



- (1) Reportable: Yes
- (2) Of interest to other Judges: Yes
- (3) Revised: Yes

Signature

14 SEPTEMBER 2026

Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2026-211671

In the matter between:

OCA TESTING, INSPECTION AND CERTIFICATION

SOUTH AFRICA (PTY) LTD T/A OCA GLOBAL

Applicant

and

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Respondent

COMMISSIONER CHITANE SOZA N.O.

Second Respondent

SOLIDARITY OBO TJ SAUNDERS

Third Respondent

Heard: 8 September 2026

Delivered: 14 September 2026

Summary: (Urgent application – Urgent application for interim interdict pending finalisation of review application of incomplete arbitration proceedings in terms of Section 158(1B) of the LRA - the Court may interdict uncompleted proceedings in exceptional cases - determining exceptional circumstances requires a consideration of whether the traditional grounds for an interim interdict have been shown together with a *prima facie* consideration of the underlying premise of the review application – stay of proceedings granted)

JUDGMENT

MAY, AJ

Introduction

[1] Applicant approaches this Court on an urgent basis for an interim interdict pending the review of a jurisdictional ruling made by the second respondent and thus pending a review of incomplete arbitration proceedings contemplated in Section 158 (1B) of the Labour Relations Act 66 of 1995 (the LRA).

Background

[2] The third respondent's member, Mr Saunders was employed, in 2024 and again in 2025 on written fixed-term contracts for varying durations as a QC Level 1 Inspector. His fixed-term contract for 2025 commenced on 1 March 2025 and terminated on 14 December 2025. On 24 December 2025, the Applicant offered a short-term agreement for the month of January 2026, which was accepted by Mr Saunders. Discussions were held between Applicant and Mr Saunders in terms of which the Applicant had proposed that Mr Saunders be retained post January 2026 as an independent contractor. Applicant alleges that the offer was rejected by Mr Saunders and that he demanded to remain an employee of the Applicant. In the meantime, a further extension of his contract was offered until the end of March 2026, which offer was withdrawn of the same day prior to acceptance thereof.

[3] Mr Saunders referred an unfair dismissal dispute to the CCMA and, at arbitration, was represented by the third respondent. On 8 June 2026, the Applicant raised a jurisdictional objection to arbitration, submitting that the CCMA had no jurisdiction to arbitrate the dispute. The Second Respondent was appointed to arbitrate the dispute on 24 June 2026.

- [4] Second Respondent requested the parties to make oral submissions on the issue whereafter he would make a determination based on the oral submissions, the written objection and the contents of the parties' respective evidence bundles.
- [5] Applicant contends that despite numerous disputes of fact, the commissioner did not request, or insist, that the parties call witnesses or lead evidence and instead he made factual findings and drew inferences based on the oral submissions. The commissioner issued his ruling on 29 June 2026 and found that the true reason for the termination of Mr Saunders' services was not the natural end of a project or the simple withdrawal of an unaccepted offer but rather a unilateral reaction to allegations of misconduct by the Applicant's client who demanded Mr Saunders' removal. The point *in limine* was accordingly dismissed.
- [6] Applicant contends that the ruling is reviewable and had launched review proceedings in the above Honourable Court under case number 2026-210108 on 31 August 2026. These proceedings are pending. The arbitration proceedings before the First Respondent are scheduled to proceed on 16 September 2026. Applicant sought to procure an undertaking from the third respondent to agree to stay the arbitration proceedings on 25 August 2026. Instead, the third respondent replied on 25 August 2026 that the arbitration would proceed and that if the Applicant seeks to suspend the arbitration it should launch these proceedings. It did so on 1 September 2026.
- [7] Applicant explains the delay in launching these proceedings at paragraphs 101 to 115 of the Founding Affidavit. These contentions are not disputed by the Third Respondent (see paragraph 102 of the answering affidavit). Applicant only became aware of the ruling on 20 August 2026; attorneys were instructed and Counsel's opinion obtained on 23 August 2026. The review application was drafted and ready to be launched on 28 August 2026 and launched on 31 August 2026. This application followed shortly after the launch of the review application.

[8] The Third Respondent disputes that urgency has been shown herein. The Third

Respondent contends that the arbitration can be allowed to proceed, oral evidence can be lead, and the arbitrator can make a decision thereafter which could also include the jurisdictional objection. Alternatively, the Applicant could seek a postponement of the arbitration.

