

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

[redacted] 6 NOVEMBER 2026

Signature Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2026-232698

In the matter between:

AFADWU OBO MEMBERS **Applicant**

and

GERHARDUS HAMMAN **First Respondent**

PREMIER FMCG (PTY) LTD **Second Respondent**

Heard: **5 October 2026**

Delivered: **6 November 2026**

Summary: (Urgent application – Applicant seeks relief under section 189A (13) of the LRA – Applicants must show second respondent did not comply with a fair procedure – second respondent complied with a fair procedure – application dismissed)

JUDGMENT

MAY, AJ

Introduction

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[1] Applicant approaches this Court on an urgent basis for interim relief in the form of a rule *nisi* that:

1.1 the purported retrenchment of the employees by the First and Second Respondent does not constitute a fair and just retrenchment process as contemplated in section 189 of the Labour Relations Act 66 of 1995;

1.2 the proposed Voluntary Severance Packages (VSP) offered by the First and Second Respondent be halted until all possible alternative remedies are exhausted;

1.3 the applicants that have signed VSP's unintentionally or under duress be provided with an option to return back to work obtaining alternative relief other than retrenchment; and

1.4 the employment relationship between the Applicants and the First and Second Respondents remain extant and unaltered.

[2] Applicants further sought an interdict interdicting and restraining the First and Second Respondents from implementing the purported section 189 process and an order that the First and Second Respondents pay the costs of the application.

[3] The application was launched on the 21st of September 2026, was initially enrolled for hearing on 28th of September 2026. The matter eventually served before this Court on 5 October 2026.

The facts

[4] The facts are largely common cause. The second respondent is a member of the Premier Group. They manufacture, distribute and market branded and private label fast moving consumer goods in South Africa. The Group purchased 100% of the shares of RFG Holdings Limited by way of a share swap (merger). The merger was approved by the competition commission on 6 March 2026 and included conditions to the effect that the Group will not retrench any

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employees (defined as permanent employees) for a period of three years referred to as merger specific retrenchments subject to the proviso that merger specific retrenchments excludes voluntary retrenchments and/or voluntary separation agreement and any retrenchments lawfully effected for operational requirements unrelated to the merger.

[5] Second Respondent underwent an internal restructuring as a result of the transfer of employees of RFG Foods (Pty) Ltd to the second respondent in terms of section 197 of the LRA. RFG Foods was a subsidiary of RFG Holdings.

[6] The fruit products operation (situated in Tulbagh) to which this application relates was an operation of RFG Foods and became an operation of the second respondent pursuant to the section 197 transfer. On 28 and 29 July 2026, the second respondent issued notices in terms of section 189 (3), read with section 189A, of the LRA, inviting consulting parties to consult on the contemplated dismissals. At the same time, the second respondent requested facilitation by the CCMA by submitting the requisite referral form to them.

[7] The facilitation process commenced on 6 August 2026 and included the Applicant, Solidarity, NUFAS, representatives from the second respondent, representatives from non-union salaried staff, representatives from the commercial and shipping departments and representatives from non-union staff. After the second respondent presented their business rationale to the parties, it was agreed that questions would be submitted to the second respondent in writing by 14 August 2026 and the second respondent would provide answers thereto by 21 August 2026. The second facilitation meeting would take place on 26 August 2026.

[8] At the following facilitation meeting, a dispute arose as to whether a representative from COSATU could participate in the meeting as well as a person who was no longer an employee of the second respondent. The Commissioner indicated that he would make a ruling on the matter and a further facilitation session was scheduled for 8 September 2026.

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[9] At the third facilitation meeting, and after the second respondent made a full financial presentation to answer the questions posed by the parties, spokespersons on behalf of the employee parties presented without prejudice demands which included that the second respondent pay severance packages to permanent salaried and wage staff as well as to employees on fixed-term contracts, that severance be calculated at four weeks' pay for every year of service, that years of service be rounded up from 0.5 to a full year, that employees receive three months' notice pay, that the minimum amount payable be R100 000.00, that a gratuity be paid to seasonal employees who would have reached normal retirement age in the coming season, that the second respondent continue paying for employees on formal training programmes, including apprentices and that the second respondent investigate the possibility of offering employees other skills to make them more employable. The next meeting was scheduled for 14 September 2026.

[10] At the facilitation meeting the second respondent presented its VSP proposal which was to be offered to three groups of employees to wit permanent salaried staff, permanent wage staff and employees on fixed-term contracts as at July 2026, that the severance package on offer would be two weeks' wages for every completed year of service, that the second respondent would rely on section 198B (10)(b) of the LRA and that severance would be backdated to 1 January 2015 for permanent employees who were made permanent in October 2024, that one month's notice would be given on the basis that employees would stop working on 30 September 2026 and October would be paid as notice and that if 100% of employees accepted the VSP's , the minimum amount payable would be R50 000.00. For any outstanding work remaining, employees would first be offered VSP's and then retained on fixed-term contracts thereafter. The second respondent, after some further discussions, agreed to increase the notice pay with an additional 2 weeks' pay. The parties concluded the meeting on the understanding that the facilitation process was conducted with prejudice, that it was not necessary to sign a separate agreement and the parties had reached an agreement. The meeting concluded and it was agreed that the parties would meet again on 30 September 2026 for the fourth meeting to finalise the matter.

