(1) Reportable Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: 2025 – 075712

As Consolidated with CASE NO: J2896/18

In the matter between:

THE REGISTRAR OF LABOUR RELATIONS **Applicant**

and

SIPHO ERIC SONO *N.O.* **First Respondent**

(Administrator of the Chemical, Energy Paper, Printing, Wood and Allied Workers' Union)

CHEMICAL, ENERGY, PAPER, PRINTING, WOOD AND ALLIED WORKERS' UNION (Under Administration) **Second Respondent**

GERHARD VOSLOO **Third Respondent**

CEPPWAWU INVESTMENTS (PTY) LTD **Fourth Respondent**

Heard: **30 July 2025**

Delivered: **This judgment was handed down electronically by uploading on *Caselines*; and circulation to the parties' legal representatives by email; and publication on the Labour Court's website and *SAFLII*. The date for hand-down is deemed to be on 28 January 2026**

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

[1] The Second Respondent, Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union (CEPPWAWU) (The Union), has been unable to manage its own affairs since 2018. It was placed under administration following an application by the Applicant (Registrar) in terms of section 103A(1)(c) of the Labour Relations Act (The LRA)[1]. Such an order was granted by Rabkin-Naicker J on 4 June 2020[2], and Ms Thulisile Mashanda was appointed as the Administrator.

[2] The detailed order of Rabkin-Naicker J set out the mandate inclusive of the powers and responsibilities of the Administrator[3]. Effectively, Mashanda was authorised to take immediate control of the Union in the place of its National Office Bearers and the National Executive Committee (NEC). The Administrator's powers included *inter alia*, the management of the affairs of the Union, inclusive of all its contracts, legal proceedings, professional services, meetings, remuneration, finances, assets and interests related to its business and affairs.

[3] In December 2021, individual members of the Union who were aggrieved with Mashanda's administration brought an application before this Court. That application resulted with Mashanda's removal by agreement with the Registrar on 24 March 2022.

[4] Mashanda was replaced by the First Respondent (Mr Sono), who was appointed on an *interim* basis for 180 days as Administrator. Sono was to assume the role on the same terms as applicable to Mashanda flowing from the Rabkin-Naicker J's Order. In addition, he was mandated to within the *interim*

[1] Act 66 of 1995.
[2] *Registrar of Labour Relations v Chemical, Energy, Paper, Printing, Wood and Allied Workers Union*. Case no: J2896/18 (Delivered on 4 June 2020)
[3] At pages 8 – 11 of the Order

period, ensure the facilitation of a National Congress and handing over to the elected leadership.

The main applications before the Court:

[5] Before this Court are two consolidated applications brought under the provisions of section 103A of the LRA. In the first application ('Removal Application') launched on 21 May 2025, the Registrar, seeks *inter alia*, orders that the administration of the Union be extended from 30 June 2025 until 30 September 2026; that Sono be removed and replaced by the Third Respondent (Vosloo) as the Administrator until June 2026, or until Vosloo has finalised and concluded (i) all the outstanding audited financial statements ('AFS') of 2018 - 2025 financial years, (ii) convened a National Congress for the election of the Union national leadership, and (iii), handed over the Union to such elected leadership, whichever comes first.

[6] The second application (counter-application)('Extension Application'), was launched on 26 May 2025 by Sono. He brought the application in his official capacity as Administrator, and in his own personal capacity. Other than opposing the Removal Application, Sono seeks a variety of order including, extending the term of the administration of the Union from 30 June 2025 to an indeterminate period, and to be terminated within a period of 6 (six) months from the date of receiving funds from the CEPPWAWU Development Trust (CDT) to settle the creditors; securing of the balance of AFS, and the holding of the national congress.

[7] Although the Union is cited as the second respondent, on the approach followed by Snyman AJ in *Chemical, Energy, Paper, Printing, Wood, and Allied Workers Union and Others v Mashanda N.O and Others (Mashanda)*[4]*,* it cannot however be an independent respondent in circumstances where it is under Sono's administration. The latter fully represents it as he squarely stands in its shoes as administrator.

[8] The above applications were consolidated by the Court (per Prinsloo J) on 04 June 2025 when the Extension Application was before the Court on the urgent roll. The Court had further ordered that the period of administration be extended

[4] (J 2896 (2018) [2022] ZALCJHB 350; (2023) 44 ILJ 520 (LC) at para 50

to 30 September 2026, and that Sono's tenure be *interim*, pending the determination of the consolidated applications.

Litigation history:

[9] Before and since the appointment of Sono, there has been persistent litigation between various parties with interests in the affairs of the Union. In the meantime, after four administration orders since the Rabkin-Naicker J's Order of June 2020, the Union is nowhere near achieving self-governance. The parties in the continuous litigation involved Sono as Administrator, the Registrar, individual or group members of the Union, and the Fourth Respondent (CEPPWAWU Investments Pty Ltd (CI), which is the Union's investment arm.

[10] Those numerous disputes played themselves out in this Court, the High Court, the Labour Appeal Court and the Constitutional Court into July 2025. Other disputes at the High Court involved CEPPWAWU Development Trust (CDT), Sono, the Union, CI and the Registrar. The CDT was established as a vehicle to hold investments for the benefit of the Union. As at February 2019, it was valued at R1.5b. The CDT is also CI's 100% shareholder, with the Union being its sole beneficiary.

[11] Resulting from these various disputes, there are no less than 19 Orders and Judgments issued by various Courts between June 2020 and July 2025 as per the schedule[5] prepared on behalf of Sono. For context, the consolidated applications are before the Court against the following prior litigation:

11.1 Sono's initial term of appointment was due to expire on 12 December 2022. The Registrar had obtained an order on 7 December 2022 extending Sono's term.

11.2 During August 2022, individual members of the Union had approached the Court, leading to an order being issued on 25 August 2022 (Per Snyman AJ). The order interdicted a Union National Congress sought to be convened by Sono. The interdict was granted pending an order in Part B, in which the removal of Sono was sought.

[5] *Caselines* 011-01-2

11.3 Pending the determination of Part B as above, the Registrar had in September 2022, brought a counter-application and sought the extension of Sono's appointment as Administrator.

11.4 On 7 December 2022, Snyman AJ dismissed the application brought by the individual members of the Union, and extended Sono's term for a further 12 months, with a specific order that the latter must convene a national congress by 30 September 2023 and hand over the Union to its elected leadership.

11.5 It is however common cause that flowing from Snyman AJ's order, applications for leave to appeal; applications under section 18(3) of the Superior Courts Act; and Petitions for leave to Appeal to the LAC followed. An unsuccessful petition to the Constitutional Court put an end to that dispute on 5 July 2023.

11.6 On 3 November 2023, Sono obtained an order (Per Mahosi J), condoning the failure to convene a National Congress before 30 September 2023.

11.7 Lallie J on 4 December 2023 issued an order and extended Sono's tenure until 30 June 2025, or in the alternative, until the Union had elected a leadership at a National Congress. The main reason for the extension according to the Registrar, was to enable Sono to file the AFS and convene a National Congress by 12 December 2023.

