



- (1) Reportable: No
- (2) Of interest to other Judges: No
- (3) Not revised

Signature 16 February 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026-014787

In the matter between:

NATIONAL UNION OF METALWORKERS OF

SOUTH AFRICA

First applicant

DITAU KLAAS MAMUSHI AND AYANDA GXUMISA

Second Applicants

and

DENEL SOC LTD

Respondent

Heard: 13 February 2026

Delivered: 16 February 2026

Summary: An application to declare the appointment of an external chairperson and external initiator for a disciplinary hearing in breach of contract, as the Disciplinary Code forms part of the terms of service. The Disciplinary Code has no provisions prohibiting the appointment of an external chairperson and external initiator.

JUDGMENT

GANDIDZE, J

Introduction

- [1] The matter first came before the Court on 11 February 2026, but no pleadings were uploaded to Caselines. Although the Court expressed concern about the applicants' attempts to upload documents to Caselines at the last minute when the application was filed on 29 January 2025, the matter was not struck from the roll because, according to the parties, the help desk confirmed that Caselines was offline. The matter was rescheduled to 13 February 2026.

Nature of the application

- [2] The applicant employees, Mr Mamushi and Mr Ayanda Gxumisa, are represented by their trade union, National Union of Metalworkers of South Africa (NUMSA), collectively referred to as the applicants, in an urgent application for a rule *nisi*, where the following orders are sought:

- 2.1 Declaring that the employer's disciplinary code and procedure, which is incorporated into the applicant's employment contract, does not provide for or authorise the respondent to appoint an external initiator or an external chairperson for the applicant employee's disciplinary hearing;
- 2.2 That the employer's conduct in appointing an external initiator and chairperson constitutes a breach of the applicant employees' contracts of employment;
- 2.3 Interdicting the employer from proceeding with the disciplinary hearing of the applicant employee with an external initiator and an external chairperson, in breach of the contract of employment.

- [3] Although a rule *nisi* was sought, when the matter was heard, all the pleadings had been filed; therefore, the case will be considered on the basis that final relief was sought.
- [4] The requirements for final relief are (i) a clear right, (ii) harm committed or reasonably apprehended, (iii) the absence of a suitable alternative remedy.

- [5] As the application was filed on an urgent basis, the applicants must demonstrate that the matter is urgent and that they cannot secure substantial redress through normal channels in due course. Whether these criteria are satisfied can only be assessed by considering the context in which the dispute arose, an issue I now turn to.

Background facts

- [6] The applicant employees are employed by Denel SOC Ltd (the employer), as Category Specialists in the Procurement Department. They have been suspended since March 2025, and a disciplinary hearing against them is pending. In the Notice to attend the disciplinary hearing issued on 11 November 2025, the applicants were informed that MNS Attorneys would initiate the disciplinary hearing, which MBA Inc Attorneys would chair. The hearing was scheduled for 13 November 2025. It was agreed that the hearing would be rescheduled to 26 November 2025, on which date preliminary points would be dealt with.
- [7] On 24 November 2025, NUMSA sent a letter requesting information about the appointment of external parties to conduct the disciplinary hearing. Their argument was that the Disciplinary Code, incorporated into employment contracts, did not permit an external chairperson or initiator.
- [8] On 26 November 2025, it was agreed that NUMSA would submit written representations regarding the recusal of the external chairperson and external initiator by 12 December 2025, and that a ruling would be issued by 12 January 2026.
- [9] The ruling was delayed. On 20 January 2026, an order was issued dismissing the recusal application, with the reasons to be provided on 23 January 2026.
- [10] The current application was launched on 26 January 2026, following the employer's refusal to provide an undertaking to appoint an internal chairperson and initiator.

- [11] The reasons in the recusal application were provided on or around 28 January 2026. The date for the continuation of the hearing has not yet been scheduled.

