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

30 June 2026

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

CASE Number: 2026 – 128968

In the matter between: -

NTHOKOZISI PAUL MABHENA

Applicant

and

THEEWATERSKLOOF MUNICIPALITY

First Respondent

GW HERMANUS N.O.

Second Respondent

THE COUNCIL OF THE THEEWATERSKLOOF

MUNICIPALITY

Third Respondent

HEDDA SCHENSEMA N.O.

Fourth Respondent

SEBASTIAAN MARX N.O.

Fifth Respondent

Date of hearing: 18 June 2026

This judgment was handed down electronically by circulation to the parties and legal representatives by email and by uploading onto CaseLines. The date and time for hand-down is deemed to be 30 June 2026.

Summary:

Jurisdiction – s 157(1) – applicant failing to establish jurisdiction of the Court to grant the relief sought – Court not having general jurisdiction as relied on by applicant – applicant not pleading reliance on rights under the LRA or employment laws – *Cibane and Another v Premier of Province of Kwazulu-Natal* considered – Court having no jurisdiction to intervene in incomplete disciplinary proceedings under section 157(1) – Court having no jurisdiction to consider case based on unlawfulness – matter falls to be dismissed for want of jurisdiction

Jurisdiction – s 158(1)(a) considered – section does not confer jurisdiction but only conveys powers on Court – jurisdiction must be conferred on other provisions under LRA / other employment laws for s 158(1)(a) to apply – applicant's reliance on s 158(1)(a) misplaced – section cannot be used to confer jurisdiction to consider applicant's application

Jurisdiction – s 158(1)(h) considered – Court does have review jurisdiction under s 158(1)(h) – requires application of ordinary principles / processes relating to review applications – urgent and final intervention on basis of pending review not competent – no review grounds pleaded – review also not competent where real issue in dispute resorts under ordinary LRA remedies – applicant non-suited on such basis

Review jurisdiction – urgent review application *in medias res* – principles considered – requires exceptional circumstances for intervention to be shown – applicant failing to establish exceptional circumstances – applicant's review *in medias res* not competent

Suspension – applicant pleading case of unlawful suspension – Court having no jurisdiction to consider unlawful suspension – matter can be pursued as unfair suspension based on case raised by applicant – such dispute must be referred to bargaining council – Court having no jurisdiction

Jurisdiction – Court having no jurisdiction to consider applicant’s application – application dismissed for want of jurisdiction

Costs – application constitutes an abuse of process – application should never have been pursued and / or persisted with – principles relating to costs considered – costs awarded

JUDGMENT

SNYMAN, AJ

Introduction

[1] Once again, I am seized with a case of a senior employee in the public service seeking to approach this Court directly on an urgent basis in order to obstruct a pending internal disciplinary hearing. What is even worse is that it is apparent from the notice of motion that what the applicant seeks is in effect that the entire disciplinary proceedings against him be permanently abolished. This conduct is regularly perpetrated by senior employees in the public service, and is unacceptable, as made clear in this Court on a plethora of occasions. The fact that it is nonetheless persisting is an intolerable state of affairs. This conduct is pursued despite all that had been said in this Court about the lack of competence of such conduct.¹ I once again, as I have done in the past, feel compelled to refer to the following *dictum* in *George v Nyoka and Others*², which makes this entire sorry state of affairs clear:

‘The Court deems it necessary to outline all of the above for the simple reason that these antiquated shenanigans, exhausting as they are, in the end come back to bite the employees when claiming urgency in this Court. This Court has consistently rebuked such truant like antics, which are in most instances

¹ See for example *Public Allied Workers Union of SA on Behalf of Netshikhudini v Commission for Conciliation, Mediation and Arbitration and Others* (2022) 43 ILJ 2812 (LC) at paras 1 – 2; *National Union of Metalworkers of SA on behalf of Members v BMW (SA) (Pty) Ltd* (2025) 46 ILJ 2712 (LC) at para 1; *Choko-Choko and Others v Tharisa Minerals (Pty) Ltd* (2025) 46 ILJ 2618 (LC) at paras 38 – 39.

² [2023] 7 BLLR 654 (LC) at paras 3 – 4. See also *Minya v SA Post Office Ltd and Others* (2021) 42 ILJ 141 (LC) at paras 2 – 3.

aided and encouraged by legal representatives. My colleague Van Niekerk J recently delivered a trio of judgments¹ that concerned attempts at halting internal disciplinary hearings, and in all instances, costs were awarded against recalcitrant applicants. These judgments are amongst numerous others delivered in this Court from the urgent roll, which have consistently set out the law and the difficulties the applicants face when approaching the court on an urgent basis with applications to stay internal proceedings. These frivolous applications have caused strain on the limited judicial resources of this Court. This message has clearly not filtered through to employees or their legal representatives.

These antics are truly exhausting, not only to the court's resources but also because in the end, they turn out to be financially draining for the already financially depleted municipalities or government departments and its entities. This is particularly so since in most internal disciplinary enquiries held in all spheres of government, legal practitioners are engaged to act as initiators or chairpersons in those enquiries. I am not even taking into account all the other officials who are taken away from their real work, in order to attend to these stop-start disciplinary enquiries. These antics are an antithesis of the primary purpose and objectives of the Labour Relations Act ("LRA"), primary of which is to have labour disputes resolved expeditiously. They do not have a place either in the workplace or in this Court, if the primary objectives of the LRA are to be achieved.'

- [2] But what makes the matter *in casu* even worse is that the applicant's legal representative, when confronted with all the difficulties relating to the relief sought with regard to the pending disciplinary proceedings against the applicant, simply reacted by saying that the applicant is no longer seeking such relief but is instead only seeking relief relating to the applicant's alleged unlawful suspension. It is unacceptable to drag the first respondent to Court to fight a case based primarily on challenging the pending disciplinary proceedings and cause this Court to read everything relating to such challenge, only to then simply glibly state, when the shoe pinches in the course of argument in Court, that it is no longer sought. But even then, this relief sought was never formally abandoned, so I still need to decide it.

- [3] The applicant has also sought to overcome many of his difficulties by dividing the application into part A and part B. Part A concerns the matter now before Court. In part A, the applicant prays for what he labels as an interim interdict, in which he seeks to interdict and restrain the first respondent from in any manner conducting the disciplinary proceedings against him, until the relief sought in part B has been decided. The applicant also seeks, under part A, interim declaratory relief that his precautionary suspension be declared to be of no force and effect and he be reinstated in his position of CFO, pending a determination of part B. In part B, the applicant then seeks final relief. That relief is firstly that his precautionary suspension be declared to have lapsed by virtue of the expiry of the time limit under regulation 6(6)(a) of the Local Government: Disciplinary Regulations for Senior Managers, 2010 (the Regulations)³. Further, he asks that such suspension be declared to be unlawful or invalid for want of compliance with regulations 6(2), (3), (4) and (5) of the Regulations. The applicant also seeks final relief in the form of a review under section 158(1)(h) of the Labour Relations Act (LRA)⁴, in terms of which the applicant asks that the resolution by the first respondent on 27 February 2026 to suspend him be reviewed and set aside. The applicant finally asks that the decision by the first respondent to discipline him be reviewed and set aside under section 158(1)(h) of the LRA, and that the disciplinary proceedings against him be finally interdicted.
- [4] The first issue that must be dealt at the outset is the nature of the relief sought. The applicant has couched the relief sought as an interim order under part A. But to simply call the relief sought an interim order in the notice of motion does not make it so. Attaching a particular label to substantive relief sought in a notice of motion cannot change the true nature of what it is that is being applied for. As said in *Vodafin Mining (Pty) Ltd v NKK Minerals and Construction CC*⁵: ‘... It is trite that when determining whether the relief sought is interim or final, a court should look at the substance of the relief sought rather than the form in which the prayer is couched ...’. Next, in *Armas Developments (Pty) Limited v Singh*⁶ the court similarly held: ‘... A final interdict is set out as being granted without any limitation as to time and which

³ Promulgated by way of GN344 in GG 34213 of 21 April 2021.

⁴ Act 66 of 1995 (as amended)

⁵ 2016 JDR 0854 (GP) at para 7.

⁶ 2017 JDR 1633 (KZD) at para 22.

secures a permanent cessation of an unlawful course of conduct. The substance of the relief sought must be considered. An interlocutory interdict on the other hand is granted pendente lite to protect that right of the complainant to protect or reserve his rights pending an action or application between the parties. It does not involve or affect the final determination of the right of parties. It merely suspends or reverses the position complained of until the main issues are determined and then ceases to operate And specifically relating to supposed interim relief pending the determination of a review application, the Court in *Zondo and Another v Uthukela District Municipality and Another*⁷ decided as follows:

‘... Mr *Hlatswayo* confirmed that what the applicants were actually seeking is that the disciplinary proceedings against the applicants be interdicted from in any way proceeding until the applicants' review application in respect of the legal representation ruling has been finally determined. This is clearly not interim relief, but final relief. In effect, the disciplinary proceedings would be permanently stayed until the event of the outcome of the legal representation review application. As matters stand, this is indefinitely. ...’

- [5] So, what the applicant in reality seeks in this case is final relief. In order to establish a right to the relief sought, the applicant must show that his pending review will likely succeed. Or differently put, his case for interim relief is directly tied to a determination of the merits of the review, which is sought on a final basis. Once it decided that the review has merit, which is necessary to grant interim relief, that would dispose of the whole case. That is final relief. But even if a later determination of the review remains competent, how can the prospects of success on review be established without a proper review record and without the prescribed process for review under Rule 37 being applied? That is basically not competent. It would then follow that the mere existence of the review is the foundation for the interim relief, which, as undesirable as this may be, would have the practical result that nothing can happen, vis-à-vis the pending disciplinary proceedings and the applicant's continued suspension, until the actual review applications are decided at some undetermined point in

⁷ (2015) 36 ILJ 502 (LC) at para 4. See also *See Mashiya v Sirkhot NO and Others* (2012) 33 ILJ 420 (LC) para 19.

the future, which for all intents and purposes is an indefinite period. This means that effectively, the relief sought is final in nature.⁸

[6] This matter came before me as an urgent application on 18 June 2026. It was opposed by the first respondent, who filed an answering affidavit. After hearing argument by all parties, and considering the affidavits and heads of argument filed, I granted the following order on the same date:

1. The applicant's application is dismissed in its entirety.
2. The applicant is ordered to pay the respondents' costs on the party and party scale C.
3. Written reasons for this order will be provided on 30 June 2026.

[7] This judgment now constitutes the written reason as contemplated by paragraph 3 of the order, *supra*.

