

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2025-237972

1. REPORTABLE: ~~YES~~/ NO
2. OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
3. REVISED: YES / NO

DATE: 19 June 2026

SIGNATURE OF JUDGE: [REDACTED]

In the matter between:

**KGOMOTSO MODISELLE
LERATO SIMON THAGE**

**FIRST APPLICANT
SECOND APPLICANT**

and

**NATIONAL ENTERPRISES WORKERS UNION
PHAUWE PHOSE
DEPARTMENT OF EMPLOYMENT AND LABOUR**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT**

Heard: 1 June 2026

Delivered: 19 June 2026

JUDGMENT:

HR FOURIE, AJ

[1] The applicants seek the provisional sequestration of the first respondent. The applicants were previously employed by the first respondent as union officials, but are

cited in their capacity as creditors of the first respondent. They represent themselves in this application.

[2] The first respondent is the National Enterprises Workers Union (LR 2/6/2/3338), a trade union apparently registered in terms of the Labour Relations Act.¹ The second respondent is the Secretary General of the first respondent, and the third respondent is the Department of Employment and Labour. The second and third respondents are joined for their potential interest in the matter. The respondents were given notice of the application but did not oppose.

[3] The applicants state that the first respondent is indebted to them in the amount of R188 808.64, excluding interest at 15.5% *per annum*. The origin of the debt is two default Arbitration Awards issued by the Commission for Conciliation, Mediation and Arbitration ('the CCMA') in favour of the first applicant on 1 May 2025 in the amounts of R 15 456.60 and R 135 140.61, respectively. A third Arbitration Award was issued in favour of the second respondent on 28 March 2025 in the amount of R 38 211.88. The first respondent has failed to pay the amounts or any part thereof.

[4] The applicants explain that they initiated proceedings before the CCMA to claim outstanding salary payments owed to them by the first respondent. Their written demands for payment, made after the due date as stipulated by the Awards had passed, were ignored. They obtained certification of the Awards in their favour on 26 May 2025 and 8 May 2025, respectively. The Sheriff for Pretoria East served the warrants of execution, and his returns of service indicated that the premises of the first respondent are "very scantily furnished". The applicants thereafter obtained an order in the Labour Court for the attachment and seizure of the first respondent's bank account. That, too, yielded no results. The applicants concluded that the first respondent is unable to pay its debts and is insolvent.

[5] The applicants further state that they reside within the area of jurisdiction of this court, and the first respondent's head office is situated in Arcadia, Pretoria.

¹ 66 of 1995

[6] A more vexing question is whether the High Court has the necessary jurisdiction to hear an application relating to the insolvency status of a trade union, or whether it is a matter that is vested in the sole jurisdiction of the Labour Court.

[7] Mr. Modiselle argued that section 157(2) of the Labour Relations Act affords a litigant the choice between the Labour Court and the High Court. Because the Labour Court cannot address certain aspects of insolvency law as it determines disputes between employers and employees, whereas the High Court determines debtor/creditor disputes, the application is correctly brought before the High Court.

[8] For the reasons that follow, I do not agree with Mr. Modiselle's submission that the Labour Court and the High Court have concurrent jurisdiction over the winding-up of a trade union.

[9] The jurisdiction of the Labour Court is provided for in section 157 of the Labour Relations Act. Sub-sections (1) and (2) are relevant:

- “(1) Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.
- (2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from-
 - (a) employment and from labour relations;
 - (b) any dispute over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and
 - (c) the application of any law for the administration of which the Minister is responsible.”

[10] A registered trade union is a body corporate created and governed by Chapter

VI of the Labour Relations Act. Part A of Chapter VI, comprising sections 95 to 106, is particularly relevant in the present context. It addresses, *inter alia*, the regulation of trade unions from inception to dissolution.

[11] Section 104 reads as follows:

“Any person who seeks to wind-up a trade union or employers’ organisation by reason of insolvency must comply with the Insolvency Act, 24 of 1936, and, for the purposes of this section, any *reference to the court in that Act must be interpreted as referring to the Labour Court.*” (Emphasis added).

