



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

Signature

Date

10 March 2026

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2025-192509

In the matter between:

LAMOUR TOMMY-NEL

Applicant

and

BOLDR (PTY) LTD

Respondent

Heard: 10 March 2026

Delivered: 10 March 2026

Summary: (Default judgment application – jurisdiction is conferred on this Court in terms of section 191(5)(b) read with section 191(11) of the LRA when the CCMA (or the council with jurisdiction, as the case may be), issues a certificate that the dispute remains unresolved - a referral outside of the time periods means that the Court is divested of jurisdiction)

JUDGMENT

MAY, AJ

Introduction

- [1] This is an application for default judgment pursuant to a statement of claim delivered by the Applicant acting in person after the matter was before the Commission for Conciliation, Mediation and Arbitration (CCMA) previously.

Background

- [2] The dispute concerns the Applicant's dismissal for operational requirements. The Applicant referred the dispute to the above Honourable Court in terms of Section 191 (5)(b)(ii) of the Labour Relations Act, 66 of 1995 (LRA).
- [3] The Applicant referred the matter to the CCMA on 18 June 2024, and conciliation was held on 11 July 2024. The Applicant elected to refer the matter to arbitration at that stage and arbitration was held on 23 September 2025.
- [4] Commissioner Martin Rabie on 29 September 2025 issued a ruling that the provisions of Section 191 (12) of the LRA does not apply to instances where the employer has dismissed more than one employee within a 12-month period with a workforce of more than 10 employees. He therefore held that the CCMA lacks jurisdiction to deal with the dispute and afforded the Applicant an opportunity to refer the matter to this Court.
- [5] Section 191(12) provides as follows "*if an employee is dismissed by reason of the employer's operational requirements following a consultation procedure in terms of Section 189 that applied to the employee only, the employee may elect to the further dispute either to Arbitration or to the Labour Court*".
- [6] S 191(12) does not expressly pronounce upon the jurisdiction of the CCMA. What the section provides is that when a single employee disputes the fairness of his/her dismissal for operational reasons, and where such a dispute remains unresolved after conciliation, the single employee has a choice either to refer the dispute to the CCMA for arbitration or to the Labour Court for adjudication¹.

¹ *Scheme Data Services (Pty) Ltd. v. Myhill N.O. and Others* [2009] 4 BLLR 381 (LC) and *Bracks NO and Another v Rand Water and Another* (JA 2/08) [2010] ZALAC 4; (2010) 31 ILJ 897 (LAC); [2010] 8 BLLR 795 (LAC)

- [7] It is trite that the LRA must be interpreted purposively to give effect to an expeditious resolution of labour disputes².
- [8] This Court is therefore not convinced that Commissioner Rabie's interpretation of the section is correct. It is however not necessary to say more on this.
- [9] Section 191 (11)(a) requires that a referral in terms of Section 191 (5)(b) be made within 90 days after the commissioner has certified that the dispute remains unresolved. This means that the Applicant had 90 days within which to refer the dispute to this Court which she unfortunately did not do.
- [10] The 90-day period for referring the matter to this Court is triggered by the earlier of either the elapse of 30 days from the date of the referral to the CCMA, or the issue of the certificate of outcome³. In this case, the 90-day period is calculated from the issue of the certificate of outcome.
- [11] In *NUM v Hernic Exploration (Pty) Ltd*,⁴ the LAC stated that jurisdiction is conferred on this Court in terms of section 191(5)(b) read with section 191(11) of the LRA when the CCMA (or the council with jurisdiction, as the case may be), issues a certificate that the dispute remains unresolved. This was followed by this Court in *National Union of Metalworkers of SA and another v BMW (SA) (Pty) Ltd*⁵. It follows therefore that a referral outside of the time periods means that the Court is divested of jurisdiction.
- [12] As stated above, the LRA must be interpreted purposively to give effect to an expeditious resolution of labour disputes. In light of this obligation, this Court is mindful of avoiding permanently closing the door on the Applicant.
- [13] In the premise the following order is made:

² Bracks supra at para 11.

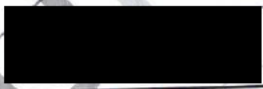
³ *SA Municipal Workers Union on behalf of Manentza v Ngwathe Local Municipality and Others* [2015] ZALAC 26; (2015) 36 ILJ 2581 (LAC) at paras 28 - 30. See also *NUMSA v Driveline Technologies (Pty) Ltd and Another (Driveline Technologies)* [1999] ZALC 157; [2000] 1 BLLR 20 (LAC), and *Premier of Gauteng and Another v Ramabulana NO and Others (Ramabulana)* [2007] ZALAC 16; [2008] 4 BLLR 299 (LAC).

⁴ [2003] 4 BLLR 319 (LAC) at para [45].

⁵ 6 (2019) 40 ILJ 1818 (LC)

Order

1. The Applicant is ordered to apply for condonation for the late filing of her statement of claim within 30 days from date of this order.
2. The Respondent is ordered to file its statement of response accompanied by an application for condonation for the late filing thereof within 15 days of receipt of the application for condonation.
3. No order as to costs.


C. May

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Applicant in person
For the respondent : Ms Lewendal
Instructed by : Ms L Slamet, Adriaans Attorneys, Cape Town