Background facts

[8] The background facts in this case are straight forward, and mostly undisputed. But where factual disputes do exist, and because the applicant is effectively seeking final relief, I shall decide those in line with the principles enunciated in the well-known judgment of *Plascon Evans Paints v Van Riebeeck Paints*⁹. In short, it follows that it is the admitted or undenied facts together with the facts as stated by the first respondent that must be utilized in deciding this matter. The only exception would be if the first respondent simply offers a bald denial, or the facts as stated by the first respondent are patently false, absurd or

⁸ Also compare *Vodafin Mining (supra)* at para 8: '...the relief is final in nature in the sense that the effect of the order, should it be granted, is that it will remain in place only until the period of the agreement has run its course and will thereafter lapse. The substance of the relief sought is thus in my view final. The format, in which it is couched, that is, to operate as an interim interdict, does not change its nature. It remains final ...'.

⁹ 1984 (3) SA 623 (A) at 634E-635C, where the Court said: '... in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order ...'. See also *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others* 2005 (2) SA 359 (CC) at para 53; *Jooste v Staatspresident en Andere* 1988 (4) SA 224 (A) at 259C – 263D; *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) paras 26 – 27; *Gbenga-Oluwatoye v Reckitt Benckiser SA (Pty) Ltd and Another* (2016) 37 ILJ 902 (LAC) at para 16; *Molapo Technology (Pty) Ltd v Schreuder and Others* (2002) 23 ILJ 2031 (LAC) para 38.

fanciful.¹⁰ The background as set out below is arrived at based on the application of these principles.

- [9] The applicant is employed as the Chief Financial Officer (CFO) of the first respondent, having commenced employment in 2023. The events giving rise to this entire matter took place on 29 January 2026, when it was alleged that the applicant had physically assaulted a co-worker. The particulars of this event are not relevant to deciding the case *in casu*. This complaint served before the first respondent's Municipal Council (the Council) on 2 February 2026, and it was resolved to place the applicant on precautionary suspension pending an investigation of the incident of 29 January 2026. The applicant was informed in writing on 4 February 2026 of this suspension.
- [10] Even though the applicant was informed on 4 February 2026 that he was suspended, it was nonetheless also resolved by the Council on 2 February 2026 that the applicant be afforded an opportunity to make written representations to the Council why he should not finally be suspended, within seven days of being informed of such suspension as aforesaid. He was also informed that he could make written representations as to why he should not be finally suspended to Municipal Manager, also within seven days. It thus appears that the applicant being informed of his suspension on 4 February 2026 can be called a *prima facie* suspension, pending the written representations and final decision to be made. The Council decided to adopt this course of action due to the seriousness of the allegations and to enable a proper investigation going forward.
- [11] On 10 February 2026, the applicant's attorneys stepped in and answered the suspension letter of 4 February 2026. In this letter, his attorneys sought an indulgence to file the written representations after the seven days' deadline, because they required additional time to consult with him for purposes of obtaining full and detailed instructions. It was however acknowledged that the applicant was called on to make representations, and the applicant was of the intention to do so. No issue was taken with lawfulness of the suspension

¹⁰ See *Minister of Justice and Correctional Services and others v Tshifhango and Another* [2019] 7 BLLR 627 (LAC) at para 26; *TIBMS (Pty) Ltd t/a Halo Underground Lighting Systems v Knight and Another* (2017) 38 ILJ 2721 (LAC) at para 29; *SA Football Association v Mangope* (2013) 34 ILJ 311 (LAC) at para 12.

effected on 4 February 2026. In this letter, the applicant's attorneys also demanded an independent investigation into the matter. The Council resolved on 16 February 2026 that the applicant be afforded an extension to 20 February 2026 to file his written representations, and the applicant's attorneys were informed accordingly.

- [12] However, and on 19 February 2026, the applicant's attorneys again wrote to the first respondent, acknowledging that the applicant was required to submit his written representations by 20 February 2026. His attorneys once again sought a further indulgence to file the representations, now citing the applicant's unavailability due to ill health as cause for seeking the extension. The first respondent was not inclined to grant a further extension. In the end, there is no evidence of any written representations being filed by the applicant as to why he should not be suspended.
- [13] On 27 February 2026, the Council then resolved that, having regard to the seriousness of the allegations against the applicant, he be finally suspended with immediate effect. The Council further resolved on 27 February 2026 that based on the outcome of an investigation had been conducted in the interim, disciplinary action be instituted against the applicant in relation to the assault which took place on 29 January 2026. And finally, the Council resolved to appoint an independent investigator to conduct a final investigation.
- [14] Pursuant to the aforesaid resolution of the Council on 27 February 2026, the applicant was then informed in writing on 3 March 2026 that he had finally been placed on suspension, and what the reasons for the suspension was. The conditions applicable to the suspension was also stipulated. No challenge or response was forthcoming from applicant's attorneys about this, at the time.
- [15] The current attorneys of record of the first respondent were appointed on 9 March 2026 to conduct the investigation and to facilitate the conducting of the disciplinary proceedings. The attorneys so appointed sent a letter to the applicant's attorneys on 30 March 2026, informing the applicant's attorneys that they had been appointed to conduct an independent investigation, and the applicant was invited to attend an interview as part of the investigation. The applicant failed to answer this request for an interview. As a result, the

applicant was informed on 7 April 2026 that the investigation will be completed without his input.

- [16] The outcome of the investigation was submitted to the Council on 8 April 2026 by way of a written investigation report. Subsequent to receiving the investigation report, the Council considered the report and finally resolved on 14 April 2026 to institute disciplinary action against the applicant on the basis as recommended in the investigation report. The fourth respondent was appointed as the initiator of the disciplinary hearing.
- [17] On 11 May 2026, the fourth respondent sent an e-mail to the applicant's attorneys, enquiring whether such attorneys were authorised to accept service of the disciplinary hearing notice and charge sheet on behalf of the applicant, and whether the applicant would be amenable to the enquiry being conducted in person at the first respondent's offices or by way of Microsoft Teams. The applicant's attorneys subsequently confirmed that the disciplinary hearing notice and charge sheet could be served on them, on behalf of the applicant.
- [18] The disciplinary hearing notification and charge sheet was then served on the applicant's attorneys on 14 May 2026. The date for the disciplinary hearing was set as 22 May 2026. The applicant's attorneys on 14 May 2026 confirmed receipt of the same. However, and in confirming receipt of the disciplinary hearing notification and charge sheet, the applicant's attorneys indicate that neither they nor the applicant would be available to commence with the enquiry on 22 May 2026, as the applicant was required to appear in the Caledon Magistrates Court. It was requested that an alternative date be provided.
- [19] Due to the applicant's unavailability, the disciplinary hearing was rescheduled to commence on 25 May 2026. The fourth respondent made telephonic contact with the applicant's attorney to confirm the date. In this conversation, the fourth respondent and the applicant's attorney agreed that the enquiry would commence on 25 May 2026 and that only the plea and any preliminary issues would be addressed on that date.
- [20] Despite this agreed date of 25 May 2026, and despite the agreement as to what would transpire on that day with regard to the conducting of the hearing,

the applicant's attorneys on 22 May 2026 sent a letter to the fourth respondent, indicating that the applicant was not available to attend the hearing on 25 May 2026 due to his medical condition. A medical report was provided to substantiate this contention.

- [21] But of particular relevance to the current matter, the letter of 22 May 2026 by the applicant's attorneys now for the first time raises a number of preliminary concerns. The first concern was that the applicant was not furnished with the investigation report prior to the institution of the disciplinary hearing, as well as the Council resolutions authorising the disciplinary proceedings. The second concern was that the applicant's suspension was unlawful because of the expiry of the time period under Regulation 6(6)(a) of the Regulations. It was stated that as a result of these alleged irregularities, the disciplinary enquiry could not proceed. In fact, it was even said that because the suspension was unlawful, and disciplinary proceedings flowing from it would also be unlawful.
- [22] In the letter of 22 May 2026, the applicant's attorneys stated that the applicant would launch an urgent application in which he will seek the review and setting aside of the precautionary suspension, alternatively declaring that the suspension has lapsed. He further indicated that relief would be sought to interdict and restrain the first respondent from proceeding with the disciplinary process against him pending the determination of that review application. The letter set a deadline of 17h00 on 25 May 2026 for the first respondent to answer and provide an undertaking that the disciplinary hearing would not proceed pending the determination of the contemplated urgent application. Ironically, this deadline is after the disciplinary hearing was set to commence.
- [23] The fourth respondent answered on the same day (22 May 2026). It was made clear that the hearing date of 25 May 2026 had been agreed to with the applicant's attorney. It was further stated that the disciplinary enquiry would proceed on 25 May 2026 at 09h00, as agreed and scheduled.
- [24] The disciplinary enquiry then indeed convened on 25 May 2026 at 09h00, before the fifth respondent as independent chairperson. The applicant failed to attend the enquiry. The fifth respondent as chairperson then convened the enquiry and took charge of it. He noted the medical report submitted on behalf of the applicant, and decided to postpone the disciplinary hearing *sine die* until

the period of incapacity of the applicant as indicated in the medical report had run its course, following which an alternative date would then be arranged with the applicant.

[25] Following the convening and then postponement of the disciplinary hearing, the fourth respondent addressed a letter to the applicant's attorneys that same day (25 May 2026), in which it was stated that the hearing had convened, and a recording was also provided of what transpired at the hearing. It was noted that due to the applicant's medical condition, it had been decided to postpone the disciplinary hearing *sine die*, with a mutually convenient date to be arranged after 15 June 2026, being the date until which the applicant was booked off. The letter also refuted all the allegations made in the letter from the applicant's attorneys on 22 May 2026.

[26] The current urgent application then followed on 4 June 2026, more than a week later.

Urgency

[27] I intend to first deal with the issue of urgency, as the first respondent has contended that the matter is not urgent. Urgent applications are governed by Rule 38 of the Labour Court Rules, being the successor to the erstwhile Rule 8. The Court in *Jiba v Minister: Department of Justice and Constitutional Development and Others*¹¹ applied Rule 8 as follows:

'Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self created when seeking a deviation from the rules.'

These same considerations, in my view, equally apply to Rule 38.

[28] When considering whether urgency has been established, an important consideration, which is particular application *in casu*, would be whether an

¹¹ (2010) 31 ILJ 112 (LC) at para 18.

applicant would not be afforded substantial redress in due course, and the applicant must provide proper reasons in support of a case that this would not be possible.¹² As succinctly described by the Court in *Maqubela v SA Graduates Development Association and Others*¹³:

‘Whether a matter is urgent involves two considerations. The first is whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. In all instances where urgency is alleged, the applicant must satisfy the court that indeed the application is urgent. Thus, it is required of the applicant adequately to set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary. ...’

[29] Where an applicant in effect seeks final relief, the Court must be even more circumspect when deciding whether or not urgency has been established.¹⁴ In *Tshwaedi v Greater Louis Trichardt Transitional Council*¹⁵ the Court said:

‘... An applicant who comes to court on an urgent basis for final relief bears an even greater burden to establish his right to urgent relief than an applicant who comes to court for interim relief.’

