IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case No: JS 31/21

In the matter between:

MTHANDENI MBATHA	**First Applicant**
THEMBINKOSI HLONGWANE	**Second Applicant**
MPHIKELELI VICTOR JWARA	**Third Applicant**
BHEKI SIBIYA	**Fourth Applicant**
SIMO MASUKU	**Fifth Applicant**
LUVO NOGAGA	**Sixth Applicant**
PHUMLANI THUSI	**Seventh Applicant**
LWAZI ZUNGU	**Eighth Applicant**
THOKOZANI NENE	**Ninth Applicant**
THANYANI NENGWENANI	**Tenth Applicant**
MDUDUZI ZONDO	**Eleventh Applicant**
JOHN CHAUKE	**Twelfth Applicant**
SIYABONGA MAKHOBA	**Thirteenth Applicant**
KULUKAZI QUNTA	**Fourteenth Applicant**
DAVID NXUMALO	**Fifteenth Applicant**
MXOLISI ZUNGU	**Sixteenth Applicant**
ARON MUKHOVHANAMA	**Seventeenth Applicant**

ZAKHALE ZULU **Eighteenth Applicant**

TITUS CHAUKE **Nineteenth Applicant**

DUMISANI MATIMA **Twentieth Applicant**

and

PIONEER FOODS (PTY) LTD t/a SASKO **Respondent**

Heard: 5 May 2023

Delivered: 7 June 2023

JUDGMENT

JOLWANA AJ

Introduction

[1] Having been served with the applicants' statement of claim, the respondent raised a point in *limine* in its statement of response contending that this Court does not have jurisdiction to determine the applicants' dismissal dispute. This judgment only deals with that jurisdictional point in *limine*.

Background

[2] Briefly, the facts are that following the activities of 3 April 2020 at the workplace of the respondent involving some of its employees, the applicants were among some of the respondent's employees who were later charged with participating in an allegedly illegal strike on 3 April 2020. After a disciplinary hearing was held, the applicants were found guilty and dismissed.

[3] I do not intend to get into details about the activities of the 3 April 2020 involving the applicants or the allegations and counter allegations about what actually happened on that day. All of those issues are not before this Court currently and may very well be a subject of a trial in due course. To the extent that I may comment about any of the issues that will be before the trial Court, I

do not intend to make any definitive findings whatsoever beyond a passing comment as may be necessary to determine the jurisdictional issue before me. Where I regard some issues as being common cause I do so only to the extent that they appear to be or are regarded as such in the pre-trial minute filed on 14 July 2021.

The respondent's point in limine

[4] In its statement of response, the respondent raised a jurisdictional point in *limine* contending that the referral of the applicants' dispute to this Court was done some three and a half months later than it should have been. Furthermore, there was no condonation application sought for the said delay. This is how the issue of jurisdiction is pleaded in the respondent's statement of response:

'1. The Court does not have jurisdiction to hear the Applicants' dismissal dispute.

2. The Applicants were dismissed by the Respondent (the Company) on various dates during May and June 2020, having been found guilty of, *inter alia*, unprotected strike action.

3. The Applicants referred a dispute to the Commission for Conciliation, Mediation and Arbitration (the CCMA) in terms of section 191(1) of the Labour Relations Act 66 of 1995 (the LRA) on 12 June 2020.

4. Conciliation took place on 9 July 2020 and a certificate of outcome was issued on the same day.

5. Section 191(11)(a) of the LRA provides that:

> "The referral, in terms of subsection (5) (b), of a dispute to the Labour Court for adjudication, must be made within 90 days after the council or (as the case may be) the commissioner has certified that the dispute remains unresolved."

6. In the premises, the applicants were obliged to have referred their dispute to the Labour Court on or before 8 October 2020.

7. The applicants referred their dispute to the Labour Court on or about 25 January 2021. Accordingly, the dispute was referred just over three and a half

months outside of the time period contemplated by section 191(11)(a) of the LRA."

[5] There was no replication to the respondent's statement of response since it was filed in this Court on 10 February 2021. However, on 4 May 2023 which was the day before this matter was heard, the applicants, through their Union representative[1] caused to be filed a document that appears to be intended to be a replication to the statement of response. This document was filed more than two years after the statement of response was filed. The respondent's legal representative objected to the admission of this document which was filed without any explanation or even an application for condonation for its late filing. There was also no explanation for its late filing even during oral submissions in court by Mr. Luthuli, the applicants' Union representative who appeared on behalf of the applicants.

