THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Reportable: Yes
Of interest to other judges: Yes
Revised: Yes
Case No: 2026-066392

In the matter between:

SAMWU obo SITHABILE I. MAPHUMULO **Applicant**

and

UMZINYATHI DISTRICT MUNICIPALITY **First Respondent**

MR MLUNGISI NTANZI **Second Respondent**

ME THOKOZANI QWABE **Third Respondent**

MR SIPHIWE DIMANE **Fourth Respondent**

SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL **Fifth Respondent**

Heard: **25/03/2026**

Delivered: **25/03/2026**

Summary: Urgent application to stay implementation of disciplinary sanction pending the issuing of a compliance order by the Bargaining Council – Labour lacks jurisdiction to determine dispute – Application dismissed.

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Mootness – At the time the application was heard, the sanction of dismissal already implemented. The relief sought is moot. Application dismissed.

Jurisdiction – Labour Court lacks general jurisdiction to intervene in disciplinary proceedings. No jurisdictional facts pleaded. Labour Court lacks jurisdiction to determine the dispute. Application dismissed.

Practice and Procedure – The requirement of service on Respondents not ousted by the utilisation of the Courtonline or Case lines systems. The uploading of documents on the electronic platforms does not constitute service.

JUDGMENT

STEENKAMP, AJ

Introduction

[1] This is an application in terms of which the applicant seeks interim relief, staying the implementation of a disciplinary sanction of dismissal, pending the issue of a compliance order by the Fifth Respondent, which was brought on an extremely urgent basis.

[2] The application was opposed by the First and Second Respondents.

Salient Facts

[3] The Applicant's case is that a disciplinary hearing was convened on or about 04 March 2026. The Fourth Respondent, who acted as the representative of the First Respondent, requested a postponement of the matter in order to consult, and the postponement was granted by agreement between the parties.

[4] The parties discussed dates for continuation of the disciplinary hearing, and the dates of 06, 20 and 23 March 2026 were identified. The Applicant alleges

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that her representative indicated that he was involved in a different matter before the First Respondent on 06 March 2026, but a postponement had been applied for.

[5] A notice of set down for the continuation of the disciplinary proceedings on 06, 20 and 23 March 2026 was issued. The Applicant alleges that this notice was not served on her "*personally*"[1]. The main thrust of the Applicant's case herein is that the lack of personal service of the notice of set down vitiates the continuation of the disciplinary hearing in her absence. It was also submitted by the Applicant's representative at the hearing of this application that this perceived error has the effect of the disciplinary hearing having to be conducted *de novo*.

[6] It is alleged that on some undisclosed date, the Applicant's union representative became aware that a postponement in his other matter was not granted, he allegedly notified the "parties" and requested a postponement of the disciplinary hearing. It apposite to state that the union representative did not depose to a confirmatory affidavit. No proof the alleged "communication", let alone an application for postponement, was annexed to the founding papers. The effect hereof is that the allegations in the founding affidavit on this score constitutes inadmissible hearsay evidence.

[7] The Applicant asserts that the Presiding Officer was duty bound to render a ruling in this regard, and no ruling indicating that a postponement was refused was "communicated" with her. The hearing proceeded on 06 March 2026 *in absentia*. There is no explanation why the Applicant did not, despite the unavailability of her representative, attend the proceedings on 06 March 2026 to request a postponement in the prevailing circumstances. Be that as it may, the Presiding Officer delivered his verdict on 10 March 2026. The Applicant

[1] Personal service of the notice to attend disciplinary enquiry is not mandatory in accordance with Clause 7.10 of the Collective Agreement. A number of means of service is listed in this clause, including service by email.

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was found guilty of gross misconduct, and the sanction meted out was one of dismissal[2].

[8] The Applicant alleges that in the absence of the notice of set down having been served on her personally, the Second Respondent violated the terms of the collective agreement by proceeding with the hearing *in absentia*. She alleges that she reported the First Respondent's "non-compliance" to the Fifth Respondent for a compliance and enforcement order. It is apposite to state that the Applicant did not disclose the date upon which she reported the alleged violation to the First Respondent. Instead, a copy of a letter authored by her union was simply annexed to the founding affidavit, despite no proper reference thereto having been made in the affidavit itself[3]. The court gleaned from the letter that the complaint of non-compliance was in actual fact authored by the Regional Organiser: KZN. It is necessary to repeat that no confirmatory affidavit in this regard was attached to the papers.

[9] The Applicant seeks an urgent interdict, restraining the First Respondent from implementing the disciplinary sanction, pending finalisation of the "compliance and enforcement process" reported to the First Respondent.

[10] An answering affidavit was filed by the First and Second Respondents, wherein it is alleged that the sanction of dismissal was implemented, and the Applicant was paid her *pro-rata* remuneration to date of dismissal and accrued leave pay on 25 March 2026.