[30] The Court must also consider the interests of the respondent party, and in particular, the prejudice the respondent may suffer if the matter is urgently disposed of. In *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another*¹⁶ the Court held as follows:

‘But it is not just about the applicant. Another consideration is possible prejudice the respondent might suffer as a result of the abridgement of the prescribed time periods and an early hearing.’

¹² *Mojaki v Ngaka Modiri Molema District Municipality and Others* (2015) 36 ILJ 1331 (LC) at para 17; *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2012] JOL 28244 (GSJ) at para 6.

¹³ (2014) 35 ILJ 2479 (LC) at para 32. See also *Transport and Allied Workers Union of SA v Algoa Bus Co (Pty) Ltd and Others* (2015) 36 ILJ 2148 (LC) at para 11.

¹⁴ [2002] JOL 9452 (LC) at para 8.

¹⁵ [2000] 4 BLLR 469 (LC) at para 11.

¹⁶ (2016) 37 ILJ 2840 (LC) at para 26. See also *IL & B Marcow Caterers (Pty) Ltd v Gretermans SA Ltd and Another* 1981(4) SA 108 (C) at 113D-114C.

- [31] Finally, urgency must not be self-created by an applicant, as a consequence of the applicant having not brought the application at the first available opportunity.¹⁷ As the Court said in *Northam Platinum supra*¹⁸:

‘... the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to Court immediately, or risk failing on urgency. ...’

- [32] When the above considerations with regard to urgency are then applied to the applicant’s application *in casu*, I am compelled to conclude that there simply exists no basis on which to urgently intervene in this matter. The first respondent’s criticism of the conduct of the applicant where it came to the issue of urgency is fully substantiated by the facts, which I will turn to next.

- [33] As is clear from the introduction to this judgment, the applicant takes issue both with his precautionary suspension, and the disciplinary proceedings against him. I will start with the issue of his suspension. He was informed as far back as 3 March 2026 that he was finally placed on suspension. If he believed that such suspension was somehow unlawful, that was the point at which he should have instated an urgent application. To then wait until 4 June 2026 to bring it, which is some three months later, without an iota of an explanation why it was not brought at the time, is entirely destructive of any urgency. But that is not the end of it. The applicant also contends that his suspension lapsed on 4 May 2026 by virtue of the time limit in the Regulations, but once again he does nothing at that point to challenge it, and does not explain why he did not do so. There simply exists no justified or feasible explanation why the applicant would not have acted far earlier. In my view, the logical inference to draw from this is that the applicant in reality had no issue with his suspension, but is now seeking to challenge it because he wants to use it as some basis to scupper his disciplinary hearing which followed months later. If this is not self-created urgency, I do not know what would be.

¹⁷ See *Golding v HCI Managerial Services (Pty) Ltd and others* [2015] 1 BLLR 91 (LC) at para 24; *National Union of Mineworkers v Lonmin Platinum Comprising Eastern Platinum Ltd and Western Platinum Ltd and Another* (2014) 35 ILJ 486 (LC) at para 50.

¹⁸ *Id* at para 26. See also *Sihlali and Others v City of Tshwane Metropolitan Municipality and Another* (2017) 38 ILJ 1692 (LC) at para 18.

- [34] As to the disciplinary proceedings, it was formally instituted as far back as 14 May 2026. If the institution of those proceedings were somehow unlawful, that is once again the point at which urgent intervention (assuming it is even competent) needed to have been sought. But yet again, the applicant's conduct is entirely inconsistent with a litigant seeking urgent intervention because of being subjected to unlawful proceedings. The applicant in fact asks for a postponement of the hearing to a suitable date because he is not available, and then agrees to a date. When the shoe came to pinch because the hearing must now happen, then the applicant only on 25 May 2026 complains about alleged irregularities and threatens an immediate urgent application. But that urgent application only follows more than a week later, without any explanation for this further delay. Once again, this is an instance of unexplained procrastination and self-created urgency.
- [35] The manner in which the applicant dealt with urgency in his founding affidavit is worthy of some criticism. He relies on what he simply calls a 'continuous course of conduct', despite recognising when the relevant eventualities that could give to an application actually occurred, as I have dealt with earlier. He says that he became aware of 'immanent prejudice' when he received the charge sheet on 14 May 2026. That being so, I find it quite inexplicable that the applicant's attorney would not immediately object to the hearing, but instead ask for a postponement because the applicant was not available, and then agree with the fourth respondent for the hearing to take place on 25 May 2026. The applicant does not deal with the actual delays that occurred at all. Instead, he basically says he should not be subjected to unlawful proceedings, he is being subjected to psychiatric harm, and he will be deprived of his employment. None of this establishes urgency.
- [36] In fact, the applicant approaches this Court almost on the basis of an entitlement. It seems to me that the approach adopted by the applicant is that because he relies on alleged unlawful conduct on the part of the first respondent, it effectively gives him some right to urgent interim relief. Such an approach is patently wrong. No matter what the underlying cause of action may be, where an urgent application is brought, the prescribed considerations

of urgency must always be satisfied. If not, this Court could be turned into a free for all by any litigant who believes it has been unlawfully treated.

[37] I am satisfied that the applicant can obtain proper and full redress in the ordinary course. As matters stand, he is not dismissed. But if he is later dismissed, he can pursue an unfair dismissal dispute to the bargaining council, and if successful, he could obtain full redress in the form of fully retrospective reinstatement as consequential relief. If he is not dismissed and receives a lesser sanction, that is open to challenge to the bargaining council as well, under the unfair labour practice jurisdiction provided for in the LRA, and yet again, he can obtain full redress. The same applies to his complaints about his suspension, in respect of which he can also obtain full redress under the auspices of pursuing an unfair labour practice dispute to the bargaining council.

[38] As part of any case of urgency, the interests of the first respondent must also be considered. It has been dragged to Court on the flimsiest of grounds and on an urgent basis to effectively stop it from pursuing disciplinary proceedings against the applicant it is perfectly entitled to pursue. Added to this, it is done in circumstances where the proceedings have been conducted, so far, with the full participation of the applicant, without him expressing reservations. And then, the first respondent is given seven days to answer what is in reality final relief sought. I believe this kind of conduct constitutes an improper interference with the first respondent's rights to conduct its operations free from undue hindrance.

[39] All said, the applicant has dismally failed to make out a case of urgency. The requirements of Rule 38 have thus not been satisfied. In sum, there are several periods of delay that are entirely unexplained, and the approach adopted by the applicant is nothing short of a clear case of self-created urgency. There is a complete absence of any exceptional circumstances justifying urgent intervention, and no such case has even been made out by the applicant. And finally, the applicant is able to obtain full redress in the ordinary course. For these reasons alone, the application falls to be struck

from the roll or be dismissed.¹⁹ The Court in *February v Envirochem CC and Another*²⁰ accepted that urgency was not established, but the Court nonetheless proceeded to dismiss the matter. For the reasons to follow, I believe that this is a similar situation where the matter must be finally disposed of and dismissed and not just struck from the roll. This is especially so because it involves, primarily, an issue of jurisdiction.

Jurisdiction

[40] In its answering affidavit, the first respondent has specifically challenged the jurisdiction of this Court to grant the applicant the relief sought in this application. As a result, I am from the outset compelled to decide the issue of jurisdiction. When establishing whether jurisdiction to decide a particular matter exists, this must be determined on the basis of the case as pleaded by the applicant, which pleaded case in motion proceedings is determined by reference to the notice of motion and founding affidavit.²¹

[41] The applicant's founding affidavit at least makes it clear on basis the application has been brought. The applicant relies on unlawfulness in several respects. First, he contends his precautionary suspension is unlawful, because the first respondent has breached the Regulations and / or his suspension has lapsed by virtue of the Regulations. He then pleads the disciplinary proceeding against him is equally unlawful, because of the unlawful suspension that would directly impact on it, the first respondent's failure to provide him with the investigation report and the Council's resolutions authorising the disciplinary action against him, and his medical incapacity. He seems to then change tack, and pleads that the first respondent violated '*my right to procedural fairness, my right to fair labour practices guaranteed by section 23(1) of the Constitution, and the principle of legality*'. And lastly, to put

¹⁹ See *Radebe and Others v Aurum Institute* (2024) 45 ILJ 876 (LC) at paras 26 – 28.

²⁰ (2013) 34 ILJ 135 (LC) at para 17. See also *National Union of Metalworkers of SA and Others v Bumatech Calcium Aluminates* (2016) 37 ILJ 2862 (LC) at para 33; *Bethape v Public Servants Association and Others* [2016] ZALCJHB 573 (9 September 2016) at para 53; *Rail Refurb CC v South African National Road Agency* 2023 JDR 3545 (GP) at para 22; *National Association of SA Workers on Behalf of Members v Kings Hire CC* (2020) 41 ILJ 685 (LC) at para 32.

²¹ See *Gcaba v Minister for Safety and Security and Others* (2010) 31 ILJ 296 (CC) at para 75; *Mbatha v University of Zululand* (2014) 35 ILJ 349 (CC) at para 157; *Ekurhuleni Metropolitan Municipality v SA Municipal Workers Union on behalf of Members* (2015) 36 ILJ 624 (LAC) at para 21; *Moodley v Department of National Treasury and Others* (2017) 38 ILJ 1098 (LAC) at para 37; *Mohlomi v Ventersdorp/Tlokwe Municipality and Another* (2018) 39 ILJ 1096 (LC) at para 42; *Public Servants Association on behalf of Members v Minister of Health and Others* (2019) 40 ILJ 193 (LC) at para 15.

matters beyond doubt, and specifically under the heading of 'jurisdiction', the applicant pleads:

'This Honourable Court has jurisdiction to entertain this application by virtue of section 157(1) read with sections 158(1)(a)(ii), 158(1)(a)(iii) and 158(1)(h) of the Labour Relations Act ...'

[42] When the notice of motion is considered, which is already dealt with earlier in this judgment, the current interim relief sought is squarely based on the grounds for final relief under part B of the application. In this respect, the applicant contends his suspension is '*unlawful and invalid*'. He also contends that the decisions by the first respondent to suspend and discipline him are reviewable based on section 158(1)(h) of the LRA, which obviously contemplates a legality review.

[43] The aforesaid being the case as pleaded, the first issue for consideration is whether this Court has jurisdiction to entertain the applicant's application and grant him the relief sought. In *Du Plessis v Public Protector and Others*²² the Court said:

'Jurisdiction cannot be assumed or implied. It either exists or it does not. Jurisdiction is the power of the Court to decide a matter that has been brought before it. If the Court does not have the power to do so, it cannot consider the matter, no matter what the merits or equities may be ...'

