



- (1) Reportable: Yes
(2) Of interest to other Judges: Yes

Signature

3 March 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2026-034905

In the matter between:

UNIVERSITY AND ALLIED WORKERS UNION

Applicant

and

UNIVERSITY OF CAPE TOWN

First Respondent

Heard: 24 February 2026

Delivered: 3 March 2026

Summary: An urgent application to declare as unlawful, the termination of organisational rights acquired through a settlement agreement, which constitutes a collective agreement. Section 21(11) of the LRA, which requires the referral of a representativity dispute to the CCMA, by an employer, is inapplicable. Section 23(4), which deals with the termination of collective agreements, applies.

JUDGMENT

GANDIDZE, J

Introduction

- [1] The applicant union, University and Allied Workers Union (the union), seeks, on an urgent basis, orders against the University of Cape Town (UCT) regarding organisational rights. Firstly, the union seeks an order declaring the notice, which terminates the union's organisational rights under sections 12 (access to UCT premises) and 13 (stop order facilities) of the Labour Relations Act¹ (LRA), issued by UCT on 29 January 2026, unlawful and setting it aside. The ancillary orders sought include the reinstatement of the organisational rights and an interdict preventing UCT from interfering with the union's exercise of those rights. The orders are sought pending the final determination by the Commission for Conciliation, Mediation and Arbitration (CCMA) of the representativity dispute between the parties. When the urgent application was filed, no dispute had been referred to the CCMA, with the parties disagreeing over the nature of the dispute and which party was obliged to refer it.
- [2] On 27 February 2026, the Court issued the order dismissing the application, with reasons to follow by 3 March 2026. These are the reasons for the order.

Background facts

- [3] The union gained organisational rights at UCT in 2018. In the same year, the union and UCT signed a Recognition Agreement in April 2018, which specified that the union would have organisational rights subject to certain conditions. In October 2022, UCT withdrew some of the organisational rights previously enjoyed by the union, arguing that it no longer met the representativity threshold.
- [4] Further correspondence was sent to the union in January 2023, alleging a further decline in membership. This was followed by another letter in which UCT gave notice of the termination of the Recognition Agreement, citing UCT's wish to establish a single bargaining unit. The Recognition Agreement

¹ Act 66 of 1995.

was terminated with 90 days' notice, in accordance with the termination clause.

- [5] In August 2023, the union referred a dispute to the CCMA, alleging that UCT failed to deduct membership subscriptions from its members. On 11 October 2023, at the conciliation meeting, a settlement agreement was reached, granting the union organisational rights in terms of section 12 (trade union access to the workplace) and section 13 (deduction of trade union subscriptions of the LRA). The organisational rights were agreed upon, subject to the union maintaining its representativity as a recognised union.
- [6] The union initially argued that the settlement agreement was made an arbitration award in terms of section 142A of the LRA. UCT strongly disputed this version, asserting that the settlement agreement was never converted into an arbitration award. In its heads of argument, the union claimed that it was irrelevant whether the settlement agreement was converted into an arbitration award and asserted that what mattered was that the agreement was reached under the auspices of the CCMA in accordance with sections 21 (6), (7), (8) of the LRA.²
- [7] After establishing a single bargaining unit, in January 2024, UCT entered into a collective bargaining agreement with the other unions organising at UCT. It also concluded Recognition Agreements with these unions in the same year. The union involved in this dispute was not a party to the agreements. According to UCT, this was because it was not recognised, as it failed to meet the agreed representativity threshold (either on its own or with another union).
- [8] In February 2025, the union referred a dispute to the CCMA seeking the organisational rights regarding the recognition of trade union representatives in terms of section 11 of the LRA and leave for trade union activities in terms of section 15 of the LRA. The other unions were cited as co-respondents. The

² The provisions state as follows:

(6) The Commission must appoint a commissioner to attempt to resolve the *dispute* through conciliation.

(7) If the *dispute* remains unresolved, either party to the *dispute* may request that the *dispute* be resolved through arbitration.

(8) If the unresolved *dispute* is about whether or not the registered *trade union* is a representative *trade union*, the commissioner-...

dispute was withdrawn in August 2025 after the parties agreed to engage in a verification process.

