



- (1) Reportable Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026-171375

In the matter between:

LWANDILE HASHENI

Applicant

and

ROAD ACCIDENT FUND

First Respondent

DONALD DIALE N.O.

Second Respondent

Heard: 20 July 2026

Judgment delivered: 20 August 2026

JUDGMENT

PHEHANE, J

Background

- [1] The applicant is employed by the first respondent in the position of senior employee relations manager. In January 2026, the first respondent commenced a disciplinary hearing against the applicant to answer to serious

allegations of misconduct. The second respondent is the appointed chairperson of the disciplinary hearing.

- [2] The applicant was legally represented during his disciplinary hearing, following the decision of the second respondent permitting legal representation. The first respondent led its witnesses and closed its case. On 18 June 2026, when the applicant was to lead evidence, he reported that he was feeling ill on that day. It is common cause that due to his illness, an agreement was reached between the parties, that the applicant would submit his evidence by way of written statements by 22 June 2026. He did not do so. Instead, on 22 June 2026, the applicant launched an application for the recusal of the second respondent. The recusal application was opposed. The second respondent issued a ruling on 1 July 2026, dismissing the recusal application, and the applicant was once more given the opportunity to submit his written representations within three days, failing which, he was warned that a ruling would be made on the merits without his written statement.
- [3] Still, the applicant did not submit his written statement. The applicant subsequently changed his legal representative. The second respondent was disinclined to postpone the hearing as he noted a pattern of delaying the proceedings on the part of the applicant. The second respondent issued his finding on the merits on 13 July 2026, wherein he found the applicant guilty of serious allegations of misconduct and directed the parties to file their factors in mitigation and aggravation of sanction within three days. The applicant received the ruling on the merits on 14 July 2026 thus, he ought to have filed his mitigating factors by 17 July 2026. He did not. The applicant submitted its factors in aggravation of sanction. The applicant informed this Court that the second respondent issued the sanction on 20 July 2026, in which he recommended that the applicant be dismissed.
- [4] The applicant only approached this Court on an urgent basis on 17 July 2026, the date when he was to file his mitigating factors, to stop the second respondent from making an adverse finding against him and from dismissing him unfairly in circumstances where his constitutional right of *audi alteram*

partem was infringed by the respondents.¹ He asserts that the procedure in his hearing is unfair as he was not granted the opportunity to lead his evidence and he wants this Court to intervene on an urgent basis in order that he be afforded the opportunity to lead his evidence.

[5] He seeks the following relief as prayed for in his notice of motion:²

- ‘1. This application we heard as one of urgency and the rules relating to time periods, service and sitting of the Court be condoned in terms of Rule 38 of the Rules of this Court.
2. A Rule Nisi be hereby granted and the Respondents called upon to show cause on a date to be determined by the Registrar as per paragraph 5 below.
3. A Rule Nisi be granted as follows:
 - 3.1 The First Respondent is interdicted and restrained from pursuing with the disciplinary hearing currently pending before the Second Respondent.
 - 3.2 The Second Respondent’s ruling dated 13 July 2026 and received on 14 July 2026 be set aside.
 - 3.3 The disciplinary hearing pending against the Applicant be instituted afresh and *de novo* before a new Chairperson.
4. Directing that the Rule Nisi operates as an interim interdict.
5. The Respondents are called upon to show cause why the order and paragraph 3, above, should not be made final, on _____.
6. Costs, only in the event of opposition, on Scale C.
7. Further and/or alternative relief.’

¹ Founding affidavit at para 12 on p 002-5.

² pp 001-4 to 001-5.

- [6] The first respondent contends that, properly construed, the relief sought by the applicant was to stop the disciplinary hearing. The first respondent submits that the relief sought is moot, as the second respondent has already issued his ruling recommending the dismissal of the applicant – all that remains is for the first respondent to consider the recommendation.
- [7] The first respondent contends that this Court lacks jurisdiction to intervene in incomplete disciplinary hearings on the basis that the applicant has not pleaded a specific section of the Labour Relations Act³ (LRA) that confers jurisdiction on this Court; further, that urgency is self-created. Therefore, on these bases, the application falls to be struck off the roll.

