the disciplinary steps taken by Minister Kubayi were unlawful or unfair, he had no reason to direct Minister Creecy to start completely new disciplinary steps, and the redelegation of 7 October 2025 did not direct Minister Creecy to do such.
- [20] Knowing that Minister Creecy was now properly seized with the matter, the applicant's attorneys wrote to her on 3 November 2025, making representations concerning the allegations of misconduct against the applicant and making proposals for the amicable resolution of the matter, because at this point the applicant had not yet been charged. The applicant accepted that Minister Creecy would exercise a discretion to determine whether, in the light of his substantial submissions to her, disciplinary charges would be proffered against him.
- [21] Because the applicant accepted that Minister Creecy would probably require some time to consider his representations and thus properly exercise her discretion, and because he had not yet been charged, he adopted the view

that Minister Creecy would not be strictly held bound by him to the 60 days' time limit for the suspension period under the SMS Handbook, and that the applicant would not insist on the disciplinary hearing being convened within 60 days of his suspension. On 5 November 2025, the applicant emailed the attorneys for Minister Creecy, indicating that he would not insist on the disciplinary hearing being convened within the strict 60 days' period to afford Minister Creecy adequate time to apply her mind to his representations.

- [22] In her answering affidavit, Minister Creecy stated that she indeed considered all the representations made by the applicant, however she was satisfied that there indeed existed a case he would need to answer in a disciplinary hearing. She therefore instructed her attorneys to write to the applicant's attorneys on 13 November 2025 to indicate that the only alternative to avoid the imminent initiation of the disciplinary proceedings, was if the applicant voluntarily resigned.
- [23] After asking for time to consider the proposal by Minister Creecy, the applicant's attorneys answered on 26 November 2025, before the charge sheet was served on the applicant, expressing what the applicant considered '*deep concerns*' about the continued management of the matter, particularly the retention of the legal representatives (initiators) in the disciplinary hearing who were originally appointed by Minister Kubayi. The applicant expressed his concern that Minister Kubayi appeared to remain involved in the process, which according to him defeated the purpose of the redelegation. The applicant also bemoaned that there was a possibility that a Chairperson of Minister Kubayi's preference and recommendation could be appointed if Minister Creecy does not take control of the process, and that would also defeat the rationale for the redelegation.
- [24] Nonetheless, and on 27 November 2025, Minister Creecy instructed that the charges against the applicant be issued. A disciplinary hearing notification was drawn up, containing the charges against the applicant, which was then signed by Minister Creecy. The disciplinary hearing notice along with an evidence bundle was served on the applicant on the same day. In terms of the notification, the disciplinary hearing was set to commence on 5 December 2025.

- [25] On 4 December 2025, the applicant referred an unfair labour practice dispute to the General Public Service Sector Bargaining Council (GPSSBC), contending that the Department was acting unlawfully by refusing to allow him to return to work post the lapsing of his suspension, which occurred when the 60 days' time period in terms of the SMS Handbook had expired. The applicant believed that period had indeed expired. In the answering affidavit, Minister Creecy disagreed with this interpretation by the applicant, but for the reasons elaborated on below, this issue need not be decided in this judgment.
- [26] On 5 December 2025, the disciplinary hearing convened before the Chairperson, who was an independent practicing senior counsel and University professor. Despite some grumblings in the founding affidavit, there has been no actual challenge to the independence of the Chairperson. There is no suggestion nor any evidence that he would somehow be biased in favour of the Department. When the disciplinary hearing convened, two issues were raised by Advocate Manchu SC, for the Department, for determination. The first was the extension of the suspension period of the applicant under the SMS Handbook. The second was a suggestion concerning a truncated disciplinary process, considering the applicant's fixed term contract was shortly to expire. However, Advocate Manchu SC did not persist with the application to the Chairperson for the extension of the applicant's precautionary suspension.
- [27] The applicant's counsel, Advocate Ford, then raised a point *in limine* on behalf of the applicant, concerning the composition of the entire disciplinary panel, and in particular the appointment of the Chairperson by Minister Kubayi. The basis of the point *in limine* was that this panel had been appointed in terms of a delegation to Minister Kubayi, which was withdrawn, and therefore the panel could not continue to act in the proceedings in terms of the re-delegation issued to Minister Creecy. It is important to note that Advocate Ford did not apply for the recusal of the Chairperson on the basis of a reasonable apprehension of bias. The issue was only limited to an alleged lack of authority. The disciplinary proceedings were adjourned on 5 December 2025 for the Chairperson to make a finding on the point *in limine* raised by the applicant. At this stage, there was no determination on the issue of the dates

when the hearing was to resume since the Chairperson first had to deal with the point raised by the applicant.

- [28] Then, on 9 December 2025, notwithstanding the fact that it was decided in the hearing on 5 December 2025 that the issue of the extension of the suspension of the applicant not be pursued, the Department's attorneys wrote to the Chairperson, requesting an extension of the suspension. The applicant's attorneys were copied with such letter. The applicant objected to this request for extension, on the basis that the suspension period had actually lapsed, and as such, the extension was not competent. The applicant's attorneys answered in writing on 10 December 2025, objecting to what they termed this improper approach, and noting the procedural unfairness of seeking a ruling without the applicant's input.
- [29] On 19 December 2025, the Chairperson then issued a comprehensive written ruling, dismissing the applicant's authority challenge. The Chairperson also, in such ruling, extended the applicant's suspension until conclusion of the disciplinary hearing. Finally, the Chairperson set dates for the continuation of the hearing as being 2 to 4 February and 11 to 13 February 2026. It is the issuing of this ruling that then gave rise to the current urgent application.

Urgency

- [30] I intend to first deal with the issue of urgency, as the fourth respondent has contended that the matter is not urgent. The ruling by the Chairperson on 19 December 2025 was the catalyst for the application. I accept that it is appropriate for the applicant to raise his authority point before the Chairperson first, and that it would be the ruling issued by the Chairperson that would determine what further action the applicant needed to take, including whether an application to this Court was then necessary.
- [31] The applicant explains that when the ruling was received on 19 December 2025, his legal team was already on leave. Nonetheless, on 22 December 2025, his legal team consulted with counsel to determine the route to follow in dealing with this matter going forward. Counsel requested an opportunity to carefully study and scrutinize the ruling. Considering the intervening Christmas holidays, counsel advised on 27 December 2025 that he had properly studied

the ruling and that an application in the format now placed before this Court be brought on a semi-urgent basis. The applicant's legal team then commenced drawing up and preparing the application, which was quite detailed and obviously required some time to be completed. Counsel prepared an initial draft, and this draft was circulated for input and comment over the period 27 December 2025 to 4 January 2026. The application was finalised on 5 January 2026, and a case number and hearing date obtained from the Registrar. The application was served and filed on 6 January 2026.

