



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 2025-008323

In the matter between:

**DUMANI KULA
SANDRASHEN GOVENDER
MAYANDA DINWAYO**

**FIRST APPLICANT
SECOND APPLICANT
THIRD APPLICANT**

and

**BUSAMED (PTY) LTD
JUDGE BASHEER WAGLAY
BUSAMED MANAGEMENT COMPANY (PTY) LTD
DILIZA MJI
THABISO BUKU**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT**

ORDER

The following order shall issue:

- (a) The first applicant is directed to pay the costs of the two counsel, on Scale C in respect of the Rule 7 application.
- (b) The matter is struck from the roll for lack of urgency.
- (c) The first applicant is to pay the wasted costs of the application, such costs to include the costs of two counsel on Scale C.

JUDGMENT

OLIFF AJ

[1] The first applicant, Dr Dumani Kula, and two other applicants launched an urgent application in two parts: Part A, which sought urgent interdictory relief and which was enrolled on 3 February 2026, and Part B which seeks final interdictory and declaratory relief.

The Parties

[2]

2.1 The first applicant is Dumani Kula, who was the Chief Executive Officer of Busamed (Pty) Ltd who also served as an executive director of Busamed and Busamed Management Company (Pty) Limited (BMC) (the third respondent)).

2.2 The second applicant is Sandrashen Govender, the Chief Financial Officer of Busamed (Pty) Ltd.

2.3 The third applicant is Moyonde Dinwayo, the Chief Experience Officer at the time of Busamed (Pty) Ltd (and Group HR Executive).

2.4 The first respondent is Busamed (Pty) Ltd.

2.5 The second respondent is Retired Judge Basheer Wagley.

2.6 The third respondent is Busamed Management Company (Pty) Ltd (BMC).

2.7 The fourth respondent is Dr Diliza Mji.

2.8 The fifth respondent is Thabiso John Buku.

[3] For ease of reference the parties were represented as follows:

- 3.1 First applicant – Mr *P Louw SC* and Mr *M Cajee*;
- 3.2 First and third respondents – Mr *N Cassim SC* and *L Nyangiwe*;
- 3.3 Third and fourth respondents – Mr *C Loxton SC* and Ms *H Ndlovu*.

[4] The applicants initially sought relief in two stages; Part A and Part B. The initial Part A sought the following:

- 4.1 the first respondent is interdicted from giving effect to the second applicant's 3 December 2025 recommendation.
- 4.2 the fourth respondent is interdicted from taking any decisions in the name of the third respondent without the participation of all the directors of the third respondent.

[5] At the hearing on 3 February 2026, it was agreed by the parties that the argument would proceed on three provisional issues. A date later in the session would be arranged if the first applicant successfully navigated these provisional issues.

[6] The agreed issues were the following:

- 6.1 the Rule 7 application;
- 6.2 the urgency; and
- 6.3 the jurisdiction.

[7] Given the nature of these issues and the time constraints arising from the alleged urgency, I undertook to deliver a ruling by 6 February 2026 and reserved the opportunity to further supplement this judgment if necessary.

[8] I thank the parties for their detailed heads of argument, that were received.

Summary of the Facts

[9] The first applicant, in his founding affidavit, sets out the following chronological background facts:

- 9.1 On 16 October 2025, he was invited to a BMC meeting scheduled to take place on 23 October 2025, which he later learnt was convened in order to suspend him from his position as CEO.
- 9.2 On 21 October 2025, he brought the intended suspension meeting to the attention of the Busamed Board and the proposed meeting on 25 October 2025 was thwarted.
- 9.3 On 28 October 2025, the first applicant attended a mediation session.
- 9.4 On 28 October 2025, the first applicant emailed the Busamed Board to clarify who his employer was.
- 9.5 On 29 October 2025, the first applicant was invited to an in-person BMC meeting. This meeting did not take place.
- 9.6 On 30 October 2025, the first applicant sent further communication to the Busamed Board.
- 9.7 On 30 October 2025, Busamed Board obtained a legal opinion from Feroze Boda SC.
- 9.8 On 31 October 2025, the Busamed Board sub-committee meeting took place.
- 9.9 On 7 November 2025, Dr Mji (the fourth respondent) emailed a document titled “notice and request for written submissions” to the first applicant relating to BMC’s intention to formally commence disciplinary proceedings against him before retired Judge Wagley (the second respondent). Such document invited the first applicant to make representations.
- 9.10 On 10 November 2025, the first applicant raised issue with certain substantive aspects relating to his appointment as Chief Executive Officer at BMC and included a request for documentation including the opinion of *Bhoda SC*.
- 9.11 Such request for documentation was refused by Dr Mji on 12 November 2025.