[6] That document having been filed irregularly and contrary to the rules of this Court[2], has no standing in these proceedings. After all, during oral submissions in court, Mr. Luthuli referred the court to his vast experience in these matters which he submitted, dates back to 1986. He never sought the indulgence of the Court to have the document admitted even with a vague reference to timeously filing it having slipped his mind at the time it should have been filed. I, therefore, regard that document as *pro non-scripto*.

[7] It would be very remiss of me not to express some disquiet at the cavalier attitude sometimes displayed, regrettably not so infrequently, by some of those who appear in this Court. It must be understood that if the rules, procedures and practices of this Court are not adhered to and most importantly, enforced, the results will be anarchy and chaos. Those who make the choice of practising and appearing in this Court in whatever capacity, must understand that leniency extended to them will not be the same as for lay litigants who come to court seeking to vindicate their rights in person. In Osho

[1] The applicants are members of the Inqubelaphambili Trade Union which has represented them at all material times up to and including the date of hearing during which Mr. Luthuli, a Union official argued the applicants' case on their behalf.
[2] GN 1665 of 14 October 1996: Rules For The Conduct Of Proceedings In The Labour Court.

Steel (Pty) Ltd v Ngobeni NO and Others[3], Tlhotlhalemaje J explained the importance of court rules for an orderly and speedy adjudication of disputes as follows:

> "The rules of any court are put in place for multiple purposes, chief amongst which is to prescribe the procedure, the time-limits, and the forms to be used in the court; to promote access to the court and to ensure the right to have disputes resolved and determined expeditiously and with minimum costs; to enable the business of the Court to be carried out in an orderly, uniform and consistent manner; and to set guidelines on the standards of conduct expected of those who practice in the court.
>
> …
>
> As it was correctly pointed out by Prinsloo J in *Sol Plaatjie Local Municipality v South African Local Government Bargaining Council and Others*, the purpose of the Practice Manual is to promote uniformity and consistency in practice and procedure, to set guidelines on standards of conduct expected of those who practise and litigate in the Labour Court, and to further promote the statutory imperative of expeditious dispute resolution. This is [in] line with the objectives of the court rules as already alluded to.'

[8] Mr. Luthuli's submissions on the issue of the jurisdiction of this Court are captured in the heads of argument that he filed for the applicants. Those heads of argument were also filed contrary to the Practice Manual of this Court[4] by being handed up during the oral hearing of this matter. That too was improper and a complete disregard for the regulatory processes contained in the Practice Manual that has been carefully designed for the smooth running of court proceedings. Having said that, I have had regard to the applicants' heads of argument which have assisted me greatly in understanding the essence of the applicants' contentions on jurisdiction.

The applicants' submissions on the point in limine

[3] (2020) 41 ILJ 476 (LC) at paras 14 and 16
[4] Practice Manual of the Labour Court of South Africa, effective 1 April 2013.

[9] The applicants' submissions contained in the applicants' heads of argument on the point in *limine* are, quoted verbatim, mainly the following*:*

> '3. Note that unfair dismissal dispute was referred to CCMA within 30 days for conciliation hearing but conciliation was unsuccessful due to Covid-19 related delays.
>
> 4. Thereafter the Applicant referred a dispute to arbitration as there were delays to proceed with conciliation proceedings and eventually the CCMA set the matter down for arbitration on the 1 December 2020. I refer the Court to the Commissioner's Ruling dated 20 December 2020 where the Commissioner stated that CCMA lacks jurisdiction to determine the dispute and further said the union may refer the dispute to the Labour Court.
>
> 5. Thereafter on or about 25 January 2021 the Applicants referred their dispute which was made on time as per Court rules.
>
> 6. The company allegations to say the referral for Labour Court was supposed to be made on the 8 October 2020 is not correct because that time there was no non-resolve-certificate or ruling issued as the matter was still pending before CCMA as the conciliation was unsuccessful on the 9 July 2020 and the CCMA had to set the matter down for arbitration on the 1 December 2020.
>
> 7. Note that the dispute was filed on time to the Labour Court meaning there was no reason to file the condonation application as the referral before Court was made on time within the Court rules.
>
> 8. Therefore the company allegation that the referral to Labour Court to be made within 90 days is noted, that is what the applicants did as the application was referred early within 90 days to the Labour Court.'