- [32] Considering the aforesaid, I believe that the time taken from 19 December 2025 to 6 January 2026, to bring this application, especially considering its scope and extent and the particular time of year⁶, is sufficiently expeditious conduct to satisfy the requirements of urgency. It is clear that throughout this period, and despite the several public holidays, the applicant's legal team was actively attending to the matter, which was never left unattended. Once counsel advised on 27 December 2025 that the current application be brought in the form that it was, it then took just more than a week to prepare and finalise the application, and obtain a case number and hearing date from the Registrar. In my view, this is prompt action, brought at the appropriate first opportunity. Overall considered, the manner in which the applicant attended to this matter, after the ruling by the Chairperson came to hand, was prompt and immediate action which I consider to be line with the requirements to establish 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. Pursuant to the principles set out in *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another*⁷, I will accept that the applicant took sufficiently prompt and urgent action, and satisfies the requirement that the application was in effect brought at the earliest appropriate opportunity. It is in any event in my view important

⁶ In *Transport and General Workers Union and Others v Hiemstra NO and Another* (1998) 19 ILJ 1598 (LC) at para 7 it was held: '... I would be unduly shortsighted to fail to acknowledge that it is a norm of South African society that during the period mid-December to early January the nation slouches to a near halt. This customary annual shutdown may not have excused the appropriate degree of expedition in a matter which was truly urgent but it can hardly be said that the nature of this matter was one in which it was inexcusable not to disturb our collective slumber ...'. See also *Baur Research CC v Commission for Conciliation, Mediation and Arbitration and Others* (2014) 35 ILJ 1528 (LC) at para 3.

⁷ (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.

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, starting with the issue of jurisdiction.

Jurisdiction

[33] In her answering affidavit, Minister Creecy has specifically challenged the jurisdiction of this Court to grant the applicant the relief sought in this application. This means that the issue of jurisdiction must be first be considered and decided. First and foremost, jurisdiction is determined on the basis of the case as pleaded by the applicant, which pleaded case in motion proceedings is determined by reference to the notice of motion and founding affidavit.⁸

[34] So, where it comes to jurisdiction, what did the applicant actually plead? At least the founding affidavit provides a definitive answer, which is far better than one often finds in applications such as these. It is clearly stated as follows in the founding affidavit:

‘This Honourable Court has jurisdiction to hear and determine this matter in terms of section 157(1) and 158(1)(a) (iii) and (iv) and 158(1)(h) and of the Labour Relations Act 66 of 1995 (as amended).’

[35] The applicant then expands on the basis of the application, and the relief sought therein, in the following manner:

‘This is an application seeking declaratory and interdictory relief to address the profound unfairness and unlawfulness of the disciplinary process instituted against me by Minister Creecy, acting on delegation by the President.

I seek an order declaring the ongoing disciplinary process invalid and unlawful due to the failure of Minister Creecy to implement the President's delegation to her, following the withdrawal of the delegation issued to Minister Kubayi.

⁸ 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.

Further, I seek an order setting aside the ruling of Professor Madima, dated 19 December 2025, which found that he was authorised to preside over the disciplinary process, and declaring that the extension of and/ or follow-up suspension issued by Professor Madima to be of no legal force and thus invalid'

And:

'This is an application to set aside a two-pronged ruling made by the Chairperson of the hearing, Professor Madima. The first deals with authority to act, the second with the extension of my "purported" suspension. It is brought in terms of section 158(1)(h) of the Act.'

- [36] The aforesaid being the case as pleaded, the first issue for consideration is whether this Court has jurisdiction to entertain the applicant's application and grant him the relief sought, on this basis. In *Du Plessis v Public Protector and Others*⁹ 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 ...'

- [37] In *Gcaba v Minister for Safety and Security and Others*¹⁰, 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*¹¹, 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).'*'

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.

¹⁰ (2010) 31 ILJ 296 (CC) at para 74.

¹¹ (2009) 30 ILJ 1539 (SCA) at para 23.

[38] As set out above, it is so clear that the applicant has pleaded three sources that he says convey jurisdiction on this Court. I will start with his reliance on section 157(1) of the LRA. The section reads:

‘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. ...’

[39] In terms of section 157(1), the jurisdiction of the Labour Court is specifically circumscribed and determined by statute, being the LRA itself. But does this include a general jurisdiction allowing this Court to intervene, *in medias res* on an urgent basis, where it comes to any conduct of an employer, which includes the conducting of discipline, in the event that it is pleaded that such conduct is unfair or unlawful. In this context, it is true that as far back as 2011, the LAC in *Booyesen v Minister of Safety and Security and others*¹² 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:¹³

‘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 ...’

[40] Following *Booyesen*, the general approach in the Labour Court was to assume jurisdiction to intervene in disciplinary proceedings that were not complete, however the exercise of this jurisdiction was tempered by the requirement that the applicant had to show the existence of exceptional circumstances justifying such intervention. More often than not, because of the imperative that the dispute resolution machinery of the LRA rather be applied, showing exceptional circumstances was a difficult hurdle to clear.¹⁴ But this approach

¹² (2011) 32 ILJ 112 (LAC).

¹³ *Id* at para 54.

¹⁴ See for example *Mmatli and Others v Department of Infrastructure Development (Gauteng Province)* (2015) 36 ILJ 464 (LC) at para 13; *Mere v Tswaing Local Municipality and Another* (2015) 36 ILJ 3094 (LC) at paras 17 – 18; *Hlabangwane v MEC for Public Works, Roads and Transport, Mpumalanga Provincial Government and Others* (2012) 33 ILJ 1195 (LC) at paras 7 – 9.

did not detract from the position that the Labour Court was considered to have general jurisdiction to intervene.

- [41] Things started changing after the judgment of the Constitutional Court in *Steenkamp and Others v Edcon Ltd (National Union of Metalworkers of SA intervening)*¹⁵, where the Court had the opportunity to consider if the Labour Court had jurisdiction to determine whether a dismissal was unlawful, as opposed to being unfair. After referring to the fact that the LRA created special rights and obligations that do not exist at common law, which included the right of an employee not to be unfairly dismissed, but then also created principles applicable to such rights and special processes and fora for the enforcement of those rights,¹⁶ the Court, with specific reference to section 185 of the LRA,¹⁷ decided that:¹⁸

‘Conspicuous by its absence here is a para (c) to the effect that every employee has a right not to be dismissed unlawfully. If this right had been provided for in s 185 or anywhere else in the LRA, it would have enabled an employee who showed that she had been dismissed unlawfully to ask for an order declaring her dismissal invalid. Since a finding that a dismissal is unlawful would be foundational to a declaratory order that the dismissal is invalid, the absence of a provision in the LRA for a right not to be dismissed unlawfully is an indication that the LRA does not contemplate an invalid dismissal as a consequence of a dismissal effected in breach of a provision of the LRA.’

The Court then concluded:¹⁹

‘I conclude that invalid dismissals and a declaratory order that a dismissal is invalid and of no force and effect fall outside the contemplation of the LRA. Such an order cannot be granted in a case based on the breach of an obligation under the LRA concerning a dismissal.’

- [42] Following the judgment in *Edcon*, things started to change in the Labour Court where it came to the issue of urgent intervention in disciplinary proceedings

¹⁵ (2016) 37 ILJ 564 (CC) at para 106.

¹⁶ Id at para 105.

¹⁷ Section 185 reads: ‘Every employee has the right not to be — (a) unfairly dismissed; and (b) subjected to unfair labour practice.’

¹⁸ Id at para 106.

¹⁹ Id at para 136.

that were not complete. The Labour Court started to accept that where the case of the employee was based on allegations of unlawfulness or illegality, the Labour Court, based on what was said in *Edcon* about unlawful dismissals, did not have the jurisdiction to so intervene. A number of authorities so illustrate. In *Democratic Municipal and Allied Workers Union of SA and Others v City of Johannesburg*²⁰ it was said: ‘... The effect of this judgment is that when an applicant alleges that a dismissal is unlawful (as opposed to unfair), that applicant has no remedy under the LRA and this court has no jurisdiction to make any determination of unlawfulness. If a remedy is sought under the LRA, the applicant must categorise the alleged unlawfulness as unfairness ...’. And in *Neumann v Western Cape Education Department and Others*²¹ the Court held: ‘... Since the decision of the Constitutional Court ... there is now serious doubt whether a dismissal or other forms of employer conduct or action can be challenged under the LRA on the basis of unlawfulness’. Similar conclusions were arrived at in *National Education Health and Allied Workers Union and others v University of South Africa and another*²² and *Shezi v SA Police Service and Others*²³.