[44] In *Gcaba v Minister for Safety and Security and Others*²³, the Court described the concept of 'jurisdiction' as follows: '*... The specific term 'jurisdiction', which has resulted in some controversy, has been defined as the 'power or competence of a court to hear and determine an issue between parties ...*'. And in *Makhanya v University of Zululand*²⁴, the Court also dealt with the meaning of jurisdiction as follows: '*.... Judicial power is the power both to uphold and to dismiss a claim. It is sometimes overlooked that the dismissal of a claim is as much an exercise of judicial power as is the upholding of a claim.*

²² (2020) 41 ILJ 919 (LC) at para 20. See also *Makhanya v University of Zululand* (2009) 30 ILJ 1539 (SCA) at para 23; *SA Maritime Safety Authority v McKenzie* (2010) 31 ILJ 529 (SCA) at para 8.

²³ (2010) 31 ILJ 296 (CC) at para 74.

²⁴ (2009) 30 ILJ 1539 (SCA) at para 23.

A court that has no power to consider a claim has no power to do either (other than to dismiss the claim for want of jurisdiction).'

- [45] As set out above, it is clear that the applicant has pleaded three sources that he says convey jurisdiction on this Court. I will start with his reliance on section 157(1) of the LRA. The section reads:

‘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. ...’

- [46] In terms of section 157(1), the jurisdiction of the Labour Court is specifically circumscribed and determined by statute, being the LRA itself. But does this include a general jurisdiction allowing this Court to intervene, *in medias res* on an urgent basis, where it comes to any conduct of an employer, which includes the conducting of discipline, suspension and the like, in the event that it is pleaded that such conduct is unfair or unlawful. In this context, it is true that as far back as 2011, the LAC in *Booyesen v Minister of Safety and Security and others*²⁵ propagated a general approach that the Labour Court would have general jurisdiction to intervene to restrain any alleged illegalities, irregularities or unfairness in incomplete workplace proceedings, provided that exceptional circumstances exist that would justify such intervention. The Court in that case had said:²⁶ ‘... *To answer the question that was before the court a quo, the Labour Court has jurisdiction to interdict any unfair conduct including disciplinary action. However such an intervention should be exercised in exceptional cases ...*’.

- [47] Following *Booyesen*, the general approach in the Labour Court was to assume jurisdiction to intervene in disciplinary proceedings that were not complete, however the exercise of this jurisdiction was tempered by the requirement that the applicant had to show the existence of exceptional circumstances justifying such intervention. More often than not, because of the imperative that the dispute resolution machinery of the LRA rather be applied, showing

²⁵ (2011) 32 ILJ 112 (LAC).

²⁶ *Id* at para 54.

exceptional circumstances was a difficult hurdle to clear.²⁷ But this approach did not detract from the position that the Labour Court was considered to have general jurisdiction to intervene.

[48] Things changed after the judgment of the Constitutional Court in *Steenkamp and Others v Edcon Ltd (National Union of Metalworkers of SA intervening)*²⁸, where the Court had the opportunity to consider if the Labour Court had jurisdiction to determine whether a dismissal was unlawful, as opposed to being unfair. After referring to the fact that the LRA created special rights and obligations that do not exist at common law, which included the right of an employee not to be unfairly dismissed, but then also created principles applicable to such rights and special processes and fora for the enforcement of those rights,²⁹ the Court, with specific reference to section 185 of the LRA,³⁰ concluded that:³¹ *'I conclude that invalid dismissals and a declaratory order that a dismissal is invalid and of no force and effect fall outside the contemplation of the LRA. Such an order cannot be granted in a case based on the breach of an obligation under the LRA concerning a dismissal.'*

[49] Following the judgment in *Edcon*, there was a change in approach in the Labour Court where it came to urgent intervention in incomplete internal disciplinary proceedings. The Labour Court accepted that where the case of the employee was based on allegations of unlawfulness or illegality, the Labour Court, based on what was said in *Edcon* about unlawful dismissals, did not have the jurisdiction to so intervene. Several authorities so illustrate. In *Democratic Municipal and Allied Workers Union of SA and Others v City of Johannesburg*³² it was said: *'... The effect of this judgment is that when an applicant alleges that a dismissal is unlawful (as opposed to unfair), that applicant has no remedy under the LRA and this court has no jurisdiction to make any determination of unlawfulness. If a remedy is sought under the LRA,*

²⁷ See for example *Mmatli and Others v Department of Infrastructure Development (Gauteng Province)*

(2015) 36 ILJ 464 (LC) at para 13; *Mere v Tswaing Local Municipality and Another* (2015) 36 ILJ 3094 (LC) at paras 17 – 18; *Hlabangwane v MEC for Public Works, Roads and Transport, Mpumalanga Provincial Government and Others* (2012) 33 ILJ 1195 (LC) at paras 7 – 9.

²⁸ (2016) 37 ILJ 564 (CC) at para 106.

²⁹ *Id* at para 105.

³⁰ Section 185 reads: *'Every employee has the right not to be — (a) unfairly dismissed; and (b) subjected to unfair labour practice.'*

³¹ *Id* at para 136. See also para 106 of the judgment.

³² (2020) 41 ILJ 912 (LC) at para 7.

the applicant must categorise the alleged unlawfulness as unfairness And in *Neumann v Western Cape Education Department and Others*³³ the Court held: ‘... Since the decision of the Constitutional Court ... there is now serious doubt whether a dismissal or other forms of employer conduct or action can be challenged under the LRA on the basis of unlawfulness’. Similar conclusions were arrived at in *National Education Health and Allied Workers Union and others v University of South Africa and another*³⁴ and *Shezi v SA Police Service and Others*³⁵.

- [50] Nonetheless, the *ratio* in *Booyesen* remained, as the Court in *Edcon* did not specifically or pertinently deal with the jurisdiction of the Labour Court to intervene *in medias res* in incomplete disciplinary proceedings. Clarification then came in the form of the judgment of the LAC in *Cibane and Another v Premier of Province of Kwazulu-Natal*³⁶. In that judgment, the Court pertinently revisited the *Booyesen* approach, with due regard to what was decided in *Edcon*. In *Cibane*, the employee parties sought declaratory orders to the effect that there was an unreasonable delay in bringing the disciplinary charges against them and that the employer had waived its rights to pursue disciplinary proceedings, with the result that the disciplinary charges fell to be quashed.³⁷ In addition, these employees has applied to review and set aside the internal chairperson’s ruling on the same issues. In deciding the aforesaid case raised, and after specifically referring the *dicta* in *Edcon* quoted above, the Court in *Cibane* first said:³⁸

‘It is clear from this passage that outside of the scope of any statutory provision that specifically confers jurisdiction on the Court, the Labour Court has no jurisdiction, in any general sense, to make any determination of the unlawfulness of employer conduct.’

- [51] The aforesaid conclusion in *Cibane* is in my view clearly in line with how the jurisprudence with regard to jurisdiction in the case of contentions of unlawfulness and illegality had been developing in the Labour Court since

³³ 2021) 42 ILJ 561 (LC) at para 13.

³⁴ (2022) 43 ILJ 2351 (LC) at para 15.

³⁵ (2021) 42 ILJ 184 (LC) at para 12.

³⁶ (2025) 46 ILJ 2587 (LAC).

³⁷ See para 28 of the judgment.

³⁸ Id at para 24.

Edcon. But that is not where the Court in *Cibane* stopped. The Court specifically went further and held:³⁹

‘In the absence of any statutory provision conferring jurisdiction on the Labour Court both in respect of employer conduct alleged to be unlawful and in employment-related matters generally, there can thus be no general rule, as the judgment in *Booyesen* might be construed, to the effect that the Labour Court has jurisdiction to intervene *in medias res* to restrain any alleged illegalities, irregularities or unfairness in incomplete disciplinary proceedings.’
(emphasis added)

The Court then concluded:⁴⁰

‘In summary: to the extent that *Booyesen* has been interpreted to establish a general rule, qualified only by exceptionality, that the Labour Court has jurisdiction to intervene in uncompleted disciplinary proceedings, this is not an interpretation that can be sustained by section 157(1) of the LRA.’

[52] In my view, *Cibane* has now clarifies the issue of jurisdiction of the Labour Court under section 157(1) where it comes to intervening *in medias res* in internal disciplinary proceedings in an employer that are not completed. The Labour Court does not have any general jurisdiction to intervene and / or adjudicate any alleged unfairness, unlawfulness, illegalities or irregularities pertaining to any conduct or failure of any party to the employment relationship where it comes to incomplete internal disciplinary proceedings.⁴¹ What the applicant in any litigation proceedings, where intervention from the Labour Court is sought, must do, is to substantiate the jurisdiction of the Labour Court by specifically matching the cause of action or issue in dispute, to a specific provision as contained either in the LRA itself or in any other related employment law, such as for example the Employment Equity Act (EEA)⁴² or

³⁹ Id at para 27.

⁴⁰ Id at para 32.

⁴¹ See also *Baloyi v Public Protector and Others* (2021) 42 ILJ 961 (CC) at para 24, where it was held: ‘... Crucially, s 157(1) does not afford the Labour Court general jurisdiction in employment matters ...’ 29 Section 157(1) of the LRA does not refer to specific sections of that Act as sources of the Labour Court’s exclusive jurisdiction. It only provides that they are to be found elsewhere in the Act. In some instances, their location is clear: for example, ss 68(1), 77(2), 145 and 191. In others, it is left to the courts to determine whether a matter is one that arises in terms of the LRA and is, in terms of that Act, or another law, to be determined solely by the Labour Court ...’.

⁴² Act 55 of 1998 (as amended).

Basic Conditions of Employment Act (BCEA)⁴³. The applicant must also specifically indicate on what provision in any of these items of legislation the applicant relies.⁴⁴ If that cannot be done, or is not done, then there is no jurisdiction.

- [53] The above is clearly destructive of the applicant's reliance on section 157(1) as source of jurisdiction. *In casu*, the applicant has specifically relied on employer conduct that is alleged to be unlawful in seeking intervention from this Court in the disciplinary proceedings against him, that are, despite having commenced, is still incomplete. The applicant has made no reference to any provision under the LRA that may find application here. It does not matter what the basis of the alleged unlawfulness may be. This Court simply has no jurisdiction to intervene, *in medias res*, on the basis of unlawfulness. The applicant therefore cannot rely on section 157(1) as basis to confer jurisdiction on this Court to grant him the relief sought.
- [54] It is true that the applicant has pleaded reliance on section 23(1) of the Constitution. But this cannot assist him, by virtue of the application of the principle of subsidiarity, which makes direct reliance on the Constitution in the case of disputes under the LRA impermissible. The concept of the prohibition of unfair conduct in the workplace is regulated by the LRA, pursuant to the Constitutional imperative in section 23, and the LRA gives actual effect to this right.⁴⁵ It follows that the applicant cannot rely on the Constitution directly to assert his right to procedural fairness. He is bound to find his salvation in the LRA. This is made clear by way of the following dictum in *My Vote Counts NPC v Speaker of the National Assembly and Others*⁴⁶:

⁴³ Act 75 of 1997 (as amended).