[9] It is trite that whether a matter is urgent involves two considerations, whether, in terms of Rule 38, the reasons for urgency and why urgent relief is necessary has been set out and whether the Applicant will not obtain substantial relief at a later stage. The consideration requires an application to explain that unless relief is granted as a matter of urgency, something is likely to happen, the possible prejudice to the parties, that urgency was not self-created and that the applicant acted expeditiously¹.

[10] Third Respondent contends, with reference to *Ethekwini*² that Applicant can obtain substantial redress in due course particularly through the leading of oral evidence at arbitration which could also lead to the reconsideration of the jurisdictional objection and/or the postponement of the arbitration proceedings. The contentions are without merit. The Second Respondent already made a ruling on the jurisdictional objections and the CCMA, with reference to *Dairybelle*³ and *DriveLine Technologies*⁴, is *functus officio*.

[11] The jurisdictional objections cannot therefore be reconsidered. As to the postponement, Rule 23 of the CCMA Rules usually requires written confirmation or an agreement to postpone at least 7 days before the arbitration. Failing an agreement, an Applicant must apply in terms of Rule 31 to postpone and advance a reason to do so. This may be done with or without a hearing being scheduled however the prevailing practice at the CCMA currently is that the application just be argued on the day that the arbitration is scheduled.

¹ *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another* (2016) 37 ILJ 2840 (LC) paras 21 – 26.
² [2025] ZALCD 45.
³ *Dairybelle (Pty) Ltd v Lupondwana N.O. and others* (C679/2001)
⁴ NUMSA & others v DriveLine Technologies (Pty) Ltd and another (2000) 21 ILJ 142 (LAC) at para 15.

- [12] I agree with the Applicant that the review application could be dispositive of the entire matter and could bring an end to Mr Saunders' unfair dismissal claim alternatively, at the very least, the jurisdictional issue may be revived and either determined or sent back to an alternative arbitrator to determine. It is more likely that the reviewing Court will determine the jurisdictional issue as the Court is enjoined to decide the issue of jurisdiction *de novo* on the basis of the record filed in the review proceedings.⁵
- [13] Proceeding with the arbitration and/or arguing the postponement on the day of the hearing, causes the Applicant the exact harm it seeks to guard against as listed in paragraph 75 of the answering affidavit. In addition, it would non-suit the Applicant in the pending review proceedings as those proceedings would effectively become moot. In *In Emalahleni Local Municipality v Phooko NO and others*⁶, it was held that irreparable harm will invariably result if there is a possibility that the underlying *causa* may ultimately be removed, i.e. where the underlying *causa* is the subject matter of an ongoing dispute between the parties.
- [14] For the above reasons, I am satisfied that urgency has been established.

Grounds of interdict and evaluation

- [15] An interim interdict is 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.⁷
- [16] The requirements for interim relief are trite⁸:

10.1 a *prima facie* right;

⁵ See: *Moses v Commission for Conciliation, Mediation and Arbitration and Others* (2019) 40 ILJ 2371 (LC) at paras 11 and 12 citing *SA Rugby Players' Association and Others v SA Rugby (Pty) Ltd and Others* (2008) 29 ILJ 2218 LAC at para 39 and *Phaka and Others v Bracks NO and Others* (2015) 36 ILJ 1541 (LAC) at paras 29 and 31.

⁶ [2021] ZALCJHB 61; (2021) 42 ILJ 2196 (LC).

⁷ *National Gambling Board v Premier, Kwazulu-Natal and Others* 2002 (2) SA 715 (CC) at para 49.

⁸ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

- 10.2 a well-grounded apprehension of irreparable harm if interim relief is not granted and the ultimate relief is eventually granted;
- 10.3 the balance of convenience in favour of the granting of the interim relief; and
- 10.4 the absence of any other adequate ordinary remedy.

[17] In an application for a temporary interdict, applicant's right need not be shown by a balance of probabilities; it is sufficient if such right is *prima facie* established, though open to some doubt. The proper manner of approach is to take the facts as set out by the applicant together with any facts set out by the respondent which applicant cannot dispute and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at a trial. The facts set up ... in contradiction by respondent should then be considered, and if serious doubt is thrown upon the case of applicant he could not succeed. In considering the harm involved in the grant or refusal of a temporary interdict, where a clear right to relief is not shown, the Court acts on the balance of convenience. If, though there is prejudice to the respondent, that prejudice is less than that of the applicant, the interdict will be granted, subject, if possible, to conditions which will protect the respondent⁹.

[18] The dispute in an application for an interim interdict is 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 dispute¹⁰.

