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

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Signature Date

THE LABOUR APPEAL COURT OF SOUTH AFRICA, GQEBERHA

Case No: PA11/2024

In the matter between:

SOUTH AFRICAN POST OFFICE SOC LIMITED **Appellant**

and

JANINE WENDY JAMIESON **Respondent**

Heard: 05 March 2026

Delivered: 05 June 2026

CORAM: MAHALELO ADJP, COLLIS *et* MOSHOANA AJJA

JUDGMENT

MAHALELO, ADJP

Introduction

[1] This is an appeal by the South African Post Office SOC Limited ("the appellant") against the whole judgment of the Labour Court delivered on 22 September 2023. The Labour Court declared unlawful the appellant's intended disciplinary proceedings against the respondent, ordered the

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appellant not to release the respondent from employment in terms of an approved voluntary severance package ("VSP"), and directed the appellant to process and implement the VSP payment.

[2] Although several issues were argued, this Court finds it unnecessary to traverse them all because the appeal must succeed on a dispositive point: namely, section 133(1) of the Companies Act[1] (the Companies Act), which imposes a statutory moratorium on legal proceedings against a company under business rescue.

[3] The appellant contended that the Labour Court lacked jurisdiction to grant such relief because the appellant was in business rescue at the time, and the proceedings were instituted without the consent of the Business Rescue Practitioners ("BRPs") or leave of the High Court, as required by section 133(1) of the Companies Act.

[4] The appeal was opposed by the respondent, Ms Janine Wendy Jamieson, who argued that section 133 does not apply to the relief sought, which she characterised as an interdict against disciplinary proceedings and an order to comply with a VSP agreement, not a claim against the company's property or enforcement of a debt.

Factual background

[5] The respondent was employed by the appellant as a Branch Manager for 26 years. On 31 March 2023, she applied for a voluntary severance package.

[6] On 26 April 2023, the appellant informed the respondent that her VSP application was approved, with an exit date of 31 May 2023.

[1] Act 71 of 2008.

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[7] On 4 May 2023, the respondent submitted her termination documents. On the same day, she was booked off sick by her psychiatrist until 31 May 2023.

[8] On 9 May 2023, the appellant served the respondent with a notice of possible suspension for gross negligence. Later that same day, the appellant informed her that the VSP approval was subject to a pending investigation and had been retracted pending the outcome of that investigation.

[9] On 5 July 2023, the appellant notified the respondent that she had absconded. On 17 July 2023, she received a notice to attend a disciplinary hearing on 19 July 2023.

[10] Critically, the appellant had been placed under business rescue in July 2023, before the respondent launched her application in the Labour Court. The BRPs were not cited as parties, and neither their consent nor leave of the High Court was obtained.

[11] The respondent then instituted urgent proceedings in the Labour Court. The court a *quo* granted interim relief on 19 July 2023, later confirmed on 22 September 2023.

<u>Legal principles: Section 133 of the Companies Act and labour matters</u>

[12] Before addressing the application of section 133 to the facts of this case, it is necessary to set out the relevant legal principles and authorities, particularly as they pertain to proceedings in the Labour Court and disputes arising from employment relationships.

<u>The statutory framework</u>

[13] Section 133(1) of the Companies Act provides:

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> "During business rescue proceedings, no legal proceeding, including enforcement action, against the company or in relation to any property belonging to the company or lawfully in its control, may be commenced or proceeded with in any forum, except: (a) with the written consent of the practitioner; (b) with the leave of the court and in accordance with any terms the court considers suitable; (c) as a set-off against a claim made by the company in any legal proceedings, irrespective whether those proceedings commenced before or after the business rescue proceedings began; (d) criminal proceedings against the company or any of its directors or officers; or (e) proceedings concerning any property or right over which the company exercises the power of trustee, "

[14] The term "court" in section 133 is defined in section 128(1)(d) of the Companies Act as "*a Division of the High Court of South Africa*". The Labour Court is established under section 151 of the Labour Relations Act[2] (the LRA) and is not a Division of the High Court. Consequently, the Labour Court is not the "court" contemplated in section 133(1) for the purpose of granting leave to proceed.

[15] Section 133(1) provides for certain exceptions, including:

15.1 Criminal Proceedings.

15.2 Proceedings concerning any officeholder in the company.

15.3 Proceedings by the BRP in the exercise of his or her functions.

15.4 Proceedings concerning any property not belonging to the company but lawfully in its control, where the person claiming an interest in that property gives notice to the BRP.

[16] None of these exceptions applies to the present case. The respondent's application was not a criminal proceeding, did not concern an officeholder, was not brought by the BRP, and did not concern third-party property.

