



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

Case No.: 2026-095555

(1) (2) (3)	REPORTABLE: NO OF INTEREST TO OTHER JUDGES: NO REVISED NO	
<u>11/06/2026</u> DATE	<div style="background-color: black; width: 100px; height: 20px; margin: 0 auto;"></div> <hr style="width: 100px; margin: 0 auto;"/> SIGNATURE	

In the matter between:

DR BRUCE MALUMANE

APPLICANT

And

**MEMBER OF THE EXECUTIVE COUNCIL,
MPUMALANGA DEPARTMENT OF HEALTH
HOD: MPUMALANGA DEPARTMENT OF HEALTH
CHIEF EXECUTIVE OFFICER OF
MAPULANENG HOSPITAL
THE SENIOR CLINICAL MANAGER
MAPULANENG HOSPITAL**

**FIRST RESPONDENT
SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT**

JUDGMENT

VUKEYA J

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for the hand-down of the judgment is deemed to be 11 June 2026 at 10h00.

Introduction

[1] In this urgent application, the applicant alleges that the respondents, who are his employers, made certain unlawful deductions from his salary without his consent and without any agreement between them. He prays to this Court that these deductions be declared to be unlawful and in contravention of section 34 of the Basic Conditions of Employment Act 75 of 1997 ("the BCEA").

[2] The applicant's further prayer is for the respondents to be interdicted from making any further unlawful deductions from his salary and that they be directed to repay to him the sum of R 105,000.00 (One Hundred and Five Thousand Rand) unlawfully deducted from his salary together with interest at the prescribed rate from the date of deduction to the date of payment.

[3] The applicant is a Clinical Manager (Grade 2) Medical Doctor at Mapulaneng Hospital and holds office as a National Treasurer of the South African Medical Association Trade Union ("SAMATU"), a registered trade union for medical practitioners in South Africa. By virtue of his office as a National Treasurer of SAMATU, the applicant is an office-bearer of the union.

[4] He stated in his founding affidavit that his duties and responsibilities are set out in the SAMATU Constitution and they include, but are not limited to, managing and overseeing the finances of the union; presenting financial reports; attending NEC meetings to provide financial oversight and advice; attending collective bargaining forums and wage negotiations on behalf of SAMATU members. The applicant therefore avers that his participation in SAMATU activities as an office-bearer

constitutes protected trade union activities in terms of section 23 of the Constitution and section 5 of the LRA.

Points *in limine*

[5] The respondents opposed the application and raised two points *in limine* as follows:

5.1. Lack of urgency.

5.2. Lack of jurisdiction.

Urgency

[6] In opposing the application, the respondents contended that the application was not urgent as the applicant had failed to exhaust internal remedies, such as lodging a grievance and ensuring that the process has been completed. They submitted that employees were expected to follow formal grievance procedures, particularly in the public service, where grievances must be addressed within 30 days before further action is taken. According to the respondents, the applicant lodged a grievance on the 13th of April 2026 and in less than 10 days had already instructed his attorneys to approach this court on an urgent basis without even waiting for the investigations and outcome of the grievance.

[7] It was the respondent's submission that the applicant could afford to have the grievance process completed as he alleges in his application that even after the deductions, he still presented himself to work and therefore the application was brought prematurely. According to the respondents, the applicant could also explore other internal procedures available to him, namely, he could have the allegations resolved by escalating the matter to the Department or to the Director of Labour Relations.

[8] The respondents further submitted that the applicant could be afforded substantial redress at a hearing in due course because the alleged deductions are not continuing and on-going. The respondents allege that the only money which is less from the applicant's salary is days where he took unauthorised leave of absence which is deemed as a leave without pay.

[9] On the issue of urgency, it was argued on behalf of the applicant that he has satisfied both stages of urgency as envisaged in Rule 6 (12) (a) and (b). It was submitted that the respondents unlawfully deducted R105,000.00 from the applicant's April 2026 salary comprising of R50,000.00 and classified it as "leave without pay" and then went further to deduct R55,000 and classified it as "overtime", without the written consent required by section 34(1)(a) of the BCEA, and without the authority of any applicable law, collective agreement, court order, or arbitration award as required in terms of section 34(1)(b) of the BCEA.

[10] This, according to the applicant, is actual prejudice and one that is immediate and ongoing. The deprivation of the total sum of R105, 000.00, has caused, and continues to cause, severe financial disruption to the applicant, who relies on his monthly salary to meet bond repayments, vehicle finance, medical expenses, and the support of his dependants. It was further submitted that the applicant faces cascading consequences of being unable to meet financial obligations budgeted for based on his full contractual salary. The risk of default, damage to credit standing, and potential enforcement action by creditors are the direct and foreseeable consequences of the respondents' unlawful conduct.

