



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Appeal Case No: A239/2025

In the matter between:

VONITA VALERIE GROBLER

Defendant / Appellant

And

TAX CONSULTING (PTY) LTD

Respondent / Plaintiff

Neutral citation: *Grobler v Tax Consulting (Pty) Ltd* (Appeal Case no A239/2025)
[2026] ZAWCHC ... (2 February 2026)

Coram: LEKHULENI J et MAGONA-DANO AJ

Heard: 21 November 2025

Delivered: 02 February 2026

Summary: Civil procedure: Appeal upheld – Condonation application for late noting of the appeal - Appellant employed by the Respondent – Appellant resigning from the Respondent’s employment without giving 30 days’ notice as required by her employment contract – The Respondent sued the Appellant for breach of contract – Appellant raising constructive dismissal as a defence – trial court finding that it lacked jurisdiction to consider the defence of constructive dismissal. Section 37(2) of the Magistrates’ Courts Act 32 of 1944 considered - Appeal upheld.

JUDGMENT

LEKHULENI J (MAGONA-DANO AJ Concurring):

Introduction

[1] For convenience, the parties are cited in the same manner as they appeared before the lower court. This is an appeal against the whole judgment and order handed down by the George Magistrate's Court on 18 June 2025, in which the Court upheld a point *in limine* raised by the plaintiff at the commencement of the trial, that the Court *a quo* lacked jurisdiction to hear the defendant's defence of constructive dismissal. The plaintiff sued the defendant for breach of contract, alleging that the defendant failed to give the plaintiff 30 days' notice when the defendant resigned from the plaintiff's employment as stipulated in the defendant's contract of employment.

[2] In response, the defendant raised a defence of constructive dismissal against the plaintiff's claim. The defendant contended before the Court *a quo* that the Court had jurisdiction in terms of s 37(2) of the Magistrates' Courts Act 32 of 1944 ('the Magistrates' Courts Act') to make a finding on her defence of constructive dismissal. However, the Court *a quo* disagreed and upheld the plaintiff's point *in limine* and found that it had no jurisdiction to decide the defendant's defence of constructive dismissal as that defence fell within the exclusive jurisdiction of the Commission for Conciliation, Mediation and Arbitration ('the CCMA') or the Labour Court as envisaged by the Labour Relations Act 66 of 1995 ('the LRA').

[3] The defendant impugned that decision in this Court and contended that the Court *a quo* erred in finding that it lacked jurisdiction to make any determination on her defence of constructive dismissal and should have dismissed the plaintiff's preliminary point. Thus, the issue for determination in this appeal is whether the Court *a quo* was correct in upholding the plaintiff's point *in limine* and in finding that it lacked jurisdiction to make any finding on the defendant's defence of constructive dismissal, as such defence fell within the exclusive jurisdiction of the CCMA or the Labour Court.

[4] Remarkably, the plaintiff did not oppose the appeal. Instead, it filed a notice to abide and a practice note. In the practice note, the plaintiff stated that it filed a notice to abide for cost-effectiveness, as the quantum of the plaintiff's claim against the defendant is a mere R42 456,12 for damages allegedly suffered due to the defendant's breach of her employment contract with the plaintiff. I will return to this notice to abide later in this judgment when I deal with the issue of costs.

Preliminary Point

[5] The first issue I address in this appeal is the defendant's condonation application in terms of Rule 50(4) and 50(7) of the Uniform Rules of Court which was submitted together with the appeal record.

[6] In terms of Rule 50(4)(a) and 50(7) of the Uniform Rules of Court, the defendant within 40 days of noting the appeal ought to have applied to the registrar of this court in writing for the assignment of a date for the hearing of this appeal. This should have been done not later than 10 September 2025 however, the defendant did so few days late on 25 September 2025. This was outside the time limit prescribed in the afore-mentioned Rules. The defendant has since applied for condonation for the late filing of her request for a hearing date and filing of the record.