[2] Act 66 of 1995, as amended.

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<u>The purpose of the moratorium</u>

[17] The moratorium in section 133 serves a critical purpose in the business rescue regime. In *Chetty t/a Nationwide Electrical v Hart and Another NNO*[3] the court held:

> "Section 128(1)(b) of the Act defines business rescue to mean proceedings that facilitate the rehabilitation of a financially distressed company by providing, amongst other things, for the temporary supervision and moratorium on the rights of claimants, and the development and implementation of a plan to rescue the company. The obvious purpose of placing a company under business rescue is to give it breathing space so that its affairs may be assessed and restructured in a manner that allows its return to financial viability…"

[18] Once business rescue proceedings commence, there is an automatic and general moratorium on legal proceedings or executions against the company.[4]

<u>The reach of the moratorium: What constitutes a "*legal proceeding against the company*"?</u>

[19] The Companies Act does not define the phrase "*legal proceedings*" as provided for in section 133, however, academics have expressed the view that the clear intention of the provision is to "*cast the net as wide as possible in order to include any conceivable type of action against the company*…"[5]

[20] The Supreme Court of Appeal in *Chetty t/a Nationwide Electrical v Hart and Another NNO*[6]*,* held as follows in respect of its analysis of the meaning of the phrase "*legal proceedings*" in terms of section 133:

[3] *Chetty v Hart* [2015] ZASCA 112; 2015 (6) SA 424 (SCA); [2015] 4 All SA 401 (SCA) at para 18.
[4] Cassim et al *Contemporary Company Law* at p 878.
[5] P Delport, '*Henochsberg on the Companies Act 71 of 2008',* LexisNexis South Africa at p 526.
[6] *Chetty Supra* f(n) 3 at para 35.

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‘To conclude this analysis, the phrase 'legal proceeding' may, depending on the context within which it is used, be interpreted restrictively, to mean court proceedings or, more broadly, to include proceedings before other tribunals, including arbitral tribunals. The language employed in section 133(1) itself suggests that a broader interpretation commends itself, an approach with which academic commentators concur. Contextual indications in s 142(3)(b), and the importance of reading these provisions consistently, also support this interpretation. And finally, the purpose of the provision, which is to give breathing space to the practitioner to get the company's financial affairs in order, also requires it to be construed widely because arbitrations, like court proceedings, also involve diversion of resources, both time and money, that may hinder the effectiveness of business rescue proceedings. To construe it narrowly, as the court *a quo* did, and as the respondent contends we should, would be at odds with its language, defeat its purpose and lead to insensible and impractical consequences.’

[21] In *Timasani (Pty) Ltd and another v Afrimat Iron Ore (Pty) Ltd*[7] *the court held:*

‘Section 133 must be read as a whole: the different subsections of a provision dealing with the same subject matter must not be considered in isolation but read together so as to ascertain the meaning of the provision. Section 133 (1) is a general moratorium provision that applies in relation to the assets and liabilities of the company at the stage when business rescue comes into effect. It protects the company against legal action in respect of claims in general, save with the written consent of the business rescue practitioner and failing such consent, with the leave of the court. This Court has stated the purpose of section 133 (1) as follows:

“It is generally accepted that a moratorium on legal proceedings against a company under business rescue is of cardinal importance since it provides the crucial breathing space or a period of respite to enable the company to

[7] *Timasani (Pty) Ltd (in business rescue) and Another v Afrimat Iron Ore (Pty) Ltd* [2021] 3 All SA 843 (SCA) at para 25.

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> restructure its affairs. This allows the practitioner, in conjunction with the creditors and other affected parties, to formulate a business rescue plan designed to achieve the purpose of the process.''

[22] Academics have also theorised that 'legal proceedings' would conceivably include proceedings before bodies such as the Consumer Commission and the Competition Commission.[8]

[23] In *Burba v Integcomm (Pty) Limited*[9], the applicant employee had referred an unfair dismissal dispute following his dismissal for operational requirements. His referral was served and filed in June 2012. In July 2012, the respondent employer delivered its statement of defence opposing the applicant's claim, and on 11 September 2012, by way of court order, the respondent employer was placed in business rescue in terms of Chapter 6 of the Companies Act. The referral to this court was made some three months before the High Court order was made. The High Court *inter alia* ordered that "*during business rescue proceedings no legal proceedings, including enforcement action against [the respondent employer]… may be commenced or proceeded with in any forum except… with the written consent of the aforesaid [BRP]; with the leave of the court and in accordance with any terms the court considers suitable*…"

[24] The Labour Court in *Burba*, having considered the contents of the High Court order, the wording and purpose of section 133 and the interpretation of the phrase 'legal proceedings' as contained in *Henochsberg* held that:

> 'In the circumstances, the unfair dismissal proceedings cannot be proceeded with except with the written consent of the business rescue practitioner or with the leave of the Court.'[10]

And further that:

[8] *Henochsberg* ibid at p 526.
[9] Unreported judgment under case no JS539/13 delivered on 29 November 2013 at para 6.
[10] *Burba* Ibid at para 14.