The pleadings

- [8] The applicant approached this Court on an urgent and *ex parte* basis on 17 July 2026, seeking orders interdicting and restraining the continuation of his disciplinary hearing, setting aside the second respondent's ruling dated 13 July 2026, in which the applicant was found guilty of misconduct, and directing that the disciplinary hearing be instituted *de novo* before a different chairperson.
- [9] The applicant has not set out in his founding affidavit, why the application was brought on an *ex parte* basis. Mr Zwane, for the applicant, submits that the application is brought on an *ex parte* basis because the applicant seeks a *rule nisi*. Needless to say there are countless urgent applications in which a *rule nisi* is sought that are not brought on an *ex parte* basis and where truncated time frames are set out as contemplated in Rule 38 of the Rules Regulating the Conduct of the Proceedings of the Labour Court⁴ (the Rules). When an application is brought on an *ex parte* basis, it is normally when service on a respondent is not required or where service on the respondent may alert the respondent of the relief sought, which may defeat its purpose, for instance, an Anton Pillar application. In such applications, the notice of motion may contain an order affording the respondent the opportunity to anticipate the return date.

³ Act 66 of 1995, as amended.

⁴ Published under GN 4775a in GG 50608 of 3 May 2024.

Nothing of the sort appears in the notice of motion in this present application and it remains a mystery why the application was brought on an *ex parte* basis and yet, it was served on the respondents.

- [10] The first respondent delivered a notice of intention to oppose the application and subsequently delivered an answering affidavit. The applicant filed a replying affidavit. The application is thus fully ventilated before this Court and it therefore serves no purpose to grant a *rule nisi*. The relief prayed for in the notice of motion is however, couched in final terms.

Preliminary issues

- [11] The applicant initially launched an application seeking the same relief which application bore the reference number: *HCG1085889*. It would appear that this is the reference number that was allocated to this case when it was registered on the Court Online digital platform. Clause 1.10 of the Directive on the Implementation of Court Online Electronic Platform in the Labour Court⁵ (Directive 1 of 2025) expressly records that a party may not use the reference number as the case number. The applicant ignored this directive. The respondents delivered an answering affidavit under this reference number but subsequently withdrew this answering affidavit after the applicant filed his application under the above case number.
- [12] The applicant makes much of the withdrawal of the answering affidavit as being irregular. This contention is nonsensical, as the applicant's launching of this application under a reference number was in direct contravention of Directive 1 of 2025 as aforesaid.
- [13] On the other hand, the respondents raise the defence of *lis pendens* as they contend that the applicant has not withdrawn the application he launched under the reference number. This contention cannot be sustained for the same reason that it was impermissible for the applicant to launch its application under a reference number. The preliminary point is thus ill-conceived and nothing further needs to be said, other than emphasizing that

⁵ Directive 1 of 2025, effective 14 April 2025.

the only application in the present dispute launched in this Court by the applicant is the present application under the above case number.

- [14] That being said, the applicant's legal representative could not explain to this Court, why the case number recorded in the notice of motion, that is, case number 2026-170242 differs from the above case number, when all the pleadings in this application, barring the notice of motion, are filed under the above case number. He initially stated that he had no instructions on why this was so and later stated that it was an "error." For the sake of expedience, the applicant is given the benefit of the doubt that the recordal of the incorrect case number on the notice of motion was an error.
- [15] This present application, it would appear, was filed only at 13h32 on Friday, 17 July 2026 for a hearing at 10h00 on Monday, 20 July 2026. The notice of motion and founding affidavit served on the respondents at 13h56 on 17 July 2026 and were uploaded on Caselines at only at 17h29 on Friday, 17 July 2026. The first respondent's notice of intention to oppose under the above case number was served on the applicant by email correspondence at 14h59 on Friday, 17 July 2026. The answering affidavit was served on the applicant at 16h49 on Sunday, 19 July 2026 and was uploaded on Caselines at 17h00.
- [16] One minute before this hearing was due to commence on Monday, 20 July 2026, the applicant filed its replying affidavit.
- [17] The applicant's failure to set out time frames for the filing of further affidavits with truncated time frames commensurate with the urgency of this application resulted in the further pleadings being filed late.
- [18] This impacts urgency, which I deal with below. First, I deal with jurisdiction.