⁹ *Webster v Mitchell* 1948 (1) SA 1186 (W).

¹⁰ *City of Johannesburg Metropolitan Municipality v Mphefo and Others* [2024] ZALCJHB 297 at para 42.

- [19] The Third Respondent contends that the existence of a proper and competent review application is in and of itself not determinative of the Applicant's entitlement to interdictory relief, more is needed to justify urgent intervention. The Third Respondent cites paragraphs 30 to 40 from *Ethekwini*¹¹ in support of its contention. It is trite that the Court may interdict uncompleted proceedings in exceptional cases and that the threshold is that a grave injustice might otherwise result or justice might not by any other means be attained.¹²
- [20] Exceptional circumstances have been found to exist where such intervention was necessary to prevent illegality.¹³ The LAC in *Sa Cabin Crew* further underscored that intervention is particularly justified where the impugned ruling rests on a material error of law, given the constitutional right to lawful, reasonable, and procedurally fair administrative action.¹⁴
- [21] In order to determine therefore whether exceptional circumstances have been shown, a consideration of whether the traditional grounds for an interim interdict have been shown together with a *prima facie* consideration of the underlying premise of the review application is necessary. In *Ethekwini* the Court stated that if the applicant fails to convince the Court that bringing the review application was just and equitable, then this would have been the end of the interdict application as it would have no foundation for the relief sought.¹⁵

The Section 158(1B) application

- [22] 158(1B) of the LRA, provides that:

'The Labour Court may not review any decision or ruling made during conciliation or arbitration proceedings conducted under the auspices of the Commission or any bargaining council in terms of the provisions of this Act before the issue in dispute has been finally determined by the Commission or

¹¹ *Ethekwini Municipality v Mthethwa and others* [2025] ZALCD 45.

¹² *Ethekwini* quoting from *Spar Group Ltd t/a Spar South Rand Distribution Centre v CCMA and Others* [2010] JOL 26397 (LC) at para 8.

¹³ *South African Cabin Crew Association v South African Airways (Soc) Ltd and Others* [2025] 10 BLLR 1048 (LAC) at para at para 27. See also *Ntombela and Others v United National Transport Union and Others* (2019) 40 ILJ 874 (LC) at para 31; *Workforce Group (Pty) Ltd v National Textile Bargaining Council and Another* (2011) 32 ILJ 3042 (LC) at para 18.

¹⁴ *Sa Cabin Crew* at paras 27 – 28.

¹⁵ *Ethekwini* at para 29.

the bargaining council, as the case may be, except if the Labour Court is of the opinion that it is just and equitable to review the decision or ruling made before the issue in dispute has been finally determined.'

- [23] In *Moolman v Commission for Conciliation, Mediation and Arbitration and Others*¹⁶ (*Moolman*), the Labour Appeal Court (LAC) held that judicial interference in incomplete arbitration proceedings is warranted only in exceptional circumstances. The LAC held that section 158 (1B) seeks to prevent piecemeal litigation and to ensure that challenges to interlocutory rulings are deferred until the conclusion of the main dispute. The LAC further held that intervention in pending arbitration proceedings may be justified only where allowing the ruling to stand would cause irreparable harm to the applicant and where such harm could not be remedied after the arbitration has been finalised.
- [24] In *City of Johannesburg Metropolitan Municipality v Mphefo and others*¹⁷ (*Mphefo*), this Court granted interim relief pending the determination of a review application against a jurisdictional ruling that effectively disposed of the dispute.
- [25] In *Ethekwini* the Court ultimately found that the review application was permissible and competent as the Applicant had satisfied the requirement of just and equitable but that the applicant failed to show exceptional circumstances because there will be no illegality or grave injustice if the arbitration were to continue as the applicant, on the facts before the Court, had several options to secure its rights. This was a factual consideration of the facts as it presented itself before the Court in *Ethekwini*¹⁸.

¹⁶ [2024] ZALAC 339 at paras 42 to 45.

¹⁷ [2024] ZALCJHB 287.

¹⁸ At paragraphs 7 to 18.

[26] The facts in *casu* are distinguishable from the facts in *Ethekwini*. Here the effect of the jurisdictional ruling, unlike as in *Ethekwini*, effectively means the CCMA is *functus officio* as it relates to the jurisdictional objection whereas in *Ethekwini* the arbitrator specifically reserved the issue for determination at arbitration. In *Ntombela* the Court held that a legal issue that would in fact dispose of a matter on the merits thereof if successful, is what was contemplated in Section 158 (1B)¹⁹.