- [9] Before the withdrawal of the dispute referred in February 2025, the union lodged another dispute with the CCMA in March 2025, seeking the organisational rights of leave for stop steward activities, trade union representatives' access to facilities, and access rights. That dispute was resolved in November 2025, when the parties reached a settlement agreement that the union would submit its membership records for verification. The union submitted its membership records, and a joint verification exercise was carried out on 25 and 26 November 2025. The union alleges that the verification process was flawed, among other things.
- [10] Before the agreement of November 2025, UCT had issued the union, on 24 October 2025, with a formal notice of intention to withdraw the organisational rights to access the premises and stop order facilities, on the basis that the union no longer met the minimum representativity threshold.
- [11] The letter also recorded that UCT was exercising its rights in terms of sections 18³ and 21(11)⁴ of the LRA, and that if the union failed to provide information to prove that it was compliant with the representativity requirements, UCT would refer the matter to the CCMA in terms of section 21(11) of the LRA. In these proceedings, UCT contend that the reference to section 21(11) was an error in law as it was not required to follow that provision to withdraw organisational rights conferred by agreement. Section 21(11) provides as follows:
- ‘(11) An employer who alleges that a trade union is no longer a representative trade union may apply to the Commission to withdraw any of the organisational rights conferred by this Part, in which case the provisions of subsections (5) to (10) apply, read with the changes required by the context.’

³ Which deals with the establishment of thresholds for representativeness by an employer and a majority trade union.

⁴ Section 21 deals with the exercise of organisational rights set out in Chapter III Part A of the LRA.

- [12] The parties blame each other for what went wrong regarding the verification process, with UCT stating that no written representations were ever received from the union on why the specified organisational rights should not be withdrawn. Despite that debate, it is common cause that ultimately a verification exercise took place in November 2025. According to UCT, the verification exercise confirmed that the union's representativity was around 5%. The union states that the verification exercise was flawed, and the extent of its representativity is a matter for the CCMA to pronounce on after UCT has referred a dispute to the CCMA in terms of section 21(11) of the LRA.
- [13] The culmination was the letter of 29 January 2026, in which UCT notified the union of the withdrawal of organisational rights, effective from 28 February 2026. The union was also informed that it could refer the matter to the CCMA under sections 21⁵, 22⁶, and 24⁷ of the LRA if it wished to challenge the decision. It was this letter that led to the filing of the present application, and as jurisdiction was disputed, I address that issue first.

Jurisdiction

- [14] In *Zungu v Premier, Province of KwaZulu-Natal*⁸, the Court stated that it is the necessary averments made to demonstrate a cause of action that determines whether the Court has jurisdiction to hear a matter.
- [15] The union pleaded that the Court has exclusive jurisdiction to adjudicate matters concerning the interpretation and application of the LRA, including disputes relating to organisational rights as provided in sections 12, 13 and 21 of the LRA.
- [16] The exclusive jurisdiction of this Court is provided for in section 157 of the LRA, which states as follows:

157. Jurisdiction of Labour Court

⁵ Dealing with the exercise of organisational rights set out in Chapter III Part A of the LRA.

⁶ Deals with the processing of disputes about organisational rights.

⁷ Deals with the processing of disputes about collective agreements.

⁸ (2017) 38 ILJ 1644 (LAC).

- (1) Subject to the Constitution and section 173, and except where *this Act* provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of *this Act* or in terms of any other law are to be determined by the Labour Court.

[17] Therefore, this Court has exclusive jurisdiction in matters where a provision either in the LRA or any other law is to be determined by the Labour Court.

[18] The union relies on sections 12, 13 and 21 of the LRA. Sections 12 and 13 of the LRA deal with the organisational rights of trade unions, including access to the workplace and the deduction of trade union subscriptions or levies. Section 21 deals with how unions may exercise the organisational rights set out in Part A of Chapter III of the LRA. Nowhere in those provisions is it stated that this Court has exclusive jurisdiction to hear the current dispute.

[19] However, the union also argued that section 158 (1) of the LRA empowers this Court to grant urgent interim relief. This is correct, although the caveat is that this Court does not have jurisdiction to entertain all types of applications for interim relief simply because it has the power to grant urgent interim relief. As I have recorded above, jurisdiction is determined by the cause of action pleaded by an applicant.

[20] UCT contends that the Court is precluded, by virtue of section 157(5) from hearing a matter which should be referred to arbitration. That provision states that

- (5) Except as provided for in section 158(2), the Labour Court does not have jurisdiction to adjudicate an unresolved *dispute* if *this Act* or any *employment law* requires the *dispute* to be resolved through arbitration.'

