



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



Signature

09 June 2026

Date

**THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**

Case no: 2026-112604

In the matter between:

**NATIONAL UNION OF PUBLIC  
SERVICE AND ALLIED WORKERS  
(NUPSAW)**

**Applicant**

and

**PARLIAMENT OF THE REPUBLIC OF  
SOUTH AFRICA (represented by the  
Secretary to Parliament)**

**First Respondent**

**THE SPEAKER OF THE NATIONAL  
ASSEMBLY**

**Second Respondent**

**THE CHAIRPERSON OF THE  
NATIONAL COUNCIL OF PROVINCES**

**Third Respondent**

**NATIONAL EDUCATION, HEALTH  
AND ALLIED WORKERS UNION  
(NEHAWU)**

**Fourth Respondent**

**SOUTH AFRICAN LEGISLATIVE  
SECTOR EMPLOYERS'  
ORGANISATION (SALSEO)**

**Fifth Respondent**

**Heard:** 28 May 2026

**Delivered:** 9 June 2026

**Summary:** (Urgent application – termination of limited organisational rights without notice purportedly on the basis of a workplace collective agreement affording such rights being superseded by the conclusion of an overarching sector wide collective agreement cancelling the workplace level agreement – interim relief pending outcome of dispute referred to CCMA or order of final relief – interim relief granted)

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**JUDGMENT**

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**LAGRANGE, J**

Introduction

[1] This is an urgent application in which the applicant, NUPSAW, a registered union, seeks interim interdictory relief restoring its organisational rights obtained under a collective agreement between Parliament, the first respondent, and the fourth respondent NEHAWU, another registered union, pending the determination of substantive disputes under Part B of the application and proceedings to be pursued in terms of sections 21 and 24 of the Labour Relations Act 66 of 1995 (“the LRA”). The interim and final relief set out in the notice of motion reads:

*‘PART A: URGENT INTERIM RELIEF*

1. *That the forms of service and time periods provided for in the Rules of this Honourable Court be dispensed with, and that this application be heard as one of urgency in terms of Rule 38 of the Rules of the Labour Court, on the following abridged timetable:*
  - a. *any Respondent intending to oppose the application is to deliver a notice of intention to oppose by no later than Wednesday, 20 May 2026;*
  - b. *any Respondent opposing the application is to deliver its answering affidavit by no later than Friday, 22 May 2026;*
  - c. *the Applicant is to deliver its replying affidavit, if any, by no later than Monday, 25 May 2026;*
  - d. *the parties are to deliver their respective heads of argument, if directed by the Court to do so, by no later than Wednesday, 27 May 2026; and*
  - e. *the application is to be heard on Thursday, 28 May 2026, or on such other date as the Registrar may allocate.*
2. *Pending the final determination of Part B of this application and the substantive disputes referred and to be referred to the Commission for Conciliation, Mediation and Arbitration as more fully set out in the Founding Affidavit, the First Respondent is interdicted and restrained from giving effect to the purported revocation of the Applicant's right of access to Parliament communicated by letter dated 7 May 2026 from Ms Santie Myburgh to Mr Vuyani Shwane ("the revocation letter").*
3. *Pending the final determination of Part B and the substantive disputes referred to in prayer 2 above, the First Respondent is directed forthwith to restore, and thereafter to maintain, the Applicant's right of access to the precincts of Parliament on the same terms and conditions as obtained immediately prior to 7 May 2026, including (without limitation):*

- a. *the right of the Applicant's officials and office bearers to enter the precincts of Parliament for the purposes of representing members, attending to union business, and exercising the rights conferred by section 12 of the Labour Relations Act 66 of 1995;*
  - b. *the right of the Applicant to convene general meetings with its members at the precincts of Parliament, as previously arranged with the First Respondent;*
  - c. *the right of the Applicant's officials to communicate with members at the precincts of Parliament, subject to the standard security and operational protocols of the First Respondent.*
4. *Costs of Part A in the event of opposition, on the scale as between attorney and client.*
  5. *Further and/or alternative relief.'*

**'PART B: FINAL RELIEF**

1. *It is declared that the purported revocation of the Applicant's right of access to Parliament communicated by the letter dated 7 May 2026 is unlawful, invalid and of no force or effect, on the grounds that it:*
  - a. *was effected in breach of clause 18.2 of the Recognition Agreement concluded between the First Respondent and the Fourth Respondent on 6 December 2012 ("the 2012 Recognition Agreement"), which requires three (3) calendar months' written notice of termination;*
  - b. *was effected in breach of clauses 19 and 21.2 of the 2012 Recognition Agreement, which require any variation of that Agreement to be reduced to writing and signed by the parties;*
  - c. *was effected without recourse to the procedure prescribed by section 21(11) of the Labour Relations Act 66 of 1995;*