11.8 On 20 March 2024, following yet another application, Sono obtained an order varying the initial terms and powers of the Administrator as determined by Rabkin-Naicker J on 4 June 2020. A similar order was obtained by agreement between Sono and the Registrar on 14 May 2024, which effectively empowered Sono to appoint and remove the trustees appointed by the Union to the CI.

11.9 On 9 July 2024, the Registrar brought an application to set aside the appointment of a Union's National Organiser (Mr Ntseki) made by Sono. The application was dismissed (per Prinsloo J) on 14 August 2024.

11.10 Pending an application for leave to appeal against the judgment of Prinsloo J, the Registrar brought a semi-urgent application on 27 September 2024 to remove Sono as an Administrator. It is this application that triggered other applications leading to the ultimate consolidation as ordered by Prinsloo J.

11.11 It is further common cause that on 27 March 2025, this Court, (per Mahomed AJ), had issued an order following an urgent application by the Registrar. Following undertakings by Sono, a National Congress that was planned to convene in June 2025 or in the future, was interdicted until the filing of the AFS was up to date.

11.12 Prior to the hearing of the consolidated applications, there was a further application by individual members of the Union seeking intervention. The application was dismissed on 10 June 2025 by Phakedi AJ, who in line with the interpretation of section 103A (1) of the LRA as espoused in *Mashanda*[6], had however allowed their submissions to be placed before the Court for consideration in the removal application.

11.13 Equally filed after the consolidation order were other applications by both the Registrar and Sono, with each seeking leave to file further supplementary affidavits. The Court will however despite objections by both parties to each other's application, admit them to the extent that they are relevant to the issues for consideration.

CI's intervention in the consolidated applications, the interlocutory applications and evaluation:

[12] Vosloo and CI had not filed any papers in the consolidated applications. This was so since no specific relief was sought against it by the Registrar. CI was however not cited in the Extension Application.

[13] CI, whose attorneys of record have been involved in representing it in all legal proceedings since 2004, had not at any stage participated in these proceedings other than maintaining a watching brief. This was CI's position until the matter was heard on 30 July 2025.

[14] At the hearing of the matter, and at a stage where argument for the other parties was about to be completed, the Court had afforded the CI an opportunity to make any oral submissions in regards to issues pertaining to its involvement,

[6] At paras 46 - 47

and more particularly issues raised by the Registrar concerning the disputes surrounding a conditional loan from the CI, which Sono had rejected. I will deal in detail at a later stage of this judgment on these crucial issues.

[15] The Court's invitation to CI appears to have placed a spanner in the wheels of these proceedings. The submissions made by Counsel for the CI were clearly in support of the Removal Application, and by implication, opposed to the Extension Application. To the extent that the issues raised from the bar by Counsel for the CI in the Court's view required proper ventilation, the proceedings were then adjourned. An order was issued setting out the timeframes within which the parties were required to deliver further papers. CI was to deliver an affidavit and short heads of argument in respect of issues it needed to raise by 8 August 2025. Sono was to deliver any response whilst the Registrar was afforded until 20 August 2025 to file any submissions.

[16] Arising from the Court order on 30 July 2025, and after the CI had delivered its Answering Affidavit to the main application and further submissions, Sono in turn delivered various interlocutory applications. Primary was an objection in terms of Rule 36(2) of the Rules, to the late filing of the answering affidavit and the submissions, and a further application in terms of Rule 57 of the Rules to set aside CI's irregular steps.

Preliminary issues and evaluation:

(i) Sono's locus standi:

[17] A preliminary point was raised by both the Registrar and the CI to the effect that Sono lacked *locus standi* to bring the extension application, on the grounds that in a previous judgment of Snyman AJ of 7 December 2022, it was held that in the instance where the Registrar, and not the Union itself, had brought the original Section 103A(1) application, only the Registrar could bring a further Section 103A(1) application. It was submitted that both Registrar and Sono were parties in the Section 103A(1)(c) application by the Registrar and in accordance with the *res judicata* principle, this matter has accordingly been finally determined and could not be re- litigated by the same parties. It was further submitted that since Sono's term ended on 30 June 2025, Sono had no *locus standi* to oppose the application for extension of administration and appointment

of Vosloo, since the application for removal has been overtaken by events and became irrelevant. It was contended that Sono after 30 June 2025, only remained on as administrator in a temporary capacity, pending the handing down of judgment in the latest section 103A(1) application.

[18] The judgment of Snyman AJ heavily relied on by CI dealt with a removal application brought by individual members of the Union, and not the Union itself. It is not clear on what basis its can be said the judgment precluded Sono from acting in both capacities in either opposing the removal application or extension of the administration in the light of the provisions of section 103A(5), more specifically given his mandate arising from the Rabkin-Naicker J's Order that he had authority to litigate for and on behalf of the Union, and to also seek an amendment or variation to the administration order.

[19] In my view, the fact that Sono's tenure had come to an end on 30 June 2025 is neither here nor there. This is so in that but for the belated determination of the removal application which he had opposed and the extension application which was brought before the end of his tenure, the matter ought to have been heard prior to 30 June 2025. Further in view of the extension orders granted by Prinsloo J on 4 June 2025 and by this Court on 23 July 2025, in the absence of the Union being in the position to act on its own or where as things stand Sono remains the Administrator, I am satisfied that he has the necessary *locus standi* for the purposes of the consolidated applications.

(ii) Sono's application to supplement the founding affidavit in the Extension Application:

[20] Despite the clear directives and timeframes for filing of further documents as set out by the Court in its Order of 30 July 2025, filing had continued into 2 December 2025, when Sono filed an application seeking leave to supplement the founding affidavit in the Extension Application. This is the second such application, with the first having been filed in July 2025 prior to the hearing of the matter.

[21] To compound matters, as late as 17 December 2025, the CI had filed an answering affidavit to Sono's application for leave to supplement his papers in

the Removal Application. In response, as late as 19 January 2026, Sono had filed a Notice of Irregular Step in respect of the CI's answering affidavit

[22] From the chain of events since the Order of the Court on 30 July 2025, it is my view that the indulgence granted by the Court has clearly been gratuitously abused by both the CI and Sono, for purposes other than those intended by the Court when the matter was adjourned.

[23] Sono's latest application of 2 December 2025 for leave to supplement the papers in the Extension Application ought to be swiftly disposed of. This is so in that arguments had already been heard and the matter was properly ventilated but for the submissions still to be made by CI resulting from the Court's indulgence and any other responses thereto. It is not clear why Sono would want to essentially re-open his case and seek to supplement evidence and arguments already heard and finalised.

[24] Accordingly, inasmuch as Sono complained of abuse of the Court's indulgence by CI, he is equally guilty of the same abuse. For reasons already stated, the Court should refuse to consider that application and strike it out. It would therefore not be necessary to consider the CI's answer nor Sono's latest Notice of Irregular Step in that regard.