[10] In summary, the applicants' case on the point in *limine*, as far as could be gleaned from their heads of argument is a simple one. It is that, following an unsuccessful conciliation at the CCMA, the applicants referred their dismissal dispute to arbitration. There were delays in the arbitration process although it is not clear whether it was the CCMA that delayed in arbitrating the dispute or

the applicants that delayed in referring it for arbitration. However, the CCMA set down the arbitration hearing for 1 December 2020 and the commissioner delivered his ruling on 20 December 2020 in which he found that the CCMA lacked jurisdiction. Thereafter, the applicants, on 25 January 2021 referred the dispute to the Labour Court. On that basis, so went the submissions, the referral to this Court was done timeously and in any event within 90 days from 20 December 2020.

The legal framework

[11] Section 191(5) of the Labour Relations Act[5] (LRA) provides:

> 'If a council or a commissioner has certified that the dispute remains unresolved, or if 30 days or any further period as agreed between the parties have expired since the council or the Commission received the referral and the dispute remains unresolved –
>
> (a) the council or the Commission must arbitrate the dispute at the request of the employee if –
>
> (i) the employee has alleged that the reason for dismissal is related to the employee's conduct or capacity, unless paragraph (b) (iii) applies;
>
> (ii) the employee has alleged that the reason for dismissal is that the employer made continued employment intolerable or the employer provided the employee with substantially less favourable conditions or circumstances at work after a transfer in terms of section 197 or 197A, unless the employee alleges that the contract of employment was terminated for a reason contemplated in section 187;
>
> (iii) the employee does not know the reason for dismissal; or
>
> (iv) the dispute concerns an unfair labour practice; or

[5] Act 66 of 1995, as amended.

(b) the employee may refer the dispute to the Labour Court for adjudication if the employee has alleged that the reason for dismissal is –

(i) automatically unfair;
(ii) based on the employer's operational requirements;
(iii) the employee's participation in a strike that does not comply with the provisions of Chapter IV; or
(iv) because the employee refused to join, was refused membership or was expelled from a trade union party to a closed shop agreement.'

The analysis

[12] Section 157(4)(a) of the LRA provides that the Labour Court may refuse to determine any dispute if it is not satisfied that there was an attempt to resolve the dispute through conciliation. Section 157(4)(b) provides that a certificate issued by a commissioner or a council is sufficient proof that an attempt to resolve a dispute through conciliation has been made[6]. This means that where there is a dispute and a matter has not been referred to the CCMA or a bargaining council and a certificate of non-resolution has not been issued, the Labour Court may refuse to hear the matter. With the provisions of section 157(4) in mind, it seems to me that there are two ways of dealing with a dispute that has not been resolved at conciliation. The route provided for in section 191(5)(a) is for the categories of disputes listed therein and may lead to the referral of the dispute to arbitration. The second route bypasses arbitration and allows a referral to the Labour Court after a certificate of non-resolution has been issued or a 30-day period has lapsed since the referral of the dispute to the CCMA or council for conciliation with the dispute remaining unresolved. That route is provided for in section 191(5)(b) but it is only for the categories of the disputes listed in section 191(5)(b).

[6] Section 157(4) reads:
'(a) The Labour Court may refuse to determine any dispute other than an appeal or review before the Court, if the Court is not satisfied that an attempt has been made to resolve the dispute through conciliation.
(b) A certificate issued by a commissioner or a Council stating that a dispute remains unresolved is sufficient proof that an attempt has been made to resolve the dispute through conciliation.'

[13] However, the direct referral to the Labour Court after a failed conciliation but without arbitration as provided for in section 191(5)(b) must be made within the timelines prescribed in section 191(11). Section 191(11) provides as follows:

> '(a) The referral, in terms of subsection (5) (b), of a dispute to the Labour Court for adjudication, must be made within 90 days after the council or (as the case may be) the commissioner has certified that the dispute remains unresolved.
>
> (b) However, the Labour Court may condone non-observance of that timeframe on good cause shown.'