- d. *was effected on the strength of an asserted supersession of the 2012 Recognition Agreement by the Recognition and Procedural Agreement signed between the Fifth Respondent and the Fourth Respondent on or about 10 April 2026 ("the SALSEO/NEHAWU Agreement"), which asserted supersession is itself a disputed legal question that had not, and has not, been adjudicated;*
- e. *constitutes a unilateral and impermissible variation of a benefit vested in the Applicant as third party beneficiary under clause 4.3 of the 2012 Recognition Agreement, contrary to the principle of stipulatio alteri.*
2. *It is declared that the Applicant's right of access to Parliament, conferred under clause 4.3.2 of the 2012 Recognition Agreement, subsists until lawfully terminated and was not lawfully terminated by the revocation letter of 7 May 2026.*
  3. *The First Respondent is interdicted and restrained from giving effect to the revocation letter of 7 May 2026.*
  4. *The First Respondent is ordered to restore the Applicant's right of access to Parliament on the same terms and conditions as obtained immediately prior to 7 May 2026.*
  5. *The First Respondent is ordered to pay the costs of this application, including the costs of Part A, on the scale as between attorney and client; and any other Respondent opposing the application is ordered to pay such costs jointly and severally with the First Respondent, the one paying the others to be absolved.'*

[2] The dispute arises from a letter issued by Parliament on 7 May 2026, in terms of which the Applicant's right of access to the precincts of Parliament was revoked "with immediate effect". The letter was authored by Ms S Myburgh ('Myburgh'), who is employed as Parliament's Labour Relations Specialist, acknowledged that NUPSAW had been granted access to parliamentary premises on the basis of its 'minority union' status as defined in the collective

agreement concluded in 2012 between Parliament and NEHAWU. However, she advised that the recent agreement concluded on 10 April 2026 between NEHAWU and the fifth respondent, SALSEO, an employer's organisation, superseded all recognition agreements concluded between individual legislatures (hereafter referred to as the 'SALSEO agreement' or 'sectoral agreement'). The terms of the sectoral agreement stipulated that section 12 and 13 organisational rights are only obtainable by a union that represents 30 % of employees in the legislative sector nationally. Under the parliamentary agreement, a minority union was defined as a union with a minimum membership of 15 % of the workforce falling under the bargaining unit and in terms of clause 4.3.2 was entitled to access rights in terms of Section 12 of the LRA, which is what NUPSAW enjoys under that agreement.

- [3] Myburgh advised, in effect, that because the new sectoral threshold for Section 12 rights in the SALSEO agreement was much higher than the 'superseded' parliamentary agreement, Parliament was terminating NUPSAW's access right to Parliament with immediate effect.
- [4] The central issue is whether, pending the resolution of disputes concerning the effect of a sectoral agreement concluded on 10 April 2026, Parliament was entitled unilaterally to withdraw those rights without notice, process, or prior adjudication.

#### Factual Background: Chronology of Events

- [5] The dispute must be understood against the background of the collective bargaining framework at Parliament.
- [6] On 6 December 2012, Parliament and NEHAWU concluded the parliamentary agreement regulating collective bargaining at Parliament.
- [7] That agreement established a system of representivity thresholds, including a 15% threshold for minority union recognition, entitling such unions to organisational rights including access to the workplace.