[7] The defendant filed the notice of appeal in the magistrate's court timeously in terms of the Rules of that court. The issue is that the transcribed record only became available several days after the expiration of the 40-day period prescribed in Rule 50(4)(a) of the Uniform Rules of this court which makes provision for a party to apply to the registrar for the assignment of a date for the hearing of the appeal. In this matter, the last date fell on 10 September 2025 however, at this stage the record had not yet been received from the transcribers.

[8] A formal request for a date of hearing, along with the accompanying record, could only be filed on 25 September 2025, which is outside the prescribed time limit. On the same date, the defendant also filed application papers for condonation. It is important to note that this application is unopposed.

[9] It is trite that condonation is not granted as a mere formality. An applicant must show good cause by providing a full, detailed and satisfactory explanation for the entire period of the delay, demonstrate that the application is brought without undue delay, show reasonable prospects of success on appeal, and satisfy the Court that the granting of condonation will not unduly prejudice the other party. These principles are well-established and were articulated in *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) and consistently applied thereafter. See *Uitenhage Transitional Local Council v South African Revenue Service* 2004 (1) SA 292 (SCA).

[10] Each factor is not decisive on its own. They must be considered cumulatively in the interests of justice.

[11] In the present matter, the explanation for the delay is both reasonable and satisfactory. This is borne out by the following:

a. I have considered that the defendant has demonstrated that the notice for leave to appeal was filed on time within 20 days after the date of judgment.

b. The defendant made a payment as a deposit towards the transcriber's fees and on the same date a quotation from the transcribers was sought by his legal representatives.

c. Shortly thereafter, there was a damaged pipe at the George Magistrates' Court which resulted in the entire building being flooded and rendered inaccessible for a considerable time. As a result, the record could not be accessed for a substantial portion of this period. Furthermore, an email correspondence was sent to check the status of the request for a quotation from the transcribers who indicated that they were unable to access the audio recordings of the court since the building was inaccessible. This was entirely beyond the control of the defendant.

d. Access to the record was restored on 11 August 2025. The quotation from the transcribers was received, and the defendant's legal representatives confirmed their approval for the transcribers to proceed on 15 August 2025.

e. Significantly, the remaining time to file the transcribed record and appeal had become severely limited, rendering compliance practically impossible. Attempts to request for a date on the last date (10 September 2025) of the period of the noting of appeal was rejected by the Registrar who refused to issue a date without the transcribed record.

f. Only on 16 September 2025 the full transcribed record was received from the transcribers. On the same date until 17 September 2025 the defendant's attorney was off sick and only on his return on 18 September 2025 attended to the appeal.

g. On 25 September 2025 the transcribed record, the appeal papers together with this application for condonation were filed.

[12] It has been repeatedly held that a short delay, when coupled with a reasonable explanation, strongly favours the granting of condonation. I am of the view that the explanation covers the entire period of the delay and discloses no element of negligence, wilfulness, or disregard of the rules. What matters is whether the applicant acted with diligence once the default was discovered. On the facts before me, this requirement has been satisfied.

[13] Importantly, once the defendant became aware that they were out of time, her legal representatives acted promptly in bringing the condonation application. I am of the view that the delay of a few days is minimal.

[14] The absence of opposition is also a significant factor. While it does not automatically entitle the defendant to condonation, it confirms that the plaintiff does not allege prejudice and does not dispute the explanation tendered. This strengthens the conclusion that the granting of condonation will not result in any injustice.

[15] Although prospects of success need not be exhaustively examined at this stage, the defendant has demonstrated that the appeal is not frivolous and raises

arguable issues deserving the attention of this court. This is sufficient for purposes of condonation.

[16] In balancing all the above relevant factors, to refuse condonation in these circumstances would elevate form over substance and unjustly bar the defendant from exercising her right of appeal for reasons that were entirely beyond her control.

[17] It is on these grounds that I grant the condonation application. I now turn to deal with the appeal.