[11] I found in favour of the applicant and ruled that the application was to be heard as an urgent application in terms of Rule 6 (12) of the Uniform Rules of Court. My view was, and still is, that the respondents had deducted more than half of the applicant's salary without warning in a single month, and this may have indeed caused a huge financial setback and disruption to his monthly budget, causing him to be unable to meet all his financial obligations. I was also convinced that the applicant would not be afforded substantial redress at a hearing in due cause as he was uncertain whether the deductions would continue monthly and if the matter were to be heard in the normal cause, the applicant would suffer an even bigger financial loss. The point *in limine* relating to lack of urgency was thus dismissed.

Jurisdiction

[12] The respondents further raised a *point in limine* relating to jurisdiction. They submitted that the Labour Court has exclusive jurisdiction over disputes involving alleged or threatened violations of fundamental constitutional rights arising specifically from employment and labour relations. It was argued on their behalf that disputes over

union rights fall under the Labour Court's purview and not the High Court. According to the respondents, section 5 of the Labour Relations Act, which the applicant specifically relies on, provides protection exclusively under the Labour Court's jurisdiction, more so because the applicant also relies on or alleges that there is an unfair labour practice being committed against him by the respondents.

[13] Section 34 of the BCEA states that:

(1) An employer may not make any deduction from an employee's remuneration unless- (a) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or (b) the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

[14] In terms of Section 77 of the BCEA, subject to the Constitution and the jurisdiction of the Labour Appeal Court, and except where the BCEA provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters in terms of the BCEA, except in respect of an offence specified in sections 43, 44, 46, 48, 90 and 92. It further provides that the Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.

[15] Subsection (1) of the BCEA does not prevent any person relying upon its provisions to establish that a basic condition of employment constitutes a term of a contract of employment in any proceedings in a civil court or an arbitration held in terms of an agreement. If, according to section 77 (5), proceedings concerning any matter contemplated in terms of subsection (1) are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer that matter to the Labour Court.

[16] The Constitutional Court in *Amalungelo Workers' Union and Others v Philip Morris South Africa (Pty) Limited and Another* (CCT20/18) [2019] ZACC 45; 2020 (2) BCLR 125 (CC); [2020] 3 BLLR 225 (CC); (2020) 41 ILJ 863 (CC) (26 November 2019) stated the following at paragraph 20-25:

[20] As the heading to this provision suggests, the subject-matter of section 77 is the jurisdiction of the Labour Court. The section tells us in unambiguous

terms that the Labour Court has exclusive jurisdiction over matters arising from the Basic Conditions Act. The only exception is in respect of where the Act itself provides otherwise. For example, section 77(3) stipulates that the Labour Court enjoys concurrent jurisdiction with civil courts in matters concerning contracts of employment.

[21] On a proper interpretation of section 77(1), the Labour Court has jurisdiction in respect of all matters arising from the Act. And barring the exception, that jurisdiction is exclusive to the Labour Court. However, that exclusivity is subject to the Constitution and the jurisdiction of the Labour Appeal Court. This means two things. First, where the Basic Conditions Act is in conflict with the Constitution, the Constitution takes precedence. This requires that the section be read through the lens of the Constitution.

[22] Second, the section acknowledges the appellate role played by the Labour Appeal Court in relation to decisions of the Labour Court. Therefore, the exclusive jurisdiction of the Labour Court as envisaged in the section does not operate against the Labour Appeal Court. Nor does it operate against the jurisdiction of this Court which derives directly from the Constitution.

[23] But what is important is the point that section 77(1) confers jurisdiction on the Labour Court in the widest of terms. It declares that the Labour Court has jurisdiction “in respect of all matters” arising from the Basic Conditions Act. Section 77(3) expands the Labour Court’s jurisdiction to cover disputes arising from contracts of employment even if they are not regulated by the Act. But in that event, the jurisdiction is not exclusive. It is shared with the civil courts.

[24] What locates a matter within the jurisdiction of the Labour Court is the application of the Basic Conditions Act to it. All claims to which this Act applies fall within the exclusive jurisdiction of the Labour Court. In addition, section 77(1A) grants the Labour Court exclusive jurisdiction to award civil relief arising from a breach of certain provisions of the Act.[\[9\]](#) And if a matter that falls within the exclusive jurisdiction of the Labour Court is brought before another court, section 77(5) mandates the transfer of that matter to the Labour Court, regardless of the stage at which the transfer is effected.