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It follows then that as the unfair dismissal proceedings in this Court are covered in the words "legal proceedings … in any forum" in section 133(1) of the Companies Act, the proceedings must be stayed and not proceeded with except… with the written consent of the BRP; or with the leave of the High Court that granted the High Court order.''[11]

<u>Do labour disputes enjoy a special exemption from section 133</u>

[25] The respondent argued, in effect, that labour matters are sui generis and that the Labour Court's exclusive jurisdiction over unfair labour practices, dismissals, and related disputes should exempt such matters from the moratorium.

[26] This argument has been squarely rejected in *Burba* as the unfair dismissal proceedings were stayed pending fulfilment of the exceptions as set out in section 133(1), which included a High Court order granting leave to proceed with the litigation.

[27] In *National Union of Metal Workers of South Africa obo Members v Motheo Steel Engineering*[12] the court was again approached to determine whether an application brought against a company in business rescue was stayed in accordance with section 133. The Labour Court (per Lagrange J) held that:

'In terms of s 210 of the Labour Relations Act, 66 of 1995 a matter dealt with in that Act prevails over the provisions of any other law save the Constitution or any Act expressly amending it. I am satisfied that s 133(1) of the Companies Act 71 of 2008 does not expressly amend the provisions of the LRA, and insofar as it might otherwise prevent legal proceedings without the leave of a court or the relevant business rescue partner, it does not prevent the applicant bringing this application.'

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[11] Ibid at para 17.
[12] [2014] ZALCJHB 315 (7 February 2014) at para 1.

[28] In effect, in *Motheo,* the Court accepted that the provisions of section 133 did not prevent the applicant from approaching the Labour Court on application.

[29] Although not decided in the context of dismissal, *Sondamase and Another v Ellerine Holdings Ltd and Another*[13], provided guidance in determining labour disputes in the case of business rescue proceedings. In *Sondamase,* the applicant employees had lodged a grievance alleging discrimination, victimisation and unfair labour practices and referred their dispute to the Commission for Conciliation, Mediation and Arbitration in July 2014. Their dispute was unresolved at conciliation, and the employees referred their matter to the Labour Court. On 7 August 2014, Ellerines Furnishers commenced with business rescue proceedings and on 21 August 2014, Ellerines Holdings did the same. The respondents raised a special plea that section 133 of the Companies Act had placed a general moratorium on all legal proceedings, including the proceedings before the Labour Court and that, as no consent had been provided by the BRP nor had the High Court granted an order allowing the employees to proceed with their dispute, the dispute before the Labour Court had been suspended.

[30] The Court agreed with the judgment of *Burba* and upheld the special plea.

[31] Insofar as there has been conflicting jurisprudence on the application of s 133 of the Companies Act to disputes arising out of the LRA, it appears to have been settled by the decision of the Supreme Court of Appeal in *Chetty*[14]. In that case, the Supreme Court of Appeal interpreted section 133 to place a moratorium, not only on legal proceedings in court, but even in arbitration proceedings. Cachalia JA took a purposive approach:

[13] [2016] ZALCCT 53 (22 April 2016) at paras 15 – 16.
[14] *Chetty Supra* f(n) 3 at para 26 – 27.

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> "[26] But the question the respondent is unable to answer is why the lawmaker would want the company to provide details of all proceedings, including arbitration proceedings, to a practitioner, but exclude arbitrations from the ambit of the moratorium and the obligation to obtain a practitioner's consent in s 133(1)(a). After all, the outcome of an arbitration by way of award is usually that the losing party has to pay a sum of money, which is the outcome of most court actions involving commercial disputes. In my view the answer lies in properly understanding the purpose of these provisions as they apply to business rescue proceedings and the consequences that flow from the parties' contending interpretations
>
> [27] Section 5(1) of the Act directs that its interpretation and application must give effect to the purpose stated. Section 7(k) is relevant here. It says that one of these purposes is to:
>
>> "...provide for the efficient rescue, and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders…"

[32] The only potential exception, which is not applicable here, is where the proceeding does not seek any relief against the company itself, for example, a dispute between two employees that does not involve the company, or a claim against a third party. The present proceeding sought orders directly against the appellant, a company in business rescue.

