



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2026-155434

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED: NO

6 August 2026
DATE


SIGNATURE

In the matter between:

SIROVHA, KHATHUTSHELO INNOCENT

First Applicant

SOUTH AFRICAN YOUTH ECONOMIC COUNCIL

Second Applicant

and

**THE MINISTER OF HIGHER EDUCATION
AND TRAINING**

First Respondent

**THE DIRECTOR-GENERAL OF HIGHER EDUCATION
AND TRAINING**

Second Respondent

**THE MINISTER FOR THE PUBLIC SERVICE
AND ADMINISTRATION**

Third Respondent

**THE PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA**

Fourth Respondent

JUDGMENT

NXUMALO, AJ

Introduction

- [1] This matter serves before this Court, on an urgent basis, with the first applicant seeking an interim interdict pending the finalisation of the relief set out in Part B of his notice of motion.
- [2] The relief in Part B of the application essentially seeks to review and set aside a directive issued by the first respondent, and to declare that the first applicant was lawfully appointed as the Chief Executive Officer (“CEO”) of the National Skills Fund, an institution which, according to the first applicant, was established to advance skills development for the benefit of, *inter alia*, the youth of South Africa.
- [3] It is common cause that the first applicant emerged as the most suitable candidate from 93 applicants who submitted their applications and from the shortlisted candidates who were interviewed by a selection committee.
- [4] The first applicant alleges that in February 2026, his appointment was confirmed to him personally and was acted upon.
- [5] On 18 July 2025, the then Minister of High Education and Training, submitted

a memorandum to the Minister for Public Service and Administration, requesting Cabinet's concurrence with the first applicant's appointment. The memorandum stated that the first applicant had been found to be the most suitable candidate and enclosed, *inter alia*, documents pertaining to the list of candidates who applied for the post, the competency-based assessment report and the related supporting documents.

- [6] During or about May 2026, the first applicant got wind of the fact that the first respondent intends to rerun the recruitment process for the appointment of a CEO for the National Skills Fund. The first respondent proceeded to issue a directive on or about 17 June 2026, directing the second respondent to readvertise the post and set a deadline of 29 June 2026 for the steps to give effect to the directive.
- [7] The first respondent's justification for the directive is that as the Executive Authority, he is obliged to act and to interfere with what he perceived to be an incorrect process, and that where material irregularities become apparent before an appointment process has reached legal finality, it is incumbent upon the Executive Authority to ensure that those irregularities are addressed before the process proceeds further.
- [8] It is the directive and its effect that the applicants seek to challenge through Parts A and B of their application.

Condonation

- [9] In their notice of motion, the applicants had given the respondents until Tuesday, 14 July 2026 to deliver their answering affidavit/s. The respondents failed to adhere to this timeframe and only delivered their answering affidavit on or about 21 July 2026.
- [10] They provided an explanation for their delay in their answering affidavit, which

included the first respondent's unavailability to consult due to being outside of the country, as well as senior counsel's unavailability due to being occupied in another matter.

- [11] By the time the matter was heard before this Court, the full set of papers, including each party's heads of argument, was before this Court. Relying on the principles set out in ***Pangbourne Properties Ltd v Pulse Moving CC and Another***^[1], I granted condonation for the respondents' late delivery of their answering affidavit.

Jurisdiction

- [12] The next issue that came up for determination was the issue of jurisdiction. The respondents contend that this Court does not have jurisdiction to hear this matter by virtue of section 31 of the Skills Development Act 97 of 1998 ("the Skills Development Act") which, according to the respondents, provides for the exclusive jurisdiction of the Labour Court.

- [13] Section 31 of the Skills Development Act reads as follows:

"31. Jurisdiction of Labour Court.

- (1) Subject to the jurisdiction of the Labour Appeal Court and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters arising from this Act.*
- (2) The Labour Court may review any Act or omission of any person in connection with this Act on any grounds permissible in law.*
- (3) If proceedings concerning any matter contemplated in subsection (1) are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer the matter to the Labour Court."*

- [14] The respondents contend that the applicants' application is based primarily on section 29(1)(d) of the Skills Development Act.

