



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: C350/2024

In the matter between:

VANESSA ADAMS

Applicant

and

COMMISSIONER LAMEESAH JOOMA N.O.

First Respondent

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION (CCMA)

Second Respondent

QUANTUM LEAP CONSULTING (PTY) LTD

Third Respondent

WESTERN CAPE GOVERNMENT

DEPARTMENT OF CULTURAL AFFAIRS AND SPORT

Fourth Respondent

WESTERN CAPE GOVERNMENT

DEPARTMENT OF THE PREMIER

Fifth Respondent

Heard: 29 January 2026

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 23 March 2026.

JUDGMENT

DE KOCK, AJ

Introduction

- [1] The Applicant ("Adams") referred a dispute to this Court seeking an order that she was an employee of the Fourth Respondent in terms of section 200A of the Labour Relations Act¹ ("LRA"), that she was unfairly dismissed in terms of section 185(a) of the LRA, and that she be awarded appropriate relief in terms of section 193(1) of the LRA for being unfairly dismissed.
- [2] The Third, Fourth and Fifth Respondents objected to the referral on a number of grounds. The first ground is that Adams should have referred an unfair dismissal dispute to the relevant bargaining council before approaching this Court. The second ground is that Adams was an independent contractor contracted by the Third Respondent and not an employee of the State.
- [3] Insofar as condonation is required for the late filing of the Fourth and Fifth Respondents' answering affidavits are concerned, this Court has considered the respective submissions. Given the complexity of the procedural history of this matter and the absence of prejudice to Adams in the circumstances, condonation is granted.

¹ Act 66 of 1995, as amended.

Evaluation of Jurisdiction

- [4] By way of background, Adams commenced working as a business analyst on 1 December 2022. On 19 March 2024, the Third Respondent issued an extension of her fixed-term contract, valid until 30 September 2024. Eight days later, on 27 March 2024, the extension was unilaterally cancelled. Adams referred a dispute to the CCMA for conciliation. She subsequently approached this Court by way of application on 26 August 2024.
- [5] Adams was contracted as an independent contractor of the Third Respondent and claims that she was unfairly dismissed. Adams also cited the Fourth and Fifth Respondents, notwithstanding that her own pleadings disclose no employment relationship with either.
- [6] The issue before this Court is first and foremost an allegation of an unfair dismissal. It matters not whether the alleged dismissal was done by the Third, Fourth or Fifth Respondents. What matters is that, since this is an alleged unfair dismissal dispute, whether for misconduct, incapacity or operational requirements, this Court lacks jurisdiction to determine the alleged dismissal dispute as a court of first instance. The jurisdiction to determine the alleged unfair dismissal lies with the relevant bargaining council. Adams in this case specifically relies on the failure to renew a fixed-term contract of employment, as contemplated in section 186(1)(b) of the LRA.
- [7] The question of whether Adams was an employee or an independent contractor, and if she was an employee, whether the Third, Fourth or Fifth Respondent was her employer does not clothe this Court with jurisdiction to hear the matter as a court of first instance. The correct forum is the relevant bargaining council where Adams would have been required to firstly prove that she was an employee and not an independent contractor and once she was able to show that she was an employee, to prove who her employer was. Once the employer was identified, Adams was required to prove that she was dismissed and that her dismissal was unfair.

- [8] This Court can find no averment made in the pleadings that would give this Court jurisdiction to determine the aforesaid issues as a court of first instance. Insofar as Adams relies on section 200A, it is undisputed that Adams earned above the threshold and that section 200A is therefore not applicable to her.
- [9] It follows that this Court lacks jurisdiction to entertain the referral as a court of first instance. The Court addresses each ground in turn.

Section 200A of the LRA

- [10] Section 200A of the LRA provides for the presumption as to who is an employee. Section 200A (1)(a) to (g) lists the factors relevant to the determination whether a person is an employee.
- [11] Section 200A (2), however, states that subsection (1) does not apply to any person who earns in excess of the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act ("BCEA").²
- [12] It is undisputed that Adams at all material times earned in excess of the threshold amount as determined by the Minister in terms of section 200A (2). That being the case, Adams is not able to rely on the provisions of section 200A in support of her claim that she was an employee of the Fourth Respondent or of any other Respondent for that matter. The relief sought in terms of section 200A must therefore be dismissed.

Unfair Dismissal

- [13] Adams claims that she was dismissed. This claim must be viewed in the proper context. On the pleadings before this Court, Adams was contracted to the Third Respondent as an independent contractor. In order for Adams to prove that she was dismissed, she must first prove that she was an employee of the Third Respondent, or of the Fourth and Fifth Respondents. Whether Adams was an employee or an independent contractor must be determined by the forum which

² Act 75 of 1997.

has the required jurisdiction to determine the alleged unfair dismissal dispute. The Labour Court does not have jurisdiction to determine this question unless such determination is directly relevant to a dispute referred to the Labour Court, which the Labour Court has exclusive jurisdiction over as a court of first instance. An example would be a claim of an automatic unfair dismissal in terms of section 187 of the LRA.³