- [43] Nonetheless, the *ratio* in *Booyesen* remained, as the Court in *Edcon* did not specifically or pertinently deal with the jurisdiction of the Labour Court to intervene *in medias res* in incomplete disciplinary proceedings. However, in this respect, a recent important development has taken place. Based on what was held in *Edcon*, the LAC in *Cibane and Another v Premier of Province of Kwazulu-Natal*²⁴ has now revisited the *Booyesen* approach. In *Cibane*, the employee parties sought declaratory orders to the effect that there was an unreasonable delay in bringing the disciplinary charges against them and that the employer had waived its rights to pursue disciplinary proceedings, with the result that the disciplinary charges fell to be quashed.²⁵ In addition, these employees has applied to review and set aside the internal chairperson’s ruling on the same issues. In deciding the aforesaid case raised, and after

²⁰ (2020) 41 ILJ 912 (LC) at para 7.

²¹ (2021) 42 ILJ 561 (LC) at para 13.

²² (2022) 43 ILJ 2351 (LC) at para 15.

²³ (2021) 42 ILJ 184 (LC) at para 12.

²⁴ (2025) 46 ILJ 2587 (LAC).

²⁵ See para 28 of the judgment.

specifically referring the *dicta* in *Edcon* quoted above, the Court in *Cibane* first said:²⁶

‘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.’

[44] The aforesaid conclusion in *Cibane* is in my view clearly in line with how the jurisprudence with regard to jurisdiction in the case of contentions of unlawfulness and illegality had been developing in the Labour Court since *Edcon*. But that is not where the Court in *Cibane* stopped. The Court specifically went further and held:²⁷

‘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.’
(emphasis added)

The Court then concluded:²⁸

‘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.’

[45] In my view, *Cibane* has now clarified the issue of jurisdiction of the Labour Court under section 157(1) where it comes to intervening *in medias res* in internal disciplinary proceedings in an employer that are not completed. The Labour Court does not have any general jurisdiction to intervene and / or adjudicate any alleged unfairness, unlawfulness, illegalities or irregularities pertaining to any conduct or failure of any party to the employment relationship

²⁶ Id at para 24.

²⁷ Id at para 27.

²⁸ Id at para 32.

where it comes to incomplete internal disciplinary proceedings.²⁹ 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 either in the LRA itself or in any other related employment law, such as for example the Employment Equity Act (EEA)³⁰ or Basic Conditions of Employment Act (BCEA)³¹. The applicant must also specifically indicate on what provision in any of these items of legislation the applicant relies.³² If that cannot be done, or is not done, then there is no jurisdiction.

[46] The above is clearly destructive of the applicant's reliance on section 157(1) as source of jurisdiction. *In casu*, the applicant has specifically relied on employer conduct that is alleged to be unlawful in seeking intervention from this Court in the disciplinary proceedings against him, that are, despite having commenced, still incomplete. The applicant has made no reference to any provision under the LRA that may find application here. This is clear from the pertinent pleaded passages in the founding affidavit I have quoted earlier in this judgment. It does not matter what the basis of the alleged unlawfulness may be. This Court simply has no jurisdiction to intervene, *in medias res*, on the basis of unlawfulness. The applicant therefore cannot rely on section 157(1) as basis to confer jurisdiction on this Court to grant him the relief sought.

[47] This brings me now to section 158(1)(a) of the LRA. The applicant has pleaded that this Court has jurisdiction to afford him the relief sought by virtue of section 158(1)(a) (iii) and (iv). For the reasons to follow, the applicant's reliance on these provisions to confer jurisdiction on this Court is misplaced. It

²⁹ See also *Baloyi v Public Protector and Others* (2021) 42 ILJ 961 (CC) at para 24, where it was held: '... Crucially, s 157(1) does not afford the Labour Court general jurisdiction in employment matters ...' 29 Section 157(1) of the LRA does not refer to specific sections of that Act as sources of the Labour Court's exclusive jurisdiction. It only provides that they are to be found elsewhere in the Act. In some instances, their location is clear: for example, ss 68(1), 77(2), 145 and 191. In others, it is left to the courts to determine whether a matter is one that arises in terms of the LRA and is, in terms of that Act, or another law, to be determined solely by the Labour Court ...'.

³⁰ Act 55 of 1998 (as amended).

³¹ Act 75 of 1997 (as amended).

³² 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.

has been recognised that there are in essence two categories of powers envisaged by section 158(1). The first category is those powers that can only be exercised if it is first found that the Labour Court already has jurisdiction on another basis. The second category is what can be described as jurisdiction conferring powers, meaning that the power itself establishes jurisdiction. This was made clear in *South African Municipal Workers Union and Others v Mokgatla and Others*³³, as follows: ‘... While s 157(1) and (2) relate, broadly, to the jurisdiction of the Labour Court, s 158(1) both lists specific remedial powers and provides substantive jurisdictional bases of that court. ...’ The same was said in *Du Plessis supra*, namely:³⁴ ‘... This then only leaves s 158. Even though this provision on face value appears to deal with powers that are conveyed to the Labour Court only once jurisdiction is first established to exist, this section must be read in conjunction with s 157 as a source of jurisdiction as well ...’.

- [48] The nature of the powers of the Labour Court under section 158(1) was pertinently dealt with in *Merafong City Local Municipality v SA Municipal Workers Union and Another*³⁵. In that judgment, the Court accepted that section 157 is the primary provision in the LRA which deals with the Labour Court's jurisdiction,³⁶ however the Court added that section 157(1): ‘... directs the reader of that section to the sources of the Labour Court's exclusive jurisdiction, albeit in very vague and general terms ...’. Because of this, the Court expressed the view that:³⁷ ‘... As a result, the interpreter is saddled with the difficult task of having, for example, to distinguish purely jurisdictional provisions from general empowerment provisions. This difficulty is exacerbated by sections which purport to contain mere empowerment provisions, whereas they, on proper construction, also actually contain provisions which are sources of the Labour Court's jurisdiction’. That all being said, the Court then concluded:³⁸

‘Section 158 is such a section. Its introductory wording specifically states that it deals with the powers of the Labour Court. Because the introductory words

³³ 2016 (5) SA 89 (SCA) at para 11.

³⁴ Id at para 24.

³⁵ (2016) 37 ILJ 1857 (LAC).

³⁶ Id at para 28.

³⁷ Id at para 30.

³⁸ Id at para 31.

of the previous section, that is s 157, state that it deals with the jurisdiction of the Labour Court, the immediate expectation is that s 158 is not a source of jurisdiction, but merely contains provisions defining the powers of the Labour Court in respect of matters, which, in terms of some other provision in that Act, fall under the jurisdiction of the Labour Court. However, a close reading of the entire s 158 dispels that initial notion. It does deal with powers (post jurisdiction), but also with powers which cannot but be construed and understood as sources of jurisdiction.'