⁴⁴ In *SA Medical Association Trade Union on Behalf of Rikhotso v Member of the Executive Council, Department of Health, Limpopo Province and Others* (2023) 44 ILJ 1779 (LC) at para 6, the Court said: '... an applicant must necessarily identify the statutory provision that confers jurisdiction on the court ...'. See also *Shezi v SA Police Service and Others* (2021) 42 ILJ 184 (LC) at para 10.

⁴⁵ In *SA Airways (SOC) Ltd (In Business Rescue) and Others v National Union of Metalworkers of SA on Behalf of Members and Others* (2020) 41 ILJ 2113 (LAC) at para 38 it was said: '... The constitutional right to fair labour practices finds legislative expression in the LRA. Its scope covers the interests of both employers and employees ...'. See also *Public Servants Association on behalf of Ubogu v Head of the Department of Health, Gauteng and Others* (2018) 39 ILJ 337 (CC) at para 42; *Safcor Freight (Pty) Ltd t/a Safcor Panalpina v SA Freight and Dock Workers Union* (2013) 34 ILJ 335 (LAC) at para 18.

⁴⁶ 2016 (1) SA 132 (CC) at para 160. See also *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another* 2022 (4) SA 1 (CC) at para 102; *SA National Defence Union v Minister of Defence and Others* (2007) 28 ILJ 1909 (CC) at paras 50 – 51.

'First, allowing a litigant to rely directly on a fundamental right contained in the Constitution, rather than on legislation enacted in terms of the Constitution to give effect to that right, would defeat the purpose of the Constitution in requiring the right to be given effect by means of national legislation. Second, comity between the arms of government enjoins courts to respect the efforts of other arms of government in fulfilling constitutional rights. Third, allowing reliance directly on constitutional rights, in defiance of their statutory embodiment, would encourage the development of two parallel systems of law ...'

[55] So, once the applicant's right to fair hearing is a right found in and regulated by the LRA, which it clearly is, then the applicant faces another insurmountable obstacle. This obstacle is created by virtue of the reality that the LRA does not bestow rights in a vacuum. Where the LRA bestows a right, it equally prescribes a specific process that must be followed to give effect to such right, or to enforce that right.⁴⁷ In this context, a direct approach to this Court where the case relates to an unfair dismissal for misconduct, or contemplated unfair dismissal for misconduct, is simply not competent. As pertinently said in *Edcon supra*:⁴⁸

'The scheme of the LRA is that, if it creates a right, it also creates processes or procedures for the enforcement of that right, a dispute-resolution procedure for disputes about the infringement of that right, specifies the fora in which that right must be enforced and specifies the remedies available for a breach of that right.'

[56] This brings me to section 158(1)(a) of the LRA. The applicant has pleaded that this Court has jurisdiction to afford him the relief sought by virtue of section 158(1)(a)(ii) and (iii). But the applicant's reliance on these provisions to confer jurisdiction on this Court is misplaced. It has been recognised that there are in

⁴⁷ As held in *Chirwa v Transnet Ltd and Others* (2008) 29 ILJ 73 (CC) at para 41: '... It is my view that the existence of a purpose-built employment framework in the form of the LRA and associated legislation infers that labour processes and forums should take precedence over non-purpose-built processes and forums in situations involving employment related matters. ...'. Also, in *Gcaba (supra)* at para 56 it was similarly said: '... Once a set of carefully crafted rules and structures has been created for the effective and speedy resolution of disputes and protection of rights in a particular area of law, it is preferable to use that particular system ...'.

⁴⁸ *Id* at para 130. See also *Chirwa (supra)* at para 68; *Gcaba (supra)* at para 69; *Hendricks v Overstrand Municipality and Another* (2015) 36 ILJ 163 (LAC) at paras 12 and 27; *SA Social Security Agency v Hartley and Others* (2023) 44 ILJ 1334 (LC) at para 3; *Mohlomi v Ventersdorp/Tlokwe Municipality and Another* (2018) 39 ILJ 1096 (LC) at para 40; *O'Connor v Department of Education, Eastern Cape and Others* (2024) 45 ILJ 1041 (LC) at para 44.

essence two categories of powers envisaged by section 158(1). The first category is those powers that can only be exercised if it is first found that the Labour Court already has jurisdiction on another basis. The second category is what can be described as jurisdiction conferring powers, meaning that the power itself establishes jurisdiction. This was made clear in *South African Municipal Workers Union and Others v Mokgatla and Others*⁴⁹, as follows: ‘... While s 157(1) and (2) relate, broadly, to the jurisdiction of the Labour Court, s 158(1) both lists specific remedial powers and provides substantive jurisdictional bases of that court. ...’ The same was said in *Du Plessis supra*, namely:⁵⁰ ‘... This then only leaves s 158. Even though this provision on face value appears to deal with powers that are conveyed to the Labour Court only once jurisdiction is first established to exist, this section must be read in conjunction with s 157 as a source of jurisdiction as well ...’.

- [57] The nature of the powers of the Labour Court under section 158(1) was pertinently dealt with in *Merafong City Local Municipality v SA Municipal Workers Union and Another*⁵¹. In that judgment, the Court accepted that section 157 is the primary provision in the LRA which deals with the Labour Court's jurisdiction,⁵² however the Court added that section 157(1): ‘... directs the reader of that section to the sources of the Labour Court's exclusive jurisdiction, albeit in very vague and general terms ...’. Because of this, the Court expressed the view that:⁵³ ‘... As a result, the interpreter is saddled with the difficult task of having, for example, to distinguish purely jurisdictional provisions from general empowerment provisions. This difficulty is exacerbated by sections which purport to contain mere empowerment provisions, whereas they, on proper construction, also actually contain provisions which are sources of the Labour Court's jurisdiction’. That all being said, the Court then concluded:⁵⁴

‘Section 158 is such a section. Its introductory wording specifically states that it deals with the powers of the Labour Court. Because the introductory words of the previous section, that is s 157, state that it deals with the jurisdiction of

⁴⁹ 2016 (5) SA 89 (SCA) at para 11.

⁵⁰ Id at para 24.

⁵¹ (2016) 37 ILJ 1857 (LAC).

⁵² Id at para 28.

⁵³ Id at para 30.

⁵⁴ Id at para 31.

the Labour Court, the immediate expectation is that s 158 is not a source of jurisdiction, but merely contains provisions defining the powers of the Labour Court in respect of matters, which, in terms of some other provision in that Act, fall under the jurisdiction of the Labour Court. However, a close reading of the entire s 158 dispels that initial notion. It does deal with powers (post jurisdiction), but also with powers which cannot but be construed and understood as sources of jurisdiction.'

- [58] The Court in *Merafong supra* provided examples of provisions found in section 158(1) that conferred jurisdiction, as opposed to those that could only be exercised if jurisdiction was first established elsewhere under the LRA. In this regard, the Court said:⁵⁵ '*Section 158(1)(a) is clearly an example of the powers the Labour Court may exercise in respect of a matter falling within its jurisdiction, and it does not purport to grant the Labour Court jurisdiction, in the sense of the power to hear and determine the matter in the first place. On the other hand, s 158(1)(i) clearly bestows on the Labour Court jurisdiction in the latter sense*'. The Court also referred to section 158(1)(h) as being a source of conferring jurisdiction and then also empowering the Labour Court to hear and determine applications to review any decisions taken or acts performed by the State in its capacity as employer.⁵⁶
- [59] It follows that each individual provision in section 158(1) must be carefully scrutinised in order to ascertain whether the provision confers jurisdiction on the Labour Court in addition to providing it with powers to exercise, or is only a provision providing the Labour Court with powers to exercise once it already has jurisdiction established by other means in the first place. In this regard, the Court in *Merafong supra* has clearly said that the powers in terms of section 158(1)(a) do not serve to confer jurisdiction, and can only be exercised if jurisdiction exists in the first place. It must follow that the reliance by the applicant on section 158(1)(a)(ii) and (iii) as a source of conferring jurisdiction on this Court is ill-founded. These are not jurisdiction conferring provisions. These are actually provisions providing powers to the Labour Court, only once jurisdiction is conferred from another source. Therefore, it cannot be said that the Labour Court has jurisdiction on this basis.

⁵⁵ Id at para 33.

⁵⁶ Id at para 34.

[60] This leaves only section 158(1)(h), which reads: ‘*The Labour Court may ... review any decision taken or any act performed by the State in its capacity as employer, on such grounds as are permissible in law*’. It is correct, as said in *Merafong supra*, that this is indeed a jurisdiction conveying provision.⁵⁷ Accordingly, this Court would have jurisdiction to entertain the applicant’s case, based on section 158(1)(h),⁵⁸ but only within the confines of what is contemplated specifically by such section. Section 158(1)(h) can equally not serve as some source of general jurisdiction to challenge unlawful or unfair conduct. It is specifically a review jurisdiction, which must be exercised within the confines of what is required and permitted by the LRA in dealing with such kinds of challenges. As said in *Cibane supra*:⁵⁹

‘Counsel relied ultimately on s 158(1)(h) of the LRA. That section empowers the Labour Court to review any decision taken or act performed by the state in its capacity as employer, on such grounds as are permissible in law. The founding affidavit does not expressly disclose the grounds for review on which the appellants rely, save for broad averments that the second respondent’s ruling is bad in law and a finding to which no reasonable chairperson could come on the available material. Section 158(1)(h) requires an applicant to articulate a ground for review that is ‘permissible in law’. This requires the ground for review on which the applicant relies to be specifically identified and articulated. ...’

And in *Public Servants Association of SA on behalf of De Bruyn v Minister of Safety and Security and Another*⁶⁰ it was held:

‘... it does not follow that because the remedy of judicial review may still exist for public servants that the Labour Court will entertain an application to review “any act performed by the State in its capacity as employer” as a matter of course. Recourse to review proceedings, in terms of s 158(1)(h), takes place in the context of the law relating to judicial review as well as the other elements of the system of dispute resolution which the LRA has put in place and also other applicable statutes.’

⁵⁷ See also *Booyesen v Beaufort West Municipality and Another* (2026) 47 ILJ 129 (LAC) at para 22.

⁵⁸ See *Vanguard of Organised Labour (Voola) v Mahlangu and Others* [2025] JOL 69950 (LC) at para 22.

⁵⁹ *Id* at para 30.

⁶⁰ (2012) 33 ILJ 1822 (LAC) at para 28.