- [8] During the second half of 2025, the Applicant began recruiting members at Parliament. By December 2025, it had attained the threshold for recognition as a minority union and began exercising organisational rights, including access to Parliament's premises.
- [9] On 5 December 2025, NUPSAW formally applied to Parliament under Section 21 of the LRA for all the organisational rights provided for in that section. On 26 January 2026, NUPSAW further requested engagement with Parliament with a view to extend its organisational rights beyond the Section 12 right of access it had obtained under the Parliamentary agreement and simultaneously referred a dispute about organisational right to the CCMA. Parliament was not willing to deviate from the terms of the existing agreement.
- [10] As at 22 April 2026, NUPSAW's claimed membership stood at 221 employees out of a bargaining unit of about 1017, representing approximately 21.7%.
- [11] By then the sectoral bargaining process involving NEHAWU and SALSEO, of which Parliament is a member, had already culminated in the conclusion of the sectoral agreement, which covered the national and provisional legislatures. NUPSAW was neither a party to the negotiations nor formally notified at that stage.
- [12] As mentioned, that agreement introduced a 30% national membership threshold for Section 12 and 13 rights (Part 2, Clause 1b), and clause 3(f), stated that it superseded all recognition agreements concluded between NEHAWU and individual legislatures. It is common cause that NUPSAW does not meet that national threshold.
- [13] On 24 April 2026, NEHAWU informed Parliament that the Sector Agreement had been concluded and asserted that prior recognition agreements, including the parliamentary agreement of 2012 had been superseded.
- [14] The parties are in dispute as to whether NUPSAW had prior knowledge of the Sector Agreement before 7 May 2026. NUPSAW maintains that it did not but NEHAWU argues that the negotiations were known to it by virtue of one its

own representatives in the negotiations having subsequently becoming one of NUPSAW's shop stewards. This dispute is peripheral but forms part of the context.

- [15] As more fully described above, on 7 May 2026, Parliament notified NUPSAW that its organisational rights were revoked with immediate effect. It is common cause that no prior notice was given to NUPSAW, no hearing or consultation occurred, and no CCMA process under section 21(11)<sup>1</sup> of the LRA was invoked. Parliament did not furnish NUPSAW with a copy of the sectoral agreement either.
- [16] Following the letter of 7 May, NUPSAW's officials were denied access to Parliament's premises. Between 7 May and 18 May 2026, NUPSAW took steps to challenge the decision, including seeking legal advice and attempting to engage Parliament. Due to statutory requirements relating to service within Parliament, permission to serve process was obtained only on **18 May 2026**, whereupon the application was launched.

### Urgency

- [17] The question of urgency falls to be determined in accordance with Rule 38 of the Labour Court Rules and the well-established principles governing urgent applications. The Applicant is required to demonstrate not only that the matter is urgent in the ordinary sense, but also that it will not obtain substantial redress at a hearing in due course, that the urgency is not self-created, and that it has acted with the necessary expedition once the cause of complaint arose.

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<sup>1</sup> Section 21(11) of the LRA states:

*'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.'*

- [18] In the present matter, the foundation for urgency lies in the events of 7 May 2026, when Parliament addressed a letter to NUPSAW purporting to revoke its organisational rights with immediate effect. That conduct had direct and immediate consequences. It is common cause that, following the letter, the Applicant's officials were denied access to Parliament's precincts and were thereby precluded from carrying out organisational functions on Parliamentary premises. Those functions include, inter alia, engaging with members, recruiting employees, and representing members in workplace processes. The deprivation complained of is therefore not discrete or self-contained; it is ongoing and continuous in nature. Each day that the Applicant is excluded from the workplace reinforces the prejudice suffered.
- [19] The nature of the harm is such that it strikes at the core of the Applicant's existence as a trade union within the workplace. Organisational rights are, by their very character, relational and time-sensitive. They depend upon continuous interaction between the union and its members. The loss of physical access to the workplace undermines the Applicant's ability to maintain and grow its membership base and risks a progressive erosion of its organisational presence. In circumstances of this kind, the prejudice is not easily quantifiable or capable of subsequent restoration. Even if the Applicant were ultimately to succeed in proceedings brought in due course, the intervening loss of organisational cohesion and member engagement cannot easily be reversed.
- [20] The Applicant further relies on what it contends is an entitlement to a period of notice before any termination of its rights could take effect. Whether or not that contention is ultimately well-founded, it underscores the time-sensitive nature of the dispute. If the application is not entertained on an urgent basis, and the matter is left to be determined in the ordinary course, the period which the Applicant claims to be entitled to enjoy may well have expired before the issue is finally adjudicated. In that event, the Applicant would be deprived of the very benefit it seeks to protect, rendering any eventual relief hollow or academic.
- [21] The availability of alternative remedies does not detract from the urgency of the matter. Although disputes concerning organisational rights may, in appropriate circumstances, be referred to the CCMA for resolution, that process is not

designed to afford immediate restorative relief. The timeframes ordinarily associated with conciliation and arbitration render that mechanism inadequate to prevent the ongoing prejudice suffered by the Applicant. By the time such proceedings are concluded, the harm complained of will have occurred and will, for all practical purposes, be irreversible. It follows that the Applicant does not have access to a satisfactory remedy in due course.