- [49] The Court in *Merafong supra* provided examples of provisions found in section 158(1) that conferred jurisdiction, as opposed to those that could only be exercised if jurisdiction was first established elsewhere under the LRA. In this regard, the Court said:³⁹ '*Section 158(1)(a) is clearly an example of the powers the Labour Court may exercise in respect of a matter falling within its jurisdiction, and it does not purport to grant the Labour Court jurisdiction, in the sense of the power to hear and determine the matter in the first place. On the other hand, s 158(1)(i) clearly bestows on the Labour Court jurisdiction in the latter sense*'. The Court also referred to section 158(1)(h) as being a source of conferring jurisdiction and then also empowering the Labour Court to hear and determine applications to review any decisions taken or acts performed by the State in its capacity as employer.⁴⁰
- [50] It follows that each individual provision in section 158(1) must be carefully scrutinised in order to ascertain whether the provision confers jurisdiction on the Labour Court in addition to providing it with powers to exercise, or is only a provision providing the Labour Court with powers to exercise once it already has jurisdiction established by other means in the first place. In this regard, the Court in *Merafong supra* has clearly said that the powers in terms of section 158(1)(a) do not serve to confer jurisdiction, and can only be exercised if jurisdiction exists in the first place. Using a simple example relevant to the case *in casu*, the Labour Court has the power to grant a declaratory order under section 158(1)(a)(iv), but can only exercise this power if it already has jurisdiction to entertain the dispute on another basis.

³⁹ Id at para 33.

⁴⁰ Id at para 34.

[51] It must follow that the reliance by the applicant on section 158(1)(a)(iii) and (iv) as a source of conferring jurisdiction on this Court is ill-founded. These are not jurisdiction conferring provisions. These are actually provisions providing powers to the Labour Court, only once jurisdiction is conferred from another source. Therefore, it cannot be said that the Labour Court has jurisdiction on this basis.

[52] This leaves only section 158(1)(h), which reads: '*The Labour Court may ... review any decision taken or any act performed by the State in its capacity as employer, on such grounds as are permissible in law*'. It is correct, as said in *Merafong*, that this is indeed a jurisdiction conveying provision.⁴¹ Accordingly, this Court would have jurisdiction to entertain the applicant's case, based on section 158(1)(h),⁴² but only within the confines of what is contemplated specifically by such section. Section 158(1)(h) can equally not serve as some source of general jurisdiction to challenge unlawful or unfair conduct. It is specifically a review jurisdiction, which must be exercised within the confines of what is required and permitted by the LRA in dealing with such kind of challenges. As said in *Cibane supra*:⁴³

'Counsel relied ultimately on s 158(1)(h) of the LRA. That section empowers the Labour Court to review any decision taken or act performed by the state in its capacity as employer, on such grounds as are permissible in law. The founding affidavit does not expressly disclose the grounds for review on which the appellants rely, save for broad averments that the second respondent's ruling is bad in law and a finding to which no reasonable chairperson could come on the available material. Section 158(1)(h) requires an applicant to articulate a ground for review that is 'permissible in law'. This requires the ground for review on which the applicant relies to be specifically identified and articulated. ...'

And in *Public Servants Association of SA on behalf of De Bruyn v Minister of Safety and Security and Another*⁴⁴ it was held:

⁴¹ See also *Booyesen v Beaufort West Municipality and Another* (2026) 47 ILJ 129 (LAC) at para 22.

⁴² See *Vanguard of Organised Labour (Voola) v Mahlangu and Others* [2025] JOL 69950 (LC) at para 22.

⁴³ Id at para 30.

⁴⁴ (2012) 33 ILJ 1822 (LAC) at para 28.

‘... it does not follow that because the remedy of judicial review may still exist for public servants that the Labour Court will entertain an application to review “any act performed by the State in its capacity as employer” as a matter of course. Recourse to review proceedings, in terms of s 158(1)(h), takes place in the context of the law relating to judicial review as well as the other elements of the system of dispute resolution which the LRA has put in place and also other applicable statutes.’

[53] There are many obstacles standing in the way of the applicant being able to obtain the relief he seeks under section 158(1)(h), but these obstacles do not relate to the issue of jurisdiction under the section, *per se*. Rather, the obstacles relate to whether the applicant’s case based on section 158(1)(h) is a bad case, which will be dealt with below. As decided in *Makhanya supra*⁴⁵:

‘... the claim that is before a court is a matter of fact. When a claimant says that the claim arises from the infringement of the common-law right to enforce a contract, then that is the claim, as a fact, and the court must deal with it accordingly. When a claimant says that the claim is to enforce a right that is created by the LRA, then that is the claim that the court has before it, as a fact. When he or she says that the claim is to enforce a right derived from the Constitution then, as a fact that is the claim. That the claim might be a bad claim is beside the point.’

Analysis

[54] It is quite true that in the notice of motion, the applicant seeks relief to the effect that the decision by the Chairperson dismissing the applicant’s authority point be set aside. This clearly contemplates a review application, which is, as discussed above, what is envisaged by section 158(1)(h). However, and as said in *Mohlomi v Ventersdorp/Tlokwe Municipality and Another*⁴⁶:

‘The enquiry whether or not to entertain such a review application however does not stop just because it may be accepted that the Labour Court in general terms has jurisdiction to do so. Simply put, the fact that the Labour Court has jurisdiction/power does not mean that the court should exercise this power. In other words, and even though the court may have jurisdiction to

⁴⁵ Id at para 71. See also *McKenzie (supra)* at para 8; *SA Local Government Bargaining Council v Ally NO and Another* (2016) 37 ILJ 223 (LC) at para 42; *O’Connor v Department of Education, Eastern Cape and Others* (2024) 45 ILJ 1041 (LC) at paras 27 – 28.

⁴⁶ (2018) 39 ILJ 1096 (LC) at para 34. See also *O’Connor (supra)* at para 42.

consider such a review under s 158(1)(h), it does not mean that it is appropriate for it to exercise such power, especially where there are other specifically prescribed alternative means by way of which the issue can be resolved.’

[55] The applicant has at least pleaded what appears to be grounds of review. But these pleaded grounds seem to rotate between both unfairness and unlawfulness as basis for granting the review. For example, the applicant pleads: *‘I have a right to a fair hearing as contemplated in the SMS handbook. And that right has been compromised by a superficial implementation of the redelegation, since the same panel appointed by Minister Kubayi, under a now-withdrawn delegation, continues to preside and participate in the present proceedings. Minister Kubayi effectively remains actively involved, as evidenced by her premature media announcement, defeating the very purpose of the President’s intervention to start afresh and cure the bias’*. But on the other hand, the applicant pleads that because the redelegation to Minister Creecy reads: *‘You are directed to initiate disciplinary processes against the Director-General’*, the word *‘initiate’* therein means to begin afresh. It follows, according to the applicant, that the further conducting of the process implies a new, independent, and untainted process, and this can only happen if all the functionaries appointed under the delegation to Minister Kubayi are withdrawn, so to speak, and Minister Creecy makes new appointments *de novo*. The applicant then pleads that the mere continuation of a process by Minister Creecy that was tainted from the outset, rendered the process unlawful and the proceedings null and void, which case has nothing to do with unfairness.

[56] So, on what basis does the applicant really seek to review and set aside the decision of the Chairperson refusing his authority challenge. In *O’Connor v Department of Education, Eastern Cape and Others*⁴⁷ the Court held that where the Court is faced with a review application under section 158(1)(h) to challenge any decision of the state in its capacity as employer, which would obviously be the decision of the Chairperson *in casu*, it is essential for the Court to consider the true nature of the decision, or, in other words, the true nature of the dispute.⁴⁸ In *Magoda v Director-General of Rural Development*

⁴⁷ (2024) 45 ILJ 1041 (LC) at para 45.