<u>Non-joinder of the BRP as a fatal defect</u>

[33] Even if the Labour Court had jurisdiction, the failure to join the BRPs is a separate, fatal defect. In *Oakdene Square Properties (Pty) Ltd v Farm Bothasfontein (Pty) Ltd*[15] the court held that a BRP is a necessary party to any proceeding against a company in business rescue because the BRP alone has authority to manage the company's affairs.

[15] *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* [2013] ZASCA 68; 2013 (4) SA 539 (SCA); [2013] 3 All SA 303 (SCA).

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[34] The respondent did not cite the BRPs. She did not seek their consent. She did not apply to the High Court for leave. The proceedings were therefore fatally flawed from their inception.

Application to the present case

[35] Applying these principles to the facts of the present case, the following conclusions are inevitable:

[36] First, the appellant was in business rescue when the respondent launched her application in the Labour Court. The BRPs were in place and were managing the company's affairs.

[37] Second, the respondent did not obtain the written consent of the BRPs before commencing proceedings. She did not even cite them as parties.

[38] Third, the respondent did not apply to the High Court for leave to proceed under section 133(1). The Labour Court is not the "court" contemplated in that section and could not grant such leave.

[39] Fourth, the relief sought by the respondent, an order declaring the disciplinary hearing unlawful, an order releasing her from employment, and an order compelling the processing and payment of the VSP, constitutes a "*legal proceeding against the company*". Each of these orders would require the appellant, under the management of the BRPs, to take action or refrain from action affecting its affairs.

[40] Fifth, none of the statutory exceptions in section 133(2) apply. This is not a criminal proceeding. It does not concern an officeholder. It was not brought by the BRP. It does not concern third-party property.

[41] Sixth, the respondent's characterisation of the relief as "interdictory" rather than "monetary" is immaterial. An interdict compelling the company to desist from disciplinary proceedings is a legal proceeding against the

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company. An order compelling the processing of a VSP is an enforcement action.

[42] The court a *quo,* therefore, erred in holding that section 133(1) did not apply. The Labour Court lacked jurisdiction to entertain the application. The proceedings were a nullity.

Non-joinder and irregularity

[43] Even if the jurisdictional point were decided differently, the failure to join the BRPs is fatal. The BRPs are the statutory representatives of the company during business rescue. Any order against the company affects the BRPs' management of the rescue. The BRPs were necessary parties. Their non-joinder renders the proceedings irregular and the order unenforceable.

[44] The court a *quo* ought to have dismissed the application on this ground alone.

The validity of the VSP agreement and other grounds

[45] In light of the conclusion on the section 133 point and non-joinder, it is strictly unnecessary to decide the other grounds of appeal, including whether a valid VSP contract was concluded and whether the Respondent was entitled to severance pay under section 41(4) of the Basic Conditions of Employment Act[16].

[46] However, for completeness, I note that the appellant raised a serious argument that no valid VSP contract was concluded because the necessary line manager's signature was absent and because the respondent had already secured alternative employment from 1 June 2023 as well. These are matters that would ordinarily require determination by

[16] Act 75 of 1997.

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the Labour Court. However, since the Labour Court lacked jurisdiction to entertain the matter at all, I express no final view on them.

Conclusion

[47] The court a *quo* erred in holding that section 133(1) of the Companies Act did not apply. The appellant was in business rescue. The respondent commenced legal proceedings against the appellant without the consent of the BRPs or leave of the High Court. The Labour Court accordingly lacked jurisdiction to grant the relief sought.

[48] The failure to join the BRPs is an additional, independent ground for setting aside the judgment.

[49] The appeal must therefore succeed. The judgment and order of the Labour Court are set aside. The rule *nisi* in the court a *quo* should have been discharged

Costs

[50] The appellant seeks costs, including senior counsel on scale C. Considerations of fairness and the Law dictate that there should be no order as to costs.

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

Order

1. The appeal is upheld with no order as to costs.

2. The judgment and order of the Labour Court delivered on 22 September 2023 under case number P72/2023 is set aside and substituted by the following:

   2.1. The rule nisi is discharged.

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2.2. There is no order as to costs.

M B. Mahalelo

Acting Deputy Judge President of the Labour Appeal Court

Collis *et* Moshoana AJJA concurs

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APPEARANCES:

For the Appellant	:	Adv P. Tshavhungwe
		Instructed by: Koka Attorney
For the Respondent	:	Adv. Simoyi
		Instructed by: Hexana Attorneys

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