[12] This invokes section 157(1) and presents a *prima facie* indication that the present application is in the wrong forum and ought to have been brought before the Labour Court. I accordingly consider the relevant section in its context in the Act.

[13] Section 103(1) empowers *the Labour Court* to order a trade union to be wound up if (1) the trade union has resolved to wind-up its affairs and has applied to the Court for an order giving effect to that resolution, or (2) the registrar or any member of the trade union has applied to the Court for its winding up and the Court is satisfied that the trade union for some reason that cannot be remedied is unable to continue to function. (Emphasis added).

[14] Section 103A provides for the appointment of an administrator of a trade union *by the Labour Court* where certain specific circumstances are established. (Emphasis added).

[15] Sections 103 and 103A differ from winding-up in terms of the law of insolvency in that, under section 103(3), the Labour Court is empowered to appoint a suitable person as the liquidator, and under section 103(4), the registrar of the Labour Court must determine the liquidator's fees. The latter determination may be reviewed by the Labour Court in chambers. Compare section 103A(4)(a) and (b). It is settled law that the power to appoint a liquidator under the Companies Act vests in the Master and that the court has no power to appoint a liquidator. *Ex parte the Master of the High*

*Court of South Africa (North Gauteng)*² at [33].

[16] Because section 104 makes the Insolvency Act applicable, the impression may be created that the High Court has jurisdiction to make an order in terms of that section. This is dispelled by section 106.

[17] In section 106, *the registrar of the Labour Court* is enjoined to notify the registrar of labour relations *if the Court* ordered a registered trade union *to be wound up in terms of section 103 or 104* and when the registrar receives a notice from the Labour Court in terms of section 106(1), the registrar must cancel the registration of the trade union by removing its name from the appropriate register. (Emphasis added).

[18] The Labour Court and the registrar of the Labour Court have been designated specific and material roles in the winding-up of trade unions. If a creditor were to be permitted to select to approach the High Court instead, their roles would be undermined. It appears that the process applicable to insolvent trade unions is *sui generis*.

[19] It is not insignificant that the applicants invoked the dispute resolution mechanism provided for in Part A of Chapter VII of the Act when they approached the CCMA, and subsequently attempted to obtain payment.

[20] In the premises, I conclude that it is the Labour Court that is seized with the necessary jurisdiction to adjudicate this application, to the exclusion of the High Court, and thus that the applicants' reliance on section 157(2) must fail.

[21] Another aspect that can conveniently be addressed together with jurisdiction is the nature of the relief sought.

[22] The applicants seek the sequestration of the first respondent. Section 104 refers to "winding-up", as do section 103(1) and 103(3) and section 106. The term "winding-up" is not defined in the Labour Relations Act. It is not defined in the

² 2011 (5) SA 311 (GNP)

Companies Act,³ but it is the terminology that is used, interchangeably with “liquidation”, in relation to a company, close corporation or other corporate entity. As mentioned before, a registered trade union is a body corporate. In contrast, the term “sequestration” is used in relation to a natural person or other debtor to which the Insolvency Act⁴ only applies, such as a trust or a partnership.

[23] In *SA Solidarity Union and Others v Iliad Africa Trading (Pty) Ltd and Another*⁶ the Labour Court applied the Insolvency Act only and granted a winding-up order. However, the reference to the Insolvency Act in section 104 does not necessarily exclude the application of the Companies Act, because section 339 of that Act makes the law relating to insolvency applicable to winding-up, where specific provision is not made by the Companies Act.

[24] I need not make any finding on whether a trade union ought to be wound up under the Insolvency Act alone or under the Insolvency Act read with the Companies Act. I also make no finding on the merits of the applicants’ application.

[25] The applicants will have to bring the application *de novo* in the Labour Court, Johannesburg, having made the necessary changes to their papers.

Order

[26] The following order is made:

- (a) The application is removed from the roll.
- (b) No order as to costs.


HR FOURIE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

For the Applicants: Mr. Kgomotso Modiselle in person

For the Respondents: No appearance

³ 61 of 1973

⁴ 24 of 1936

⁵ (J1229/10; J1181/10) [2012] ZALCJHB 144 (17 February 2012)