[15] Interestingly, both parties relied on the principles set out in **National Gambling Board v Premier of Kwazulu-Natal and Others**^[2] (“National Gambling Board”) to advance their respective cases on the jurisdiction issue.

[16] Both parties quoted paragraphs [49] to [53] of the **National Gambling Board** judgment at length in their respective heads of argument. For ease of reference, the said paragraphs, including paragraph 48, read as follows:

“[48] This matter is not within this Court’s exclusive jurisdiction. The High Court therefore had jurisdiction to deal with the application for an interim interdict. Mr Prinsloo however pointed out that the National Board had been advised to bring the application for the interim interdict in this Court because there was no precedent to guide it in the choice of the correct court. It is important that this Court gives guidance in that respect.

[49] An interim interdict is by definition

‘a court order preserving or restoring the status quo pending the final determination of the rights of the parties. It does not involve a final determination of these rights and does not affect their final determination.’

The dispute in an application for an interim interdict is therefore not the same as that in the main application to which the interim interdict relates. In an application for an interim interdict the dispute is whether, applying the relevant legal requirements, the status quo should be preserved or restored pending the decision of the main dispute. At common law, a court’s jurisdiction to entertain an application for an interim interdict depends on whether it has jurisdiction to preserve or restore the status quo. It does not depend on whether it has the jurisdiction to decide the main dispute.

[50] Whether a high court will have jurisdiction to grant interim relief pending a matter exclusively within this Court’s jurisdiction does not depend on the form or effect of the interim relief. It depends on the proper interpretation of the relevant provision and on the substance of the order: Does it involve a final determination of the rights of the parties or does it affect such final determination? If it does not, the High Court will, depending on the provision that grants exclusive jurisdiction, have jurisdiction to grant interim relief.

[51] It does not follow that a high court will always have jurisdiction to grant or refuse interim relief pending the decision of a matter exclusively within this Court’s jurisdiction. To decide whether a high court has such jurisdiction the provision in terms of which this Court has exclusive jurisdiction must be interpreted. Section 167(4)(c) of the Constitution is an example of a provision giving to this Court exclusive jurisdiction to grant interim relief. It provides that this Court has exclusive jurisdiction to “decide applications envisaged in section 80 or 122”. Sections 80 and 122 respectively provide that members of the National Assembly and provincial legislatures may apply to the Constitutional Court for an order declaring that all or part of respectively a national or a provincial Act

is unconstitutional. Sections 80(3) and 122(3) are identical. They provide:

*“The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of subsection (1) has no force until the Court has decided the application if -
(a) the interests of justice require this; and
(b) the application has a reasonable prospect of success.”*

Read together, sections 167(4)(c) and sections 80(3) and 122(3) assign exclusive jurisdiction to this Court to grant interim relief.

[52] A court hearing an application for an interim interdict can obviously only decide the main dispute if it has jurisdiction to do so. A court that does not have jurisdiction in the main dispute will simply determine whether the applicant has a *prima facie* right to the relief which is to be sought in the court having jurisdiction to deal with it.

[53] Section 167(4)(a) provides that only this Court “may decide disputes between organs of state” in the relevant spheres and concerning those organs’ constitutional status, powers or functions. The exclusive jurisdiction of this Court is to decide the disputes in question. There is no reason why the ordinary common law should not apply. Provided that a high court is not called upon to decide a dispute within this Court’s exclusive jurisdiction, it has jurisdiction to grant interim relief pending the final determination of such a dispute.”

[17] The question that arises in this matter is the following: will this Court, in Part A, be called upon to decide a dispute within the Labour Court’s exclusive jurisdiction? In other words, does the relief sought in Part A of this application raise matters that fall within the exclusive jurisdiction of the Skills Development Act?

[18] This Court found the answer to this question in paragraphs 207 and 208 of the first applicant’s founding affidavit, which are quoted herein for ease of reference:

“207. I am advised that, at this stage, I am required to establish no more than a *prima facie* right, even if it be open to some doubt. I have such a right and more.