Background Facts

[18] The plaintiff employed the defendant from 14 April 2021 to 7 May 2024 as a senior professional accountant. The defendant's employment contract with the plaintiff was reduced to writing and signed by the defendant and the plaintiff's representative. In terms of the employment contract, the defendant was required to give 30 days' written notice of termination if she wished to terminate her employment with the plaintiff. On 7 May 2024, the defendant resigned from the plaintiff's employ with immediate effect without giving the required 30 days' notice.

[19] On 02 July 2024, the plaintiff issued summons against the defendant in the Magistrates Court, George, for the payment of the sum of R42 456, 12, premised on the defendant's alleged breach of her employment contract for failing to give 30 days' notice prior to her resignation. The plaintiff alleged that as a result of the defendant's breach of the employment agreement, of not giving the required notice, the plaintiff had to urgently appoint a replacement senior accountant who had to take over the duties of the defendant without a handover, thus causing damages to the plaintiff in the sum of R42 456.12 being the difference between the defendant's monthly remuneration and the amount paid by the plaintiff to the replacement professional accountant for the notice period.

[20] The defendant defended the matter and filed her plea. In her plea, the defendant raised the defence of constructive dismissal as a defence to the plaintiff's claim against her. The defendant pleaded that, in circumstances of constructive

dismissal under South Africa's employment legislation, she was *ex lege* excused from the contractual requirement to give notice of termination of her employment. The defendant further pleaded that her employment circumstances with the plaintiff were such that they led to her constructive dismissal and that she had no option but to resign from the plaintiff's employment.

[21] The matter was enrolled for trial before the Court on 24 and 25 April 2025. At the commencement of the hearing on 24 April 2025, and without raising the lack of jurisdiction in the pleadings, the plaintiff raised a point *in limine* that the Court *a quo* lacked jurisdiction to decide the defendant's defence of constructive dismissal raised in the defendant's plea as it is a matter that falls within the exclusive jurisdiction of the CCMA, alternatively the Labour Court as provided for in the LRA. By agreement, the trial was postponed, and witnesses were excused pending a determination of the plaintiff's point *in limine*. The point *in limine* was argued on 25 April 2025, and the Court postponed the matter until 18 June 2025 for judgment. In addition, the trial Court directed the parties to file heads of argument addressing this point. Indeed, the parties obliged.

[22] As foreshadowed above, at the Court *a quo*, the plaintiff contended that the magistrate's court had no jurisdiction to decide the defendant's defence of constructive dismissal as the matter fell within the exclusive jurisdiction of the CCMA or the Labour Court as envisaged in the LRA. The defendant, on the other hand, submitted that in terms of s 37(2) of the Magistrates' Courts Act, the magistrates' court had the requisite jurisdiction to hear the matter and that the Court was not called upon to make a declaratory finding or order on the question of constructive dismissal. On 18 June 2025, in a written judgment, the magistrate upheld the plaintiff's point *in limine* and found that the magistrate's court lacked jurisdiction to adjudicate the defendant's defence of constructive dismissal.

[23] The Court *a quo* premised its decision on the grounds that it had no jurisdiction to determine labour disputes. The Court found that to answer the question whether the plaintiff's conduct constituted constructive dismissal, the Court will have to hear evidence on whether the defendant had been unfairly dismissed and whether her dismissal amounted to constructive dismissal, which would require

the Court to adjudicate on the labour dispute between the parties. In the Court's view, the defence of unfair dismissal falls exclusively under the LRA. It is a matter for the CCMA or the Labour Court to decide.

[24] The Court also found that the dispute falls outside the application of s 77(3) of the Basic Conditions of Employment Act ('BCEA'), as it is not a matter arising from a contract of employment and involves a matter within the exclusive jurisdiction of the CCMA and the Labour Court. The Court eventually found that it lacked jurisdiction to hear the matter. It is this order that the defendant seeks to assail in this Court.

Issues for determination

[25] As discussed earlier in this judgment, the issue for determination is whether the Court *a quo* was correct in holding that it lacked jurisdiction to determine the defendant's defence of constructive dismissal, which the defendant raised in her plea.