Jurisdiction

- [12] Before discussing the requirements that I have specified the applicants must meet to succeed in obtaining the relief they seek, there is an additional requirement. The court must have jurisdiction to hear the dispute. This matter concerns an alleged breach of contract, and therefore, this court has jurisdiction to entertain the matter by virtue of the provisions of section 77(1) and section 77(3) of the Basic Conditions of Employment Act.¹

- [13] I disagree that an alleged breach of contract claim is a right under the Labour Relations Act² (LRA), as submitted by the respondent. To the extent that there was some confusion about whether this Court has jurisdiction over contractual claims, the court in *Passenger Rail Agency of SA and Others v Ngoye and Others*³ stated the following:

[19] ...if non-compliance with the LRA is not relied on, an employee can pursue a contractual claim if a contractual remedy is sought.'

- [14] This is the situation in this case, as the applicants have not relied on any provision of the LRA but have alleged a breach of contract, and they are seeking specific performance. They are entitled to do so, and this Court has jurisdiction over such claims. It is not for the respondent to tell the applicants to allege an unfair labour practice and to assert that the relief granted for such a claim will be more than satisfactory, as the respondent submit. Applicants choose a cause of action to pursue. This Court has jurisdiction to determine the applicants' chosen cause of action, and section 157(5) of the LRA, and the *Booyesen v the Minister of Safety and Security and others*⁴ decision, which found that this Court can intervene in incomplete disciplinary proceedings in

¹ Act 75 of 1997.

² Act 66 of 1995, as amended.

³ 2025 (2) SA 556 (LAC) at para 19.

⁴ [2011] 1 BLLR 83 (LAC).

exceptional circumstances, does not change the fact that this Court has jurisdiction to determine the alleged contractual breach.

- [15] Further clarity was provided in *Cibane and Another v Premier, Province of KwaZulu-Natal and Another*⁵, when the Court stated the following:

[29]When pressed on the basis on which the Labour Court had jurisdiction to entertain the declaratory orders sought, counsel for the appellants appealed to s 77(3) of the Basic Conditions of Employment Act. (BCEA). That section confers concurrent jurisdiction on the Labour Court (with the civil courts) to hear and determine any matter concerning a contract of employment. The difficulty with this submission is that the pleadings make no reference to the appellants' contracts of employment, even less do they assert a contractual term (or any breach of any contractual term) that might form the basis of the right that they assert. At best for the appellants, they assert that the SMS Handbook contains 'indications' that, as a matter of fairness, disciplinary action ought to be taken promptly once the employer is aware of the alleged misconduct. Contrary to what counsel submits, the pleadings disclose no claim that is founded on any term of a contract of employment, nor do the appellants seek to enforce any contractual right.'

- [16] The applicant employees have alleged a breach of contract, and it follows that this Court has jurisdiction to hear the case. Whether the claim has merit is a different matter entirely, an issue addressed later in the judgment.

Urgency

- [17] The sole basis on which urgency was contested is that it was self-created. It was argued that the applicants knew, as early as 11 November 2025, when the Notices to Attend the disciplinary hearing were issued, that an external chairperson and an external initiator had been appointed, yet they only filed the application on 26 January 2026.

⁵ (2025) 46 ILJ 2587 (LAC).

- [18] Based on the timeline I have outlined above, I disagree that the applicants delayed in bringing their case to Court. In fact, the opposite is true. They raised the issue of the external chairperson as early as November 2025. The outcome that the chairperson and the initiator would not recuse themselves was known by 23 January 2026, and on 26 January 2026, they filed the current application.
- [19] The matter is urgent also because, if the applicants are correct that having an external chairperson and external initiator breaches their employment contract, then this Court must consider the application before the hearing begins. They have a right to insist that the employer comply with the terms of the employment contract. The alleged breach must be addressed, as redress in due course will not be substantial. This would be the exceptional circumstances warranting the Court's interference in the disciplinary proceedings, in accordance with *Booyesen v Minister of Safety and Security and Others*⁶.

Clear right

- [20] The question is whether appointing an external chairperson and an external initiator breaches the employment contracts of the applicant employees.
- [21] The answer depends on whether the Disciplinary Code forms part of the conditions of service. The Letter of Appointment includes this provision.

