



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable
Case no: C468/2021

In the matter between:

DETAWU O.B.O. MAVANDLA BOMWANA AND 22 OTHERS

First Applicant

ANDILE GQOTSO AND 29 OTHERS

Second Applicant

and

UNITRANS PASSENGER (PTY) LTD t/a GREYHOUND

Respondent

In re the action between:

DETAWU O.B.O. MAVANDLA BOMWANA AND 22 OTHERS

Applicant

and

UNITRANS PASSENGER (PTY) LTD T/A GREYHOUND

Respondent

Heard: 3 February 2026

Delivered: 3 February 2026

JUDGMENT

JACOBS AJ

Introduction

- [1] This is a joinder application brought by 30 individuals who have been cited as the Second Applicant.
- [2] The Second Applicants did not appear in court.
- [3] The Second Applicants seek an order:
 - 3.1 Allowing the 30 individuals cited as the Second Applicant to be joined to the pending dispute between the First Applicant and the Respondent;
 - 3.2 Allowing Mr Andile Gqotso to act on behalf of the 30 individuals cited as the Second Applicant;
 - 3.3 Condoning the Second Applicant's late entering as party to the proceedings; and
 - 3.4 Costs if the application is opposed.
- [4] The First Applicant had filed a notice stating its intention to abide by the Court's ruling.
- [5] The Respondent opposed the application and also raised a jurisdictional objection based on the Second Applicant's apparent failure to refer a dispute to the CCMA. The Respondent also pleaded that the Second Applicant's claim would amount to a debt which would have prescribed to the Prescription Act.

Historical context

- [6] Respondent initiated a retrenchment process and eventually, dismissed a number of employees for operational reasons in April 2021.
- [7] An unfair dismissal dispute was referred to the CCMA by the First Applicant (DETAWU) on or about 21 May 2021. The dispute was not resolved at conciliation, and the requisite certificate was issued on 3 June 2021.
- [8] The Second Applicant's list of individual applicants, curiously show that four of the individuals comprising the Second Applicant were apparently also members of DETAWU at the time of the retrenchments. These individuals are not listed

as members represented by DETAWU as the Applicant in this matter. There is no explanation why these individuals were not part of the initial referral to the CCMA and these proceedings.

- [9] The First Applicant's referral to this court was made on 9 September 2021, a few days late. Since then, the short delay was condoned on 20 March 2025 and some amendments and additions have been made to the Statement of Case and Statement of Response that were filed by the parties. A pre-trial minute was filed, and the matter appear to be trial-ready.
- [10] This joinder application was launched on or about 19 June 2025, more than four years after the dismissals for operational reasons, and three years after the filing of the pre-trial minute.
- [11] Rule 52 of the rules for this court allows for a joinder to be made at any time before judgment is delivered. The Second Applicant seeks condonation for late bringing of the joinder application. Although the failure to pursue the matter for four years invite explanation from the Second Applicant, there seems to be no time constraints relevant to the timing of a joinder application.
- [12] The Second Applicant contends that joinder is appropriate because the relief they seek is identical to that sought by the First Applicant. It is also suggested that the Respondent will not suffer any prejudice if joinder is allowed.

Evaluation

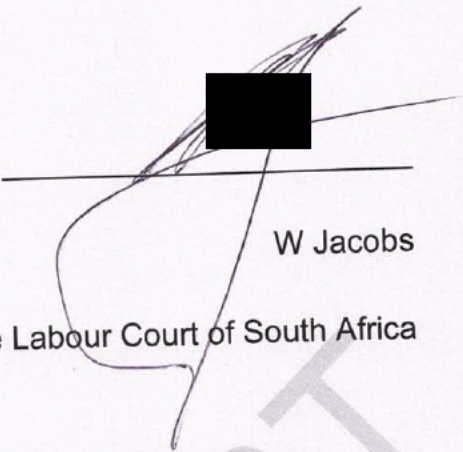
- [13] The condonation application and the joinder application can only be considered if the court has jurisdiction to deal with the matter at all.
- [14] The application for Mr Andile Gqotso to act on behalf of the 30 individuals who comprise the Second Applicant cannot be allowed. Section 161 LRA lists the parties who can represent a litigant or litigants before this court and this court is bound by the provisions of sec 161. Mr Gqotso is not a person referred to in sec 161 (a) to (e). He can appear in person on his own behalf, and he can be a deponent to affidavits and a witness at trial. He cannot represent others.

- [15] Andre Reed Attorneys had signed and filed the papers on behalf of the Second Applicant in this application. In par 48 of the founding affidavit by Mr Gqotso in joinder application, he states that the Second Applicants' attorneys have agreed to represent them at a reduced fee on semi-pro-bono basis. The papers were also signed by Andre Reed Attorneys as representatives for the Second Applicant.
- [16] There are attorneys on record for the Second Applicant. Mr Gqotso may not represent others before this court.
- [17] The Second Applicant bears the onus to show that the court has jurisdiction to hear the matter. The Second Applicant has not pleaded or shown that a dispute was referred to the CCMA by or on behalf of the individuals who comprise the Second Applicant.
- [18] A referral to conciliation is mandatory.¹ Without such a referral, this court will not have the jurisdiction to deal with a matter.
- [19] In the absence of jurisdiction, the issue concerning prescription has become moot.
- [20] Mr Niewoudt argued that the matter stands to be dismissed, and not merely struck from the roll. He pointed out that other parties will be prejudiced by the matter not being disposed of, especially in light of the hopelessness of the merits. This court agrees.
- [21] In the result, the following order is made:

Order

1. The application for joinder is dismissed for a lack of jurisdiction.
2. There is no order as to costs.

¹ See: *Industrial Oleo Chemical Products v National Union of Metalworkers of South Africa and Others* (DA05/2023) [2024] ZALAC 53; [2025] 1 BLLR 1 (LAC); (2025) 46 ILJ 328 (LAC) (23 October 2024); *National Union of Metalworkers of South African obo Members v SAA Technical SOC Ltd* [2024] ZALAC 41)



W Jacobs

Acting Judge of the Labour Court of South Africa

Appearances:

For the First Applicant: - No Appearances

Instructed by: - Bernadt Vukic Potash & Getz Attorneys

For the Second Applicant: - No Appearances

Instructed by: - Andre Reed Attorneys

For the Respondent: - Adv H Nieuwoudt

Instructed by: - Thomson Wilks Attorneys