(iii) CI's standing, answering Affidavit and objections thereto:

[25] It needs to be reiterated that CI had throughout the delivery of the Removal and Extension applications and the consolidation order, only maintained a watching brief. It is not necessary to point out the purpose of a watching brief, other than to point out that its main objective is *inter alia,* to ensure that the interests of a client are protected. Where a client has not filed any papers in the proceedings, counsel on a watching brief can only intervene or interfere with proceedings with the Court's permission. Even then, it would only be for the purposes of making submissions if an issue arose that affected a client's interests, or where certain pertinent points of law were to be raised. Thus, the extent of the involvement of the watching brief counsel is not to provide more than assistance to the Court, or to overstep by interference in the proceedings.

[26] The question that arises as correctly pointed out on behalf of Sono, is whether despite being cited and having held a watching brief, CI has a right to be heard through its answering affidavit, more specifically in relation to the merits of the consolidated applications.

[27] CI's argument was that being cited as a party to the proceedings, and without more, gave it an automatic right to participate in the proceedings[7]. It further submitted that the objection by Sono based on a misjoinder was misplaced as it was for Sono to seek a misjoinder as an *in limine* point, which he had not[8]. CI further submitted that it could have been joined under the common law on the grounds of, *inter alia*, equity, and/or in accordance with the provisions of Section 173 of the Constitution, to allow it to participate in the proceedings since it had a valuable contribution to make and assist the Court.

[28] The Registrar in support of CI's intervention submitted that CI's intervention and answering affidavit was consistent with the Court's order. The Registrar also opposed the application to strike out, and viewed it as delaying tactic. The Court was implored to look beyond the procedural technicalities raised by Sono, and evaluate the merits of CI's intervention. It was submitted that the CI had an interest in the main application, which granted it the right to be heard in the manner it has proposed. The Registrar reiterated the CI's contentions that Sono did not object to the misjoinder of the CI in the first instance, and there was therefore no reason not to allow its answering affidavit.

[29] Other than these submissions, the Registrar in similar fashion as Sono, sought to add evidential material which had already been ventilated when the matter was argued on 30 July 2025, to which of course an objection was raised.

[30] Sono's counter-arguments were that the CI despite being cited had elected not to participate in the proceedings, and it was therefore unnecessary to bring a misjoinder application. It was disputed that a mere citation conferred *locus standi* on CI, and that what was required was a direct and substantial interest in the subject matter of the litigation, i.e., an interest in the Order the Court may

[7] In reference to *Van Staden NO v Pro-Wiz Group (Pty) Ltd* 2019(4) SA 532 (SCA) at para [13].
[8] In reference to *Rabinowitz and Another NNO v Ned-Equity Insurance Co Ltd* 1980 (3) SA 415 (W) at 419E -F:

make, which could prejudice the party's rights if granted, and that interest alone or convenience was not sufficient[9].

[31] The objection was that the mere citation of CI as a party did not confer upon it a right to actively prosecute or support the Registrar's case in the absence of a *lis* between it and Sono. It was further submitted that no relief was sought against the CI, nor had it applied to intervene as a co-applicant in the proceedings. Its citation was viewed as material misjoinder, and it was in any event, regarded as a procedural formality which did not however confer substantive *locus standi* on CI, specifically since no specific relief was sought against it.

[32] In the circumstances it was submitted that CI had no interest in the proceedings, and that its attempt to participate in the proceedings was procedurally irregular and prejudicial to the orderly conduct of the proceedings, with the consequence of causing procedural chaos and additional costs to the other parties. CI was accused of taking advantage of the Court's indulgence by introducing new impermissible grounds supporting the removal application, and which grounds the Registrar had not relied upon in support of Sono's removal.

[33] It might be argued on behalf of the CI, that the Court Order in terms of which the matter was postponed on 30 July 2025 may have by implication granted it leave to file an affidavit regarding the issues to be addressed in the main applications before the Court. CI clearly misunderstood the intentions behind the Court's indulgence. Even if its understanding was correct, the indulgence could not have been an open invitation to CI to file a substantive answering application either for or against either of the main applications. The invitation was issued in the light of its involvement to the extent that disputes arose regarding the nature and conditions of the loan that Sono sought in the course of the administration of the Union. This issue was material to the determination of whether the failure to accept the loans impacted on the completion of the

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[9] In reference to *Murray and Roberts (Pty) Ltd v Commission for Conciliation, Mediation and* Arbitration [2019] 11 BLLR 1224 (LAC); (2019) 40 ILJ 2510 (LAC) at paras 24 – 25; *Municipal & Essential Services Civil Union (MECSU) v City of Ekurhuleni* [2025] ZALCJHB 230 (20 June 2025) at paras 36 - 37.

administration and whether it pointed to just and equitable grounds for a removal.

[34] It was however correctly pointed out on behalf of Sono that whether the CI was permitted to intervene in the manner it sought was an issue that arose and was answered by the Labour Appeal Court (LAC) in *Kruger and others v Aciel Geomatics (Pty) Ltd (Kruger)*[10]*.* The issue before the LAC as an *in limine* point was whether a co-respondent that remained a respondent could support an applicant by raising facts and allegations in its affidavit in support of the latter, and also seek the same relief.

[35] The LAC had held that a respondent in a motion application could not simply decide to be another applicant[11]. It had supported the view that in such circumstances, a co-respondent such as CI in this case, had various options, including being joined as a second applicant in order to make out its own case. Such a co-respondent, which had elected not to join issue with the applicant in the first place, was however not permitted to file an answering affidavit the sole purpose of which was to build the case for the relief sought by the primary applicant.

[36] In this case as was in *Kruger*, once the CI in its belated answering affidavit essentially sought the same relief as the Registrar, it obviously pinned its colours to the mast, and made itself an applicant in the proceedings. It further went beyond the Court's narrow leave to file an affidavit and the intentions behind the indulgence of the Court. CI as a co-respondent resulting from the Court's indulgence, cannot buttress the Registrar's case post the closing of pleadings in the consolidated applications, and without due regard to proper procedural requirements in motion proceedings.

[37] The approach adopted by CI cannot be countenanced by the fundamental principle in our law, which is that it is the founding affidavit filed in support of a motion that made the case which the respondent must meet, and it is therefore not open to a Court to allow such procedure on any grounds. These procedural

[10] (JA87/2014) [2016] ZALAC 92 (14 June 2016)
[11] At para 10

requirements cannot simply be dismissed as mere technicalities as argued on behalf of the Registrar. The approach of the CI clearly placed Sono in an invidious position, where he had to file answering affidavits to a co-respondent's answering affidavit. The rules of engagement in litigation cannot clearly be countenanced by such an approach, more specifically where in the end, the Court would have to determine the factual and disputed material from the papers on the application of the principles in *Plascon-Evans*[12]. Equally important in such cases were issues surrounding any adverse cost[13]. In the end, reliance by CI on *Children's Institute v Presiding Officer*[14] for the proposition that the interests of justice should permit its answering affidavit in its form and manner, cannot come to its assistance, given the prejudice to Sono.

