(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **YES**

11 June 2026

IN THE LABOUR COURT OF SOUTH AFRICA,

HELD AT JOHANNESBURG

Case no: 2026 – 128682

Date of hearing: **11 June 2026**

In the matter between:

BIFAWU obo MEMBERS Applicant

and

DOCUMENT EXCHANGE (PTY) LTD Respondent

EX TEMPORE JUDGMENT

SNYMAN, AJ

[1] On the 3rd of June of 2026, the applicant has brought an urgent application to this court in terms of which relief is sought in terms of the notice of motion in which, mainly, the applicant seeks an order that the respondent be interdicted

and restrained from giving the applicant union notice of intention to terminate the union recognition agreement which is attached as Annexure A13 to the founding affidavit.

[2] The basis of the attack by the applicant is that the respondent has erred in relying upon the threshold of presentively of 50% plus 1 as a basis to terminate the agreement. It is clear from this dispute as pleaded, to which pleaded case the applicant is bound, that the dispute will essentially concerns the interpretation and application of the recognition agreement.

[3] In this respect, the recognition agreement is attached to the founding affidavit. It is an agreement concluded on the 5th of December of 1997 and contains provisions relating to what is defined as 'representative', which one finds in clause 1.10 of the agreement. It refers to being representative on the part of the applicant as having 50% plus 1 membership in the respondent.

[4] Then, under clause 17.2 of the recognition agreement, it is recorded that the agreement remains binding as long as the applicant retain sufficient members in the respondent. The respondent contends that it is thus entitled to terminate the agreement. The applicant disagrees and contends that there exists no threshold that would entitle the respondent to terminate the agreement. I do not need to decide what the agreement reads or how it should be interpreted. The point is that it is clear from the issues at stake in this case that this is an interpretation and application of a collective agreement dispute.

[5] The Labour Relations Act (LRA) bestows rights on individuals, trade unions, employers and the like. This includes the rights relating to collective bargaining and the conclusion of collective agreements. The LRA also specifically creates a process and dispensation in terms of which those rights are to be enforced and to be applied. In the case of a dispute concerning the interpretation and application of a collective agreement, that dispute can only be pursued by way of arbitration proceedings under Section 24 of the LRA. That is the prescribed process.

[6] This court has no jurisdiction to make any pronouncement as a court of first instance on such an issue. To ask this court in a notice of motion to effectively

interpret and apply the agreement as a basis for the interdict sought is entirely incompetent and this court has no jurisdiction to consider or grant this relief. This application was, in fact, ill-founded from the outset. In addition, to make matters worse, the applicant also asks in a notice of motion that the court grant an order that ‘’… the employees’ rights in terms of the Labour Relations Act will not be limited by the Companies Act and insofar as may be argued that there is the conflict between the company law and labour law section 210 of the LRA is clear and that labour law should prevail’. On what basis such relief sought in urgent motion proceedings would be competent is beyond me. The applicant here is asking for declaratory relief and there is no cause or basis for such declaratory relief to be granted on motion to this court on a basis of urgency. The prayer is incompetent. There are further prayers seeking declaratory relief, which I am not going to repeat, which all face the same fate. So therefore, even the other prayers as contained in the notice of motion is not competent in current proceedings and in the current matter in which it was brought.

[7] The applicant has sought to suggest that what makes this matter exceptional and why this court should intervene is that the respondent is effectively abusing the cancellation of the recognition agreement as a basis to avoid bargaining with the Union on wages and conditions of employment. In this regard, one only has to consider the notice of termination given to the applicant when it comes to the recognition agreement. This notice is dated 20 April 2026, the notice specifically refers to the issue of thresholds of representivity, and it refers to clause 17.2 of the recognition agreement which records that the agreement will continue to subsist for as long as there are sufficient union members employed by the respondent. The notice then records why there are no longer sufficient members of the applicant at the respondent, because according to it, only 38% membership of the union exists, which is lesser than the 50% plus one the respondent contends is the applicable standard. On that basis, notice was given of termination of the agreement.

[8] Again, I need not decide whether or not this notice is valid or whether it is in some way irregular or misconstrues the agreement. The fact is that on face value, it constitutes a proper notice of termination of the agreement based on a specific cause, and that cause is the failure to meet the threshold of representivity. If the respondent is correct in its contentions and how the agreement should be applied, then obviously the termination of the recognition agreement would stand, but as I have said, that is a dispute for the CCMA to determine in the ordinary course.

[9] There is no cause or reason to involve this court in these kinds of proceedings at this stage, especially on an urgent basis, considering that the legislature has deemed it fit to prescribe in the LRA that this dispute must be resolved by way of arbitration proceedings, where *viva voce* evidence can be led and the entire issue of the interpretation of the agreement can be properly considered. It is seldom appropriate for this court to determine those kinds of issues on affidavit in urgent motion proceedings.

[10] What the above also illustrates is that the issue of whether or not wage negotiations should be pursued is entirely irrelevant in this context. But there is another issue in this regard that I believe is important. Attached to the applicant's own founding affidavit, in response to each letter by the applicant containing its demands relating to wages and conditions of employment, are letters in terms of which the respondent in fact gave an answer. The most pertinent answer is found in a letter on the 13th of November 2025, when it addressed those demands and in essence said it was unable to accede to them at all, due to its adverse financial position. It explained its financial position and said it can only afford a 0% percent increase, so it is not as if the respondent doesn't want to bargain. The respondent is saying it cannot afford what the applicant wants. This is an issue that can only be resolved by collective bargaining in the ordinary course, irrespective of whether a recognition agreement exists.