[21] But UCT also conceded that in exceptional circumstances, the Court can grant interim relief to preserve the *status quo* even where there are statutory and tailor-made remedies. The *status quo* can be preserved pending the

determination, by the appropriate forum, of the merits of the underlying dispute⁹.

- [22] It is so that the Commission has jurisdiction to finally determine the dispute between the parties. However, the union is seeking interim relief pending the determination of a representativity dispute by the CCMA. This Court does have jurisdiction to grant the interim relief sought, in terms of section 158(1)(a). The question is whether the union has made out a case for interim relief, taking into account the requirements for interim relief. The other requirement is whether the union has demonstrated exceptional circumstances justifying interim relief until the outcome of a dispute that will be referred to the CCMA.
- [23] The Court is of the opinion that even though the requirement of exceptional circumstances is separate and distinct, in some cases, whether there are exceptional circumstances or not is closely linked to issues of urgency, as well as whether the applicant has shown a *prima facie* right to the relief it seeks. I am therefore willing to consider the application on the basis that there are exceptional circumstances justifying this Court's involvement, but whether the relief sought will ultimately be granted depends on the merits, or not, of the application.
- [24] UCT also argued that the union sought interim relief pending the CCMA's final decision on a dispute, even though no dispute has been referred to the CCMA. Usually, this would have been considered negatively against the union. However, in this case, although both parties agree that a dispute must be referred to the CCMA, they disagree on who should make the referral. The answer to that question relates to the merits of the application, which will be discussed after I have addressed the issue of urgency, also contested.

Urgency

- [25] An applicant who approaches this Court urgently must outline the reasons for their urgency and demonstrate why they cannot obtain substantial recourse in

⁹ *Jiba v Minister of Justice and Constitutional Development* [2016] 4 BLLR 408 (LC).

due course. An additional consideration is whether the urgency was self-created.¹⁰

- [26] The application was launched on 16 February 2026; UCT filed the answering papers on 20 February 2026, that is within four days; the matter was set down for hearing on 24 February 2026; with the judgment expected within three days, that is, by midnight on 27 February 2026. It is against this very tight timetable that it must be assessed with the union launched the application without delay after the dispute arose.
- [27] UCT's letter of October 2025 stated its intention to withdraw organisational rights. It also mentioned that if the union failed to provide the necessary information, UCT would refer the matter to the CCMA. Consequently, I accept that urgency was not present in October 2025, considering UCT's assurance that the next step would be to refer the matter to the CCMA. As I noted earlier in the judgment, when the application was initiated, no dispute had been referred to the CCMA.
- [28] That a verification exercise was undertaken at the end of November 2025 also did not trigger urgency, in my view, because the union reasonably believed that the next step would be for UCT to refer a dispute to the CCMA, as it undertook to do in its October 2025 letter.
- [29] It is UCT's letter dated 29 January 2026, withdrawing the organisational rights, that triggered the urgency. This meant that the 28 February 2026 deadline was approaching.
- [30] Upon receipt of that letter, the union should have acted swiftly and sent a letter to UCT demanding the immediate withdrawal of the letter; otherwise, an application would be launched. Instead, the union took 13 days to respond. It acted without any genuine sense of urgency.
- [31] When the letter was ignored, the union waited a further five days before submitting the current application. By that point, only two weeks remained before the withdrawal took effect.

¹⁰ *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* 2011 JDR 1832 (GSJ).

- [32] Essentially, this means that the union had 18 days to approach the Court, UCT had four days to prepare an answering affidavit, and the Court had three days to consider the matter and deliver a judgment. The unfairness and prejudice to both UCT and the Court are clear, which explains why only an order was issued on 27 February 2026, with reasons to follow in due course.
- [33] Despite this, the union is seeking interim relief to maintain the status quo until the CCMA's determination of the dispute is made in due course. I recognise that if the withdrawal becomes effective at midnight on 27 February 2026, the union would lose the organisational rights it currently holds. The Court's intervention before midnight on 27 February 2026 was necessary to decide whether UCT had lawfully withdrawn the organisational rights it had held since 2018. The issue was not whether the union was entitled to the organisational rights, but rather whether UCT could withdraw them as it had done. Therefore, any redress obtained later would not undo what had already been done. For this reason, I accepted that unless the Court resolved the matter by 27 February 2026, the union would not be able to obtain substantial redress in due course.
- [34] I have already determined that UCT was prejudiced by the truncated time periods for filing its answering affidavit. In that answering affidavit, it reserved the right to supplement it. When the matter was argued, UCT had not filed supplementary papers.
- [35] Taking all of the above into account, the matter will be treated as urgent and decided on its merits.