[38] Other than the above irregularity, to the extent that CI filed that answering affidavit in circumstances where on the facts there was no *lis* between it and Sono or where no relief was sought against it, on the approach in *Kruger*, Sono had no obligation to answer to the CI's affidavit. Equally so, and in the absence of a *lis*, it would be superfluous for the Court to consider other objections raised by Sono pertaining to whether CI's affidavit was in compliance with the provisions of Rule 35(7) of the rules of Court. On account of the irregularities regarding the CI's answering affidavit, it follows it ought to be struck out.

(iv) CI's written submissions:

[39] CI's written submissions were delivered on 12 August 2025 and contrary to the Court order which required such filing by 8 August 2025. It was submitted that

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[12] *Plascon-Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) Ltd* (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620

[13] See also *Kruger* at para 10; *James Brown & Hamer (Pty) Ltd (previously named Gilbert Hamer & Co Ltd) v Simmons NO* 1963 (4) SA 656 (A) at 660D-H, where it was held;

> "It is in the interests of the administration of justice that the well-known and well-established general rules regarding the number of sets and the proper sequence of affidavits in motion proceedings should ordinarily be observed. That is not to say that those general rules must always be rigidly applied: some flexibility, controlled by the presiding Judge exercising his discretion in relation to the facts of the case before him, must necessarily also be permitted. Where, as in the present case, an affidavit is tendered in motion proceedings both late and out of its ordinary sequence, the party tendering it is seeking, not a right, but an indulgence from the Court: he must both advance his explanation of why the affidavit is out of time and satisfy the Court that, although the affidavit is late, it should, having regard to all the circumstances of the case, nevertheless be received."

[14] 2013 (2) SA 620 (CC)

in the absence of an application for condonation, the submissions were not properly before the Court. Of course the Court had invited the submissions, and in view of the purpose of the indulgence granted to CI and its interests in ensuring that its loans to the administration are accounted for, the interests of justice dictate that those submissions be admitted.

The merits of the consolidated applications.

[40] Although the matters were consolidated, it follows that once the Court establishes that a case was made out for the relief that the Registrar seeks in the Removal Application, that would be the end of the matter, and without the need to consider the Extension Application.

The legal frame-work:

[41] It is not necessary to deal with the provisions of Section 103A(1) of the LRA, to the extent that these have been invoked and the Union is under administration since 2020. The only consensus in this matter is that both the Registrar and Sono agree that the period of administration must be extended. The relevant sub-sections of section 103A of the LRA for the purpose of the determination of the issues before the Court are;

> (2) "Without limiting the generality of subsection (1)(a), it may be just and equitable to make an order in terms of subsection (1) if-
>
> *(a)* the trade union or employers' organisation fails materially to perform its functions; or
>
> *(b)* there is serious mismanagement of the finances of the trade union or employers' organisation.
>
> (3) If there are any persons not represented before the Labour Court whose interests may be affected by an order in terms of subsection (1), the Court must consider their interests before deciding whether or not to grant the order.
>
> …
>
> (5) The Labour Court may, on the application by the trade union, employer's organisation or registrar-
>
> (a) vary or amend any prior order made in terms of this section; or

(b) if it is satisfied that an administrator is no longer required, terminate the appointment of the administrator, on appropriate conditions."

[42] It is apparent from the above that the primary objective of section 103A of the LRA other than regulating the appointment of an administrator of a union, is to enable it to regain its viability and the fulfilment of the purpose for which it was established, and to further restore its lawful and democratic functioning. In effect, the appointment of an administrator is compared to that of a business rescue practitioner in the case of an ailing company, with the objective of placing a trade union that is in financial distress on the road to a healthy recovery as the last step, before a winding-up application or in the case of a Union, its deregistration by the Registrar[15].

[43] Section 103A of the LRA therefore acknowledges the extraordinary circumstances and nature of administration where a Union is ultimately placed under administration, and the Court's supervisory role where such a measure is deemed appropriate. At the core of the reason for appointment or continuation of administration is substantive dysfunction of a Union, rather than mere irregularities in the management of its affairs.

[44] Section 103A(5), which is the operative provision in the consolidated applications, regulates the removal, variation or termination of administration, and permits the Registrar or the Union to seek termination of administrator's appointment or variation of administration orders already issued, if in the view of the Court, it is just and equitable. The Registrar is a creature of statute, and fulfils an important regulatory and custodial function in terms of the LRA. The powers of the Registrar are therefore not unfettered in the light of an obligation to act within the confines of the powers afforded in terms of the LRA[16].

The grounds for removal and opposition thereto:

[45] Given the Registrar's powers under section 103A(5) of the LRA, it can be accepted that those powers extend to seeking a removal of an administrator

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[15] *Minister of Labour and Another v Public Servants Association of SA and Another* (2017) 38 ILJ 1075 (LAC); *Vosloo NO and Another v South African Medical Association NPC and Another* (2020) 41 ILJ 2482 (LC) at para 17; See *Mashanda* at paras 56 - 59

[16] *Registrar of Labour Relations v Sono N.O. and Others* (J 2896/18) [2024] ZALCJHB 310 (14 August 2024) at para 32

and replacement with another of the Registrar's choosing. The administrator's mandate in most instances will derive from Court Orders when a Union was placed under administration, or statutorily under the provisions of sections 98 – 100 of the LRA.

[46] By all accounts, and such as in this case, the removal shall have as its basis, amongst other things, the failure to meet the mandate, any factor such as incompetence, mismanagement of funds, acting contrary to the mandate, not acting in good faith, exercise of powers for nefarious reasons, and acting in a manner that is prejudicial to the interests of the Union and its members.

[47] In my view the same grounds that are applicable under section 103A(2) when a union is placed under administration, ought equally apply where an administrator's removal is sought. This is so in that at the core of those statutory grounds, and where proven, is a state of dysfunctionality, coupled with material failures to place the Union in a position where it can run its own affairs independently.

[48] Ultimately, it is the Court in its supervisory role and discretionary powers, to determine on the grounds advanced, whether it would under the circumstances be deemed just and equitable to permit the removal. As correctly pointed out on behalf of the Registrar and in reference to *Knoop and Another NNO v Gupta (Tayob Intervening)(Knoop)*[17], (within the context of an application to remove business rescue practitioners), a removal is not something to be ordered lightly. The primary reason justifying removal will be actual or potential prejudice or harm to the interests of the estate, trust or company, and those in whose interests the administration was established. It was added that the nature of the grounds of removal is based on factual conclusions or inferences drawn from other proven facts and not speculation. It was for the applicant seeking a removal to specify and establish by evidence, the conduct that justified an order for removal [18]. These principles are apposite to the facts of this case within the context of section 103A of the LRA, where the removal of an administrator is sought.

[17] (116/2020) [2020] ZASCA 163; [2021] 1 All SA 726 (SCA); 2021 (3) SA 88 (SCA) (9 December 2020)
[18] At para 18 - 19

[49] Against these considerations, the Registrar seeks the removal of Sono on three main grounds which are interrelated. For the sake of convenience, these grounds of removal and opposition thereto will be outlined and evaluated jointly.