208. My right flows directly from section 29(1)(d) of the Skills Development Act and from the completed appointment made under it.” (My emphasis)

- [19] It is evident that even in determining whether or not the applicants are entitled to interim relief, this Court would, on the applicants' own pleaded case, need to make a determination on issues that fall within the exclusive preserve of the Labour Court, in terms of section 31 of the Skills Development Act.
- [20] This Court cannot grant the interim relief sought by the applicants without determining whether or not the first applicant has a *prima facie* right. The first applicant has told this Court unequivocally that his *prima facie* right in this matter flows directly from section 29(1)(d) of the Skills Development Act.
- [21] It therefore follows that even the issues pertaining to the interim relief, as framed by the applicants, fall within the exclusive jurisdiction of the Labour Court, in terms of section 31(1) of the Skills Development Act. Afterall, jurisdiction is determined on the basis of the pleadings. The pleadings, properly interpreted, demonstrate that the applicants, even in Part A of their application, are asserting a claim under the Skills Development Act, which is to be determined exclusively by the Labour Court.^[3]
- [22] It has been held in an earlier decision of this Court that a proper construction of the term "matter" in section 31 is wider than a cause of action engaging the Skills Development Act and encompasses all disputes that relate causally to the Skills Development Act or functions performed under the Skills Development Act.^[4]
- [23] This Court is therefore constrained to find that it does not have jurisdiction to entertain the interim relief sought by the applicants.

Referral

- [24] The finding that this Court does not have jurisdiction is not the end of the enquiry. Section 31(3) of the Skills Development Act affords this Court the discretion, having found that it does not have jurisdiction to hear the matter, to

refer the matter to the Labour Court at any stage during the proceedings.

[25] The interests of justice dictate that this matter be referred for adjudication before the correct forum.

[26] Contrary to what was submitted by counsel for the respondents, the fact that the application, in its current form, does not comply with the Rules of the Labour Court, is not a bar to this Court exercising its discretion to refer the matter to the Labour Court. The Labour Court Rules make provision for a party to seek condonation in the event of non-compliance with the Rules and to amend its pleadings, where necessary.

[27] I am of the view that both parties, for different reasons, deserve their day in Court. The first applicant, having emerged as the most suitable candidate, is certainly deserving of the opportunity to test the soundness of the directive that seeks to undo the entire selection process that led to his emergence as the most suitable candidate, while the respondents, as representatives of the State, are also deserving of their moment to demonstrate that the exercise of their public power was carried out in a lawful and constitutional manner.^[5] Transparency and accountability are important principles in any democratic state, therefore having the matter determined on its merits will only serve to bolster the public confidence in the Executive.

Costs

[28] The issues pertaining to the jurisdiction of the Court to grant interim relief in matters in which the Court does not have jurisdiction to hear the main application are by no means straightforward. This much is demonstrated by the parties' reliance on the same authority to advance their respective arguments, which stand on opposite ends.

[29] There can also be no suggestion that this application is frivolous or vexatious. Burdening the applicants with the costs under the circumstances would only

serve to hinder the advancement of constitutional justice.^[6]

[30] The following order is therefore made:

1. the matter is referred to the Labour Court in terms of section 31(3) of the Skills Development Act;
2. each party shall bear its own costs.

NS NXUMALO
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the applicants:	Adv K Prehmid, with Adv L Moela
Instructed by:	Matlhwana Attorneys Inc.
For the respondents:	Adv L Halgryn SC, with Adv T Mabuza
Instructed by:	The State Attorneys
Date of hearing:	30 July 2026
Date of judgment:	6 August 2026

This Judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on Case Lines and SAFLII. The date for the handing down is deemed to be 10am on 6 August 2026.

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- [1] 2013 (3) SA 140 (GSJ) [18] – [19]
[2] 2002 (2) SA 715 (CC)
[3] Gcaba v Minister for Safety and Security and others 2010 (1) SA 238 (CC) [75]
[4] Jet Education Services NPO v Manufacturing Engineering and Related Services Sector Education and Training Authority (2023/070358, 2023/071032) [2024] ZAGPJHC 709 (2 August 2024) pars. 35 to 36
[5] Affordable Medicines Trust v Minister of Health 2006 (3) SA 247 (CC) [49]
[6] *Ibid* [138]