- 9.12 On 14 November 2025, the first applicant's erstwhile attorney transmitted a demand to BMC and retired Judge Wagley.
- 9.13 On 18 November 2025, BMC's attorney responded without addressing the issues raised and advised that the time for the first applicant to respond to the notice of 7 November and make representations had been extended to 25 November 2025.
- 9.14 On 19 and 20 November 2025 further correspondence was addressed to the retired Judge regarding the disciplinary meeting scheduled to take place on 1 December 2025.
- 9.15 On 25 November 2025, the retired Judge responded that he would deal with all issues at the disciplinary meeting on 1 December 2025.
- 9.16 On 25 November 2025, the first applicant received a "precautionary suspension" from Dr Mji in the name of BMC.
- 9.17 On 28 November 2025, the first applicant avers he and the second applicant had a frank and open discussion with Dr Mji.
- 9.18 The first applicant received a Microsoft Teams invite from BMC's attorney inviting him to the meeting with the retired Judge on 1 December 2025. The first applicant sent to Dr Mji, Mr Buku advising the third and fourth respondent's attorneys, and the retired Judge of the suspension of BMC's process as per his discussion with Dr Mji.
- 9.19 The first applicant elected to not attend the meeting with the retired Judge on 1 December 2025.
- 9.20 On 3 December 2025, the first applicant received an email from the retired Judge including his recommendation pursuant to the disciplinary meeting held on 1 December 2025 in his absence, the first applicant electing not to attend.
- 9.21 On 18 December 2025 the Busamed Board held a meeting.

- 9.22 On 22 December 2025, Mr Buku (the fifth respondent) emailed to the first applicant a summary of the outcome of the Board's meeting on 18 December 2025.
- 9.23 On 22 December 2025, the first applicant responded to Mr Buku's email bringing various concerns to the Board's attention.
- 9.24 On 23 December 2025, Mr Buku responded that the first applicant must elect whether to agree to a mutual separation or have the matter resolved via the legal route.

[10] Thereafter no further action was taken until the first applicant received an email from Mr Buku (the fifth respondent) on 16 January 2026. Interestingly, the founding affidavit records that this email was received moments before finalising the affidavit.¹ The email called upon the first applicant to, within 7 days, agree to mutually separate. If the first applicant did not accept the mutual separation, Busamed recorded that it would take it that the first applicant has elected to go the legal route.

[11] It is evident that the first applicant had already made this decision in respect of a choice offered in the email of 23 December 2025 but not communicated it.

Events post the launch of the application

[12] On 23 January 2026, the Board of Busamed met and authorised BMC in its capacity as employer to dismiss the first applicant in accordance with BMC's disciplinary process and the retired Judge's recommendations.

[13] On 24 January 2026 BMC transmitted a notice of dismissal to the first applicant terminating his employment with BMC with immediate effect.

[14] Pursuant to this the first applicant's attorney served an amended notice of motion. In terms of the amended notice of motion, the applicant sought the following relief:

¹ Paragraph 104 of the Founding Affidavit:

- 14.1 'The First and/or Third Respondents' purported termination of the employment of the Applicant is set aside and declared invalid.
- 14.2 The First Respondent and/or the Third Respondent are interdicted from giving effect to the Second Respondent's 3 December 2025 recommendations or terminating the Applicant's employment.
- 14.3 The Fourth Respondent is interdicted from taking any decisions in the name of the Third Respondent without the participation of all directors of the Third Respondent.

The Rule 7 application

[15] The application was launched by the third and fourth respondents citing three applicants with Mr Govender cited as the second applicant and Ms Dinwayo as the third applicant.