(i) Failure to file Audited Financial Statements (AFS):

[50] It is not in dispute that there have been considerable delays in the filing of AFS since the first administration order. Equally not disputed is that delays had persisted since Sono's appointment in 2022. The Registrar contends that Sono had not filed the AFS for the period 2018 to date. It was contended that Sono had reported in August 2024 that the AFS for 2018 were audited *albeit* not signed, and that the remaining statements had been prepared. The Registrar however complained that Sono's report was not supported by any documentation to demonstrate that indeed the 2018 financial statements had been audited, nor did he provide a plan in regard to when the AFS would be completed.

[51] The Registrar contended that the AFS for 2014 to 2024 as submitted were non-compliant with the LRA, and auditing and accounting standards. In this regard, it was averred that Sono had not complied with the six monthly reporting to the Registrar; the AFS did not consolidate the assets and liabilities of the Union's investments structures being the CI and CDT; did not account for Agency Shop levies; and were accompanied by disclaimers and qualified opinions.

[52] Sono according to the Registrar, only cited financial constraints as the reason the audited statements could not be finalised. This was however in circumstances where he had refused to accept advanced funding from the CI as Union's investment arm, on the basis that it was conditional upon him being made accountable in regard to the use and management of those loans. Sono had however viewed the conditions as compromising his independence.

[53] The Registrar had added that the available financial resources to attend to the AFS, were used by Sono for other purposes, such as the payment of salaries of unnecessary appointments he had made. To the extent that the Registrar in this regard was referring to the appointment of Ntseki as National Organiser, this issue as was correctly pointed out on behalf of Sono, was adjudicated and determined by Prinsloo J, and it need not detain this judgment.

[54] The CI in its written submissions confirmed that indeed Sono had consistently refused its offer of conditional funding towards the completion of AFS, settlement of creditors and convening congress. It had submitted that the refusal was irrational, unreasonable and inconsistent with his fiduciary obligations as an Administrator. CI submitted that Sono's refusal to accept the conditional funding on the basis that his independence would be compromised was misconceived, as such funding was tied to governance and accountability, which was compatible with the objectives of section 103A of the LRA. These provisions demanded proper utilisation of Union assets, transparent accounting, accountability to Union members, and lawful reporting to the Registrar.

[55] In a nutshell, the submissions were that Sono had failed to account for fees, resisted reasonable loan conditions that would enforce accountability, and that the Union was however not in a position to secure any other funding. It was contended that Vosloo on the other hand was willing to accept the loan conditions and complete the task of the administration.

[56] The intervening parties (in an application that was before Phakedi AJ), were identified as members of the Union in good standing and employed at various entities where the Union enjoyed organisational rights. Some of them were elected union representatives at various levels of its structures, and their interests are to be considered within the framework of section 103A(3) of the LRA.

[57] Central to their submissions in support of the removal application was that Sono had failed in material ways to act in the best interests of the Union and its members. They submitted that despite Sono being accountable to Union members, he had nonetheless acted on 'frolic of his own', disregarded statutory obligations, failed to convene national congress and constitutional structures of the Union despite prior commitments, and thus eroded its democratic governance. They shared the Registrar's concerns that there was no financial accountability in managing the affairs of the Union, that there was no justification not to pursue the unlawful cash withdrawals made by Mashanda (the third ground of removal), and confirmed that there was no progress in completing the AFS. They submitted that the delays were in the interests of Sono, who wanted to prolong the period of administration. For personal reasons.

[58] In opposition to his removal, Sono submitted that the removal application was misconceived and premature in the first place, in view of his tenure reaching its end, and further in the light of previous extensions granted by this Court. He contended that the grounds relied upon by the Registrar for his removal were resolved through various litigation that came before this Court, and were further undermined by the Registrar's concession that the primary cause of any delays in completing the AFS or convening a National Congress was the Union's financial distress.

[59] He submitted that the primary reason for the extension of the administration of the Union and his tenure as per the various Court orders, was the lack of funds which made it impossible for him to complete the duties that he was appointed to perform, and to pay auditors. He contended that he had to appoint new auditors who were willing to proceed despite arrear payments. He contended that the Union was in a debt of about R35m, and that completing the AFS and convening a National Congress were costly exercises for which no funds were available.

[60] In respect of finalising the AFS, Sono submitted that the previous Administrator, Mashanda, had completed the 2017 statements after receiving R42m in loans from the CI. He contended that he inherited outstanding statements for 2012-2021 of which he had completed the 2018 – 2020. He attributed the delays in respect of 2021 – 2024 to Mashanda having withheld reports due to her unpaid fees. He further conceded that there could have been disclaimers and qualification in the audits of 2022 and 2023, but attributed these to a variety of factors including historical and pre-administration dysfunction and data loss, to which he had attended to through reconstruction of data. He denied that this indicated default on his part and instead argued that the modified opinions reflected a remedial process he had undertaken resulting from inherent data deficits and faults by appointed auditors.

[61] Sono further attributed the financial problems to the dysfunctional state of the CDT since 2011 which had operated without trustees. He however contended that he had formulated a rescue plan to unlock the necessary funds through the regularisation of the CDT.

[62] Sono contended that evidence pointed that he had made progress in stabilising the finances of the Union despite the constraints, and the need for an estimated R3.1m to finalise the audit. He contended that he had inherited huge arrears and notwithstanding the constraints, he had produced the AFS sequentially. Progress was made as at May 2024 and even though the AFS for 2022-2024 were outstanding, it was anticipated that these would be completed within six months. As at the filing of further papers after 30 July 2025, he had contended that the 2021 – 2023 AFS were complete and furnished in October and November 2025 whilst those for 2024 were in the process of being prepared.

[63] Sono regarded his refusal to accept the conditional funds from the CI as reasonable in order to protect the independence of the administration process. He contended that the CI was not neutral funder or independent, as it was too enmeshed in Union politics. He relied on the judgment Snyman AJ that it was not for CI to impose conditions that circumscribed the administrator's discretion, let alone redefine accountability in a manner that had the effect of displacing the Court's supervisory role. He further submitted that the issues of funding and reliance on it by the Registrar in seeking his removal were in any event a matter that was *res judicata,* as the Court had accepted the Administrator's independence and further since various Court Orders had extended his tenure in the past, notwithstanding the financial constraints.

[64] He further submitted that the Registrar had throughout understood the constraints and supported him in turning around the Union's affairs. According to Sono, the Registrar's support was an acknowledgment of these persistent problems, which were compounded by various litigation and factionalism within the Union. In his view, the relationship with the Registrar soured when Ntseki was appointed as the Union's National Organiser in 2024. He submitted that the appointment of Ntseki was in any event determined and resolved by this Court in a judgment delivered on 14 August 2024 (per Prinsloo J), and thus could not be used as a ground to remove him.

(ii) Failure to convene a National Congress:

[65] In accordance with an order granted by this Court (per Snyman AJ) on 7 December 2022, Sono was ordered to convene a National Congress to enable

the election of a new leadership of the Union, which would manage its own affairs.