⁴⁸ In *Zungu v Premier, Province of Kwazulu-Natal and Another* (2017) 38 ILJ 1644 (LAC) at para 18, the Court said: ‘... Accordingly, the first exercise in any proceedings is to read, as in this case, the

and *Land Reform and Another*⁴⁹ the Court had the following to say: ‘... section 158(1)(h) establishes a jurisdictional footprint for review, with the permissible grounds of review being dependent upon the nature of the impugned decision ...’. The enquiry to determine the nature of the dispute must thus always be conducted by this Court, irrespective of how the review applicant may choose to label the dispute.⁵⁰ Once this enquiry shows that the issue in dispute is actually one that contemplates a violation of the rights of the applicant bestowed by the LRA, then the dispute must be resolved by way of the proper prescribed processes under the LRA, and this Court should decline to entertain the same under section 158(1)(h). The Court in *Leshabane v Minister of Human Settlements and Others*⁵¹ found as follows:

‘... insofar as this court may be empowered to consider a legality challenge by an employee of the state such as the applicant in casu, such entitlement is always subject to such an employee being required, if not obliged, to instead utilise the prescribed dispute-resolution processes under the LRA, like any other employee.’

[57] Should the applicant’s basis for review be founded on a violation of his right to a fair hearing as envisaged by the SMS Handbook, this is a right bestowed by the LRA. The SMS Handbook does nothing more than give effect to such right. Where the LRA affords an employee a right, it also prescribes a process that must be applied in giving effect to such a right. As pertinently said in *Edcon supra*.⁵²

‘The scheme of the LRA is that, if it creates a right, it also creates processes or procedures for the enforcement of that right, a dispute-resolution procedure for disputes about the infringement of that right, specifies the fora in which that

allegations in the affidavits, and make the determination. It is not, primarily, the form of relief sought, but rather the necessary averments to demonstrate the ‘cause of action’ that determines the ‘character’ of the dispute, although the form of the relief, if it is consonant with the cause of action, will point in the same direction’. See also *Mohlomi (supra)* at para 42; *Ngubane v Safety and Security Sectoral Bargaining Council and Others* (2022) 43 ILJ 2543 (LC) at para 24.

⁴⁹ (2017) 38 ILJ 2795 (LC) at para 5.

⁵⁰ Compare *National Union of Metalworkers of SA and Others v Bader Bop (Pty) Ltd and Another* (2003) 24 ILJ 305 (CC) at para.52; *Chirwa (supra)* at para 63; *Gcaba (supra)* at para 66; *Farre v Minister of Defence and Others* (2017) 38 ILJ 174 (LC) at para 17.

⁵¹ (2024) 45 ILJ 833 (LC) at para 46.

⁵² *Id* at para 130. See also *Chirwa (supra)* at para 68; *Gcaba (supra)* at para 69; *Hendricks v Overstrand Municipality and Another* (2015) 36 ILJ 163 (LAC) at paras 12 and 27; *SA Social Security Agency v Hartley and Others* (2023) 44 ILJ 1334 (LC) at para 3; *Mohlomi (supra)* at para 40; *O’Connor (supra)* at para 44.

right must be enforced and specifies the remedies available for a breach of that right.’

[58] It follows that it is not competent for the applicant to challenge the decision of the Chairperson refusing his authority point on review to this Court, in terms of section 158(1)(h), should the applicant wish to rely on his right to procedural fairness. Such a dispute must be pursued in terms of the ordinary dispute resolution processes under the LRA, by way of a referral to the GPSSBC should the applicant be dismissed, and in such proceedings, the applicant would be able to make out a case that his right to procedural fairness was violated and he could then obtain relief. The following dictum in *Zungu v Premier of the Province of KwaZulu-Natal and Others*⁵³ is apposite, where the Court held as follows:

‘The Labour Appeal Court was correct in upholding the Labour Court’s decision that it did not have jurisdiction in the matter. This is because the claim by the applicant relating to the Premier’s decision not to appoint her, and the contention that this was unlawful, falls squarely within the definition of dismissal in s 186(1)(b) of the LRA. The dispute should have been referred to conciliation and ultimately to arbitration under s 191 of the LRA. Therefore, the applicant cannot bypass the dispute-resolution process envisioned in the LRA. The applicant was obliged to follow the dispute-resolution process in chapter VIII of the LRA but did not do so.’

And in *Shezi supra* the Court decided that:

‘Where the employer conduct complained of is alleged to be unfair, the court is precluded from granting final relief since it has no jurisdiction in respect of matters that concern the procedural fairness of disciplinary proceedings. At most, the court has jurisdiction to grant interim relief. Even then, the court has held that it is not desirable that disputes about the exercise of workplace discipline be dealt with on a piecemeal basis, particularly by way of the review of every decision taken by the employer in the disciplinary process.’

[59] What is also apparent from the case as pleaded by the applicant is that his case of unlawfulness, on the one hand, and unfairness on the other, where it comes to what he believes is unauthorised disciplinary proceedings against

⁵³ (2018) 39 ILJ 523 (CC) at para 20.

him, is founded on basically the same facts. He seems to approbate and reprobate, depending on how he wants his claim to be decided. But in the end, it all goes back to what is a right to a fair hearing under the provisions of the SMS Handbook, and that is simply not a dispute that can competently be pursued directly to this Court by virtue of the review jurisdiction this Court has under section 158(1)(h) of the LRA. Therefore, and based on the true nature of the applicant's case, this Court would not have jurisdiction to determine his review application under section 158(1)(h), as it is a case that must be pursued in terms of the ordinary dispute resolution processes in terms of the LRA. I consider the following *dictum* in *Magoda supra* to be apposite *in casu*:⁵⁴

'The principle emerging from Hendricks (and related case law) is that s 158(1)(h) reviews (including legality review) are only permissible where there is no other remedy available under the LRA. The principle is not defeated because an applicant relies on legality (ie lawfulness) in the review, while the LRA provides for a remedy in fairness, because it is the existence of a remedy under the LRA that renders the review impermissible. In any event, in substance the applicant's complaint is that she was treated procedurally unfairly as a consequence of the procedural rulings. The founding affidavit is replete with references to the applicant's right to a 'fair' trial or hearing having been breached. And in argument, Mr Ogunronbi placed reliance on item 4 of the Code of Good Practice: Dismissal (schedule 8 to the LRA), which deals with the procedural fairness of dismissals for misconduct. In effect, the applicant has labelled a complaint about procedural fairness as one of unlawfulness in order to mount a legality review, simply because unfairness itself is not a ground of review. The LRA provides a remedy to address this very complaint; a review under s 158(1)(h) is thus impermissible ...'

[60] But even if I am incorrect in determining the nature of the applicant's dispute, and it is actually a review application to challenge the lawfulness of the actions of the Department in convening the disciplinary proceedings against him, the applicant nonetheless faces another insurmountable hurdle. This hurdle is evident from the following dictum in *Cibane supra*:⁵⁵

'In any event, the appellants sought to review the second respondent's ruling in *medias res*. There is a general rule against a review court entertaining a

⁵⁴ Id at para 11.

⁵⁵ Id at para 31.

review application in these circumstances. Specifically, in a labour context, s 158(1B) expresses the general rule applicable in the Labour Court in respect of the review of rulings issued during the course of any conciliation or arbitration proceedings conducted under the LRA. The Labour Court may not review any decision or ruling until a final determination has been made, except where the court is of the opinion that it would be just and equitable to do so before the stage of final determination. The Labour Court ought to be even more circumspect in upholding appeals to exceptionality in the case of a review of rulings made in the course of internal disciplinary proceedings. To do otherwise would frustrate the LRA's purpose of expeditious dispute resolution.'