[22] NUPSAW argues that since it can take approximately two months to obtain redress from the CCMA, the failure to preserve the status quo until will seriously undermine its organisational activity in the parliamentary workforce.

[23] NUPSAW's case is that its rights were terminated unilaterally, without recourse to any agreed or statutory process, and in reliance on a contested interpretation of the applicable collective agreements. Where organisational rights are abruptly withdrawn, prompt judicial intervention can prevent the situation from becoming entrenched before the lawfulness of the conduct has been determined. This consideration adds further weight to the claim of urgency.

[24] As to delay, the Parliament and Provincial Legislatures Act 4 of 2004, required NUPSAW to obtain Parliament's prior permission to serve the application. NUPSAW's attorney requested that permission on 14 May 2026 and lodged a formal request on 15 May 2026. The union was ready to serve the application on 14 May and as soon as it received permission at 16h13 on 18 May 2026, it did so that same day. In the circumstances, the delay is both explained and reasonable.

[25] To the extent that the Respondents contend that the urgency is self-created, that argument cannot be sustained. The Applicant's cause of complaint arose only upon receipt of the letter of 7 May 2026, which effected an immediate termination of its rights. There is no basis to suggest that the Applicant could or should have instituted proceedings at an earlier stage. The urgency is therefore a direct consequence of Parliament's conduct, and not the result of any dilatoriness on the part of the Applicant.

[26] Finally, when the respective prejudice to the parties is weighed, the balance favours the Applicant. If relief is withheld, the Applicant will continue to suffer ongoing and irreparable harm through its exclusion from the workplace. By

contrast, if interim relief is granted, Parliament and NEHAWU will be required only to tolerate, for a limited period, the continuation of a recognition regime that existed prior to 7 May 2026, pending the resolution of the underlying dispute. That prejudice is temporary and reversible.

[27] In all the circumstances, the Applicant has established that the matter is urgent, that it will not obtain redress in due course which can substantially restore the value of maintaining its right of access in the interim, that the urgency is not self-created, and that it has acted with the necessary expedition. The requirements for urgency are accordingly satisfied.

[28] The remaining question is whether NUPSAW has established a clear right to the relief or a *prima facie* right, though open to doubt.

Existence of a clear right or a *prima facie* right, though open to doubt

[29] NEHAWU argues that the relief sought is only interim in name and therefore NUPSAW must demonstrate the existence of a clear right, an actual injury and the absence of an alternative remedy which the union did not plead. In riposte, the NUPSAW argues that the interim relief sought determines none of the substantive questions reserved to the arbitrator and merely preserves the status quo for as long as the proper forum takes to decide remains interim relief. Moreover, insofar as NUPSAW argues that its organisational right of access could only be terminated on three months' notice in terms of clause 18.2 of the parliamentary agreement, it still lies within the power of parliament to give such notice. Clause 18.2 provides that apart from cancellation for breach of the agreement, either party may give the other three months' notice of their intention to terminate the agreement.

[30] Whether that provision is applicable as between NUPSAW and Parliament is a matter of dispute. Be that as it may, NUPSAW contends that in any event, clause 4.6 of the parliamentary agreement which provides for a union whose membership falls below a threshold it previously passed, must be given three months' notice to satisfy the threshold, during which it continues to exercise the rights it attained. It argues this provision cannot simply be ignored and that

it applies with even more force to a purported adverse variation of the applicable membership threshold necessary to retain the right.

- [31] NUPSAW and Parliament argue that NUPSAW is seeking to pre-empt the determination of whether the sectoral agreement supersedes the parliamentary one, in seeking to preserve the status quo under the latter agreement. NUPSAW retorts that the interim relief sought merely leaves the determination of that right hanging pending the outcome of the CCMA process, and all that is necessary is to establish a *prima facie* right, though open to doubt.
- [32] NUPSAW also argues that it is questionable that the sectoral agreement between NEHAWU and SALSEO, can simply sidestep the requirement in clause 19 and 21.2 of the parliamentary agreement which require any contractual variation of that agreement to be reduced to writing and signed by the parties, which has not occurred.
- [33] Lastly, NUPSAW argues that it runs contrary to the principle that unilateral enforcement of a disputed right flouts the principle that self-help as a way of resolving a dispute of right has been frowned upon by the Constitutional Court<sup>2</sup>. Moreover, in, the Constitutional Court underscored that the law does not countenance self-help as a means of resolving disputes over rights. The Respondents' position entails that Parliament was entitled to resolve a disputed legal question in its own favour and to act upon it immediately, thereby extinguishing rights before adjudication. In any event, NUPSAW contends that where rights derive from contract, the law requires that termination of those rights must comply with contractual or lawful procedural mechanisms<sup>3</sup>. In (2022) ZASCA 162, the Supreme Court of Appeal reaffirmed that a contract must be terminated in accordance with its terms, failing which the termination is ineffective.