[16] On 16 January 2026, the third and fourth respondents delivered a Rule 7(1) notice calling on the first applicant's attorney to produce authority to act on behalf of the alleged co-applicants.

[17] No proof of authority was ever filed and although it appears that the first applicant's attorney informally withdrew as attorney of record, the formal withdrawal was produced once argument on the Rule 7 application was under way. A notice of withdrawal of the proceedings in respect of the second applicant which includes a tender of costs by the first applicant was handed up at the hearing simultaneously with a notice of withdrawal as attorney for the third applicant.

[18] The withdrawal notices effectively put an end to the third and fourth respondents' interlocutory application. I was also handed an email from the third applicant who advised that she was not signing a document stating that she was withdrawing the application, as it suggested that she had provided a mandate to institute the main application thereby agreeing to be a co-applicant.

[19] I see no reason not to award the third and fourth respondents in the main application the costs of the Rule 7 application, with such costs to be borne by the first applicant.

[20] The failure of the first applicant to file confirmatory affidavits of the second and third applicants renders portions of the founding affidavit inadmissible.

[21] With respect to urgency Mr Louw SC, acting for the first applicant, stressed that the email dated 16 January 2026 which gave the first applicant seven (7) calendar days to make a decision between a mutual separation or the legal route was the catalyst to argue urgency. He further submitted that it was not necessary for the first applicant to explain his inaction from 22 December 2025, for a three week period.

[22] Mr Louw argued that the first applicant's cause of action was not an unfair dismissal but an illegal termination of the first applicant's contractual rights by an unrelated third party albeit, a subsidiary of the main group. Hence this court had jurisdiction to deal with the matter. As the first applicant had already been unfairly dismissed, if the impugned decision was allowed to stand pending Part B, the first applicant would suffer continuing reputational harm and financial prejudice which could not be adequately remedied by damages alone.

[23] I was referred to *Mogotlhe v Premier of the North-West Province* [2009] JOL 22987 (LC), which found that a suspension affects various rights and it may be challenged urgently. Mr Louw submitted that the termination amplified the need to challenge on an urgent basis.

[24] In the papers as well as during argument it was stated that the termination process was beset with fraudulent actions, most specifically in the contract generated from a template. Ms Bopela's affidavit claims that the contract was signed by her and the first applicant was not requested to sign same.

[25] With respect to jurisdiction, Mr Louw argued that jurisdiction is determined on the basis of the pleadings, not the substantive merits of the case.² The simple question to be determined is the question of contractual privity.

[26] Finally, Mr Louw argued that the facts give rise to an oppressive remedy envisaged in section 163 of the Companies Act, 2008 and specifically section 163(2) which permits the Court to make “any order it considers appropriate”. Mr Louw argued that damages would not adequately compensate the first applicant and relief was required in terms of the amended notice of motion.

[27] Mr Cassim SC on behalf of the first and fifth respondent, submitted that the first applicant was entitled to proceed with Part B of this application and retain his right to sue for damages. He argued that by 28 November 2025, it would have been clear to the first applicant the route the respondents intended to pursue. The first applicant having failed to attend the meeting with the retired Judge on 1 December 2025 must, at the very least, on 23 December 2025, have been aware of the upcoming actions. The email of 15 January 2026 merely provides a time frame, for the path proposed on 22 December 2025.

[28] Mr Cassim questioned why the first applicant was unable to “wait in the queue” as there is no impediment to the first applicant claiming damages. This submission was based on the first applicant’s allegations of fraud against the respondents which have rendered a continued working relationship intolerable. The allegations of fraud are incompatible with an order directing the respondents to reinstate the first applicant given the breakdown in the working relationship between the parties.

[29] Mr Cassim submitted that an employee can have two employers³ and that the relief in Part B could be sought at a later stage. The first applicant was not entitled to the relief sought in the amended notice of motion, Part A.

² South African Maritime Safety Authority v McKenzie 2010 (3) SA 601 (SCA) at paragraphs 7 to 12.

³ Board of Executives v McCafferty in Golding v HCI Managerial services (Pty) Ltd and Others [2014] ZACCT 52 (LC).