[25] The scheme that emerges from the reading of section 77 as a whole is that the Labour Court, subject to few specified exceptions, enjoys exclusive jurisdiction over all disputes and claims arising from the provisions of the Basic Conditions Act. This means that on a proper reading of section 77, as soon as a dispute is ripe for litigation, the claimant is entitled to refer it to the Labour Court.

[17] Clearly, this application is based on section 34 of the BCEA, which prohibits an employer from making deductions from an employee's remuneration unless a written agreement specifying the debt exists; or the deduction is permitted in terms of a law, a collective agreement, a court order, or an arbitration award. In essence, before the court can prohibit continued deductions from the salary of the applicant by the respondents, who are his employers, it must find that the deductions were contrary to section 34 of the BCEA and therefore unlawful.

[18] The BCEA confers jurisdiction to the Labour Court and the Labour Appeal Court in all matters, with the exception of cases where it, the BCEA provides otherwise. The BCEA does indeed provide otherwise in section 77 (3) as it provides that the Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.

[19] When a court's jurisdiction is challenged, the court should base its conclusion on the applicant's pleadings, as they contain the legal basis of the claim under which the applicant had chosen to invoke the court's competence. (See *Gcaba v Minister for Safety and Security & others* [2009] ZACC 26; 2010 (1) SA 238 (CC)). Although the merits of the application are not currently in determination until the jurisdictional issue has been decided, it is worth mentioning that the applicant's pleadings clearly assert a claim under the BCEA and the LRA. It relates to the applicant's entitlement to leave of absence for trade union activities because it is alleged that the applicant, as an office-bearer of the trade union, was entitled to take reasonable leave during working hours for the purpose of performing the functions of his office.

[20] Section 15 of the LRA regulates this, and furthermore, it permits the participation of union members in the lawful activities of a trade union, federation of trade unions or workplace forum. What is before this Court includes a claim for re-

payment of money due to the applicant in terms of an employment contract, which he claims was deducted from his salary without his consent by the respondents, because of his participation in union activities. Clearly, the applicant's claim arose out of and related to the contract of employment between him and the respondent. It was for payment of money due to him in terms of his employment contract and it is based on a contractual obligation of the employer to pay a full salary due to his employee unless the employee has consented to salary deductions.

[21] The applicant correctly alleges in his founding affidavit that he has a contractual right to receive his full salary as agreed in his contract of employment and therefore the unlawful deductions constitute a breach of contract by the respondents. The fact that the application and the claim is based on the employee's contractual obligation towards the employer, confers jurisdiction to the civil court in terms of section 77 (3) of the BCEA. I therefore find that this Court has concurrent jurisdiction with the Labour Court in terms of section 77 (3) of the BCEA.

The merits

[22] Facts which he alleges led to the unlawful deductions in his salary arose from attending several SAMATU activities and HPCSA meetings which were not voluntary or discretionary as they were part of his official duties as the National Treasurer of SAMATU and as a registered medical practitioner. He listed the following activities:

- 22.1. On 5-6 February 2026, he attended the Medical Dental board meeting which he is a member of;
- 22.2. On 2-4 March 2026, he attended a SAMATU Northern Cape Provincial Executive Committee (PEC) meeting held in Kimberley.
- 22.3. On 4-5 March 2026, he attended an HPCSA Committee Meeting via virtual meeting. This meeting was attended by board members, to discuss preliminary committee of enquiry.
- 22.4. On 6-8 March 2026 he attended a SAMATU Provincial Shop Stewards Council meeting held in Witbank, Mpumalanga.
- 22.5. On 10-11 March 2026 he attended the Health Professions Council of South Africa (HPCSA) meetings held in Kempton Park.

22.6. On 12 March 2026 he attended a SAMATU National march against the government in support of the unemployed doctors at the Union Building in Pretoria. and

22.7. On 13 March 2026 the SAMATU Finance Committee held an inspection of buildings/properties that the union intended to purchase, the applicant also attended this inspection as a National Treasurer of the Union.

[23] The applicant avers in his founding affidavit that prior to his attendance at these activities, SAMATU formally requested his release from duty for these periods and confirmed that he will be attending legitimate SAMATU trade union activities. This formal request to release him constituted full compliance with any procedural requirements for the release of a union office-bearer to attend trade union activities. He stated that that this request was made in good faith, was specific as to the dates and purpose of the activities, and was submitted well in advance of the relevant dates.