- [61] The applicant has simply not made out a proper case for intervention *in medias res*. What makes it worse is that this is not even a review application in the ordinary course. The review application in this case is an urgent one where the applicant actually seeks final relief in these proceedings. That makes the requirement of '*just and equitable*' even more difficult to meet. I am not aware of any review application that was finally decided on the basis of urgency, and I simply do not believe this is a competent approach, especially considering what is involved in properly deciding a review application.
- [62] Yes, there are cases where the Court could, for example, temporarily interdict proceedings or actions pending the final determination of a review application, however in those cases the requirement of needing to show exceptional circumstances for such intervention still remains applicable.⁵⁶ This is evident from what was said in *Magoda supra*, as follows:⁵⁷

'... even if a legality review is available to the applicant under s 158(1)(h) despite the existence of an alternative remedy under the LRA, in order to succeed with an application for interim relief at this stage, she would have to establish exceptional circumstances for a review in *medias res* ...'. And in *Shezi supra*⁵⁸ it was held: 'It is important to emphasise that regardless of the legal basis on which intervention is sought, whether by way of interim

⁵⁶ Exceptional circumstances in this context means, as said in *Booyesen (supra)* at para 34: '... Among the factors to be considered would in my view be whether failure to intervene would lead to grave injustice or whether justice might be attained by other means. The list is not exhaustive ...'. In *Choko-Choko (supra)* at para 33, it was described as 'a manifest injustice'. And in *BMW (supra)* at para 51, it was said that: '... The simple point is that this court will only entertain applications to intervene in uncompleted disciplinary proceedings in truly exceptional circumstances crying out for intervention and if material irremediable prejudice or grave injustice is shown to exist ...'.

⁵⁷ (2017) 38 ILJ 2795 (LC) at para 12.

⁵⁸ (2021) 42 ILJ 184 (LC) at para 20. See also *O'Connor (supra)* at para 48.

relief, a review application or a claim in contract, the rule that intervention is exceptional remains. Once the court determines that the pleadings disclose a jurisdictional basis for intervention in uncompleted disciplinary proceedings, the case for exceptionality must be made’.

- [63] Therefore, even if competent, these kinds of interim proceedings discussed above, are not intended to finally determine the merits of the review application. The applicant in this case however seeks a final determination of the merits of his review, on an urgent basis. This, in my view, is not a competent course of action. As a result, the review application, brought on an urgent basis seeking final relief, is incompetent, and the applicant must be non-suited on this basis, without even considering the merits of the review application. As made clear in *Jiba supra*:⁵⁹

‘Urgent applications to review and set aside preliminary rulings made during the course of a disciplinary enquiry or to challenge the validity of the institution of the proceedings ought to be discouraged. These are matters best dealt with in arbitration proceedings consequent on any allegation of unfair dismissal, and if necessary, by this court in review proceedings under s 145.’

- [64] And finally in this regard, I am unconvinced that the applicant has shown that it would be just and equitable to even consider his review application *in medias res*. The former LAC in *Zondi and Others v President, Industrial Court and Others*⁶⁰ decided as follows:

‘There is no universal or absolute test governing the question when a court will interfere in uncompleted proceedings, but one thing is clear from the cases and that is that a court will only interfere in *medias res* in exceptional circumstances, or when there is very good reason to do so. In ordinary circumstances the time to take any proceedings on appeal or review is at the termination thereof. The reasons for this attitude are equally clear. To permit interference in uncompleted proceedings delays the continuation and completion of such proceedings. If such termination were to be readily permitted the proceedings might be interrupted at various times, and to deal with reviews or appeals piecemeal is clearly not practicable. In any event, the irregularity, even if it is allowed to stand, will not necessarily affect the result which might otherwise have followed. The tribunal concerned might

⁵⁹ Id at para 17.

⁶⁰ (1991) 12 ILJ 1295 (LAC) at 1300D-G.

for example in any event come to a conclusion favourable to the party otherwise affected by the irregularity. Even if the irregularity does in the end lead to a conclusion adverse to the person affected thereby, the time to put it right, as I have already said, is at the termination of proceedings.’

- [65] The aforesaid *dictum* in *Zondi supra* has been consistently applied by this Court.⁶¹ And further, in the recent judgment of the LAC in *South African Cabin Crew Association obo Members v South African Airways (Soc) Ltd and Others*⁶², albeit in the context of section 158(1B)⁶³, the Court had the following to say:

‘... the court in *South African Broadcasting Corporation (SOC) Limited v Commission for Conciliation, Mediation and Arbitration and Others* noted that “[a] case must be truly exceptional to warrant a departure from the norm that a review is appropriate only once the dispute has been finally determined in a completed arbitration hearing. This is consistent with the statutory purpose of expeditious dispute resolution which the LRA seeks to achieve”.

Exceptional circumstances justifying judicial intervention in incomplete proceedings have been found to exist where such intervention was necessary to prevent illegality, to prevent grave injustice, or where justice could not otherwise be achieved. ...’

- [66] On the facts, the applicant has dismally failed to make out any of the kind of circumstances envisaged by the judgments discussed above. The applicant effectively adopts the approach that to expect him to participate in unlawful proceedings to conclusion is *per se* exceptional circumstances justifying intervention. But this simply cannot be correct. As said in *Zondi supra*, this kind of irregularity, even if it exists, does not mean that it would lead to an unfavourable outcome for the applicant. Added to that, the applicant has not even made out a case that the Chairperson was somehow compromised or biased, or would have a predisposition to find against him. In fact, the applicant specifically disavowed such a challenge. There is, realistically considered, no indication that the applicant will not receive a fair hearing.

⁶¹ See for example *Magoda (supra)* at paras 12 – 13; *Ngobeni v Passenger Rail Agency of SA Corporate Real Estate Solutions and Others* (2016) 37 ILJ 1704 (LC) at para 13; *Ramthlakgwe v Modimolle-Mookgopong Local Municipality and Another* (2023) 44 ILJ 2297 (LC) at paras 18 – 19.

⁶² [2025] 10 BLLR 1048 (LAC) at paras 26 – 27.

⁶³ Section 158(1B) in effect prohibits piecemeal reviews before the conclusion of the matter, unless it can be shown that it would be ‘*just and equitable*’ to permit it.

- [67] The applicant also states that if he was to bring his application in the normal course, his contract of employment would have long expired by the time it is heard, which equally establishes exceptional circumstances. But this cannot be correct. The undeniable reality is that the applicant's employment contract will expire, as a matter of course, whether the disciplinary hearing proceeds or not. No order granted, as prayed for by the applicant, can change that. So why would this create exceptional circumstances. Insofar as the applicant says that he needs to take action now to protect his integrity and reputation, which would be compromised by having to go through a disciplinary hearing and ultimately being dismissed, there is nothing exceptional about this as well. Surely this is the same for every senior or high-level employee that is being subjected to disciplinary proceedings. The fact that the applicant's contract may have expired by the time he takes action does not deprive him of his right to still challenge what may ultimately happen to him throughout the disciplinary proceedings, and any conclusion reached in terms thereof, utilising the remedies available to him under the LRA. For example, if he is dismissed, and his difficulty is that a dismissal would blemish his stellar employment record, this will be set right by a finding of unfair dismissal, no matter what the ultimate consequential relief may be. There is nothing exceptional about the applicant's situation.
- [68] I must confess that I find the applicant's contentions relating to the alleged lack of authority contrived. Why I say this, at this juncture, is because it needs to be illustrated that there nothing so egregious or unjust in this case that would cry out for urgent intervention as an exceptional circumstance. Sometimes cases are so bad that one cannot turn a blind eye to it. This is not such a case. On the common cause facts, there was nothing wrong with the delegation by the President to Minister Kubayi. Further, also on the common cause facts, there was nothing wrong with the delegation to Minister Creecy. There was equally no dispute that Minister Creecy was entitled to commence the disciplinary hearing against the applicant and issue the charge sheet to him, which she did. These facts show proper compliance with clause 7 of the SMS Handbook. I find the applicant's suggestion that nonetheless, everything Minister Kubayi did with regard to the appointment of the Chairperson and initiators had to first be terminated, and then Minister Creecy had to make new appointments herself, entirely *de novo*, to be nonsensical, especially considering that the