[61] But because section 158(1)(h) is indeed a jurisdiction conveying provision, the question whether it is competent for the applicant to utilize and rely on this provision *in casu* is not an issue of jurisdiction. It is an issue relating to the merits of the case, namely of it is a good or a bad case, and I will therefore deal with that case below, in that context.

[62] In sum, and where it comes to the applicant's reliance on section 157(1), and section 158(1)(a)(ii) and (iii), as general sources of jurisdiction of this Court to intervene in the incomplete disciplinary proceedings against him at the first respondent, it must fail for want of jurisdiction. It does not matter if it is based on unlawfulness or unfairness. The applicant comes to this Court under the LRA. And when a litigant comes to this Court under the LRA, that litigant must be mindful of what the LRA allows, which does not include direct approaches to this Court to challenge what is in essence contemplated unfair dismissal disputes. The statutory dispute resolution mechanisms under the LRA are purpose built to resolve this, which do not include this Court on a direct approach.

Analysis

[63] In part B of the notice of motion, there are several instances of direct reliance by the applicant on section 158(1)(h). In this respect, the applicant seeks to review and set aside the decisions taken by the first respondent on 27 February 2026 to suspend him, and then also the decision taken to discipline him. This clearly contemplates a review application which is exactly what is envisaged by section 158(1)(h). However, and as said in *Mohlomi v Ventersdorp/Tlokwe Municipality and Another*⁶¹:

'The enquiry whether or not to entertain such a review application however does not stop just because it may be accepted that the Labour Court in general terms has jurisdiction to do so. Simply put, the fact that the Labour Court has jurisdiction/power does not mean that the court should exercise this power. In other words, and even though the court may have jurisdiction to consider such a review under s 158(1)(h), it does not mean that it is appropriate for it to exercise such power, especially where there are other

⁶¹ (2018) 39 ILJ 1096 (LC) at para 34. See also *O'Connor (supra)* at para 42.

specifically prescribed alternative means by way of which the issue can be resolved.’

[64] The applicant’s reliance on section 158(1)(h) as basis for the relief sought by him is unsustainable on a number of grounds. First and foremost, and actually fatal to his case, is the fact that nowhere in his founding affidavit has the applicant articulated any review grounds. There can be no proposer review without articulated review grounds, as made clear in *Cibane supra*. This should really be the end of it for the applicant.

[65] Nonetheless, in *O’Connor v Department of Education, Eastern Cape and Others*⁶² the Court held that where the Court is faced with a review application under section 158(1)(h) to challenge any decision of the state in its capacity as employer, which would obviously be the decisions of the first respondent *in casu*, it is essential for the Court to consider the true nature of the decision, or, in other words, the true nature of the dispute.⁶³ In *Magoda v Director-General of Rural Development and Land Reform and Another*⁶⁴ the Court had the following to say: ‘... section 158(1)(h) establishes a jurisdictional footprint for review, with the permissible grounds of review being dependent upon the nature of the impugned decision ...’. The enquiry to determine the nature of the dispute must thus always be conducted by this Court, irrespective of how the review applicant may choose to label the dispute.⁶⁵ Once this enquiry shows that the issue in dispute is actually one that contemplates a violation of the rights of the applicant bestowed by the LRA, then the dispute must be resolved by way of the proper prescribed processes under the LRA, and this Court should decline to entertain the same under section 158(1)(h). The Court in *Leshabane v Minister of Human Settlements and Others*⁶⁶ found as follows:

⁶² (2024) 45 ILJ 1041 (LC) at para 45.

⁶³ In *Zungu v Premier, Province of Kwazulu-Natal and Another* (2017) 38 ILJ 1644 (LAC) at para 18, the Court said: ‘... Accordingly, the first exercise in any proceedings is to read, as in this case, the allegations in the affidavits, and make the determination. It is not, primarily, the form of relief sought, but rather the necessary averments to demonstrate the ‘cause of action’ that determines the ‘character’ of the dispute, although the form of the relief, if it is consonant with the cause of action, will point in the same direction’. See also *Mohlomi (supra)* at para 42; *Ngubane v Safety and Security Sectoral Bargaining Council and Others* (2022) 43 ILJ 2543 (LC) at para 24.

⁶⁴ (2017) 38 ILJ 2795 (LC) at para 5.

⁶⁵ Compare *National Union of Metalworkers of SA and Others v Bader Bop (Pty) Ltd and Another* (2003) 24 ILJ 305 (CC) at para.52; *Chirwa (supra)* at para 63; *Gcaba (supra)* at para 66; *Farre v Minister of Defence and Others* (2017) 38 ILJ 174 (LC) at para 17.

⁶⁶ (2024) 45 ILJ 833 (LC) at para 46.

‘... insofar as this court may be empowered to consider a legality challenge by an employee of the state such as the applicant in casu, such entitlement is always subject to such an employee being required, if not obliged, to instead utilise the prescribed dispute-resolution processes under the LRA, like any other employee.’

[66] Bearing in mind there are no grounds of review put forward by the applicant, not nonetheless applying a generous approach, it seems that the applicant’s challenge in this case, as applying to his reliance on section 158(1)(h), is squarely founded on his right to being fairly dealt with, and in particular his right to procedural fairness, as prescribed by the LRA. Once that is true, it must always be remembered that where the LRA affords an employee a right, it also prescribes a process that must be applied in giving effect to such a right. This was pertinently said in *Edcon supra*.

[67] It follows that it is not competent for the applicant to challenge the decisions of the first respondent to suspend him or to discipline him on review to this Court, in terms of section 158(1)(h), should the applicant wish to rely on his right to procedural fairness. Such a dispute must be pursued in terms of the ordinary dispute resolution processes under the LRA, by way of a referral to the bargaining council should the applicant be dismissed, and in such proceedings, the applicant would be able to make out a case that his right to procedural fairness was violated and he could then obtain relief. The following dictum in *Zungu v Premier of the Province of KwaZulu-Natal and Others*⁶⁷ is apposite, where the Court held as follows:

‘The Labour Appeal Court was correct in upholding the Labour Court’s decision that it did not have jurisdiction in the matter. This is because the claim by the applicant relating to the Premier’s decision not to appoint her, and the contention that this was unlawful, falls squarely within the definition of dismissal in s 186(1)(b) of the LRA. The dispute should have been referred to conciliation and ultimately to arbitration under s 191 of the LRA. Therefore, the applicant cannot bypass the dispute-resolution process envisioned in the LRA. The applicant was obliged to follow the dispute-resolution process in chapter VIII of the LRA but did not do so.’

⁶⁷ (2018) 39 ILJ 523 (CC) at para 20.

And in *Shezi supra* the Court decided that:⁶⁸

‘Where the employer conduct complained of is alleged to be unfair, the court is precluded from granting final relief since it has no jurisdiction in respect of matters that concern the procedural fairness of disciplinary proceedings. At most, the court has jurisdiction to grant interim relief. Even then, the court has held that it is not desirable that disputes about the exercise of workplace discipline be dealt with on a piecemeal basis, particularly by way of the review of every decision taken by the employer in the disciplinary process.’

[68] Therefore, and based on the true nature of the applicant’s case, this Court would not have jurisdiction to determine his review application under section 158(1)(h), as it is a case that must be pursued in terms of the ordinary dispute resolution processes under the LRA. I consider the following *dictum* in *Magoda supra* to be apposite *in casu*:⁶⁹

‘The principle emerging from Hendricks (and related case law) is that s 158(1)(h) reviews (including legality review) are only permissible where there is no other remedy available under the LRA. The principle is not defeated because an applicant relies on legality (ie lawfulness) in the review, while the LRA provides for a remedy in fairness, because it is the existence of a remedy under the LRA that renders the review impermissible. In any event, in substance the applicant’s complaint is that she was treated procedurally unfairly as a consequence of the procedural rulings. The founding affidavit is replete with references to the applicant’s right to a ‘fair’ trial or hearing having been breached. And in argument, Mr Ogunronbi placed reliance on item 4 of the Code of Good Practice: Dismissal (schedule 8 to the LRA), which deals with the procedural fairness of dismissals for misconduct. In effect, the applicant has labelled a complaint about procedural fairness as one of unlawfulness in order to mount a legality review, simply because unfairness itself is not a ground of review. The LRA provides a remedy to address this very complaint; a review under s 158(1)(h) is thus impermissible ...’

[69] But even if I am incorrect in determining the nature of the applicant’s dispute, and it is actually a review application to challenge the lawfulness of the actions of the first respondent in suspending him and / or convening the disciplinary proceedings against him, the applicant nonetheless faces another

⁶⁸ Id at para 19.

⁶⁹ Id at para 11.

insurmountable hurdle. This hurdle is evident from the following *dictum* in *Cibane supra*.⁷⁰

‘In any event, the appellants sought to review the second respondent’s ruling *in medias res*. There is a general rule against a review court entertaining a review application in these circumstances. Specifically, in a labour context, s 158(1B) expresses the general rule applicable in the Labour Court in respect of the review of rulings issued during the course of any conciliation or arbitration proceedings conducted under the LRA. The Labour Court may not review any decision or ruling until a final determination has been made, except where the court is of the opinion that it would be just and equitable to do so before the stage of final determination. The Labour Court ought to be even more circumspect in upholding appeals to exceptionality in the case of a review of rulings made in the course of internal disciplinary proceedings. To do otherwise would frustrate the LRA’s purpose of expeditious dispute resolution.’

[70] The applicant has simply not made out a proper case for intervention *in medias res*. What makes it worse is that there does not exist a separate review application in the ordinary course making out an actual and proper case for review. The review sought by the applicant is the very basis for the relief sought by the applicant in this case, almost as component thereto, adopting an approach inconsistent with a standalone review to be decided in due course. That makes the requirement of ‘*just and equitable*’ even more difficult to meet. I am not aware of any review application that was finally decided on the basis of urgency, and I simply do not believe this is a competent approach, especially considering what is involved in properly deciding a review application. As a result, the review application, brought on an urgent basis seeking final relief, is incompetent, and the applicant must be non-suited on this basis, without even considering the merits of the review application. As made clear in *Jiba supra*.⁷¹

‘Urgent applications to review and set aside preliminary rulings made during the course of a disciplinary enquiry or to challenge the validity of the institution of the proceedings ought to be discouraged. These are matters best dealt with in arbitration proceedings consequent on any allegation of unfair dismissal, and if necessary, by this court in review proceedings under s 145.’

⁷⁰ Id at para 31.

⁷¹ Id at para 17.