'10. DISCIPLINARY CODE AND GRIEVANCE PROCEDURES

The Disciplinary Code and Grievance Procedure forms part of these Conditions of Service (COSAID- 00220-603).'

- [22] Then, clause 13 states as follows:

'13. ACCEPTANCE

Please note that this appointment is subject to the terms set out in the MEIBC conditions and/or the Denel Industrial properties conditions of employment of which the disciplinary code and grievance procedure forms part. (Own underlining)

⁶ (2011) 32 ILJ 112 (LAC).

[23] Mr Mzinyathi submitted that the Disciplinary Code was not incorporated into the applicant employee's contracts of employment, as the specific clauses of the Disciplinary Code that were incorporated ought to have been specified. For this position, he relied on an unreported decision of this Court in *Siseko Siyotula v Mogale City Local Municipality*⁷. There, the court stated the following:

[25] ... Incorporation must be specific, with specific reference in the employment contract to the provision sought to be incorporated. An example of such a case can be found where the employment contract of an employee in the public service specifically provided and recorded that the SMS handbook (being the regulatory provision dealing with discipline) was incorporated into the employment contract and regarded as part thereof. In short, actual contractual incorporation cannot be established by mere reference in the employment contract to such regulatory provisions as being applicable to the discipline of an employee. More is needed.

[24] I disagree with the submission. The provisions I mentioned earlier in the Letters of Appointment clearly indicate that this Disciplinary Code is part of the terms and conditions of employment. This means the entire Disciplinary Code is included.

[25] What then is the provision in the Disciplinary Code, which is part of the contract of employment, that prevents an external chairperson from chairing their disciplinary hearing and an external person from initiating the hearing?

[26] The founding affidavit states the following:

'The policy neither explicitly and/ or implicitly permit the appointment of an external initiator, or an external chairperson. Nor does it give the respondent the discretion to do so unilaterally in respect of internal disciplinary inquiries.'

[27] That submission is reiterated in the applicants' heads of argument. Given this, the inquiry into whether the applicants have a clear right to the relief they seek must conclude. If, according to his own version, the Disciplinary Code is silent

⁷ Unreported decision. Case number: J224/23. Delivered on 22 March 2024.

on the matter, there can be no question of a breach of the employment contract in appointing an external chairperson to oversee the disciplinary hearing and an external person to initiate proceedings. Consequently, there can be no discussion of a variation in the terms and conditions of employment, as argued by the applicants.

[28] Mr Shezi, for the applicants, relied on the decision in *Denel (Pty) Ltd v Vorster*⁸ (*Vorster*), which he submitted established that the employer could not act beyond that which the Disciplinary Code was silent on. I have been unable to locate the relevant part of the judgment relied upon, but found these paragraphs:

[5] The procedures that had to be followed when disciplinary action was taken against an employee, and the identities of the persons who were authorised to take such disciplinary action, were circumscribed in the appellant's disciplinary code. The terms of the disciplinary code were expressly incorporated in the conditions of employment of each employee with the result that they assumed contractual effect.

...

[15] ... It might be that the construction advanced by the appellant would create a disciplinary regime that was equally acceptable (whether that is so is by no means certain) but that is not the test: through its disciplinary code, as incorporated in the conditions of employment, the appellant undertook to its employees that it would follow a specific route before it terminated their employment and it was not open to the appellant unilaterally to substitute something else.'

[29] Therefore, in *Vorster*, the Court held that the employer had to be bound by what it had agreed to in the Disciplinary Code, and not by what the Disciplinary Code was silent on.

[30] The applicants' case worsens. Clause 1 of the Disciplinary Policy states that the initiator is the employer's representative who alleges misconduct and

⁸ (2004) 25 ILJ 659 (SCA).

presents the case against the employee. The clause does not specify that the initiator cannot be an external person. Similarly, the argument that the initiator must be an employee of Denel is not supported by this provision or any other part of the Disciplinary Policy, which was brought to the Court's attention.