Discussion

[26] The issues before the trial court were very crisp and straightforward. It is common cause that the plaintiff's claim of R42 456.12 fell within the monetary jurisdiction of the magistrates' court. This was the claim that the trial Court was enjoined to determine. It is also common cause that the defendant did not raise any counterclaim against the plaintiff. The defendant only raised the defence of constructive dismissal in terms of section 186(1)(e) of the LRA to counter the plaintiff's claim for breach of the employment contract and the reason why she resigned without giving the requisite notice.

[27] For clarity's sake, constructive dismissal in general take place when an employer makes the continued employment or working circumstances of an employee so intolerable that these conditions and circumstances are not only unfair to the employee but compel him to resign. See *Amalgamated Beverages Industries (Pty) Ltd v Jonker* (1993) 14 ILJ 1232 (LAC) at 1248. These changes of conditions and circumstances are often brought about with the sole aim of compelling an employee to resign and constitute unfair conduct on the part of the employer. In

Pretoria Society for the Care of the Retarded v Loots [1997] 5 BLLR ('LAC'), the Labour Appeal Court ('LAC') found that the inquiry is whether the employer without reasonable and proper cause conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. The LAC noted that the court's function is to look at the employers' conduct as a whole and determine whether its effect judge reasonably and sensibly, is such that the employee cannot be expected to put up with it. The adjudication of such disputes ordinarily falls within the jurisdiction of the CCMA and the Labour Court.

[28] I must mention that the extent of the civil courts' jurisdiction in respect of disputes arising in the employment setting is a vexed question on which courts and legal commentators have long been divided. *Baloyi v Public Protector and Others* 2022 (3) SA 321 (CC) para 1. Section 77(3) of the BCEA provides that 'the Labour Court has concurrent jurisdiction with the civil courts (by extension, the magistrates' court) to hear and determine *any matter concerning a contract of employment*, irrespective of whether any basic condition of employment constitutes a term of that contract'.

[29] In *Fedlife Assurance Ltd v Wolfhard* 2002 (1) SA 49 (SCA), the majority of the Supreme Court of Appeal confirmed that the Labour Court does have exclusive jurisdiction over all dismissal disputes, but only over those in which the fairness of the dismissal is challenged. Employees therefore retain the right to sue in the civil courts for contractual damages if breach of contract is pleaded. Thus, contractual rights exist independently of the LRA. In other words, the LRA does not extinguish contractual remedies available to employees following a breach of their contract of employment or an unlawful termination thereof. (*Gcaba v Minister for Safety and Security* 2010 (1) SA 238 (CC) para 73. On the other hand, the employer also has the right to claim damages from an employee who breaches the employment agreement. (See *SA Music Rights Organisation Ltd v Mphatsoe* (2009) 30 ILJ 2482 (LC); *National Entitled Workers Union v CCMA & Others* (2007) 28 ILJ 12233 (LAC) para 16.

[30] Clearly, a contractual claim arising from breach of a contract of employment falls within the ordinary jurisdiction of the civil courts, including the magistrates' court if the claim falls within its jurisdiction, notwithstanding the fact that the contract is one of employment. See *Lewarne v Fochem International (Pty) Ltd* 2019 JDR 1750 (SCA) at para 9; *Makhanya v University of Zululand* 2010 (1) SA 62 (SCA) at paras 11 and 18. The mere fact that a dispute is located in the realm of labour and employment does not exclude the jurisdiction of the civil courts. (*Baloyi v Public Protector and Others* 2022 (3) SA 321 (CC) para 45; *Makhanya v University of Zululand* 2010 (1) SA 62 (SCA) at paras 11 and 18).

[31] As explained earlier, the Court below found that it lacked jurisdiction to consider the defence of constructive dismissal raised in the defendant's plea, as this is a labour matter. In my view, the finding of the Court below was fundamentally misplaced, particularly when the provisions of s 37(2) of the Magistrates' Courts Act are considered. For completeness, s 37(2) of the Act provides as follows:

'(1) In actions wherein the sum claimed, *being within the jurisdiction*, is the balance of an account, the Court may enquire into and take evidence, if necessary, upon the whole account, *even though such account contains items and transactions exceeding the amount of the jurisdiction*.