[24] According to the applicant the respondents had a duty to consider SAMATU's request timeously and to either grant the release or provide valid reasons for refusal. No lawful refusal was communicated to SAMATU or to him prior to his attendance at these activities and therefore the respondents' subsequent conduct of effecting salary deductions, constituted an unlawful and retrospective sanction, which is impermissible in law. He fears that because his responsibilities at SAMATU continue for the duration of his tenure as National Treasurer, this means a real and immediate risk that the respondents will effect further unlawful deductions from his salary.

[25] His monthly salary, as a medical doctor is R203 478.11 per month, before deductions. On 15 April 2026, he expected to receive his full salary for the month of April 2026, together with any lawful deductions. On 13 April 2026, Dr Malumane approached the Human Resource department to access his payslip and banking details and discovered that two substantial and unauthorised deductions had been made from his salary described as, deduction 1: R50,000.00 - "leave without pay" and deduction 2: R55,000.00 - "overtime". These two deductions amounted to R105 000.00.

[26] His version is that he was never given any opportunity to make representations before the deductions were effected and neither was he informed that such deductions were being contemplated. He received no notice or charge sheet relating to these

deductions. They were effected unilaterally, arbitrarily, and without any lawful basis whatsoever. The respondents' conduct in effecting these deductions without process constitutes a flagrant and egregious violation of section 34 of the BCEA, alleged the applicant.

[27] The applicant further avers that he has a clear and established right to receive his full remuneration without unlawful deductions, which right arises from multiple independent sources one of which is in terms of section 34(1) of the BCEA, not to have any deduction made from his remuneration except where the deduction is required or permitted by law, collective agreement, arbitration award, written agreement, or court order.

[28] According to the applicant, he has suffered actual injury as a result of the respondents' unlawful conduct, and has a reasonable apprehension of further injury if the interdict is not granted. The unlawful deduction of R105,000.00 from his salary constitutes actual injury that has already been committed. The injury is not merely threatened or anticipated, it has occurred. The money has been deducted from his salary and is being withheld by the respondents. He further avers that he has been deprived of lawfully earned remuneration that he was entitled to receive.

[29] In response to the allegations made against the respondents, they denied that the applicant was owed R105 000. 00 stating that the activities attended by the applicant were not compulsory. Although the respondents admitted that the applicant attended Union activities from the 5th to the 6th of February 2026, According to the respondents the applicant went on an unauthorised leave of absence from 23 February 2026 to 26 February 2026. They deny that the applicant's requests for leave were accordingly authorised and approved. Furthermore, it is the applicant's duty to ensure that his request for leave is properly communicated and captured on the electronic system.

[30] It is the respondents' version that the applicant's requests for the days in question were not approved as he failed to inform his supervisor to obtain authorisation. The respondents deny that there was a deduction to the applicant's salary and state that the committed overtime was delayed because the applicant's contract had to be renewed. According to the respondents, an amount of R57 216. 36 was paid to the applicant on 30 April 2026. The day which the applicant was not

remunerated for, as the respondents' version goes, are the days when he took an unauthorised leave of absence from his duties and failed to inform his supervisor of his absence from the workplace, this amounts to R 47 000.

[31] It is common cause that the applicant was a member and an office bearer of SAMATU, that he was absent from work on a few occasions, particularly in February 2026, attending to activities of the union and that a total amount of R105 000 was deducted from his salary. The crisp issue for determination is the question whether the respondents were rightfully or lawfully entitled to deduct this amount from his salary without the applicant's written consent, alternatively, without having met all the other requirements as envisaged by section 34 of the BCEA.

The Legal Principles

[32] In defining "remuneration", the Labour Appeal Court stated the following in *North West Provincial Legislature and Another v National Education Health and Allied Workers Union obo 158 Members* (JA17/22) [2023] ZALAC 12; [2023] 8 BLLR 745 (LAC); (2023) 44 ILJ 1919 (LAC) (21 June 2023)

"[8] Section 23(1) of the Constitution provides that everyone has the right to fair labour practices. The BCEA gives effect to and regulates this right *inter alia* by establishing and enforcing basic conditions of employment, which include that an employer is to pay remuneration to an employee not later than seven days after the completion of the period for which the remuneration is payable or of termination of the contract of employment. Remuneration is defined in both the BCEA and the LRA as –

'...any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and "remunerate" has a corresponding meaning'. (See Section 1 of BCEA; section 213 of LRA)

[33] Section 34 (1) of the BCEA, expressly bars deductions from an employee's remuneration, save for in specified circumstances, namely, in the absence of a written agreement by the applicant to the deduction in respect of a debt specified in the agreement or a collective agreement or a court order or an arbitration award, or when the deduction is not permitted in terms of the law, the employer may not make any

deduction from an employee's salary. There may be an allegation that the applicant was absent from work during February 2026 when his application for leave of absence had not been approved, but that is not the question to answer when dealing with section 34. The real issue is whether the threshold as required in terms of section 34 (1) has been met.