[71] And finally in this regard, I am unconvinced that the applicant has shown that it would be just and equitable to even consider his review application *in medias res*. The former LAC in *Zondi and Others v President, Industrial Court and Others*⁷² decided as follows:

‘There is no universal or absolute test governing the question when a court will interfere in uncompleted proceedings, but one thing is clear from the cases and that is that a court will only interfere in *medias res* in exceptional circumstances, or when there is very good reason to do so. In ordinary circumstances the time to take any proceedings on appeal or review is at the termination thereof. The reasons for this attitude are equally clear. To permit interference in uncompleted proceedings delays the continuation and completion of such proceedings. If such termination were to be readily permitted the proceedings might be interrupted at various times, and to deal with reviews or appeals piecemeal is clearly not practicable. In any event, the irregularity, even if it is allowed to stand, will not necessarily affect the result which might otherwise have followed. The tribunal concerned might for example in any event come to a conclusion favourable to the party otherwise affected by the irregularity. Even if the irregularity does in the end lead to a conclusion adverse to the person affected thereby, the time to put it right, as I have already said, is at the termination of proceedings.’

[72] The aforesaid *dictum* in *Zondi supra* has been consistently applied by this Court.⁷³ And further, in the recent judgment of the LAC in *South African Cabin Crew Association obo Members v South African Airways (Soc) Ltd and Others*⁷⁴, albeit in the context of section 158(1B)⁷⁵, the Court had the following to say:

‘... the court in *South African Broadcasting Corporation (SOC) Limited v Commission for Conciliation, Mediation and Arbitration and Others* noted that “[a] case must be truly exceptional to warrant a departure from the norm that a review is appropriate only once the dispute has been finally determined in a completed arbitration hearing. This is consistent with the statutory purpose of expeditious dispute resolution which the LRA seeks to achieve”.

⁷² (1991) 12 ILJ 1295 (LAC) at 1300D-G.

⁷³ See for example *Magoda (supra)* at paras 12 – 13; *Ngobeni v Passenger Rail Agency of SA Corporate Real Estate Solutions and Others* (2016) 37 ILJ 1704 (LC) at para 13; *Ramthlakgwe v Modimolle-Mookgopong Local Municipality and Another* (2023) 44 ILJ 2297 (LC) at paras 18 – 19.

⁷⁴ [2025] 10 BLLR 1048 (LAC) at paras 26 – 27.

⁷⁵ Section 158(1B) in effect prohibits piecemeal reviews before the conclusion of the matter, unless it can be shown that it would be ‘*just and equitable*’ to permit it.

Exceptional circumstances justifying judicial intervention in incomplete proceedings have been found to exist where such intervention was necessary to prevent illegality, to prevent grave injustice, or where justice could not otherwise be achieved. ...'

- [73] On the facts, the applicant has dismally failed to make out any of the kind of exceptional circumstances envisaged by the judgments discussed above. The applicant effectively adopts the approach that because he is subjected to the kinds of unlawfulness and unfairness he alleges the first respondent to have perpetrated against him, that *per se* constitutes exceptional circumstances justifying intervention. But this simply cannot be correct. As said in *Zondi supra*, this kind of irregularity, even if it exists, does not mean that it would lead to an unfavourable outcome for the applicant. Added to that, the applicant has not even made out a case that the conducting of a fair disciplinary hearing against him would somehow be compromised. The issue of the applicant's continued medical incapacity can be raised in the hearing itself, considering he is legally represented, as a basis for seeking postponements if needed. It would then be up to the fifth respondent as chairperson to decide this. And if the chairperson decides not to postpone the proceedings, this can be raised as a ground of unfairness in any proper proceedings under the LRA to follow. There is simply no reason for urgent intervention.
- [74] The issue relating to the suspension of the applicant is even worse. The applicant has already been suspended for some time, with no change in circumstance. So, it just cannot be said that without immediate intervention, undue prejudice will result. There is simply no basis to even suggest that challenging that suspension should not be decided in the ordinary course under the dispute resolution processes prescribed by the LRA. I will later in this judgment specifically deal with the issue of the applicant's suspension. Suffice it say, and in this regard, especially considering the applicant is still paid during his suspension, no exceptional circumstances for intervention *in medias res* exists.
- [75] In summary, the applicant's pleaded reliance on section 158(1)(h) cannot save his case. This is because insofar as he relies on unfairness, it not competent for him to pursue a case directly to this Court on review, and he is compelled to follow the ordinary dispute resolution processes as contemplated by the

LRA. Furthermore, and even if unlawfulness is the basis for review, the applicant has failed to make out a case justifying urgent intervention in this matter, *in medias res*. Insofar as the applicant relies on section 158(1)(h), his application must be dismissed.

The suspension

- [76] The final issue to be considered is the applicant's suspension case. I must say that I have difficulty in understanding why this case was now referred to this Court on an urgent basis, for what is in reality a final determination. As already touched on earlier, I can only assume this was done, at this most belated stage, because the applicant intended it to serve as one of the pillars for scuppering the disciplinary proceedings against him. Or in simple terms, the applicant is saying that because his suspension is unlawful, and the disciplinary proceedings flow from that suspension, the disciplinary proceedings are also unlawful.
- [77] I intend to dispose of the contention that there is some kind of inextricable nexus between the suspension and the disciplinary hearing which would result in an unlawful suspension rendering the disciplinary proceedings also unlawful, without further ado. This entire notion is ill-conceived and certainly has no substance. Under the Regulations, the disciplinary proceedings are entirely distinct and separate from the process relating to precautionary suspension. Suspensions are regulated in regulation 6, whilst disciplinary proceedings are regulated in regulation 10 (as read with regulation 8). The applicable time limits in these two processes are also differently regulated. Under regulation 6(6)(a), a precautionary suspension lapses if the disciplinary hearing is not convened within three months of the suspension. Under regulation 10(1), the disciplinary must commence within three months of the council resolution instituting a disciplinary hearing. The respective time frames are thus clearly distinct and separate and do not run simultaneously. As pertinently said in *Monyepao v Metropolitan Municipality and Others (Reasons)*⁷⁶:

‘The applicant's interpretation of regulation 10(1) that the hearing must commence within three months of his *suspension* is incorrect. Nowhere does

⁷⁶ [2026] ZALCJHB 75 (10 February 2026) at para 40.

regulation 10(1) provide this. In addition, regulation 10(1) does not provide, as the applicant incorrectly alleges, that the *hearing will lapse* if it does not commence within the prescribed three-month time frame.'

- [78] Further, the time frame under regulation 6(6)(a) is only directed at the competence of the continued suspension, and not the disciplinary hearing. The consequence of a suspension that exceeds the time limit is that the suspension is uplifted. There is simply not any kind of purported unlawfulness that carries over to the disciplinary hearing. It should also be considered that a suspension is not necessary for the institution of disciplinary hearing. A suspension is a holding operation and not tantamount to the conducting of discipline.⁷⁷ Disciplinary proceedings are, obviously and to the contrary, disciplinary in nature.
- [79] Focussing now on the applicant's complaints about his suspension *per se*, these are straight forward. He says that the provisions of regulation 6 of the Regulations were not complied with, and that in terms of regulation 6(6)(a), his suspension has lapsed. The applicant specifically relies on an alleged non-compliance with regulations 6(2), (3), (4) and (5), which all relate to the applicant's right to make representations prior to being suspended, and being informed in writing of the reasons for his suspension prior to being suspended. All this, according to the applicant, means his continued suspension is unlawful.
- [80] I accept that suspension of an employee under regulation 6 of the Regulations, without the disciplinary proceedings having commenced within three months of the suspension as contemplated by regulation 6(6)(a), means that such continued suspension terminates automatically, and the employee must be permitted to resume his or her normal duties.⁷⁸ It could perhaps even be said that the continued suspension is unlawful, which is what the applicant pertinently contends.
- [81] But once the applicant relies on an unlawful suspension, he walks squarely into the same obstacles he faces where it comes to his challenge to the disciplinary proceedings based on unlawfulness. The simple point is that this

⁷⁷ See *Long v SA Breweries (Pty) Ltd and Others* (2019) 40 ILJ 965 (CC) at para 24.

⁷⁸ See *Tshabalala v Moqhaka Local Municipality and Another* (2025) 46 ILJ 590 (LAC) at paras 7 – 10 and 14.

Court does not have jurisdiction to decide on the unlawfulness of the applicant's suspension. In *Phahlane v SA Police Service and Others*⁷⁹, the Court, with specific reference to the *dictum* in *Edcon* quoted above, had the following to say:

'The effect of this judgment is that when an applicant alleges that a dismissal is unlawful (as opposed to unfair), there is no remedy under the LRA and this court has no jurisdiction to make any determination of unlawfulness. If a remedy is sought under the LRA, the applicant must categorise the alleged unlawfulness as unfairness. By extension, the same principle applies to other forms of employer conduct which are alleged to be unlawful.'

[82] With reference to suspension in particular, the Court in *Democratic Municipal and Allied Workers Union of SA and Others v City of Johannesburg*⁸⁰ decided:

'The effect of this judgment (*Steenkamp & others v Edcon Ltd*) is that when an applicant alleges that a dismissal is unlawful (as opposed to unfair), that applicant has no remedy under the LRA and this court has no jurisdiction to make any determination of unlawfulness. If a remedy is sought under the LRA, the applicant must categorise the alleged unlawfulness as unfairness.

By extension, the same principle applies to any precautionary suspension from employment. Section 185 of the LRA is concerned with unfair dismissals and unfair labour practices. Section 186(2) defines an unfair labour practice. In para (b), the Act provides that the unfair suspension of an employee or any other unfair disciplinary action short of dismissal, constitutes an unfair labour practice. It follows that what was good for a termination of employment in *Edcon* is good for an unfair labour practice in the present instance. In other words, the lawfulness of any suspension is not a matter regulated by the LRA, and any remedy under that Act must be sought on the basis of fairness.' (emphasis added)

And in *Strydom v Arcelormittal SA*⁸¹ the Court pertinently held:

'... This court has no jurisdiction to decide a claim relating to unfairness or unlawfulness of suspension in terms of the provisions of the LRA.'

⁷⁹ (2021) 42 ILJ 569 (LC) at para 5.

⁸⁰ (2020) 41 ILJ 912 (LC) at paras 7 – 8.

⁸¹ (2024) 45 ILJ 931 (LC) at para 48.