[11] The Applicant filed no replying affidavit, and the First and Second Respondents' version that the sanction has been implemented must thus be accepted.

Proceedings in this Court

[2] The decision of the Presiding Officer is final and binding upon the Employer in accordance with Clause 8.5 of the collective agreement.

[3] *Swissborough Diamond Mines (Pty) Ltd v Government of the Republic of South Africa* 1999 (2) SA 279 (T) at 324-G wherein the following was said:

> 'Regard being had to the function of affidavits, it is not open to an applicant or a respondent to merely annexe to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof.'

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[12] The Applicant's notice of motion in the urgent application is dated 19 March 2026, and it appears from the founding affidavit that same was deposed to on 20 March 2026.

[13] According the audit trail on the Court Online System, the electronic court file was created on 24 March 2026 and the matter was enrolled for hearing on the urgent roll of 25 March 2026.

[14] The Applicant filed a completely defective service affidavit, which she deposed to, as opposed to the person who served the application on the Respondents, being the union official. None of the prescripts of Rule 9(2)(b) of the Rules were complied with in respect of the service affidavit.

[15] Service of the application was only effected on the Respondents on 24 March 2026. This essentially left them with a little less than 24 hours' notice of this application. Despite the wholly unreasonable timeframe, the First and Second Respondent managed to file an answering affidavit on the morning of hearing.

[16] The application was heard on 25 March 2026.

Mootness

[17] As already alluded to, at the time of hearing, the sanction of dismissal was already implemented.

[18] The appropriate relief in the circumstances is provided for in Section 191 of the LRA.

[19] Despite the fact that the employee's right to refer an unfair dismissal dispute to the appropriate forum was triggered upon her dismissal being effected, the urgent application in this court was persisted with, in circumstances where the relief sought has become moot.

[20] The appropriate course of action in the prevailing circumstances would have been to withdraw or abandon the application when it became known that the employee was dismissed, but the Applicant stubbornly persevered with the relief sought before this court.

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Jurisdiction

[21] Mr Hlongwane, appearing for the First and Second Respondents asserted that the relief sought by the Applicant was incompetent, and the jurisdiction of this court was not pleaded adequately in the founding papers. I pause here to state that parties routinely make the vague statement in their founding affidavits that this court has jurisdiction to determine the matter, which is wholly insufficient, as the jurisdiction of this court is determined by statute. It is incumbent upon parties to plead jurisdiction with reference to the applicable statute to prove that this court is vested with jurisdiction.

[22] Mr Mpanza, appearing for the Applicant in turn argued that the jurisdiction of the court *in casu* is derived from Section 158(1) of the LRA, and persisted with this argument even when the difference between jurisdiction of the court and powers of the court as contemplated in sections 157 and 158 was raised by the court.

[23] The powers of this court are only triggered once it is established that this court has the requisite jurisdiction. The LRA has been in existence for nearly 31 years, and one would certainly have expected parties to be acutely aware of this requirement. Lamentably, parties still routinely plead that this court is clothed with jurisdiction in general without any proper reference to statute engaging same.

[24] The contemporary jurisprudence of *Cibane and Another v Premier of Province of Kwazulu-Natal*[4] *('Cibane')* the Labour Appeal Court ('*LAC*') finds application *in casu*. Therein, the LAC said the following on the score of jurisdiction of this court to intervene in incomplete disciplinary proceedings:

> 'In summary: to the extent that *Booysen* has been interpreted to establish a general rule, qualified only by exceptionality, that the Labour Court has jurisdiction to intervene in uncompleted disciplinary proceedings, this is not an interpretation that can be sustained by section 157(1) of the LRA. As with every matter that serves before the

[4] (2025) 46 ILJ 2587 (LAC) at para 32

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Labour Court, jurisdiction is a matter to be determined in every case by reference to the pleadings and an enabling statutory provision, in the form of the LRA or other jurisdiction conferring statute, that extends jurisdiction to the Court to adjudicate the dispute disclosed by the pleadings.'

[25] From the aforesaid, it is clear that the jurisdiction of this court is not engaged in the present matter. The Applicant's reliance on Section 158(1)(a) of the LRA on the score of jurisdiction is bad in law.