The parties' contentions

(a) Union's submissions

- [36] Although the founding affidavit claimed that the organisational rights were acquired through a settlement agreement that was converted into an arbitration award, the union argued that whether the settlement agreement was certified as an arbitration award is irrelevant. What matters is that the organisational rights were obtained under sections 21(6), (7), and (8) of the

LRA after the union referred the matter to the CCMA. Therefore, the union contended, organisational rights gained at the CCMA can only be withdrawn in terms of section 21(11).

- [37] Above, I reproduced section 21(11), which states that an employer who claims that a trade union is no longer a representative trade union may apply to the Commission to revoke any of the organisational rights granted by this Part. The union also correctly pointed out that, in terms of section 21(11), it is UCT, not the union, that must refer the matter to the CCMA.
- [38] It was also the union's submission that an official of UCT, with express or at least ostensible authority, gave an undertaking that UCT would refer the dispute to the CCMA, and that, contrary to that undertaking, UCT issued the notice of termination of organisational rights on the grounds that the union was no longer representative.
- [39] Regarding its representativity, the union submits that it did not accept the outcome of the verification process, which it claims was fundamentally flawed. In any case, the union submitted that only the CCMA can settle a dispute about its representativeness.
- [40] Consequently, according to the union, the notice of termination is irregular and constitutes an unlawful attempt to subvert section 21(11) of the LRA and shift the burden onto the union to refer the matter to the CCMA.
- [41] The other basis for arguing that the notice of termination was unlawful is that the Recognition Agreement required 90 days' notice, whereas UCT had issued only one month's notice. This argument was not pursued seriously because it was admitted that the Recognition Agreement was lawfully terminated in 2023.

(b) UCT's submissions

- [42] It was not required to refer a dispute to the CCMA before terminating the union's organisational rights because those rights were obtained through a settlement agreement that was never certified as an arbitration award.

Therefore, according to UCT, the dispute relates to the termination of a settlement agreement, which explains why the notice of termination informed the union that it could refer the dispute to the CCMA in terms of sections 21, 22, and 24 of the LRA, but the union had decided that section 21(11) applies.

- [43] Therefore, according to UCT, the issue for determination is how organisational rights acquired under a settlement agreement concluded at the CCMA can be withdrawn if an employer alleges that a union is no longer representative. In other words, is the employer required to refer a dispute to the CCMA in terms of section 21(11) of the LRA, or can such an employer simply give notice of termination as UCT has done?
- [44] Regarding its letter of October 2025 stating that it would refer the matter to the CCMA, it was submitted that this was an error, as at the time, UCT was not aware of the decision in *Edgars Consolidated Stores Ltd v Federal Council of Retail and Allied Workers Union*¹¹(*Edgars*). It also contends that the ostensible authority point was not pleaded.
- [45] UCT also argues that it has the right to terminate the settlement agreement because the minimum requirement of 300 members has not been fulfilled over several years.

Analysis

- [46] As I see it, the dispute between the parties is how an employer can lawfully withdraw organisational rights acquired in terms of a settlement agreement concluded at the CCMA, pursuant to a referral of a section 21 dispute to the CCMA by a union.
- [47] I agree with the union's submission that it sought interim relief pending the CCMA's final decision on the dispute. The fact that the dispute had not yet been referred to the CCMA did not render the relief sought by the union final. Therefore, the relief that this Court can grant, provided the union has established a case for relief, would be interim in nature, subject to the final decision on the dispute which is still to be referred to the CCMA.

¹¹ (2004) 25 ILJ 1051 (LAC).

[48] In *Setlogelo v Setlogelo*¹², the Appellate Division held that an applicant seeking interim relief must demonstrate a *prima facie* right, even if open to some doubt, must show they will suffer irreparable harm if the relief is not granted, that there is no suitable alternative remedy, and that the balance of convenience favours granting the orders sought. Each of these requirements will now be addressed.

(a) *Prima facie right*

[49] The organisational rights that UCT sought to withdraw were not acquired under the Recognition Agreement, as that agreement was terminated in 2023. The organisational rights were obtained after the union referred a dispute to the CCMA, in terms of section 21 of the LRA. It is common cause that during the conciliation stage, the parties entered into a settlement agreement, which granted the union the organisational rights in question. The settlement agreement was never made into an arbitration award.

[50] The issue to be determined, therefore, is the process an employer must follow to withdraw organisational rights acquired through a settlement agreement.