impartiality of the Chairperson was not in issue. On the facts, there is no doubt that Minister Creecy exercised her discretion under the delegation to continue with the initiators and Chairperson, and there is nothing under both the withdrawn and current delegations to indicate this was not permitted and improper. But if there was any doubt, the President's explanation of why he did what he did puts paid to any legitimate concerns. In the end, it all turns on what the applicant believes the word '*initiate*' means and what its consequences are, and there is nothing exceptional about this, which could lead to a failure of justice if not immediately rectified, especially considering the true undeniable facts.

[69] Lastly, the applicant says because he is a high-level public figure, and the matter concerns deciding the issue of delegations by the President, it is somehow a matter of national importance. Again, I am compelled to disagree. Whatever the seniority of the applicant, and the level at which the delegations were granted, this is a case no different from the plethora of cases one finds in the public service where authority to discipline is challenged. The case *in casu* remains an individual case, applicable to an individual employee, who is being disciplined on fact specific charges, under fact specific circumstances. There is no national or public importance to the case. The fact that the case involves the Director-General of the Department may make it interesting, but it does not make it exceptional.

[70] In summary, the applicant's pleaded reliance on section 158(1)(h) cannot save his case. This is because insofar as he relies on unfairness, it not competent for him to pursue a case directly to this Court on review, and he is compelled to follow the ordinary dispute resolution processes as contemplated by the LRA. Furthermore, and even if unlawfulness is the basis for review, the applicant has failed to make out a case justifying urgent intervention in this matter, *in medias res*. Insofar as the applicant relies on section 158(1)(h), his application must be dismissed.

The suspension

[71] The final issue to be considered is the applicant's suspension case. The need by the applicant to have pursued this case to this Court is somewhat perplexing, considering that the applicant has referred an unfair suspension

case to the GPSSBC, based on in essence the same grounds that form the subject matter of his complaint now before this Court.

[72] The applicant's complaints where it comes to his suspension are simple. First, he says that the time limit permitted under the SMS Handbook for his suspension has expired, and as such his suspension has lapsed. This, according to the applicant, means his continued suspension is unlawful, and with it, the Chairperson's extension of this suspension was unlawful. Second, the applicant complains that the Chairperson's decision to extend the suspension violated his right to a fair hearing, because the parties had agreed in the earlier disciplinary hearing that this issue was not up for consideration, and the applicant thus did not have a proper and fair opportunity to state his case in this respect to the Chairperson. In the context of the above causes of complaint, the applicant pleads that he disavows any complaint based on unfairness, as this is covered by the GPSSBC referral. He pleads that he only relies on the unlawfulness of his continued suspension.

[73] I accept that suspension of an employee under the SMS Handbook beyond 60 days, without the disciplinary proceedings having commenced, means that such continued suspension terminates automatically, and the employee must be permitted to resume his or her normal duties.⁶⁴ It could perhaps even be said that the continued suspension is unlawful, which is what the applicant pertinently contends.

[74] But once the applicant relies on an unlawful suspension, he walks squarely into the same obstacles he faces where it comes to his challenge to the disciplinary proceedings based on unlawfulness. The simple point is that this Court does not have jurisdiction to decide on the unlawfulness of the applicant's suspension. In *Phahlane v SA Police Service and Others*⁶⁵, the Court, with specific reference to the *dictum* in *Edcon* quoted above, had the following to say:

‘The effect of this judgment is that when an applicant alleges that a dismissal is unlawful (as opposed to unfair), there is no remedy under the LRA and this court has no jurisdiction to make any determination of unlawfulness. If a

⁶⁴ See *Tshabalala v Moqhaka Local Municipality and Another* (2025) 46 ILJ 590 (LAC) at paras 7 – 10 and 14.

⁶⁵ (2021) 42 ILJ 569 (LC) at para 5.

remedy is sought under the LRA, the applicant must categorise the alleged unlawfulness as unfairness. By extension, the same principle applies to other forms of employer conduct which are alleged to be unlawful.'

- [75] With reference to suspension in particular, the Court in *Democratic Municipal and Allied Workers Union of SA and Others v City of Johannesburg*⁶⁶ decided:

'The effect of this judgment (*Steenkamp & others v Edcon Ltd*) is that when an applicant alleges that a dismissal is unlawful (as opposed to unfair), that applicant has no remedy under the LRA and this court has no jurisdiction to make any determination of unlawfulness. If a remedy is sought under the LRA, the applicant must categorise the alleged unlawfulness as unfairness.

By extension, the same principle applies to any precautionary suspension from employment. Section 185 of the LRA is concerned with unfair dismissals and unfair labour practices. Section 186(2) defines an unfair labour practice. In para (b), the Act provides that the unfair suspension of an employee or any other unfair disciplinary action short of dismissal, constitutes an unfair labour practice. It follows that what was good for a termination of employment in *Edcon* is good for an unfair labour practice in the present instance. In other words, the lawfulness of any suspension is not a matter regulated by the LRA, and any remedy under that Act must be sought on the basis of fairness.' (emphasis added)

And in *Strydom v Arcelormittal SA*⁶⁷ the Court pertinently held:

'... This court has no jurisdiction to decide a claim relating to unfairness or unlawfulness of suspension in terms of the provisions of the LRA.'

- [76] The aforesaid does not mean that the applicant can never challenge the fact that his suspension automatically ended when the 60 days period under the SMS handbook lapsed, however he remains suspended. Of course he can. Even if the applicant alleges this is unlawful, it nonetheless concerns an issue relating to the application of the SMS Handbook, and in this context, it is competent for the GPSSBC to consider it as part of the unfair labour practice jurisdiction under section 186(2) of the LRA. An arbitrator in such forum could direct that the suspension be uplifted for this reason. In point in this respect is

⁶⁶ (2020) 41 ILJ 912 (LC) at paras 7 – 8.

⁶⁷ (2024) 45 ILJ 931 (LC) at para 48.

the judgment in *Department of Public Works and Another v Vukela and Others*⁶⁸. In that application, the employer sought to review and set aside an arbitration award issued by a bargaining council arbitrator finding that the employer committed an unfair labour practice relating to suspension, and ordered that the employee's suspension be lifted and that he reports for duty. The basis for the award can be found in the following reasoning of the arbitrator: '*... I find that the applicant has discharged the onus to prove that the respondents committed an unfair labour practice in their conduct of extending his suspension beyond the 60-day period prescribed in clause 2.7(2)(c) of the SMS Handbook. There is absolutely no fair reason for the continuation of the applicant's suspension. If anything, the continuation of the suspension is both arbitrary and egregious. It is appropriate, therefore, that the respondents lift the suspension of the applicant*'.⁶⁹ In considering this reasoning by the arbitrator, the Court held as follows, in dismissing review application:⁷⁰

'The interpretation adopted by the court is thus that any precautionary suspension by an employer is limited to a period of 60 days, that a disciplinary enquiry must be convened within that period, and that any extension of the 60-day period is a matter for decision by the chairperson of the disciplinary enquiry. In the present instance, it is not in dispute that the 60-day period from the date of the first respondent's suspension lapsed on 26 September 2020, and that Adv Berger SC did not extend the suspension beyond the 60-day period. In the absence of any extension by Adv Berger SC of the first respondent's suspension beyond 26 September 2020, that suspension automatically lapsed. It follows that the first respondent's suspension beyond 26 September 2020 is a contravention of the SMS Handbook and for the purposes of s 186(2) of the LRA, an unfair labour practice in the form of an unfair act by the applicants in relation to the first respondent's suspension.'