[30] Mr Loxton SC, on behalf of the third and fourth respondents, correctly points out that the relief in Part A of the original notice of motion has become obsolete. Although not conceding that the amended notice of motion was competent, given the agreement reached regarding what was to be considered by me, he presented his argument on the assumption that the amended relief could be considered.

[31] Mr Loxton questioned the urgency of the relief sought to set aside the “purported termination” of the first applicant. In particular, what set the first applicant apart from the thousands of individuals who have been dismissed by their employer.

[32] He argued that on the first applicant’s version, the first applicant has a contractual claim but that he does not wish to seek damages but rather specific performance. In addition, he submitted that it was never envisaged that the relief granted by the Court in terms of section 163(3) of the Companies Act, could be extended to imposing re-instatement of a party in a relationship that had broken down irretrievably.

[33] Mr Loxton argued that the relief sought was not urgent and not competent arguing that the first applicant’s appropriate forum is the CCMA and Labour Court.

[34] I was referred to the following authorities:

34.1 In *Chirwa v Transnet Ltd and Others*⁴, the Constitutional Court emphasised the primacy of the Labour Relations Act (LRA) framework in labour disputes and the preference for labour forums. It warns against formulating claims to sidestep the LRA and its processes.

34.2 Further, in *Gcaba v Minister of Safety & Security & Others*,⁵ the Constitutional Court endorsed the primacy of the Labour Relations Act’s carefully crafted dispute-resolution structure and denounced forum shopping. The Court held further that the pleadings in a matter determine jurisdiction, but must be interpreted holistically. If properly interpreted, the pleadings reveal a Labour

⁴ 2008 (4) SA 367 (CC).

⁵ (2009) 30 ILJ 2623 (CC).

Relations Act dismissal or unfairness dispute, the High Court lacks jurisdiction to determine the dispute.

[35] It is clear from the wording of the first applicant's affidavit that he had already understood the options available to him and had already elected the legal route as at 23 December 2025. The email dated 16 January 2026 contained no new options to what had been presented by 22 December 2025. On the first applicant's own version "moments before finalising the affidavit" he received an email from Mr Buku.

[36] It appears that the first applicant was functioning at a leisurely pace before the email of 16 January 2026, suddenly provided the impetus of urgency.

[37] The initial relief sought in terms of Part A was rendered moot and the amended interim relief was sought.

[38] If I accept Mr Louw's argument that the relief sought is contractual rather than an unfair dismissal, it must follow that the first applicant's ultimate relief is either specific performance or damages.

[39] I am not persuaded that in the event of the first applicant succeeding in Part B of this application, that the damages that would flow, would not fairly compensate him.

[40] The relief sought in Part A falls within the statutory definition of "dismissed" under section 181(1)(b) of the Labour Relations Act.

[41] In the event, the first applicant is able to convince a court that relief should be granted in terms of section 163(2) of the Companies Act. I am in agreement with Mr Loxton that it could not have been intended by the legislature that the Court could reinstate the first applicant to his position when it is clear the continued working relationship is intolerable or at an end.

[42] Urgent applications must be brought under the provisions of Rule 6(12) of the Uniform Rules of Court, with due regard to the guidelines set out in cases such as *Die Republiekeiseinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk*⁶

⁶ 1972 (1) SA 733 (A) at paras 782A-G

as well as the well-known case of *Luna Muebelvervaardigers (Edms) Bpk v Makin and Another*.⁷

[43] There is, in my view, no reason why the first applicant cannot follow the remedies in terms of the Labour Relations Act. As in the decision of Mogotlhe (used to illustrate urgency), the first applicant should have proceeded in either the CCMA or the Labour Court.

[44] The first applicant elected not to participate in the disciplinary enquiry. The first applicant knew by the latest, 22 December 2025, that either a mutual separation or the legal route would be sought, he seeks to be reinstated rather than approach the CCMA and/or the Labour Court.

[45] Had the first applicant communicated his intent to follow the legal route, the email of 16 January 2026 would not have been necessary. The delay in finalising the papers, before receipt of the email, results in voluminous papers being produced and responses prepared in a short time. The first applicant's delay, at the very least, contributed to the urgency.