Analysis

[34] Even though the respondent would like the court to find that the deduction happened because the applicant did not apply for leave of absence during February 2026 or that if he did apply for leave of absence, it was not approved accordingly, that finding will be unmeritorious because in terms of section 34 of the BCEA, the respondents could not unilaterally deduct such remuneration from the applicant's salary without an agreement or order obtained in accordance with the law and rules of practice.

[35] What is clear from this application is that the respondent did not have an agreement with the applicant to effect any deductions from his salary or any of the items as required in terms of section 34 (1) but the respondents resorted to self-help. The Constitutional Court in *Public Servants Association on behalf of Ubogu v Head of the Department of Health, Gauteng and other* [2017] ZACC 45 (CC); (2018) 39 ILJ 337 (CC); 2018 (2) BCLR 184 (CC) at para 70, (*Ubogu*) and in *Chief Lesapo v North West Agricultural Bank and another* [1999] ZACC 16; 2000 (1) SA 409; 1999 (12) BCLR 1420 (*Lesapo*) made it clear that taking the law into one's own hands is inconsistent with the fundamental principles of our law.

[36] I therefore find that the respondents acted contrary to section 34 (1) of the BCEA by deducting an amount of R105 000. 00 from the applicant's remuneration without following due processes.

[37] After the hearing of the application, I requested the parties to file short heads of argument alternatively, supplementary affidavits to address the issue pertaining to the amount allegedly refunded to the applicant by the respondent and the balance that could be due to him. The applicant filed an affidavit dated 8 May 2026, stating that the amount of R57 216.36 deducted from his salary for overtime was refunded on 30 April 2026 and that the respondent still owed him an amount of R48 581.41. This is in line with what the respondents stated in their papers. The Respondents still maintain that

the applicant is not entitled to monies of the days he was on unauthorised leave of absence from work.

[38] The respondents argued that the question whether the deduction was lawful or not and whether the Applicant is entitled to the monies as claimed creates a material dispute of fact. This is not correct. The question under the circumstances of this case is whether the defence framed by the respondent against the facts alleged by the applicant are indeed truly disputes of fact, or whether the defence is merely a 'bare denial' of the applicant's material allegations. In *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984) the Supreme Court of Appeal adopted an approach which requires the adjudicator to establish which facts are common cause between both applicant and respondent; and thereafter consider which facts that are denied by the respondent are, genuine and *bona fide*, a dispute of fact.

Conclusion


[39] In *casu*, the parties are not apart on the fact that the applicant was absent from work on the alleged dates to attend to activities of the union. Whether his leave of absence had been approved or not is beside the point because money was deducted from his salary for being absent from work. It is not disputed that monies were deducted from his salary because of this reason. It is also not in dispute that there was no agreement between the applicant and the respondents to effect the deduction and that the respondents unilaterally caused an amount of R105 000 to be deducted from the salary of the applicant. That is the crux of this whole application.

[40] Clearly, there is no dispute of fact in this application. The questions to be determined are whether the respondents' actions were justified in terms of the law or not, whether they were in accordance with section 34 (1) of the BCEA or not. This is not a question of fact but of law. My finding on this issue is that the respondents' conduct was contrary to section 34 and therefore unlawful.

Order

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

- 41.1. The application is urgent in terms of Rule 6 (12) of the Uniform Rules of Court.
- 41.2. It is declared that the deductions made by the First Respondent against the salary of the applicant amounting to R105 000. 00, were unlawful and in contravention of section 34 of the Basic Conditions of Employment Act 75 of 1997.
- 41.3. The respondents are interdicted from making any further unlawful deductions, from the applicant's salary.
- 41.4. The respondents are directed to repay to the applicant the sum of R48 581.00 (Forty-Eight Thousand, Five Hundred and Eighty One Rand and Forty-One Cents) which was unlawfully deducted from the applicants salary, together with interest at the prescribed rate of 10.5% from the date of deduction to the date of payment.
- 41.5. Costs of this application are to be paid by the respondents, jointly and severally, the one paying the other to be absolved, on a party and party scale (Scale B).



LD VUKEYA

ACTING DEPUTY JUDGE PRESIDENT

Appearances:

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