(2) Where the amount claimed or other relief sought is within the jurisdiction, such jurisdiction *shall not be ousted merely because it is necessary for the Court, in order to arrive at a decision, to give a finding upon a matter beyond the jurisdiction*.

(3) In considering whether a claim is or is not within the jurisdiction, no prayer for interest on the principal sum claimed or for costs or for general or alternative relief shall be taken into account.' (emphasis added)

[32] Section 37(2) permits the Court to give a finding beyond its jurisdiction if it is necessary to reach its decision on the matter before it only if the 'relief sought is within its jurisdiction. *Ntshingila and Others v Minister of Police* 2012 (1) SA 392 (WCC) para 32. This section serves the purpose of permitting magistrates to have regard to issues which are relevant to the matter before them, which would otherwise not fall within their jurisdiction. In *Tshisa v Premier of the Freestate and Another* 2010(2) SA 153 (FB) para 10, the Court observed that a reading of s 37(2) makes it

clear that a finding on the matter that is beyond the jurisdiction of the magistrate court must be necessary in order for the Court to reach a decision on the main matter before it, which is within its jurisdiction. The fact that the Court may have to inquire into far larger sums, and into complicated accounts worth far more, is irrelevant as long as the value of the claim in dispute does not exceed the monetary jurisdiction of the magistrates' court or regional court. (See *Vorster v City Clothing (Pty) Ltd* 2025 (2) SA 156 (SCA) para 16.

[33] The finding relevant to s 37(2) need not relate to an amount of money but may include any finding beyond the Court's jurisdiction as was the case in the present matter. As correctly pointed out by Mr Van der Merwe, the defendant's counsel, the Court *a quo* misread the provisions of s 37(2) in that the decisive question that the Court had to determine was whether the Court had jurisdiction to hear the plaintiff's claim and not whether the Court had jurisdiction to hear the defendant's defence as if the same was a claim instituted against the plaintiff. The claim of the plaintiff fell within the monetary jurisdiction of the magistrate's court. A consideration of the Court on the defendant's defence of constructive dismissal was limited only to the Court determining the plaintiff's claim.

[34] Significantly, the plaintiff's claim for damages allegedly suffered as a result of the defendant's alleged breach fell within the R200 000 margin of the magistrate court's monetary jurisdiction. Section 37(2) enjoined the Court with jurisdiction to consider the defence of constructive dismissal raised by the defendant, notwithstanding that the defence fell outside the jurisdiction of the Court, in order to decide the plaintiff's claim that was before it, which fell within its jurisdiction. Expressed differently, the mere fact that the defendant raised constructive dismissal envisaged in section 186(1)(e) of the LRA, which fell within the labour terrain, was neither here nor there. To determine the plaintiff's claim that fell within the jurisdiction of the Court, s 37(2) clothed the magistrates' court with jurisdiction.

[35] Simply put, the issue that was central to a determination of the merits of the plaintiff's claim before the Court, but which was beyond the magistrate's court's jurisdiction, was the question of whether the alleged conduct of the plaintiff constituted constructive dismissal as defined in the LRA. The determination of this

question fell outside the jurisdiction of the magistrate's court. That is what s 37(2) of the Magistrates Court Act envisages. It grants the magistrate's court incidental jurisdiction to consider matters beyond its jurisdiction in order to decide the main claim. It would have been a different case, in my view, if the defendant raised a counterclaim that exceeded the jurisdiction of the Court, for instance, by seeking compensation for constructive dismissal.