[66] The order had further provided that Sono was to appoint an experienced and reputable facilitator to ensure that congresses were convened in terms of the constitution of CEPPWAWU for the purposes of electing a new national leadership; that the congresses were to be convened and concluded prior to 30 September 2023; that the control, management and affairs of the Union were to be handed over to the new leadership upon expiry of the period of administration on 12 December 2023, unless extended further by the Court on application by the Registrar.

[67] The Registrar disputed Sono’s reasons that there was a lack of funds to convene a National Congress. It was reiterated that available funds were being utilised for all the wrong reasons. This was apparent when he had in the application to set aside the appointment of the National Organiser, he (Sono), had averred that the National Organiser's salary was minute and had no influence on the Union's ability to service the Unions legacy debt.

[68] It was not in dispute that the convening of a National Congress was interdicted as Sono had at the time not completed the AFS. The Registrar however submitted that Sono did not appear to prioritise the completion of the AFS or the convening of the National Congress, despite his allegations that he spend six hours a day on the administration of the Union. This was further in circumstances where Sono had refused to provide the Registrar with a breakdown of his fees in relation to the work he had done, on the basis that the request was arbitrary.

[69] The above according to the Registrar, displayed lack of regard for the Registrar’s office authority, and is indicative that the Administrator’s task will not be completed for a handover to the Union. It was further contended that the failure to convene the National Congress undermined the Unions democratic governance.

[70] Sono in response submitted that the lack of funds was central to the planned congress not being convened, as the AFS were not completed. He however

contended that he had taken steps towards that objective by planning regional congresses and having a draft plan which was subject to funding.

[71] Sono contended that in any event, he was granted condonation by this Court for not convening congress on time, and that it was at the Registrar's own instance that the AFS be completed prior to convening the congress. It was added that it was common cause that the Union's outstanding debts continued to remain a challenge in properly executing the duties of Administrator.

(ii) Alleged Negligence in the Management of the Union's affairs:

[72] The Registrar's complaint in this regard was that in July 2022, Sono had reported that the previous Administrator, Mashanda, had withdrawn a total amount of R566 044.33 in two transactions on 6 and 7 April 2022 from the Union's Investec Bank account. The withdrawals took place after Mashanda's term as administrator had come to an end. The Registrar contends that despite Sono having undertaken since August 2022 to follow up on the matter, there has been no progress of the recovery of the funds.

[73] The Registrar had followed up the matter with Sono on 21 June 2024, and the latter had responded in August 2024 and advised that it would not make commercial sense to pursue the repayments with Mashanda, as the fees owed to her exceeded the amount she had withdrawn after her tenure. Against this response, the Registrar held the view that the Administrator displayed negligence for over two years to recover the unlawful withdrawals of Union amounts, his inability to conduct accurate due diligence over the affairs of the Union, and further that he had falsely reported to the Registrar on such matters.

Summary of the parties contentions:

[74] In the end, the Registrar submitted that other than the above grounds, Sono had effectively failed to carry out his mandate, had demonstrated lack of transparency in the administration of the Union, and had caused it ongoing harm due to his failures to get it out of its financial position.

[75] Sono's case was that against financial constraints and various litigation, he had managed the Union's finances prudently, balanced salaries, operational debt and compliance. It was submitted that the Registrar had not shown that his removal was just and equitable on the facts; that issues surrounding funding

were either issue-estoppel or not persuasive; that there was no evidence of dereliction of his tasks, that he had managed the financial challenges faced by the Union, made progress despite all obstacles, demonstrated independence and impartiality, and further that his removal was not in the interests of the Union, as it was not ready to exit administration.

[76] He contended that no case was made out as to he should be replaced by with Vosloo, whose suitability was not established. He viewed any attempts to remove him as being disruptive, costly, counter-productive and likely to result in duplication of work already done, and cause further delays in the winding up of the administration process.

Evaluation:

[77] As a starting point, it is correct as pointed out on behalf of the Registrar and the CI, that congress cannot be convened until the AFS are completed, since this is a prerequisite for handing over to the newly elected union leadership. The mandate from sections 98 – 100 of the LRA and the various administration orders in regards to the AFS, and whether it was achieved, is a crucial question under section 103A(5), when determining whether a continuation or removal of administration is just and equitable.

[78] When he was appointed in March 2022, Sono’s mandate, was time-bound given his limited interim appointment. He was in terms of the Order, required to appoint a reputable and experienced facilitator to ensure that the Union convened a Congress within the 180 days, and that a new national leadership was properly elected, interim or otherwise; and to hand over the affairs and full control of the Union to such duly elected national leadership. Implicit in this mandate was that there be could no legitimate congress convened, until the AFS were completed. In my view, it made sense that the Registrar had obtained an interdict stopping the convening of congress, when the AFS were nowhere near being completed. It would not make sense for the new leadership of a Union to take over when its financial state remains unresolved. As at the hearing of this matter, over three years had passed and the AFS had not been completed nor is a Union congress anywhere near to be convened.

[79] From the initial administration order to other orders regarding the extension and variation of the administration, it will be accepted that indeed the Union had always been in a dire financial position. What is common cause however, is that loans or funding from the CI was and is readily available, other than the fact that it is conditional.

[80] It is issues surrounding this loan, which in my view are determinative of whether the financial position the Union can be resolved, and whether the refusal to accept the loans demonstrates cause for a removal. This is so in that it is common cause that both the completion of the AFS and the convening of congress cannot be resolved unless funds are available.

[81] From the papers it appears that the only application that Sono made to the CI, for a loan to fund Union's operating costs was in May 2022[19]. He had sought a loan in the capital sum of R 107 million in accordance with funding request schedules as was attached to the application.

[82] In its response[20], the CI had raised concerns surrounding the inadequacy of information provided; the absence of a road map to achieve goals with clearly defined objectives and outcomes, and a timetable to attain those objectives coupled with details of the anticipated costs pertaining to each milestone.

[83] Concerns were also raised by the CI in regard to the drastic deterioration of the Union and its finances despite the previous loan of R42 million, and Sono's ongoing inability to provide CI with the actual monthly income and expenditure of the Union since the beginning of 2022. CI set out principles for further support and what would be required for its board to consider extending a further loan. These were *inter alia*;

(a) *Transparency* and a full and comprehensive accounting for the expenditure of the previous R42 million loan with supporting invoices, and full disclosure and transparency with regard to the activities of the Union and those of the Administrator and the implementation of the road map and attendant costs at each stage.

[19] *Caselines* 011 -225 – 011-228
[20] *Caselines* 001 – 232 - 011235

(b) *National Congress* - the provision of a comprehensive and detailed plan, road map and budget to National Congress;

(c) *Direct payments* on a monthly basis to agreed parties on behalf of the Union where acceptable supporting documentation, time sheets, tax invoices and motivation are provided;

(d) *Union's Operational Budget* to be provided on a monthly basis following monthly reports on actual income and expenditure;

(e) *Creditors' accounts* to be properly verified and these creditors engaged to delay settling of these outstanding amounts until the new leadership is elected.