- [31] The fact that the Disciplinary Code states that an employee may only be represented by a fellow employee or a trade union does not mean that the employer cannot be represented by an external person. If anything, this provision makes it clear that an employee may only be represented by the specified persons, and nothing is said about who may represent an employer. The interpretation urged by Mr Shezi must be rejected.
- [32] If the complaint is that an employer cannot have an external initiator who is a legal practitioner, while the applicant employees can only be represented by a fellow employee or a trade union representative, who are not legal practitioners, then the recourse is to apply to the chairperson to be allowed legal representation as well.
- [33] Regarding whom should be the chairperson of the hearing, Mr Shezi argued that the policy is ambiguous and unclear. Accepting this view, it follows that appointing an external chairperson cannot be regarded as a breach of the employment contract. The provision that forbids the appointment of an external chairperson cannot be identified.
- [34] On behalf of the employer, the submission was made that clause 7.2.5 of the policy expressly provides for the appointment of an external chairperson. The provision states that the Chairperson appointed by the employer shall keep a record of the proceedings but says nothing about an external chairperson. The provision is silent on whether the chairperson must be internal or external, a concession made in the respondent's heads of argument.
- [35] Realising that the breach of contract argument was unlikely to succeed, the submission was made that it has been the practice for internal staff to be appointed to chair and initiate disciplinary hearings. This practice was denied

in the answering affidavit, and that version will be accepted in accordance with the *Plascon-Evans* rule, as it is neither far-fetched nor fanciful.

- [36] The subsequent submission is that the practice aligns with the provisions of the disciplinary code. This is not correct, as I have demonstrated above.
- [37] Even if the applicants are correct that the practice has been to appoint internal chairpersons and initiators, the claim before the Court concerns an alleged breach of contract. Unless the applicants point to the contractual provision that has been breached, the claim must fail.
- [38] Whether there is justification for appointing an external chairperson and an external initiator, or whether the employer is obliged to explain to NUMSA why it has done so, are matters between the parties that this Court should not concern itself with in an alleged breach of contract claim. The only issue for determination is whether the appointment of an external chairperson and initiator breaches the employees' employment contract.
- [39] The above finding on a clear right means that the issue of irreparable harm does not even arise.
- [40] The Court has accepted jurisdiction to hear a claim for alleged breach of an employment contract. Therefore, the employer's submission that the applicants could have referred an alleged breach of contract claim to the Commission for Conciliation, Mediation and Arbitration is incorrect. In reaching this conclusion, the Court was mindful of the submission made in the applicants' heads of argument that *'It is respectfully submitted that the respondent's conduct of employing external parties to participate on its behalf at the second applicant's disciplinary enquiry may very well be procedurally unfair'*, but that the applicants were unconcerned about this, rather focusing on the lawfulness of the employer's decision.
- [41] As I conclude, I observe that the recusal ruling determined that both the chairperson and the initiator would not recuse themselves. That being the case, and without providing legal advice to the applicants, which this Court does not do, the applicants have recourse if they are aggrieved by the recusal ruling.

[42] The challenge to Mr Victor Maduka's authority to depose to the founding affidavit does not require any further attention other than to point out that he is employed as the Group Manager: Employee Relations and Transformation. Clearly, a person holding such a position would have the authority to depose to an answering affidavit in a matter like this.

Costs

[43] The applicants submitted that they were entitled to approach the Court for the relief they sought, and therefore even if the application fails, they should not be burdened with a costs order. The respondent submitted that the applicants must be ordered to pay their costs as they had been unsuccessful with the claim. Although the applicants' claim will be dismissed, the respondent made several submissions that the court rejected. An order that each party pays its costs would be in accordance with the requirements of law and fairness.

[44] In the result, the following order is made:

Order:

1. The application is dismissed.
2. Each party pays its own costs.

T. Gandidze

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr V Shezi (NUMSA Regional Legal Officer)

For the Respondent: Mr Mzinyathi of Mncedisi Ndlovu & Sedumedi Attorneys