[51] The union asserts that section 21(11) must be followed before such rights are terminated, and that UCT cannot unilaterally withdraw them. UCT argues that section 21(11) applies solely to organisational rights granted under an arbitration award, not those conferred through a settlement agreement. It maintains that organisational rights granted in a settlement agreement automatically cease if an agreed condition is not met. Alternatively, it contends that the settlement agreement constitutes a collective agreement and, that in terms of section 23(4) of the LRA, it is entitled to terminate it on reasonable notice as it has done.

[52] Section 21 of the LRA addresses the exercise of organisational rights in Part A of Chapter III of the LRA. These rights include trade union representatives, access to the workplace for trade unions, deduction of trade union

¹² 1914 AD 221.

subscriptions and levies, leave for trade union activities, and the disclosure of information.

- [53] A registered trade union¹³ that is sufficiently representative and seeks to exercise those rights may notify the employer in writing (subsection 1). Subsection 2 outlines the contents of the union's notice. The employer and the trade union must then meet within 30 days and endeavour to conclude a collective agreement on how those rights will be exercised (subsection 3). If no collective agreement is concluded, either party may refer the dispute to the CCMA (subsection 5), which will appoint a commissioner to attempt to conciliate the dispute (subsection 6). If the dispute remains unresolved, either party may then request arbitration (subsection 7).
- [54] Subsection 8 details the factors that a commissioner must consider when arbitrating a dispute about the representativeness of a trade union, and subsection 9 explains how a commissioner determines a union's membership or support. Subsection 10 requires the employer to cooperate when a commissioner assesses the trade union's membership or support, and this is followed by subsection 11, which has been quoted above.
- [55] The contention was that the organisational rights were acquired after the union referred the dispute to the CCMA and could therefore only be withdrawn in terms of section 21(11) of the LRA, which requires UCT, which is alleging that it is no longer representative, to refer a dispute to the CCMA.
- [56] The union submitted that in *National Union of Metalworkers of SA and Others v Bader Bop (Pty) Ltd*¹⁴ (*Bader Bop*), the Court held that an employer who considers a union to have lost its representative status must apply to the CCMA to withdraw the organisational rights, and that such an employer cannot resort to self-help. Indeed, this is what section 21(11) states. What *Bader Bop* does not deal with is the withdrawal of organisational rights acquired other than in terms of section 21(8), which is the dispute in the present matter.

¹³ There is a pending dispute regarding the registration status of the union.

¹⁴ 2003 (2) BCLR 182 (CC)

[57] Both parties placed reliance on *Edgars*. That decision drew a distinction between organisational rights acquired in terms of a collective agreement, and those acquired in terms of section 21(7) of the LRA¹⁵.

[58] Section 21(7) of the LRA provides as follows:

‘If a dispute remains unresolved, either party may request that the dispute be resolved through arbitration.’

[59] Consequently, section 21(7) of the LRA applies to organisational rights acquired pursuant to an arbitration award.

[60] In distinguishing between organisational rights obtained through a collective agreement and those acquired via an arbitration award, in *Edgars*, the Court stated this:

[21] It is after all this that subsection (11) then follows. On the face of it, s 21(11) would appear to apply to both those organizational rights that are regulated by a collective agreement concluded in terms of s 21(3) as well as those that are regulated by an arbitration award issued in terms of s 21(7). However, there is a distinction that must be drawn between the organizational rights regulated by a collective agreement and those regulated by an arbitration award. The distinction is that, in the case of those regulated by a collective agreement, the provisions of s 23, which apply to all collective agreements, apply to the collective agreement in which they are contained whereas those provisions do not apply to an award that regulates the manner in which a union must exercise organizational rights conferred on it by an arbitration award in terms of s 21(7). This makes a major difference in regard to the termination of such organisational rights. The difference it makes is to be found in s 23(4). That provision reads thus:

‘Unless the collective agreement provides otherwise, any party to a collective agreement that is concluded for an indefinite period may terminate the agreement by giving reasonable notice in writing to the other parties.’ (My underlining)

¹⁵ Which provides that if a dispute about organisational rights remains unresolved during at conciliation, either party may request that the dispute be resolved through arbitration.

[61] Therefore, the Court found that organisational rights acquired under a collective agreement, after a union has referred a dispute to the CCMA in terms of section 21(3), can be withdrawn when the collective agreement is lawfully terminated. In terms of section 23(4), collective agreements are terminated either in accordance with the termination clause or upon reasonable notice.