[84] Sono objected to CI's conditions and the reporting requirements. He viewed these conditions as intended to undermine his independence as an administrator, and were in his view, unlawful, onerous, and inappropriate or impractical in relation to his fiduciary duties.

[85] Other reasons related to his refusal were that it was not appropriate to accept the conditions where the CDT was in a dysfunctional state with disputes still pending before the High Court. He further contended that the conditions would place him in a conflict of interest, as he would have to be answerable to the CI rather than the Registrar. In the same token, Sono submitted that the CI loan was in any event not necessary to secure, as he had secured new auditors who were prepared to proceed with the AFS without immediate funding, and that these were to be completed within six months without the Ci's loan.

[86] The Registrar's submissions were that the CI's loan has always been available to Sono as a ready solution to complete the AFS and convene congress. His refusal over a period of three and half years was unreasonable and not principle based, and had effectively caused delays in the finalisation of the administration process and hand over of the Union to its elected leaders.

[87] In *Mashanda*[21], it was held that since Sono was asking for funds from CI, it was always up to the latter as independent party, to decide whether to make such funds available, on whatever conditions it may stipulate. At face value, the

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[21] At 76

enquiry is whether the conditions the CI imposed were in the interests of legitimate governance and accountability, or whether they were an improper encroachment on Sono's powers and responsibilities, or an interference in the administration process.

[88] It is accepted that in his position as administrator, Sono was not obliged to accept the CI's loan if the conditions were onerous and unacceptable as he alleged, or were such that they breached or encroached on his constitutional, statutory or fiduciary duties, to the detriment of the interests of the Union and its members.

[89] Having had regard to prolonged period of administration, the countless extensions and the continuous parlous financial position the Union finds itself in, coupled with any lack of progress in either the finalisation of the AFS or convening of congress, I have serious difficulties in appreciating from Sono's submissions, as to what could possibly be onerous and encroaching with the conditions set by the CI.

[90] The Court accepts that even if an administrator must act independently, independence cannot be equated with insulation from transparency and financial accountability, especially since the loan was from the Union's own investment arm whose assets were for the benefit of its members. Even within the context of administration and independence, Union members are indeed entitled to accountability and transparency as to how those assets are utilised.

[91] What CI required, more particularly in the light of the concerns surrounding the previous loan of R42m and lack of accountability in that regard, was some measure of transparency and accountability, on how a loan of R107m was to be used. What the CI required is not fundamentally different from the Sono's obligations under section 100(c) of the LRA in regards to reporting on financial matters, and which on the Registrar's version, Sono had not consistently complied with. On the other hand, it appears that Sono sought unrestrained access to the loan, in the name of independence, which is nothing but disguised form of self-preservation to circumvent transparency and accountability.

[92] There is something fundamentally flawed, when accountability and transparency related to an expenditure of R107m is required, and when on the

opposite, it is perceived as an encroachment on Sono's independence in the administration process. That very process demanded transparency and accountability.

[93] Equally flawed is Sono's reliance on the judgment of Snyman AJ in a previous removal application, for the proposition that the current application is an attempt to relitigate the same issues. This also applies to circumstances related to the previous extension orders or condonation for failure to convene congress on account of lack of funds which were acknowledged by the Courts.

[94] Since the judgment of Snyman AJ in December 2022, and other that Sono relied on that financial availability was the elephant in the room in completing the AFS or convening congress, a number of developments, even on Sono's version have taken place, which makes the excuse of lack of funds or the same set of facts that led to previous extensions or condonations being no longer sustainable three years later. On his own version, Sono had completed the AFS for 2018 – 2020, albeit the Registrar's contention was that these were non-compliant. As to how he had done that given the financial constraints is not clear.

[95] What is worrisome however is that as at the hearing of the matter, his contention was that the remaining 2021-2024 AFS were to be completed within six months should funding be available. In the same token, the remaining AFS were to be completed with the assistance of new auditors who did not demand immediate payment. What is apparent is that the new auditors are not going to render their services pro bono. In an instance where the new auditors were to complete the AFS as Sono has contended, they still have to be paid for their services, at some point, thus leaving the Union with liabilities in circumstances where the conditions under which the new auditors took over are unknown.

[96] The above however implies that if the AFS were to be completed within six months depending on funding, (i.e, either from the unconditional loans from the CI or resolution of the dispute regarding the CDT at the High Court), the state of affairs that the Union finds itself will persist. Any doubt of Sono's intentions to prolong the administration can be gleaned from the relief he seeks in his Notice of Motion, which is an that order that the term of the administration be extended

to an indeterminate period, and to be terminated within a period of 6 (six) months from the date of receiving funds from the CDT to settle the creditors; securing of the balance of AFS, and the holding of the national congress. Because Sono steadfastly refuses to accept the available conditional loan from the CI, there are no immediate guarantees that the administration process will be finalised anytime soon, since other than the CI's loan, there is no guarantee that the regularisation of the CDT will be achieved anytime soon and to Sono's expectations.

[97] The position the Union finds itself in cannot continue, nor is there justification for its administration to continue indefinitely, and in circumstances where such as in this case, there is an obvious solution to this state of affairs, which Sono has unreasonably rebuffed for over three years.

[98] The administration of a Union is meant to be a temporary measure to restore proper governance and ultimately facilitate democratic leadership through congress. The need for extension of the administration is purely based on the objective of placing the Union in a position it ought to be rather than indefinite and unlimited control by administrators. In this regard, a higher premium is placed on an administrator's duty to act in good faith and in the best interests of a Union and its members in achieving the objectives of the administration.

[99] The facts of this case point to an administration process since 2020, that has failed to achieve its objectives. They point to unreasonable posture adopted by Sono in completing the process, and in circumstances where he completely misunderstood his independence as an administrator and the need for transparency and accountability to the extent that a solution was premised on those principles.

[100] By all accounts, given the non-accountability in respect of the previous loan of R42m, CI's conditional loan was indeed lawful and necessary and in the best interests of the Union and its members who are entitled to accountability and transparency. Sono's refusal to accept the conditional loan for a period of over three years had nothing to do with the interests of the Union and its members. It had everything to do with his own personal reasons, which were detrimental to the ultimate completion of the administration process and transfer of the

Union to its democratically elected structures. Since 2020, the Union still finds itself in circumstances where its financial position has deteriorated significantly (the R35m debt Sono referred to), and where its overall dysfunction remains persistent with no end in sight.

[101] In the end, based on the approach in *Knoop,* the evidence and proven facts points to the failures in the completion of the administration process having caused actual prejudice and harm to the interests of the Union and its members. The evidence indeed supports the Registrar's submissions that Sono's refusal of conditional loans was not only mala fide and unreasonable, but also harmful and inconsistent with his fiduciary duties and the interests of the Union and its members. It is this unreasonable refusal that had led to the delays in the finalisation of the AFS or convening of congress. Based on his failures, it follows that it would be just and equitable to remove him as administrator.

[102] The issue of negligence in management and breach of fiduciary duties related to the unlawful withdrawals of cash by Mashanda from the Union's bank accounts, and Sono's flippant response towards that unlawfulness, points to monumental failures in the discharge of Sono's fiduciary duties, and to more reasons why his removal is necessary.