[14] The applicants' case is that the point in *limine* must be given short shrift as being without merit. This is on the basis that, consequent upon the ruling made at the arbitration hearing on 20 December 2020, they timeously referred the dispute to the Labour Court on 25 January 2021. The applicants' case also appears to be that they elected to have the dispute referred for arbitration after the conciliation was unsuccessful. Indeed, they were entitled to do so if the dispute in question was one of those mentioned in section 191(5)(a) and not anything else. The question that follows logically, is what was the nature of the dispute between the applicants and the respondent? In their statement of claim, the applicants give their version about the series of events of 3 April 2020 at the respondent's premises which was their workplace at the time. They also chronicle what happened as a sequel thereto, to them and to other trade union members who were members of another union. The applicants then make this assertion:

> '30. It is our submission that the company dismissed the applicants without any reasons as there was no misconduct committed as all were unfairly terminated for no reasons or they did not do anything wrong but complied with the branch manager's instruction.'

[15] This is the only place in the applicants' pleadings properly filed, in which the reason for the dismissal is indirectly alluded to which is that it was for no reason. I take this to mean that the applicants did not know the reasons for

their dismissal. This is a very strange proposition to make for people who were dismissed after a disciplinary process. This appears to be based on the applicants' disavowal of their dismissal having been for their alleged participation in an unprotected strike. Whether or not the applicants participated in an unprotected strike is not for determination in these proceedings now. It is a subject of a possible future determination when and if the matter goes to trial. It is part of what appears to be a dispute of fact about what happened on 3 April 2020, issues which, as I indicated earlier, it is important that I stay clear of. I must, however, point out that if the dismissal of the employees was for their alleged participation in an unprotected strike, this Court, in terms of section 191(5)(b), and not the CCMA in terms of section 191(5)(a), would have had jurisdiction.

[16] Whatever happened on 3 April 2020, what is clear is that there was conciliation of the dispute on 9 July 2020 which was, on both versions, unsuccessful and according to the respondent, a certificate of non-resolution was in fact issued. The applicants do not allege when the conciliation took place at the CCMA. However, they do indicate that it did take place and a certificate of non-resolution was issued. This is how the issue is pleaded in the statement of claim:

> '51. Notice that this matter was referred to the CCMA on time as unfair dismissal the CCMA accepted the referral as the conciliation proceeded and certificate of outcome was issued the matter was referred to arbitration hearing where it proceeded as the company first witness begin its evidence in chief not finalised as the time ended.'

[17] Therefore, it would be fair to say that on both versions there was a certificate of non-resolution that was issued after the failed conciliation exercise. The only available version about when the certificate of non-resolution was issued is that of the respondent. However, if regard is had to the applicants' heads of argument, it seems to me that the certificate of non-resolution may have been in fact issued on 9 July 2020 as the respondent alleges in the statement of response. This finds support from the applicants' heads of argument in which the following submission is made:

'6. The company allegations to say the referral for Labour Court was supposed to be made on 8 October 2020 is not correct because that time there was no non-resolve certificate or ruling issued as the matter was still pending before the CCMA as the conciliation was unsuccessful on the 9 July 2020 and the CCMA had to set the matter down for arbitration on the 1 December 2020.'

[18] The above submissions in the applicants' heads of argument about the certificate of non-resolution contradict the applicants' own pleadings in the statement of claim about that issue. However, it can be accepted, on applicants' own submissions that conciliation took place on or about 9 July 2020 and was unsuccessful. Once conciliation became unsuccessful, the CCMA had no jurisdiction to arbitrate the dispute if it was for participation in the alleged unprotected strike. Only the Labour Court had jurisdiction to entertain the matter in terms of section 191(5)(b)(iii) which is what the respondent alleges, took place on 3 April 2020, that is, an unprotected strike action. Whether or not the conduct, which the employer said was an unprotected strike, was, in fact, an unprotected strike is a factual question. It would have been sufficient if the applicants alleged that they were unlawfully dismissed for an unfounded allegation of participation in an unprotected industrial action which they dispute.

[19] I have serious reservations about the truthfulness of the assertion that the applicants were dismissed for an unknown reason or for no reason. The applicants were called for a disciplinary hearing which led to their dismissal. It is highly improbable that in the ultimatums that would have been issued and all written invitations to the disciplinary hearings and indeed in the disciplinary hearings themselves the applicants, throughout, remained none the wiser about what was at the centre of the dispute which led to their dismissal. Whether or not the respondent's characterisation of what was taking place as an unprotected strike was correct or not is a different matter. However, for the applicants to claim not to know the reason for their dismissal appears to me to have been a disingenuous attempt to find a reason to refer the matter to arbitration at the CCMA in circumstances where the CCMA had no jurisdiction. The referral provided for in section 191(5)(a) and (b) must happen

soon after the certificate of non-resolution is issued or within 30 days from the date of the referral regardless of whether the certificate of non-resolution is issued or not.