[46] Once his services were terminated, the original relief sought on an interim basis became moot. The amended relief sought seeks specific performance when:

- 46.1 relief could be sought in the CCMA and/or the Labour Court;
- 46.2 the damages awarded would compensate the first applicant if he was ultimately successful in Part B of the claim.

[47] It is not open to the first applicant to allege the catalyst for urgency was the email dated 16 January 2026, when, by that date:

- 47.1 the first applicant had made his election;
- 47.2 the first applicant had not communicated his election to proceed on the legal route;

⁷ 1977 (4) SA 135 (W).

47.3 the first applicant was in the process of finalising papers to launch this application.

[48] This lends itself to the conclusion that the urgency had been self-created. Coupled with the alternate relief in the form of damages that could be claimed, I do not believe that the necessary requirements to establish urgency have been proved.

[49] The distinction that Mr Louw seeks to draw with respect to the illegal cancellation of a contract and an unfair dismissal may become relevant for Part B of the application. However, the amended relief sought seeks to reinstate the first applicant in his pre-termination position.

[50] This is my view that the relief sought in Part A, should have been brought in the CCMA and/or Labour Court.

[51] An employee whose contract of employment is prematurely terminated by an employer, is entitled to claim breach of contract under the common law. However, in the amended relief sought, the first applicant seeks reinstatement which I must agree with Mr Loxton's description contained in his heads of argument that "...that application is an unfair dismissal claim dressed up as a contractual claim". The first applicant's his remedy is a damages claim in the ordinary course. The attempt to create a hybrid model on the basis of the claim in contract, yet seeking relief that would normally be granted by the CCMA and/or the Labour Court is unavailing. The relief in Part A, ought to be referred to conciliation and ultimately arbitration at the CCMA under section 191 of the Labour Relations Act.

[52] All parties sought costs of two counsel on Scale C. Given the time frame and voluminous papers provided, I am satisfied that a mutually sought costs award is reasonable.

[53] In the circumstances, I made the following order:

- (a) The first applicant is directed to pay the costs of the two counsel, on Scale C in respect of the Rule 7 application.
- (b) The matter is struck from the roll for lack of urgency.
- (c) The first applicant is to pay the wasted costs of the application, such costs to include the costs of two counsel on Scale C.

ACTING JUDGE OLIFF

Case Information

Date of Hearing : 03 February 2026
Date of Judgment : 06 February 2026

Appearances

Counsel for the Applicant : Mr P Louw SC / Mr M Cajee

Instructed by : Ka-Mbonane Cooper
Office 1A, 3 Ninth Street
Houghton Estate

: Tel: 087 131 3569
: Ref: AC/NV/KC0619
: Email: athisten@kclaw.africa
nicholas@kclaw.africa
annetta@kclaw.africa
C/O Purdon & Munsamy Attorneys
22 Dorothy Nyembe Street
Marine Building
13th Floor, Suite 1302
Email: ca@purdon.co.za

C/O Brookes Attorneys
2 Charles Way, Kloof, KZN
Ref: Nassiha Raoof
Email: nassiha@brookes.co.za

Counsel for the First and Fifth Respondents : Mr N Cassim SC / Mr L Nyangiwe

Instructed by : Rams Attorneys
3rd Floor
70 Grayston Drive
Sandton

: Tel: 011 883 2235/6
: Ref: W Moeketsane/KM/DM/M01722
: Email: wmoeketsane@ramsattorneys.co.za
kmuleya@ramsattorneys.co.za
dmooketsi@ramsattorneys.co.za

C/O MLS Attorneys Inc.
Lwazi House, Suite 8
11 Linden Road
Morningside, Durban

: Tel: 031 023 0472
: Email: lwazi@mnguni-inc.co.za

Counsel for the Third and Fourth
Respondents

: Mr C Loxto SC / Ms H Ndlovu

Instructed by

: Cliffe Dekker Hofmeyr Inc.
1 Protea Place
Sandown, Sandton

: Tel: 011 562 1000
: Email: Vincent.Manko@cdhlegal.com
Charles.Green@cdhlegal.com

C/O K M Attorneys Inc
153 Eleventh Avenue
Essenwood, Durban

: Email: lynell@kmattorneysinc.co.za