[14] The LRA establishes a compulsory dispute-resolution scheme under which ordinary unfair dismissal disputes must be referred to conciliation and, if unresolved, to arbitration. The Labour Court's jurisdiction as a court of first instance is limited to those categories of dispute expressly conferred upon it by statute, such as automatically unfair dismissals under section 187 and matters referred by the CCMA Director under section 191(6). Adams, however, has not alleged that her alleged unfair dismissal falls under the exclusive jurisdiction of the Labour Court. The allegation that Adams was unfairly dismissed falls squarely within the provisions of section 191(5)(a), which requires that the dispute must be arbitrated by the CCMA or a relevant bargaining council. It is important to note that the use of the word "must" leaves this Court with no power to determine the dispute as a court of first instance. The CCMA or the relevant bargaining council enjoys exclusive jurisdiction to arbitrate the dispute and insofar as Adams referred such a dismissal dispute to the Labour Court, the claim must be dismissed due to this Court's lack of jurisdiction. Furthermore, Adams did not obtain the consent of the CCMA Director to refer the dispute directly to this Court, as contemplated in section 191(6) of the LRA. This provides an additional and independent basis on which the referral to this Court was incompetent.

[15] During the course of the hearing, Adams sought to raise an additional basis for relief in terms of section 77(3) of the BCEA, contending that the dispute concerns the unilateral rescission of a binding fixed-term contract extension and is therefore contractual in nature. Even on a generous reading of the founding affidavit, this

³ NUMSA obo Members v BMW SA (Pty) Ltd (2025) 46 ILJ 2712 (LC).

cause of action was not advanced in the notice of motion, which is the founding pleading defining the relief sought. The notice of motion seeks only a declaratory order in terms of section 200A of the LRA and unfair dismissal relief in terms of section 193 of the LRA. The section 77(3) argument was developed for the first time in Adams' heads of argument and in oral submissions. A new cause of action may not be introduced at that stage. In any event, and for completeness, even if this argument had been properly pleaded, it would not avail Adams. Section 77(3) of the BCEA confers jurisdiction in respect of matters "concerning a contract of employment." Before Adams could engage that jurisdiction, she would first be required to establish the existence of a contract of employment with the relevant respondent. On Adams' own pleaded case, no contract of employment exists between her and the Fourth or Fifth Respondents, and the contract between her and the Third Respondent is expressly one of independent contractorship. Section 77(3) therefore affords Adams no basis for relief in these proceedings.

Conclusion

- [16] This Court therefore has no jurisdiction to determine the section 200A dispute nor the alleged unfair dismissal dispute and the referral stands to be dismissed.

Costs

- [17] The only issue that remains to be determined is whether Adams should be ordered to pay the Respondents' costs. The Third, Fourth and Fifth Respondents strongly argued that this is an appropriate case where an order for costs should be made against Adams.
- [18] The Respondents' submissions have been carefully considered by this Court, and the submissions are well made. Parties should not approach this Court with frivolous and / or vexatious disputes. At the very least, a referring party as in the case of Adams must be of the bona fide belief that the Labour Court has the required jurisdiction to determine her disputes.

- [19] This Court finds Adams' actions in not pursuing the dispute through the bargaining council and to, instead, approach the Labour Court to be ill-advised. However, this Court is unable to conclude that Adams was acting *mala fides* in approaching the Labour Court. There is a huge difference between a party before this Court acting *mala fides* and engaging in action which was ill-advised and in fact the wrong decision.
- [20] In terms of section 162 of the LRA, this Court may make any order as to costs as is just and equitable, having regard to the requirements of the law and fairness. It bears emphasis that this was most certainly a case where costs could have been awarded in terms of that section. Due to this ill-advised decision, Adams has now lost her right to pursue her dispute before the correct forum. It will be unduly harsh, in this Court's view, to now also saddle Adams with costs. Any order as to costs will in all probabilities destroy Adams financially. Furthermore, ordering costs against laypersons will also send out the wrong message about their right to approach the Labour Court to seek the resolution of their disputes.
- [21] Individual employees must seek proper guidance and advice before approaching this Court. If they fail to do so, they certainly expose themselves to what can be substantial orders as to costs. Each case must be determined on its own merits, and this Court will refrain from ordering Adams to pay the costs of any of the Respondents. This Court wishes to add an important observation, however, specifically regarding the position of the Third Respondent. It is evident from Adams' own pleadings and heads of argument that she never regarded the Third Respondent as her employer. The Third Respondent filed exceptions at an early stage of these proceedings, placing Adams on notice that her claim against it was without foundation on her own version. In those circumstances, the proper course was for Adams to withdraw her claims against the Third Respondent at that point. This Court wishes to place on record that where a referring party persists in litigation against a respondent after being placed on notice by means of an exception, and where the referring party's own pleadings provide no basis whatsoever for a claim against that respondent, such conduct will, absent

compelling circumstances, justify a costs order against the referring party even in the absence of *mala fides*. The Court must also note that it is not fair to employers to be dragged into expensive litigation by ill-advised litigants and that this Court will surely, in appropriate cases, award costs where the referring parties acted *mala fides* and / or frivolously, or persisted against a respondent against whom they themselves advance no credible basis for relief.

[22] In the premises, the following order is made:

Order

1. The referral is dismissed for lack of jurisdiction.
2. There is no order as to costs.



C. de Kock

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	In Person
For the Third Respondent:	J MacRobert (John MacRobert Attorneys)
For the Fourth and Fifth Respondent:	B Joseph SC
Instructed by:	State Attorney