[20] I have no doubt that the applicants would have been told what charges they faced and ultimately why they were dismissed. It is difficult to understand why they claimed at the CCMA and in their statement of claim that they were dismissed for an unknown reason. This allegation of not knowing the reason for the dismissal is further contradicted by the applicants themselves in the pre-trial minute. This is how the issue is canvassed in the pre-trial minute:

> '45:16 The applicants contend that they were dismissed for participating in an illegal strike, however there was no such strike on 3 April 2020. Instead, there was a meeting called by the management. In all, the applicants requested the Honourable Court to reinstate and pay them for the period they spent unemployed as their dismissal were procedurally unfair.'

[21] This puts paid to any idea that the applicants did not know that they were dismissed for their alleged participation in an unprotected strike. Therefore, the CCMA had no jurisdiction to arbitrate the dispute as the commissioner found in his ruling. The referral of the dispute to the Labour Court had therefore to take place within 90 days from 9 July 2020 on which date, on both versions, the conciliation had become unsuccessful. That is what brings section 191(11)(a) and (b) into the picture.

Was a condonation application necessary?

[22] The final issue now is the failure of the applicants to apply for condonation. It was submitted in the applicants' heads of argument and during the oral submissions in court by Mr Luthuli, that the applicants did not have to apply for condonation. Section 191(11)(a) must be read with section 191(5) conjunctively and not disjunctively. The applicants have not challenged or applied to have the CCMA's ruling reviewed and set aside. That ruling was that it did not have jurisdiction because they had, to their knowledge, been dismissed for their participation in unprotected strike action. It, therefore,

remains extant. Where the employee has proceeded in terms of section 191(5)(a) and is dissatisfied with a ruling of the arbitrator, his only option is to have that ruling reviewed and set aside in terms of section 145 of the LRA and not a referral to the Labour Court in terms of section 191(5)(b). Section 191(5)(b) is not available to an employee who has elected to make use of the process provided for in section 191(5)(a). This means that section 191(5)(a) and (b) provide for two separate options depending on the nature of the dispute amongst those listed in section 191(5)(a) or (b). Referral to the Labour Court was purportedly done in terms of section 191(5)(b). Therefore, it was subject to the 90-day period calculated from the date the certificate of non-resolution was issued.

[23] The applicants had 90 days from the 9 July 2020 which is the date on which conciliation failed, assuming the certificate of non-resolution was issued on that day. Even if it was not, they still had 90 days from the date on which the 30-day period expired since the referral of the dispute to CCMA for conciliation and it remained unresolved. That is, even if one assumes for a moment that they could still do a referral to the Labour Court regarding a dispute characterised as falling under those disputes provided for in section 191(5)(a). Whichever way one looks at it, the applicants were out of time in their referral of their dispute to the Labour Court in my view and therefore they should have applied for condonation of their late referral.

[24] Section 191(11)(b) gives the Labour Court power to condone the non-observance of the 90-day period on good cause shown. The good cause would have to be shown in a condonation application. In this case, no such application was made and the applicants, both in their heads of argument and during oral submissions in Court by Mr. Luthuli, their contention was that it was not necessary for them to make a condonation application. There was not even a request for them to be given an opportunity to do so even at this late stage. It must therefore be accepted that they had no intention of doing so at least up to the date of the hearing of the point in *limine*.

Does this Court have jurisdiction?

[25] The question I must now turn to is whether, absent a condonation, sought in an application and granted, this Court can adjudicate the applicants' dismissal dispute. In other words, can this Court hear the matter in circumstances in which the referral to it took place after the expiry of the 90-day period provided for in section 191(11)(a) absent a condonation application?