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<sup>2</sup> See *Ngqukumba v Minister of Safety and Security* 2014 (5) SA 112 (CC) at paragraphs 11,17 and 21.

<sup>3</sup> See *Datacentrix (Pty) Ltd v O-Line (Pty) Ltd* (891/2021) [2022] ZASCA 162 (25 November 2022) at paragraphs 13-14.

- [34] An alternative source of a right to the relief sought is based on the principle of *stipulatio alteri*. NUPSAW contends that when it accepted the benefit of Section 12 rights afforded it by the parliamentary agreement, cannot have the right it obtained thereby summarily extinguished.
- [35] Quite apart from these considerations, the application and interpretation of the collective agreements in question is first and foremost a matter for the CCMA or relevant bargaining council to determine under s 24 of the LRA, and it would undermine that dispute resolution machinery for this court to usurp that statutorily assigned mechanism by attempting to pronounce on the validity of the arguments raised.
- [36] I am satisfied that, even though I have doubts about the cogency of some of the arguments advanced in favour of the invalidity of Parliament's purported termination of NUPSAW's Section 12 rights under the parliamentary agreement, there is sufficient merit in the arguments to establish the existence of a *prima facie* right to continue to exercise those rights in the absence of Parliament complying with a valid procedure to terminate them.

#### Conclusion and Costs

- [37] In the circumstances, I am satisfied NUPSAW is entitled to relief, subject to a qualification that any dispute it has not yet referred to the CCMA concerning the NUPSAW's right to continue to exercise the Section 12 rights which Parliament purported to revoke on 7 May 2026, must be referred to it by 17 June 2026.
- [38] It must be mentioned that it is not appropriate to make any comment on whether this court is competent to determine any final relief in part B as a forum of first instance, as it is not necessary to do so at this stage. Accordingly, the reference to the final determination of Part B in the order does not mean that this court has the necessary power to do so.

[39] In the context of this being an interim order, it would not be appropriate in my view to make any costs order, apart from the fact that the dispute arises in the context of collective agreements which have regulated their relationship.

### Order

1. The application is heard as one of urgency in terms of Rule 38 of the Labour Court Rules and any non-compliance with the Rules relating to service and time periods is condoned.
2. Pending the final determination of Part B of this application and disputes referred for determination to the CCMA by 17 June 2026 under Section 21 and, or alternatively, Section 24 of the Labour Relations Act, 66 of 1995 ('the LRA'), which concern the Applicant's right to continue to exercise its right of access under Section 12 of the LRA that was purportedly revoked with immediate effect by the First Respondent on 7 May 2026:
  - 2.1 The First Respondent is interdicted and restrained from giving effect to the purported revocation of the Applicant's right of access to Parliament communicated by letter dated 7 May 2026 from Ms Santie Myburgh to Mr Vuyani Shwane ("the revocation letter").
  - 2.2 The First Respondent is directed to restore, and thereafter to maintain, the Applicant's right of access to the precincts of Parliament on the same terms and conditions as obtained immediately prior to 7 May 2026, including, without limitation:
    - 2.2.1 the right of the Applicant's officials and office bearers to enter the precincts of Parliament for the purposes of representing members, attending to union business, and exercising the rights conferred by section 12 of the Labour Relations Act 66 of 1995;
    - 2.2.2 the right of the Applicant to convene general meetings with its members at the precincts of Parliament, as previously arranged with the First Respondent;

2.2.3 the right of the Applicant's officials to communicate with members at the precincts of Parliament, subject to the standard security and operational protocols of the First Respondent.

3. No order is made as to costs.

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**R G Lagrange**

**Judge of the Labour Court of South Africa**

LABOUR COURT

Appearances:

For the Applicant: --- C de Kok

Instructed by: --- Pam Melapi Attorneys

For the First Respondent: --- L McFarlane of Deneys

For the Fourth Respondent: ---- C S Hendricks of Marais Muller Hendricks Inc.

LABOUR COURT