[36] I find the decision in *Le Roux v Leroux* [1998] JOL 2146 (O), with striking similarities with the present matter, pertinent and apposite to this matter. This case involved an appeal against a decision of a magistrate who upheld a special plea of jurisdiction and held that the Court did not have jurisdiction to hear the matter by virtue of s 46 of the Magistrates' Courts Act. The Court was required to consider the interpretation of a will in deciding the main claim for damages. On appeal, the High Court held that the magistrate's court was vested with effective jurisdiction. The Court held that as the main claim fell within the jurisdiction of the magistrate's court, the magistrate's court was clothed with jurisdiction pursuant to the provisions of s 37(2) of the Magistrate's Courts Act to have decided the defence relating to the interpretation of the testamentary document.

[37] Considering the principles discussed above, and by parity of reasoning, I am of the view that the magistrate in the court *a quo* erred in her finding that she did not have jurisdiction to consider the defence of constructive dismissal raised by the defendant in determining the plaintiff's claim.

[38] Finally, there is, in any event, another reason why the point *in limine* has no merit and should have been dismissed outright. The objection to the Court's jurisdiction was raised on the morning of the trial just before the trial could start. Evidently, the attack on the Court's jurisdiction was only raised after the closure of pleadings. In *Puser v Sales; Puser and Another v Sales and Another* 2001 (3) SA 445 (SCA) paras 17 to 18, the Supreme Court of Appeal held that a litigant may not, in general, raise a point of jurisdiction after *litis contestatio*. By failing to take the point before pleadings had closed, the plaintiff was taken to have submitted to the Court's jurisdiction. Similar sentiments were echoed by the full bench of this division

in *Minister of Police v Regional Magistrate, Oudtshoorn and Others* (15587/2013) [2014] ZAWCHC 165 (6 November 2014) at para 12.

[39] It is also noteworthy that, the plaintiff filed a replication to the defendant's plea. Clearly, the plaintiff knew of the defendant's defence of constructive dismissal. However, it did not raise the Court's lack of jurisdiction. Its failure to have done so must be seen as an admission of the magistrate's courts' jurisdiction to adjudicate the defendant's defence. The plaintiff's sudden renunciation of the court's jurisdiction seems to me opportunistic and should have been dismissed outright.

Costs

[40] It remains to deal with the costs of the appeal. Mr Van der Merwe submitted that the defendant incurred costs to prosecute this appeal. Counsel implored the Court to award costs in favour of the defendant, including costs of counsel on scale B. Mr Van der Merwe noted that the plaintiff filed a notice to abide. However, counsel submitted that the plaintiff could have abandoned the judgment but failed to do so. Mr Van der Merwe prayed the Court to grant costs of the appeal, including travelling, accommodation and waiting time.

[41] The general rule is that costs should follow the result. A court considering an order of costs exercises a discretion which must be exercised judiciously after due consideration of the salient facts of each case. *Ferreira v Levin NO and Others; Vreyenhoek and Others v Powell NO and Others* 1996 (2) SA 621 (CC). I am mindful that the plaintiff filed a notice to abide. However, the defendant incurred costs in prosecuting this appeal and must be indemnified for such costs. In my view, notwithstanding the notice to abide, those costs must be borne by the plaintiff.

Order

[42] Consequently, given all these considerations, the following order is granted:

42.1 The appeal is hereby upheld.

42.2 The magistrate's order of 18 June 2025 upholding the point *in limine* with costs that the Court lacked jurisdiction to adjudicate the defendant's defence of constructive dismissal is hereby set aside.

42.3 The matter is remitted to the Magistrate's Court to be decided on the merits of the plaintiff's claim and the defendant's defence of constructive dismissal.

42.4 The plaintiff is ordered to pay the costs of these proceedings on a party and party scale, including the costs of counsel on Scale B. Such costs to include travelling, waiting time and accommodation costs.

42.5 The plaintiff is also ordered to pay the costs occasioned by the hearing of the point *in limine* before the Court *a quo*.

LEKHULENI J
JUDGE OF THE HIGH COURT

I agree:

MAGONA-DANO AJ
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For the Appellant: Adv Van der Merwe
Instructed by: Le Roux Lamprecht Inc

For the Respondent: No appearance