[62] However, in respect of organisational rights acquired in terms of an award issued pursuant to an arbitration in terms of section 21(7) of the LRA, the Court stated this:

[24] ...In this matter the construction that I hold to be correct is that s 21(11) only applies to those organizational rights which are regulated by an arbitration award issued in terms of s 21(7), whereas s 23(4) applies to those organizational rights contained in a collective agreement regulating such rights.'

[63] Therefore, section 21(11) of the LRA applies only if the organisational rights were acquired pursuant to an arbitration award. Therefore, contrary to the union's submission, it is highly relevant how the organisational rights sought to be withdrawn were obtained.

[64] The organisational rights in this case were obtained through a settlement agreement. That settlement could have been an arbitration award under section 142A of the LRA, which provides as follows:

142A. Making settlement agreement arbitration award.

(1) The Commission may, by agreement between the parties or on application by a party, make any settlement agreement in respect of any *dispute* that has been referred to the Commission, an arbitration award.

(2) For the purposes of subsection (1), a settlement agreement is a written agreement in settlement of a *dispute* that a party has the right to refer to arbitration or to the Labour Court, excluding a *dispute* that a party is entitled to refer to arbitration in terms of either section 74 (4) or 75 (7).

- [65] In this case, the union wrote to the CCMA informing it that a settlement agreement was entered into, but no evidence was placed before the Court that the settlement agreement was ever made an arbitration award. Therefore, the union's claim that there was either a settlement agreement or an arbitration award is misleading. It had to be one or the other. In this case, it's a settlement agreement.
- [66] The fact that the settlement agreement was not concluded under section 21(3) (before referral to the CCMA), but under subsections (6), (7), and (8) (after the referral of the dispute to the CCMA), makes no difference. The only question is whether there is an arbitration award under section 21(7). If not, section 21(11) of the LRA does not apply. In other words, UCT is not required to refer a matter to the CCMA before withdrawing organisational rights granted to a union.
- [67] Having established that there is no arbitration award granting organisational rights to the union, it means UCT was not required to refer a dispute to the CCMA under section 21(11) of the LRA before withdrawing those organisational rights. That must be the end of the union's case. It has failed to demonstrate a *prima facie* right to the relief it sought, and the application must fail on that ground.
- [68] I nevertheless proceed to determine how UCT could lawfully terminate organisational rights acquired under a settlement agreement.
- [69] UCT submitted that it could simply terminate the agreement with reasonable notice. Alternatively, it argued that the settlement agreement constitutes a collective agreement given the definition in section 213. The alternative argument is more convincing.
- [70] Section 213 provides as follows:

‘collective agreement’ means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered *trade unions*, on the one hand and, on the other hand—

(a) one or more employers.’

[71] The settlement agreement was between an employer and a trade union, concerning organisational rights, a matter of mutual interest, as per *Bader Bop*¹⁶. Therefore, on the face of it, the parties concluded a collective agreement.

[72] In *POPCRU v Sacoswu and Others*¹⁷, the Constitutional Court distinguished between organisational rights that unions automatically acquire under Part A of Chapter III of the LRA if they are sufficiently representative, and organisational rights that unions obtain through a collective agreement. The Court stated this about the latter rights:

‘[139] The other type of organisational right is that of contractual organisational rights. The statutory organisational rights differ from the contractual rights in that their source is the statute, whereas the source of contractual organisational rights is a contract in the form of a collective agreement between a trade union and an employer. Another distinction between the two types is that, whereas an employer has no right in law to terminate a registered trade union's statutory organisational rights, an employer may terminate a trade union's contractual organisational rights by lawfully terminating the collective agreement. In other words, an employer may terminate a contractual organisational right on the normal principles of the law of contract such as a material breach of the contract or by giving the requisite notice of termination. In fact s 23(4) of the LRA makes this clear...’

[73] Section 23(4) of the LRA deals with the termination of collective agreements as follows:

‘(4) Unless the *collective agreement* provides otherwise, any party to a *collective agreement* that is concluded for an indefinite period may terminate the agreement by giving reasonable notice in writing to the other parties.’

¹⁶ *Bader Pop* (id fn 14) at para 40.

¹⁷ 2019 (1) SA 73 (CC).