Jurisdiction

- [19] This Court is a creature of statute. Section 157 (1) and (2) of the LRA confer jurisdiction on this Court and section 158 makes provisions for the powers of this Court. It is now well established that the words 'power' and 'jurisdiction' denote two different concepts. Having the power to make an order does not

mean the Court has jurisdiction.⁶ Put differently, the Court may only exercise statutory powers where it is clothed with jurisdiction by the LRA or another enabling statute.

[20] In *Cibane and another v Premier of the Province of KwaZulu-Natal and Another*⁷ (*Cibane*), the Labour Appeal Court (LAC) unequivocally held that this Court does not have general jurisdiction to intervene in disciplinary hearings. What is required, is for the applicant to specifically plead a section of the LRA or enabling legislation that confers jurisdiction on this Court to intervene in an incomplete disciplinary hearing, failing which, this Court lacks jurisdiction.

[21] In *Cibane*,⁸ the LAC stated thus:

[27] 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.’

[22] In *Modika v Industrial Development Corporation of South Africa and Another*⁹ (*Modika*), this court held that an applicant cannot simply rely on this Court’s general jurisdiction, qualified only by exceptionality, and held thus:

‘It must therefore be made clear that an applicant cannot simply rely on a general jurisdiction of this Court to intervene, qualified only by exceptionality. The applicant must show that the right to intervene arises from a right bestowed on the applicant by the LRA, which is enforceable under the LRA. If that is so, then the Court would have jurisdiction to intervene, on for example an interim basis, pending the enforcement of such right in the normal course’.

⁶ *Natal Sharks Board v SA Commercial Catering and Allied Workers Union and Others* (1997) 18 ILJ 1324 (LC).

⁷ (2025) 46 ILJ 2587 (LAC) at para 27. See also: *Modika v Industrial Development Corporation of South Africa and another* [2025] JOL 69964 (LC) at para 36.

⁸ *Ibid* at para 27.

⁹ [2025] JOL 69964 (LC) at para 36.

[23] This Court in *Modika* held that it had jurisdiction to adjudicate the application in that case because the applicant had a specific right under section 188A(11) of the LRA to refer a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) on the basis that the disciplinary hearing against him constituted an occupational detriment. It was therefore a specific statutory right, conferred by the LRA that clothed this Court with jurisdiction. The Court was explicit that it was satisfied that the applicant sought to assert a right under the LRA and therefore, it had jurisdiction to grant the interim interdictory relief that was sought.

[24] The applicant in this present application does not specify any section in the LRA or any other enabling statute that confers jurisdiction on this Court.¹⁰ Therefore, this Court lacks jurisdiction to adjudicate this application, and the application accordingly falls to be struck off the roll.

Urgency

[25] Had I not found that the applicant has not established this Court's jurisdiction, I would have found that urgency is self-created and would thus struck the matter of the roll for want of urgency for the reasons that follow below.

[26] Rule 38(1) and (2) of the Rules provide:

'(1) A party that applies for urgent relief must file an application that complies with the requirements of the rules relating to applications generally.

(2) The affidavit in support of the application must also contain:

(a) the reasons for urgency and why urgent relief is necessary;

¹⁰ See: *Mabhena v Theewaterskloof Municipality and Others* [2026] ZALCCT 106 (30 June 2026) at para 52, where this Court held thus:

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

(b) the reasons why the requirements of the rules were not complied with, if that is the case; and

(c) ...'

[27] The test for urgency is well established.¹¹ The applicant must, in its founding affidavit, explicitly set out why the application is urgent, why the abridgment of the ordinary rules for service and filing of pleadings is necessary, and why it will not obtain substantial redress if the application is heard in the ordinary course. The applicant in the present case is the author of his own misfortune for not setting out abridged time frames for the filing of further pleadings in his notice of motion. It follows that he has not, therefore, in his founding affidavit, explained why this application is urgent and why he should jump the queue. There has been no attempt whatsoever to comply with the principles of launching urgent applications as set out in *Luna Meubels (EDMS) BPK v Makin and another*¹² and *Afrikaanse Pers Republikaasies (EDMS) BPK*¹³ and thus the application warrants to be struck off the roll.