[26] The issue of the jurisdiction of this Court where the referral of a dispute to it was late and there was no condonation application has received the attention of the Constitutional Court and dealt with authoritatively in *F&J Electrical CC v Metal & Electrical Workers Union of SA on behalf of Mashatola and Another*[7] *(MEWUSA).* In that case, writing a unanimous judgment of the Constitutional Court, Zondo J, as he then was, stated the legal position as follows:

> 'Before the Labour Court may adjudicate a dispute, it, like any other court, should first satisfy itself that it has jurisdiction. In this case the Labour Court failed to do so. The certificate of non-resolution was issued on 3 March 2009. In terms of s 191(5) of the LRA the employees were obliged to refer the dispute to the Labour Court or to the bargaining council or CCMA, as the case may be, within 90 days from 3 March 2009. The Labour Court would not have jurisdiction to adjudicate the dispute if the dispute was referred to the Labour Court after the expiry of 90 days from that date unless the employees applied for condonation and showed good cause. In this case the 90-day period expired on or about 2 June 2009. The union referred the dispute to the Labour Court only on or about 7 October 2009. That was a delay of about four months.
>
> When the Labour Court granted default judgment, the union had not lodged an application for condonation. The union contended that the referral of the dispute to the Labour Court was within the prescribed period. It seems that this contention was based on a misconception that the 90-day period was to be reckoned from the date of the ruling of the CCMA. That is not so. In this case the period had to be reckoned from the date when the certificate was issued. In the absence of a finding that there was good cause for the failure to refer

[7] (2015) 36 ILJ 1189 (CC) at paras 29 - 30

> the dispute within the prescribed period, the Court had no jurisdiction to adjudicate the dispute. Accordingly, the Labour Court erred in adjudicating the dispute and granting the order without an application for condonation.'

Conclusion

[27] It is clear from *MEWUSA* that the question of whether or not a court has jurisdiction is so fundamental that where a litigant has not raised the issue, the court must itself raise it even *mero motu*. If it does not have jurisdiction it simply cannot deal with the matter before it. If it is not satisfied that it has jurisdiction, it cannot adjudicate the matter only on the basis that the opposing litigant has either not raised the issue or has accepted that the court does have jurisdiction or that the matter is not being defended or opposed. The Court must itself determine its competency to adjudicate the matter and make a decision. In all the circumstances, the respondent's jurisdictional point in *limine* must succeed and be upheld. Therefore, this Court has no jurisdiction to adjudicate the applicants' dismissal dispute.

Costs

[28] The respondent has asked for costs to be awarded against the applicants if the court finds that indeed it has no jurisdiction to adjudicate this matter. The concept of jurisdiction is in some ways highly technical and yet deceptively simple. As such it may be very confusing to litigants who may not necessarily be familiar with it. Even courts themselves do not always appreciate its centrality to their competence to adjudicate the disputes before them. That was the case in *MEWUSA* where the Labour Court went ahead and granted a default judgment in circumstances in which the Constitutional Court found that, in fact, it had no competence to deal with the matter because it lacked jurisdiction to do so.

[29] In *Long v South African Breweries (Pty) Ltd and Others,*[8] the Court stated that:

[8] (2019) 40 ILJ 965 (CC) at paras 29 – 30.

'It is clear that when making an adverse costs order in a labour matter, a presiding officer is required to consider the principle of fairness and have due regard to the conduct of the parties. This, the Labour Court failed to do. There is no reasoning on the question of costs order beyond an indication that costs are to follow the result. This is a misdirection of law and it follows that the Labour Court's discretion in respect of costs was not judicially exercised and must be set aside.

The question is then: what costs order would be fair? The first respondent in its submissions strongly urged that the applicant's senior position in the company, and his commensurate responsibility, as well as his remuneration package, took this case out of the ordinary. It submitted baldly that the applicant's conduct warranted an adverse costs order, but did not explain why. In the absence of any reasons why the principle in *Zungu* should not apply, there is no basis to make an adverse costs order.'

[30] In this case, the applicants have already lost their jobs and it is unknown if they will ever recover from that setback. To award a costs order against them for being unsuccessful over a technical issue like jurisdiction, which sometimes baffles even some of the experienced lawyers would be neither appropriate nor fair in my view. It seems to me that the most appropriate order in respect of costs would be that there should be no order as to costs.

[31] In the result, the following order shall issue:

Order

1. The respondent's jurisdictional point in *limine* is upheld.
2. The matter is struck off the roll for lack of jurisdiction.
3. There is no order as to costs.

M. Jolwana

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants:	Mr Luthuli, Union Representative of the Inqubelaphambili Trade Union
For the Respondent:	Mr Whyte and Ms Macfarlane of Norton Rose Fulbright South Africa Inc.