- [74] The union did not respond to the submission that the settlement constitutes a collective agreement. Instead, it argued that section 24, which deals with disputes over the application and interpretation of collective agreements, does not provide an adequate remedy for a complaint that an employer has unilaterally withdrawn organisational rights. The issue of '*no suitable alternative remedy*' is separate from the question of how organisational rights, obtained under a collective agreement, might be withdrawn.
- [75] UCT withdrew the organisational rights with one month's notice. Although initially arguing that UCT was required to give 90 days' notice, as stipulated in the 2018 Recognition Agreement, this argument was not pursued after it was agreed that the Recognition Agreement was lawfully terminated in 2023.
- [76] Did the settlement agreement include a termination clause? It did. The agreement states that organisational rights are granted on the condition that the union meets the representative threshold of 10%, and according to UCT, the union's representativity as of November 2025 was approximately 5%. The union did not claim to meet the 10% representativity threshold. Instead, it argued that the CCMA should determine its level of representativity. If indeed the union failed to meet the agreed representativity threshold, then the agreement would terminate automatically; alternatively, it could be terminated on reasonable notice.
- [77] It is so that the CCMA has jurisdiction, under section 21 of the LRA, to determine if the union is sufficiently representative to enjoy the organisational rights outlined in Part A of Chapter III of the LRA, but this is not done in accordance with section 21(11) of the LRA, for reasons already explained in this judgment.
- [78] The fact that UCT undertook to refer the matter to the CCMA under section 21(11) of the LRA does not alter the legal position. The undertaking was given by someone with authority, and it was found not to comply with current law. This issue will be taken into consideration when determining costs.
- [79] Before concluding on the *prima facie* requirement, UCT cited an unreported decision of this Court in *Democratic Municipal and Allied Workers' Union of*

*South Africa (DEMAWUSA) obo Members v Bushbuckridge Local Municipality, South African Local Government*¹⁸(DEMAWUSA). In that matter, the union, which sought organisational rights, referred the matter to the CCMA in terms of section 21. An arbitration was held, as contemplated in section 21(7), and an arbitration award granting the union organisational rights was issued. The award directed the parties to conclude a collective agreement on how those organisational rights would be exercised. The parties entered into a Recognition Agreement, which provided that it could be terminated by mutual agreement. Subsequently, the employer sought to terminate the organisational rights of trade union representatives, contending that this issue was not addressed in the Recognition Agreement, and was allowed in terms of an arrangement with the union. The union referred a dispute to the CCMA in terms of section 24 of the LRA, which deals with disputes about collective agreements. The commissioner who arbitrated the matter found that the CCMA lacked jurisdiction. The union approached this Court for interim relief and sought to review the award that determined the CCMA lacked jurisdiction. This Court found that the dispute was indeed about a collective agreement.

[80] In my view, and as I understand the facts, the *DEMAWUSA* decision does not address the issues raised in the current matter. In that case, the organisational rights granted through an arbitration award, and subsequently a collective agreement, were never withdrawn. Instead, the dispute concerned organisational rights granted under an arrangement between the union and the employer, and the Court found that it concerned a contract, in the form of a collective agreement, and that the CCMA had jurisdiction to hear that dispute in terms of section 24 of the LRA, which deals with disputes about collective agreements.

[81] To conclude, the union did not acquire the organisational rights UCT is withdrawing under an arbitration award. The organisational rights were acquired through a settlement agreement that met the requirements of a collective agreement. The collective agreement can be terminated if the union fails to meet the required minimum representativity threshold or on reasonable

¹⁸ (2024/107100) [2024] ZALCJHB 413 (23 October 2024).

notice. The main issue is whether UCT could terminate the collective agreement, and if not, what recourse is available to the union. UCT proposed that the dispute could be addressed under section 21, section 22, or section 24 of the LRA. It is not for this Court to decide on the matter, as it is well established that this Court does not provide legal advice. Its role is solely to determine the dispute referred to it. The dispute referred to the Court was for interim relief, pending UCT's referral of a dispute to the CCMA in terms of section 21(11). The Court has determined the dispute.

- [82] The finding regarding no *prima facie* right demonstrated is dispositive of the matter, but for completeness I proceed to deal with the rest of the requirements for interim relief.

Irreparable harm

- [83] The union submitted that, should the sought orders not be granted, it will suffer severe, imminent and irreparable harm. It will be barred from entering UCT campuses to service current members and to recruit members, it will lose visibility, prestige and bargaining leverage, and the stoppage of stop order facilities means that it will lose its primary source of income in the form of subscriptions.
- [84] UCT submitted that if the termination is lawful, then there can be no harm to the union. It also submitted that the union can obtain subscriptions directly from members and that any lost subscriptions can be recovered in due course. It also submitted that the union can meet with its members outside UCT's premises.
- [85] I agree with UCT's submission that if it is ultimately found that UCT could not terminate the collective agreement, there is no reason why UCT cannot be ordered to pay all outstanding subscriptions, plus interest, since this will be a monetary claim.
- [86] UCT's contention that the union can meet with its members outside campus is, on the face of it, impractical.