[26] Notably, in *Cibane*, the LAC has decisively dispelled the fiction that this court has jurisdiction to intervene in incomplete disciplinary processes fettered only by the requirement of "*exceptional circumstances*". Employees seeking interdictory relief halting ongoing disciplinary hearings routinely place reliance on the judgment in *Booysen v Minister of Safety and Security & others*[5] ('*Booysen*') judgment, and with reference to *Booysen*, the LAC in *Cibane* said the following:

> 'This ruling has been interpreted to mean that the Labour Court has the jurisdiction to interdict or otherwise intervene in incomplete disciplinary proceedings, limited only by the consideration of exceptionality. The implication is that the Labour Court may exercise powers over matters that, in terms of the LRA, are to be determined by arbitration, in particular, the fairness of internal proceedings relating to alleged misconduct or incapacity[6]. (own emphasis)
>
> And
>
> In the absence of any statutory provision conferring jurisdiction on the Labour Court both in respect of employer conduct alleged to be unlawful and in employment-related matters generally, there can thus be no general rule, as the judgment in *Booysen* might be construed, to the effect that the Labour Court has jurisdiction to intervene *in medias res* to restrain any alleged illegalities, irregularities or unfairness in incomplete disciplinary proceedings.'[7]

[5] (2011) 32 ILJ 112 (LAC); [2011] 1 BLLR 83 (LAC)
[6] Ibid at para 22
[7] Ibid at para 27

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[27] The provisions of the LRA and the concomitant rights of employees have not been subverted by the LAC in *Cibane*. Instead, the legal position in respect of jurisdiction of this court to intervene in incomplete disciplinary proceedings relating to conduct or capacity has been definitively clarified. Employees alleging that their rights have been infringed upon due to irregularities in disciplinary proceedings ultimately have recourse to the CCMA or Bargaining Council as procedural fairness will be determined at arbitration in those fora.

Abuse of process

[28] Despite the clear provisions of statute, and even on a misplaced application of *Booysen*, parties continue to exploit the urgent court process to halt disciplinary enquiries, which not only unduly burdens the court but also constitutes a gross abuse of process.

[29] In *George v Nyoka and Others*[8] ('*George*') the court said the following:

> 'This application is representative of the now familiar and habitual abuse of the urgent Court by employees, especially those who occupy senior positions in all spheres of government, especially in the municipalities. These employees, after being placed on prolonged periods of precautionary suspensions and when called upon to answer to the charges of misconduct, will take all means necessary in order to avoid the conclusion of those enquiries. When all the strategies deployed to avoid the hearing comes to nought, the next step is to seek sanctuary from this Court, with contrived and legally unsustainable urgent applications, with the hope that the serious charges of misconduct will vanish.'

and further:

> 'These antics are truly exhausting, not only to the court's resources but also because in the end, they turn out to be financially draining for the already financially depleted municipalities or government departments and its entities. This is particularly so since in most internal disciplinary enquiries held in all spheres of government, legal practitioners are engaged to act as initiators or chairpersons in those enquiries. I am not even taking into account all the other

[8] [2023] 7 BLLR 654 (LC) at paras 1 and 4

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officials who are taken away from their real work, in order to attend to these stop-start disciplinary enquiries. These antics are an antithesis of the primary purpose and objectives of the Labour Relations Act (LRA), primary of which is to have labour disputes resolved expeditiously. They do not have a place either in the workplace or in this Court, if the primary objectives of the LRA are to be achieved.'

[30] The current application is no different. A contrived reason was invoked in an attempt to delay or circumvent the finalisation of the internal disciplinary process. A novel iteration of this delaying tactic was employed *in casu*.

[31] The trade union raised purported non-compliance with a procedural aspect of the applicable collective agreement on discipline with the Bargaining Council and the fact that a compliance order is sought as a means of staying rulings and decisions of a disciplinary tribunal. This tactic is invoked for the sole purpose of delaying finalisation of the disciplinary proceedings. This court is then approached on an extremely urgent basis to stay the disciplinary proceedings and prevent the implementation of sanction pending the finalisation of the purported "compliance" issue by the Bargaining Council.

[32] The employment of this tactic is lamentable. It has the potential of systematically eroding the value and efficacy of compliance orders in general as same is being abused for ulterior motives.

[33] Parties who continue with this practice run the real risk of being penalised with an adverse cost order, as the principles articulated by the Apex Court in *Zungu v Premier of the Province of Kwa-Zulu Natal and others*[9] does not shield litigants in this court from cost orders in matters that are conspicuously frivolous and vexatious.

Conclusion and costs

[34] On the basis set out herein, the application must fail.

[35] The only remaining issue is the issue of costs.

[9] (2018) 39 ILJ 523 (CC) at paras 23 – 26.

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[36] *In casu*, the court seriously considered ordering the trade union to pay the costs of this application as there was a clear abuse of process in instituting these proceedings. That being said, the dismissal of the employee was only effected just prior to the hearing of the matter, and the trade union appeared to be unaware of this fact. This is the only reason why the court deems it unfair to award the Respondents costs. If the dismissal was effected soon after the verdict and sanction was delivered, this application, albeit fatally flawed, could have been avoided.

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

Order

1. The application is dismissed;

2. There is no order as to costs.

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L Steenkamp

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Mr M Mpanza
Instructed by:	Union Official - SAMWU
For the Respondent:	Mr Hlongwane
Instructed by:	Mhlanga Attorneys

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