[28] It is trite that where self-created urgency exists, the urgent application is at risk of being struck off the roll.¹⁴

[29] In *Department of Health, Gauteng Province and another v Teteni and others*¹⁵ Prinsloo J canvasses authorities on self-created urgency and considered *Sihlali and others v City of Tshwane Metropolitan Municipality and another*¹⁶, where this Court stated thus:

'There is what is termed self-created urgency. The situation herein is a classic case of such. By the time the advertisements arose, the applicants had a gripe already, which gripe they expressed in no uncertain terms to the mayor on 8 November 2016. The applicants should have, if there was any urgency,

¹¹ *Eazi Access Rental (Pty) Ltd v Suleman and Another* (2025/009793) [2025] ZALCJHB 192 (12 May 2025) at para 39; *East Rock Trading 7 (Pty) Ltd and Another v Valley Granite (Pty) Ltd and Others* 2011 JDR 1832 (GSJ) at para 8.

¹² 1977 (4) SA 135 (W) at 137 A – E.

¹³ 1972 (1) SA 773 (A).

¹⁴ *Department of Health, Gauteng Province and another v Teteni and others* [2024] JOL 63406 (LC) and *Soobedar and another v Minister of International Relations and Cooperation and another* (2021) 42 ILJ 1761 (LC) at para 20.

¹⁵ [2024] JOL 63406 (LC).

¹⁶ (2017) 38 ILJ 1692 (LC) at para 21.

approached this court then. Why they did not do so, is not explained. Instead, what is apparent is that they sat back, took their time until they obtained a legal opinion after almost three months.'

- [30] In the present application, the "*gripe*" the applicant complains about is not being afforded the opportunity to lead his evidence. This gripe arose, on his own version, on 18 June 2026, when he complains that the second respondent was biased and ruled that he should submit written representations. This, despite him having been legally represented and agreeing to submit his representations in writing. The questions the applicant now places before this Court about how his written submissions would be treated were best suited to have been canvassed with the second respondent in view of the parties' agreement that he would file written submissions. The applicant does not explain why he did not approach this Court at that point in time. When the second respondent dismissed the recusal application on 1 July 2026 and directed him once more, to file written submissions within three days, he did not approach the Court at that point. After the second respondent issued his ruling on the merits on 13 July 2026, received by the applicant on 14 July 2026, wherein he directed the parties to file mitigating and aggravating factors within three days, the applicant still waited under the guise of obtaining legal advice and instead of filing his mitigating factors, approached this Court on the afternoon of 17 July 2026, the same date when he was to file his mitigating factors, to interdict the continuation of his disciplinary hearing. This is a classic case of self-created urgency that would result in the application being struck off the roll had I not found that this Court lacks jurisdiction.

Costs

- [31] The manner in which the applicant approached the Court warrants censure, as there was material non-compliance with Directive 1 of 2025. The applicant initially brought this application in a clandestine manner without a case number with the intention of obtaining a *rule nisi* on an unknown future date. He contends that the opposition is "*premature*" and did not expect the respondents to oppose this application as he held the view that they would be

given the opportunity to oppose the application in the distant future. This would delay the finalization of his internal disciplinary hearing, which has been ongoing since January 2026. This Court, per Tlhotlalema, J, has firmly noted with displeasure, such stratagems used by senior officials in government departments which constitute an abuse of Court process,¹⁷ yet, this conduct continues with the aid of legal representatives. The applicant used this same stratagem with the knowledge that his fixed-term contract ends on 31 August 2026. He has also placed undue pressure on this Court by failing to comply with this Court's Directive as aforesaid.

[32] Section 162(2) of the LRA provides that this Court may make an order for the payment of costs, taking into consideration the conduct of the parties in proceeding with the matter before it and during the proceedings. In view of the conduct of the applicant as aforesaid, a costs order is made against the applicant.

[33] In the premises the following order is made:

Order:

1. The application is struck off the roll for lack of jurisdiction with attorney and client costs on Scale C.

M T M Phehane

Judge of the Labour Court of South Africa

¹⁷ See: *George v Nyoka and others* [2023] 7 BLLR 654 (LC).

Appearances:

For the applicant : Mr Zwane

Instructed by : BGS Attorneys

For the first respondent : Adv Petje (Ms)

Instructed by : Molefe Dlepu INC Attorneys