[103] If the facts are to be understood correctly, in April 2022, Sono had reported that Mashanda had after her removal, withdrawn an amount of R566 044.00 from the Union's bank account in two transactions. Sono had merely sent Mashanda a letter of demand in August 2022 calling upon her to repay the money. Nothing happened until the Registrar had in June 2024 enquired about the matter. Sono's response effectively was that it was pointless to pursue the unlawfully withdrawn amount of R566 044.00 since that amount was less than what Mashanda was owed for her services rendered during her tenure.

[104] I fail to appreciate Sono's posture in this regard. What it effectively means is that despite being removed as administrator, Mashanda was not only allowed access to the Union's bank account during Sono's tenure and under his watch, but was effectively allowed to resort to self-help in respect of the limited Union funds. As to how Mashanda continued to have access to the Union's bank

account some two years after her removal whilst Sono was an administrator is unknown.

[105] Mashanda's conduct was indeed serious and bordered on criminality in view of the fact that she no longer had authorised access to the Union bank account after her removal. Yet Sono brushed off Mashanda's conduct as not worth pursuing, based on untested evidence that she was owed money for her services during her tenure, and that she had in fact helped herself to less than what she was owed. There was no evidence or legal basis for the set-off, nor was the Registrar informed of the decision until an enquiry was made. This issue on its own, albeit confined to insignificance by Sono, constituted serious governance negligence, breaches of financial management and due diligence. His conduct condoned criminality and self-help to assets he was supposed to jealously protect, signifying compete neglect of the interests of Union and its members in the management of financial affairs. It demonstrated that Sono was other than being careless, incompetent in relation to his duties, which indeed justified his removal.

[106] In summary and on the application of *Plascon-Evans*, any factual dispute related to the failure to complete the AFS, convene congress and pursue the unlawful withdrawals made by Mashanda, ought to be determined in favour of the Registrar. Effectively the Court in the exercise of its discretion and upon a consideration of the facts before it, deems it just and equitable to have Sono removed as administrator.

[107] To the extent that the Registrar sought that Sono must be replaced with Vosloo, all that Sono submitted was that Vosloo's credentials were unknown, and that his replacement would merely duplicate and prolong the administration process. In his line with Snyman AJ's judgment of December 2022, it is accepted that it is not for the Court to choose its own candidate as administrator, and that a Court may confirm a nominee of the Registrar provided that he/she is sufficiently qualified.

[108] The Registrar supported Vosloo's appointment on the basis of his experience as could be gleaned from his curriculum vitae. It was contended that Vosloo had no personal interest in prolonging the administration; had already made an

assessment of the position of the Union, and expressed a professional opinion on the matter. He had expressed willingness to accept the CI's conditional loans, which would release the funds necessary to complete the administration.

[109] Sono could not mount any meaningful challenge to the Registrar's contentions, and the invariable conclusion to be reached is that Vosloo is suited for an appointment within the provisions of section 103A(1)(c) of the LRA. His appointment will be confirmed in accordance with the terms to be set out in the order below.

Costs:

[110] Cost in such matters are awarded upon a consideration of law and fairness. I have already indicated the parlous financial state of the Union and the endless litigation, which all the parties agree had compounded the Union's financial woes. The litigation within the administration process has diverted attention from the primary objectives of that process and confined the interests of the Union and its members to insignificance.

[111] One can only comment that the continuous litigation, which effectively amounts to a war of attrition between the feuding parties in this matter, is hardly to the benefit of the long suffering members of the Union. Since 2020, the Union members have remained helpless bystanders in countless legal battles waged allegedly in their interests, and which battles in an ironic twist, they have funded through their subscriptions. A point is reached where the disputants in these legal battles, especially the administrator in this case, need to take a step back, pause the charade and the bravado, and seriously reflect on what is genuinely in the interests of the union and its members.

[112] The point being made is that any costs order against Sono in effect implies more costs for the Union which it does not have, and in circumstances where strictly speaking, it was a spectator in these on-going legal battles. A costs order under the circumstances would be inappropriate.

[113] To the extent that costs were sought against Sono in personal capacity, again, the considerations of law and fairness militates against such an order. This is so notwithstanding the CI and Registrar's position that Sono's tenure had expired on 30 June 2025 and there was no need to persist with his extension

application. The fact of the matter is that Prinsloo J's Order of 4 June 2025, extended Sono's term for an interim period to 30 July 2025, and further ordered that the Court in the consolidated matter must determine whether such appointment should be extended further until 30 September 2026 or whether the Second Respondent should be replaced by Vosloo. Furthermore, this Court, when postponing the matter on 23 July 2025, had extended Sono's term until the date of this judgment. Effectively therefore, there is no cause for Sono to be liable for costs for pursuing the matter after 30 June 2025 as until delivery of the judgment, he remained an administrator.

[114] Against the above considerations and what has been stated in the judgment, the following order is made;

Order:

1. The Applicant is granted leave to supplement its founding affidavit in the Removal Application as uploaded on *Caselines* on 11 July 2025.

2. The First and Second Respondents are granted leave to file a supplementary affidavit in the Extension Application as uploaded on *Caselines* on 18 July 2025

3. The Fourth Respondent's Answering Affidavit is declared an irregular step and is accordingly struck out.

4. The Fourth Respondent's written submissions are admitted.

5. The First and Second Respondent's application to file a further supplementary affidavit in the Extension Application as uploaded on *Caselines* on 2 December 2025 is refused.

6. Paragraph 10.2 of the Court Order of Honourable Madam Justice Lallie dated 4 December 2023 is amended , and the term of the administration of the Second Respondent is extended from 30 June 2025 to 30 December 2026.

7. The Applicant's application to remove the First Respondent as Administrator of the Second Respondent is upheld.

8. The Third Respondent is appointed as the administrator of the Second Respondent with effect from 1 March 2026 to 30 December 2026, or until he has finalised and concluded:

   (i) All the outstanding audited financial statements of 2018, 2019, 2020, 2021, 2022, 2023 and 2024 as well as 2025 financial years;

   (ii) Convened a National Congress for the election of the Second Respondent's national leadership, and,

   (iii) Handed over the Union to such elected leadership, whichever comes first.

9. The powers and responsibilities granted in the Judgment and Order of Rabkin-Naicker J dated 4 June 2020 are extended to the Third Respondent.

10. The First Respondent is directed to facilitate an orderly handover of the administration of the Second Respondent to the Third Respondent with effect from the date of this Order to 27 February 2026.

11. There is no order as to costs in respect of the consolidated and other interlocutory applications.

Edwin Tlhotlhalemaje

Judge of the Labour Court of South Africa

For the Applicant:	T. Madima SC with Adv. J Chanza. Instructed by the State Attorney, Pretoria.
For the 1st and 2nd Respondents:	F Boda SC with Adv. S Bismilla, instructed by LMNS INC.
Fourth Respondent:	E. Wessels SC, instructed Mendelow Jacobs Attorneys