[87] The key issue on this requirement is that the union's submissions explaining why the termination was unlawful were rejected. If the termination was lawful, any harm that the union experiences is the type of harm that all unions face when a collective agreement is lawfully terminated.

(c) *Balance of convenience*

[88] The union submitted that the prejudice to it is immediate and ongoing, that the loss of subscription income strikes at the heart of the union's ability to function, and that the disruption to its activities will cause confusion and disengagement among the members, who may leave the union. It also submitted that UCT will suffer no prejudice, as the relief sought is interim and restitutionary in nature, maintaining the *status quo* pending the CCMA's determination on the union's representativity at UCT. It further submitted that UCT will simply be required to continue doing what it has been doing for years, pending a lawful process for change.

[89] UCT argued that the balance of convenience favours rejecting the relief sought, to promote orderly collective bargaining and to uphold the objectives of the LRA, including minimising the proliferation of trade unions and encouraging representative trade unionism in the workplace. It also stated that no dispute is currently pending at the CCMA.

[90] I have already established that the withdrawal of organisational rights under a collective agreement was lawful, as the termination was made in accordance with the agreed terms and with reasonable notice. Therefore, the balance of convenience supports denying the relief sought.

(d) *No alternative remedy*

[91] When I dealt with urgency, I concluded that only this Court could grant the interim relief pending the outcome of a dispute yet to be referred to the CCMA. This is a separate issue from the correct procedure under which such a dispute should be referred to the CCMA, and by whom. However, I also concluded that the union has not demonstrated a *prima facie* right to the relief it sought.

- [92] UCT raised the issue that the union could also strike for the organisational rights it sought. Although minority unions are entitled to strike to acquire organisational rights, the union sought an order to maintain the status quo rather than to obtain organisational rights. Only this Court could grant such an order if a case had been made for it. Therefore, striking was not a suitable alternative remedy.

Costs

- [93] The parties sought costs orders against each other. The union argued that UCT had acted unreasonably, forcing it to litigate, while UCT contended that the application was without merit and that more consideration should have been given to whether to bring it forward.
- [94] The union's application was unsuccessful on the merits. However, there are also issues with the union's conduct that need to be highlighted. It submitted the urgent application at a time that suited itself and its legal representatives, neglecting the pressure it was exerting on UCT to file answering papers or on the Court to issue an order by the midnight deadline of 27 February 2026. It made false submissions, claiming that the Recognition Agreement applied, even though it was aware it had been terminated in 2023. It also argued that it had gained organisational rights pursuant to an arbitration award, only to later change its stance and assert that it was either a settlement agreement or an arbitration award. How could the union be unaware of how it had acquired the organisational rights that UCT was withdrawing?
- [95] In urgent matters where the Court must deliver judgments within tight time constraints, the parties should at least be honest and present accurate facts. It is a waste of the Court's time to consider an urgent application based on fabricated disputes of fact, beyond the legal issues. The Court views the union's version very negatively, which, by all accounts, has caused delays in issuing the judgment.
- [96] UCT successfully opposed the application. However, its submissions on jurisdiction, urgency, and some of the interim relief requirements were deemed to be without merit.

[97] I have also considered that UCT made a commitment to the union that, if it could not demonstrate it met the representativity threshold, UCT would refer the matter to the CCMA. It then reversed its position without explaining to the union that, based on legal advice, its view that it should refer the matter under section 21(11) of the LRA had been mistaken.

[98] It is uncertain whether there is a continuing relationship between the parties, although the correspondence following the November 2025 meeting to verify the union's membership figures suggests that the relationship could be restored. This judgment is unlikely to resolve the dispute between the parties. A costs order against either party could damage a relationship that might still be repairable. Therefore, each party must bear its own costs.

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

Order

1. The matter is heard as one of urgency.
2. The application is dismissed.
3. There is no order as to costs.

T. Gandidze

Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Advocate T Malatji

Instructed by : Rasetlodi Sekhasimbe & Associates

For the Respondent : Advocate LW Ackermann

Instructed by : Bowman Gilfillan Inc.

LABOUR COURT