[27] Unlike *Ethekwini* therefore, the ruling without having considered any evidence bars the Applicant from raising the objection again and the ruling therefore constitutes a grave injustice or illegality necessary to establish exceptional circumstances for this Court to intervene.

A prima facie right

[28] In *National Treasury and others v Opposition to Urban Tolling Alliance and others (OUTA)*, the Constitutional Court held that:

*'Under the Setlogelo test the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm.'*²⁰

[29] The Applicant has a *prima facie* right to approach the court to review the jurisdictional ruling, but following *OUTA*, this is not enough, the Applicant must show that the *prima facie* right is threatened by imminent irreparable harm.

¹⁹ *Ntombela supra* at para 42.

²⁰ 2012] ZACC 18; 2012 (6) SA 223 (CC) at para 50.

Apprehension of harm

- [30] I have found above that proceeding with the arbitration and/or arguing the postponement on the day of the hearing, causes the Applicant the exact harm it seeks to guard against as listed in paragraph 75 of the answering affidavit. In addition, it would non-suit the Applicant in the pending review proceedings as those proceedings would effectively become moot. I also referred to *Emalahleni* confirming that irreparable harm will invariably result if there is a possibility that the underlying *causa* may ultimately be removed.
- [31] The review application may be dispositive of the matter; in addition the ruling has the effect that the CCMA is *functus officio*. In *Mphefo*²¹ the Court confirmed that all parties would be prejudiced if the arbitration proceedings were to continue before the issue of jurisdiction had been decided as they would all spend money and resources to participate in a process before a body which might not have had jurisdiction to adjudicate the dispute in the first place and the outcome of such process, would inevitably lead to further litigation and would contribute to the burden of this Court.
- [32] The arbitration is scheduled to continue on 16 September 2026. In my view therefore, imminent harm has been established.

Balance of convenience

- [33] In assessing the balance of convenience, the Court must balance the respective harms and assess which of the parties will be the least seriously affected or prejudiced by being compelled to endure what may prove to be a temporary injustice until the just answer can be found at the end of the trial²².
- [34] In my view, the balance of convenience favours the Applicant. The question as to the CCMA's jurisdiction to arbitrate the unfair dismissal dispute should be considered and decided before the dispute is arbitrated as this would provide clarity and certainty to the parties and would avoid the wasting of resources and

²¹ *Supra* at para 31.

²² Prest, "The Law and Practice of Interdicts" at pp 72 – 73.

unnecessary litigation. The outcome of the review application could be dispositive of the entire matter. The harm to the Third Respondent can be limited by expediting the review application instituted by the Applicant.

Alternative remedy

- [35] I have already determined that proceeding with the arbitration and/or arguing the postponement on the day of the hearing, causes the Applicant the exact harm it seeks to guard against as listed in paragraph 75 of the answering affidavit. In addition, it would non-suit the Applicant in the pending review proceedings as those proceedings would effectively become moot.
- [36] The Applicant made an attempt to get the Third Respondent to agree to postpone the arbitration which was refused. I am of the view therefore that there are no alternative remedies available to the Applicant.

Conclusion

- [37] The Applicant has satisfied the requirements for an interdict and is entitled to interim relief *pendente lite*. The Applicant has shown that allowing the ruling to stand would cause irreparable harm to the applicant and where such harm could not be remedied after the arbitration has been finalised. He has shown that exceptional circumstances exist for the Court to intervene in the incomplete arbitration proceedings.

Costs

- [38] Applicant asks that the Costs of this application be made costs in the pending review application. The Court agrees that this appears to be the most appropriate order.

- [39] In the premise the following order is made:

Order

1. The Applicant's failure to comply with the Rules of this Honourable Court relating to service and time periods be and is hereby condoned and this application is dealt with on an urgent basis in terms of Rule 38.

2. The arbitration proceedings before the First Respondent, scheduled for 16 September 2026, are interdicted and stayed pending the outcome of the Applicant's review application under case number 2026-210108.
3. The relief granted in paragraph 2 above operates as an interim interdict *pendente lite* until the final determination of the review application under case number 2026-210108.
4. Once pleadings have closed, the Registrar must enrol the review application on an expedited basis without delay.
5. The costs of the application will be costs in the review application.

C. May

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : AP Landman instructed by Mohamed
Randera & Associates, Johannesburg

For the third respondent : Ms K Van Wyk, Solidariteit