[83] The aforesaid does not mean that the applicant can never challenge the fact that his suspension automatically ended when the three months period under the Regulations lapsed, however he still remains suspended. Of course he can. Even if the applicant alleges this is unlawful, it nonetheless concerns an issue relating to the application of the Regulations, and in this context, it is competent for the bargaining council to consider it as part of the unfair labour practice jurisdiction under section 186(2) of the LRA. An arbitrator in such forum could direct that the suspension be uplifted for this reason. In point in this respect is the judgment in *Department of Public Works and Another v Vukela and Others*⁸². That case concerned a very similar provision as found in the SMS Handbook relating to suspension, as that found in regulation 6. In that application, the employer sought to review and set aside an arbitration award issued by a bargaining council arbitrator finding that the employer committed an unfair labour practice relating to suspension, and ordered that the employee's suspension be lifted and that he reports for duty. The basis for the award can be found in the following reasoning of the arbitrator: '*... I find that the applicant has discharged the onus to prove that the respondents committed an unfair labour practice in their conduct of extending his suspension beyond the 60-day period prescribed in clause 2.7(2)(c) of the SMS Handbook. There is absolutely no fair reason for the continuation of the applicant's suspension. If anything, the continuation of the suspension is both arbitrary and egregious. It is appropriate, therefore, that the respondents lift the suspension of the applicant*'.⁸³ In considering this reasoning by the arbitrator, the Court held as follows, in dismissing review application:⁸⁴

'The interpretation adopted by the court is thus that any precautionary suspension by an employer is limited to a period of 60 days, that a disciplinary enquiry must be convened within that period, and that any extension of the 60-day period is a matter for decision by the chairperson of the disciplinary enquiry. In the present instance, it is not in dispute that the 60-day period from the date of the first respondent's suspension lapsed on 26 September 2020, and that Adv Berger SC did not extend the suspension beyond the 60-day period. In the absence of any extension by Adv Berger SC of the first respondent's suspension beyond 26 September 2020, that suspension

⁸² (2022) 43 ILJ 2319 (LC).

⁸³ See para 27 of the judgment.

⁸⁴ Id at para 44.

automatically lapsed. It follows that the first respondent's suspension beyond 26 September 2020 is a contravention of the SMS Handbook and for the purposes of s 186(2) of the LRA, an unfair labour practice in the form of an unfair act by the applicants in relation to the first respondent's suspension.'

And in *Lekabe v Minister: Department of Justice and Constitutional Development*⁸⁵ the Court simply said that:

'... the right of the employee in the event that the employer does not uplift the suspension on the expiry of the 60 days is to file an unfair labour practice claim or bring an application to have an order directing the employer to uplift the suspension.'

[84] It follows that having due regard to the basis for the applicant's case that his suspension was unlawful, those are issues that can competently be placed before the bargaining council for consideration, as part of its unfair labour practice jurisdiction. There was no need to burden this Court with the issue, especially on an urgent basis, considering that the alternative remedy available to the applicant is not only an available remedy, but an actually prescribed remedy under the LRA.

[85] A final apt illustration of the issue discussed above can be found in *Democratic Nursing Organisation of SA on behalf of Binza v Department of Health, Western Cape Province*⁸⁶, which equally concerned a case founded on the 60 days' time period under the SMS Handbook having lapsed (which as said is the same position under regulation 6(6)(a)). The Court made the following interesting observations:⁸⁷

'Although he claims his suspension is unlawful, Binza does not seek an order of specific performance but argues that he has established that he has exceptional and compelling circumstances warranting the urgent intervention of the court as a matter of unfairness. His reluctance to assert a right to relief based on a claim that the suspension was unlawful is doubtless informed by the change in approach to such claims adopted by this court since the Constitutional Court decision in *Steenkamp & others v Edcon Ltd (National Union of Metalworkers of SA intervening)*.' (emphasis added)

⁸⁵ 2009) 30 ILJ 2444 (LC) at para 19.

⁸⁶ (2025) 46 ILJ 606 (LC).

⁸⁷ Id at para 11.

What is clear from this *dictum* in *Binza* is that the Court appreciated that it would not have jurisdiction to decide a case based on a contention that the suspension was unlawful for this reason.

- [86] The Court in *Binza* then considered whether it was appropriate to intervene on the basis of it being pleaded that the suspension was unfair, because the 60 days' time period had lapsed, and concluded:⁸⁸

'A final issue to consider is the nature of the right Binza asserts. It is a right to have a precautionary suspension declared an unfair labour practice. The Labour Relations Act 66 of 1995 (the LRA) has provided a process that the legislature deemed adequate to redress such unfair conduct by an employer. There is a danger that, if this court too readily accepts that just because it would make some sense for it to intervene before that process has been concluded, this could have the effect of rendering the intended statutory remedy nugatory, because the relief afforded by the court would in many instances be more effective than relief awarded in due course. That is why the circumstances warranting urgent relief of this nature must be truly unusual and exceptional, and I am not satisfied that Binza has established that the circumstances of his suspension are such.

In the light of the discussion above, I am not satisfied that Binza does not have a suitable alternative remedy ...'

Clearly, similar considerations apply *in casu*. The applicant's dispute relating to his suspension now brought directly to this Court must fail for the same reasons.

- [87] In the aforesaid context, one final issue is important. There is clearly a dispute between the applicant and the first respondent as to whether the period as contemplated by regulation 6(6)(a) has lapsed, and whether regulations 6(2), (3), (4) and (5) have been violated. The first issue to be decided in this context is when the disciplinary hearing actually commences. In *Tshabalala v Moqhaka Local Municipality and Another*⁸⁹ it was said that: '*... Read sequentially, the regulations contemplate that the disciplinary hearing is convened by the presiding officer and commenced by the reading of the charges to the senior manager accused of misconduct ...*'. According to the

⁸⁸ Id at paras 16 – 17.

⁸⁹ (2025) 46 ILJ 590 (LAC) at para 7.

first respondent, the disciplinary hearing *in casu* actually commenced on 25 May 2026, should the reasoning in *Tshabalala* be properly applied, when the chairperson convened and took charge of the hearing, and then postponed it at the instance of the applicant himself.⁹⁰ As far as the first respondent is concerned, the applicant was only finally suspended on 3 March 2026 after compliance with regulation 6, and it is thus clear that the disciplinary hearing convened for the purposes of regulation 6(6)(a) within the three months period. The applicant disagrees. He contends he was actually first suspended on 4 February 2026 without compliance with regulation 6, and the three months' period thus lapsed on 4 May 2026. In the alternative he says that the disciplinary hearing has in any event not convened yet, based on how he considers the reasoning in *Tshabalala* should be applied. In the current case, I need not decide which version prevails and which argument has merit, for the simple reason that these kinds of questions are exactly what a bargaining council arbitrator would and should be called on to decide. These are cases that can be competently and properly raised before the bargaining council. Whether the applicant labels it as unlawful suspension, or unfair suspension, it does not matter. It is not an issue for this Court to decide, especially on the basis of urgency, where no exceptional circumstances have been shown and with a proper and suitable alternative remedy being available. I will therefore not consider the parties' arguments in this regard, which I believe must be decided in the proper forum.

Conclusion

[88] For all the reasons as set out above, I conclude that overall considered, this Court does not have the jurisdiction to consider the applicant's application and grant him the relief sought, especially considering that in reality, final relief is sought. The applicant's reliance on section 157(1) and section 158(1)(a)(ii) and (iii), as sources conferring jurisdiction, is misplaced, and this Court does not have jurisdiction to entertain the applicant's pleaded case in this matter, based on these sections. Where it comes to the applicant's reliance on section

⁹⁰ See the reasoning in *Monyepao (supra)* at para 35, where it was said: 'On a purposive interpretation of regulation 10, in line with jurisprudence, the hearing commences when the presiding officer takes charge of the proceedings. In the words of regulation 10(2), the presiding officer conducts the hearing and determines the procedures to be followed. This is what the presiding officer did in the present application – the presiding officer commenced the proceedings, took charge and made a determination that the hearing is postponed after hearing both parties.'

158(1)(h), the applicant must also fail, even though this Court would have jurisdiction to decide it, for three reasons. First, the applicant has failed to plead any review grounds. Second, this Court has no jurisdiction to consider this particular review application, because the applicant, considering the particular nature of the dispute in this case, is compelled to follow the prescribed dispute resolution processes under the LRA and not approach this Court directly under section 158(1)(h). Third, the applicant has in any event not demonstrated proper exceptional circumstances to justify intervention in this case by way of a review application, *in medias res*. As to the applicant's suspension case, that case also falls to be dismissed due to a want of jurisdiction, for the same reasons. I therefore conclude that the applicant's entire application falls to be dismissed.

Costs

[89] This then only leaves the issue of costs. In this respect, and in terms of section 162(1), I have a wide discretion. The applicant was legally assisted throughout these proceedings, and thus should thus have known, from the outset, that the current application, especially brought on the basis of urgency, was doomed to fail. I also consider that the application, considering the relief sought, was never going to be competent. The kind of approach adopted by the applicant should be frowned upon. In fact, I believe that when what is said by the applicant in his founding affidavit is properly considered, this application is part of a stratagem to finally scupper the disciplinary proceedings. I take a dim view of this Court being used in such a manner. But what makes this even worse is that when the applicant's representative was confronted when this matter was argued, with all the insurmountable difficulties with the application, he simply glibly adopted the view that he would no longer seek any relief relating to the disciplinary hearing, but would only focus on relief pertaining to the suspension. This is entirely inappropriate, especially considering that a considerable part of the case is devoted to an attack on the disciplinary hearing, and the first respondent has been dragged to Court on that basis.

[90] And finally, the continuous failure by litigants to heed the numerous warnings by this Court where it comes to these kinds of applications must be visited with

proper adverse consequence. With regard to the aforesaid, I fully align myself with the following *dictum* in *Mokoena v Merafong Municipality and Others*⁹¹:

‘In casu, the applicant brought a meritless application to this court and fairness dictates that the respondents cannot be expected to endure enormous costs defending litigation where more thought and consideration had to be put in before approaching this court on an urgent basis. ...’

[91] Equally apposite is the following *dictum* in *Leshabane supra*⁹² where it was said:

‘In bringing the application, the applicant took up the valuable time and already stretched resources of this court. In doing so, the applicant compelled the respondents, which is a public institution funded out of the taxpayers virtually empty pocket, to defend the case using these already limited and stretched public funds, which is not acceptable. What in reality happened in this instance as abuse of process. This court has consistently said that this kind of unfounded litigation is deserving of costs orders. The applicant must be told, in no uncertain terms, hopefully also serving as an example to others, that exercising his right of access to the courts must be done in a responsible manner and always in compliance with the rules and processes of the court.’

[92] All said, I believe this is a situation where a costs order against the applicant is certainly earned and justified. The first respondent has asked for a costs order on what it says is a punitive scale, being scale C. For the reasons set out above, I consider that such a costs order is justified, and I make a costs order accordingly.

Order

[93] It is for all the reasons as set out above that I made the order that I did as respect in paragraph 6 of this judgment, *supra*.

S Snymman

⁹¹ (2020) 41 ILJ 234 (LC) at para 36.

⁹² (2024) 45 ILJ 833 (LC) at para 58. See also *Magoda (supra)* at para 20.

Appearances:

For the Applicant:

Advocate A Montzinger

Instructed by:

Kobus Cronje Inc Attorneys

For the First Respondent:

Cowan Harper Madikizela Inc Attorneys

LABOUR COURT