[11] Further to this, if the respondent is refusing to bargain for whatever the reason, be it that it does not want to, or it cannot afford to, or it believes that recognition is cancelled and it should not, then in that case, the applicant has

a perfectly suitable alternative remedy available to it, and that is to refer a refusal to bargain dispute to the CCMA for determination. The founding affidavit shows that the applicant is well aware of this right.

[12] It must be remembered that under the LRA there is no duty to bargain that rests on an employer, and the right or the entitlement to be bargained with is obtained by a trade union through collective action. So, in order to obtain the right to collectively bargaining, and that's perhaps not the best way to describe it, but in order to attain the right to compel an employer to bargain with the trade union, this can be done in one of two ways. Firstly, it can of course be done by agreement, which one normally finds in the recognition agreement, such as the one that exists in this case. Secondly, it can be done by way of collective action, namely strike action, where, after having obtained an advisory arbitration award from the CCMA, a trade union may go out on strike in order to compel the employer to bargain with it.

[13] Why I stress the aforesaid course of action relating to a refusal to bargain, is that this is the actual remedy available to the applicant in this particular case. If ultimately it turns out that the collective agreement should continue to subsist and that the cancellation of the agreement is not valid, then at that point in time, if the employer still refuses to bargain with the union, then an order can be sought to compel the employer to comply with the agreement, but that is another dispute for another day once the cancellation of the agreement has first been decided. Or the applicant can, despite the agreement, pursue collective action to compel the respondent to bargain with it.

[14] This all means that the relief sought by the applicant is incompetent. It also means that this Court has no jurisdiction to entertain it. For that reason alone, this application should fail.

[15] In addition, I need to address the issue of urgency as well. This matter was never urgent. It was a quintessentially a case of self-created urgency. In order for the requirements of urgency to be satisfied, the applicant was obliged to

take the appropriate action to enforce its rights at the first available opportunity.

[16] In that respect, the catalyst would be the notice of termination of the agreement issued to it on the 20th of April 2026. The application needed to have been brought in at the first available opportunity after that. Instead, the applicant procrastinated. The to and fro writing of letters by the applicant disagreeing with the respondent and asking for meetings to discuss this, does not dispel the notion of what is required for urgency. That is a classic case of self-created urgency.

[17] The applicant needs to take immediate action. If it elects to first try and resolve the matter by way of seeking meetings, which in any event were never responded to, then it must pay the price when seeking urgent relief. There is no requirement, as suggested by the applicant, that there must first be an attempt to bargain or consult or negotiate about the issue before this court can be approached. The cancellation notice is clear in what it says, and if the applicant believed it was invalid or wrong and wanted to urgently challenge it, it needed to bring the application at that point in time.

[18] Further, the founding affidavit is entirely sparse when it comes to making out the requirements of urgency as contemplated by Rule 38. It does not address issues like the failure to obtain substantial redress in the ordinary course, the prejudice to the respondent if the time limits are abridged, and why the application was brought only at this particular point in time. Overall, and even in the context of urgency, no case has been made out. And in any event, this is a matter where full substantial redress is available in the ordinary course, and that in itself must be fatal to urgency.

[19] Why I only deal with urgency at this juncture of the judgment is because I believe this is not a case where the matter should be struck from the roll for the want urgency, but should be actually dismissed, despite it not being urgent, because the lack of urgency is also coupled with the lack of jurisdiction. For all of these reasons, the applicant's application falls to be dismissed.

[20] That then leaves only the question of costs. Under section 162(1) of the LRA, I have a wide discretion when it comes to the issue of costs. I am familiar with the judgments of the Constitutional Court that stipulate that ordinarily in employment disputes, costs do not follow the result. However, none of these judgments are a blanket immunity against cost orders being granted by this court. In fact, what the Constitutional Court has said that in exercising this court's discretion with regard to costs, this court must just act fairly and in making the decision must give proper reasons why a cost order has been made.

[21] This is a case that I believe the applicant should be ordered to pay the costs of the matter for the following reasons. First, the application was always incompetent from the outset. I also consider that the applicant, in fact, referred the interpretation and application dispute to the CCMA, and there was no reason why it could not have pursued this dispute in the ordinary course. To approach this court in the manner that it did was never on. I also consider the manner in which this court was approached. It was approached basically as a matter of extreme urgency with very short time limits, and the respondent was dragged into the matter with very little time to properly defend itself, when there was no cause or reason to do so.

[22] This kind of conduct is unacceptable this court has, on numerous occasions, warned that litigants should not approach this court lightly without considering their position, especially in urgent applications where urgent intervention is sought. The failure to do so means that the litigants are in essence abusing the urgent court and the already stretched resources of this court would be compromised as a result.

[23] The applicant's application, overall considered, never had any merit and was, for all intents and purposes, hopeless. This court has said that in such circumstances, a cost order is reasonable and justified, and I believe this should be the case in the current matter as well. The respondent has indicated that it would be satisfied with a costs order on the basis of party and party at scale A, and I will grant such order accordingly.

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

Order

1. The applicant's application is dismissed.

2. The applicant is ordered to pay the respondent’s costs on the party and party scale A.

S Snyman

Acting Judge of the Labour Court of South Africa