[77] And in *Lekabe v Minister: Department of Justice and Constitutional Development*⁷¹ the Court simply said that:

'... the right of the employee in the event that the employer does not uplift the suspension on the expiry of the 60 days is to file an unfair labour practice

⁶⁸ (2022) 43 ILJ 2319 (LC).

⁶⁹ See para 27 of the judgment.

⁷⁰ Id at para 44.

⁷¹ 2009) 30 ILJ 2444 (LC) at para 19.

claim or bring an application to have an order directing the employer to uplift the suspension.'

[78] It follows that having due regard to basis for the applicant's case that his suspension was unlawful, those are issues that can competently be placed before the GPSSBC for consideration, as part of its unfair labour practice jurisdiction. This is especially so where it comes to the case that the applicant was not fairly heard by the Chairperson prior to the Chairperson deciding to extend the suspension. There was no need to burden this Court with the issue, especially on an urgent basis, considering that the alternative remedy available to the applicant is not only an available remedy, but an actually prescribed remedy under the LRA. In this regard, one must also consider that the applicant has in fact already referred an unfair suspension dispute to the GPSSBC involving, *inter alia*, the very issue that his suspension has lapsed because of the expiry of the time period under the SMS Handbook. He has also stated that he has requested the bargaining council to urgently decide the matter. This must surely stand directly in the way of this Court intervening and deciding this issue.

[79] An final apt illustration of the issue discussed above can be found in *Democratic Nursing Organisation of SA on behalf of Binza v Department of Health, Western Cape Province*⁷², which equally concerned a case founded on the 60 days' time period under the SMS Handbook having lapsed. The Court made the following interesting observations:⁷³

'Although he claims his suspension is unlawful, Binza does not seek an order of specific performance but argues that he has established that he has exceptional and compelling circumstances warranting the urgent intervention of the court as a matter of unfairness. His reluctance to assert a right to relief based on a claim that the suspension was unlawful is doubtless informed by the change in approach to such claims adopted by this court since the Constitutional Court decision in *Steenkamp & others v Edcon Ltd (National Union of Metalworkers of SA intervening)*.' (emphasis added)

⁷² (2025) 46 ILJ 606 (LC).

⁷³ *Id* at para 11.

What is clear from this dictum in *Binza* is that the Court appreciated that it would not have jurisdiction to decide a case based on a contention that the suspension was unlawful for this reason.

- [80] The Court in *Binza* then considered whether it was appropriate to intervene on the basis of it being pleaded that the suspension was unfair, because the 60 days' time period had lapsed, and concluded:⁷⁴

'A final issue to consider is the nature of the right Binza asserts. It is a right to have a precautionary suspension declared an unfair labour practice. The Labour Relations Act 66 of 1995 (the LRA) has provided a process that the legislature deemed adequate to redress such unfair conduct by an employer. There is a danger that, if this court too readily accepts that just because it would make some sense for it to intervene before that process has been concluded, this could have the effect of rendering the intended statutory remedy nugatory, because the relief afforded by the court would in many instances be more effective than relief awarded in due course. That is why the circumstances warranting urgent relief of this nature must be truly unusual and exceptional, and I am not satisfied that Binza has established that the circumstances of his suspension are such.

In the light of the discussion above, I am not satisfied that Binza does not have a suitable alternative remedy ...'

Clearly, similar considerations apply *in casu*.

- [81] It must follow from all the aforesaid is that this Court has no jurisdiction to entertain the applicant's unlawful suspension case. It is a case that can be competently and properly raised before the GPSSBC, where it has in fact already been referred to. Whether the applicant labels it as unlawful suspension, or unfair suspension, it does not matter. It is not an issue for this Court to decide, especially on the basis of urgency, where no exceptional circumstances have been shown and with a proper and suitable alternative remedy being available. I will therefore not consider the parties' arguments concerning the basis of calculation of the 60 days' time period and whether the Chairperson was competent to extend the suspension, which I believe must be decided in the proper forum.

⁷⁴ Id at para 16 - 17

Conclusion

[82] For all the reasons as set out above, I conclude that overall considered, this Court does not have the jurisdiction to consider the applicant's application and grant him the relief sought, especially considering that final relief is sought. The applicant's reliance on section 157(1) and section 158(1)(iii) and (iv), as sources conferring jurisdiction, is misplaced, and this Court does not have jurisdiction to entertain the applicant's pleaded case in this matter, based on these sections. Where it comes to the applicant's reliance on section 158(1)(h), the applicant must also fail, even though this Court would have jurisdiction to decide it, for two reasons. First this Court has no jurisdiction to consider this particular review application, because the applicant, considering the particular nature of the dispute in this case, is compelled to follow the prescribed dispute resolution processes under the LRA and not approach this Court directly under section 158(1)(h). Secondly, the applicant has in any event not demonstrated proper exceptional circumstances to justify intervention in this case by way of a review application, *in medias res*. And lastly, the applicant's suspension case also falls to be dismissed due to a want of jurisdiction, for the same reasons. I therefore conclude that the applicant's application falls to be dismissed.

Costs

[83] This then only leaves the issue of costs. In this respect, and in terms of section 162(1), I have a wide discretion. The applicant was 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 applicant should be frowned upon. In fact, I believe that when what is said by the applicant in his founding affidavit is properly considered, this application is part of a stratagem to scupper the disciplinary proceedings until the point that his contract expires. I take a dim view of this Court being used in such a manner. 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. With regard to the aforesaid, I fully align

myself with the following *dictum* in *Mokoena v Merafong Municipality and Others*⁷⁵:

'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. ...'

[84] Equally apposite is the following *dictum* in *Leshabane supra*⁷⁶ where 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 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.'

[85] All said, I believe this is a situation where a costs order against the applicant is certainly earned, and justified. The fourth respondent has asked for a costs order on what it says is a punitive scale, being scale C. The fifth respondent has not asked for costs, as it abided by the decision of this Court. I do not consider that a punitive costs order is justified. The issue of punitive costs was not really pressed in argument. However, a party and party costs order on scale B is appropriate, and this shall include the costs of two counsel. I make a costs order accordingly.

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

Order

1. The application is heard as one of urgency.

⁷⁵ (2020) 41 ILJ 234 (LC) at para 36.

⁷⁶ (2024) 45 ILJ 833 (LC) at para 58. See also *Magoda (supra)* at para 20.

2. The applicant's application is dismissed for want of jurisdiction.
3. The applicant is ordered to pay the fourth respondent's costs, on the party and party scale B, which shall include the costs of two counsel.

S Snyman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate B Ford together with Advocate G Somya

Instructed by: Ka-Mbonane Cooper Attorneys

For the Fourth Respondent: Advocate T Manchu SC together with Advocate Z Ngwenya

Instructed by: Mbali Makeleni Attorneys

For the Fifth Respondent: Advocate T Seboko SC

Instructed by: The State Attorney Johannesburg

Date of hearing: 22 January 2026