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[11] The VSP's were thereafter delivered to each of the affected employees and by the time the answering affidavit was deposed to, which was on 24 September 2026, of the salaried staff affected 100% of them had signed VSP's and of the wage staff all employees bar 2 signed the VSP's. In respect of the Applicant's members, only 1 of their 107 members did not sign a VSP. The rest all signed VSP's.

[12] Applicant delivered the urgent application on 18 September 2026, and this effectively stalled the facilitation process. As things stand, as at the date of hearing the matter, only one employee has not signed the VSP which is the Applicant's member and, as confirmed by Counsel appearing for the second respondent, Mr Mndebele, the facilitation process will continue in respect of the one employee.

Applicants' case

[13] Applicants' relief, other than the prayer rela ed to the setting aside of the VSP's, is on behalf of the one employee. In this respect, the Applicants contend that it made a proposal to the second respondent, on or around the 8th of September 2026, that there is a potential investor and/or buyer that is willing to purchase the business as a going concern in terms of section 197 of the LRA and that they furnished the second respondent with the contact details of this potential buyer. Applicants contend, in essence, that the second respondent's failure to consider the potential buyer and possible sale means that there will be no meaningful consultation as required in terms of section 189 as the sale could obviate the need for the retrenchments in *toto*.

Misjoinder and non-joinder

[14] The first respondent who deposes on behalf of the second respondent contends that he has been misjoined to the proceedings. At the hearing of the matter, Mr Seloga, appearing for the Applicants, conceded that no case is made out against the first respondent and that the relief is sought against the second respondent only. The concession is correctly made.

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[15] Mr Seloga also conceded that any relief sought could only be sought in relation to the Applicants' members and not in relation to any of the employees who were represented by any of the other unions or representatives. In essence therefore the Applicant could only seek to interfere in the signed VSP's, if they can at all, concluded by their own members. this concession means it is unnecessary for the Court to determine the non-joinder objection raised by the second respondent.

Urgency

[16] The second respondent disputes that the matter is urgent and contends that the Applicants have failed to address whether they will obtain substantial redress in due course. The second respondent also submits that the Applicants have failed to satisfy the other requirements for urgency as well. In addition, the second respondent has raised that the App cants have failed to set out the basis, whether statutory or otherwise, it r lies on to found the Court's jurisdiction to entertain the application. Finally, the second respondents contend that applicants have not sought an order that the VSP's concluded between the parties be set aside nor have they laid out a basis for same.

[17] 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 expeditiously[1].

[18] Section 189A (13) empowers a consulting party to approach the Labour Court for an order compelling the employer to comply with a fair procedure, interdicting or restraining the employer from dismissing an employee prior to complying with a fair procedure or directing the employer to reinstate an

[1] *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another (2016) 37 ILJ 2840 (LC) paras 21 – 26.*

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employee until it has complied with a fair procedure[2]. Such an application is *sui generis* and is accorded a degree of urgency.[3] The relief is usually sought in the form of a pre-emptive interdict. The aim of section 189A (13) is to provide a remedy to employees to approach the Labour Court to set their employer on the right track where there is a genuine and clear-cut procedural unfairness which goes to the core of the process. The section is aimed at securing the process in the interest of a fair outcome[4].

[19] It would be inappropriate to afford an Applicant the remedies set out in section 189A(13)(a)-(c) if they delayed unduly between the occurrence of the alleged procedural flaw or if the flaw is formal or insignificant or if the relief is sought after the retrenchment process is completed. This is so because procedural flaws must be corrected early and effectively to allow the parties to continue with the consultation process, with the possibility of the flaws being corrected and consensus being reached[5].

[20] The last facilitation was held on 14 September 2026 where the final offer was accepted. The Applicants allege that they sought a further extension of 60 days for further consultation which was refused. The second respondent contends that a further extension was unwarranted as 99% of the employees had accepted the VSP's and as such an extension would serve no useful purpose.

[21] The application was thereafter delivered on 18 September 2026 and filed on 21 September 2026. The Applicants have therefore not unduly delayed the Application at all, and it would therefore be appropriate to afford the Applicants the remedies under Section 189A (13) provided a proper case is made out for the relief sought.

<u>Is Section 189A (13) engaged?</u>

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[2] Section 189A (13)(a), (b) and (c).
[3] *BIFAWU obo Miya and Another v Scorpion Legal Protection (Pty) Ltd* [2023] ZALCJHB 314; (2024) 45 ILJ 298 (LC) at para 15.
[4] *RAWUSA v Schuurman Metal Pressing (Pty) Ltd [2005] 1 BLLR 78 (LC).*
[5] *Insurance and Banking Staff Association and another v Old Mutual Services and Technology Administration and another* [2006] 6 BLLR 566 (LC) at paras 14 to 17.

[22] Jurisdiction is determined on the basis of the pleadings and not on the substantive merits of the case. The Applicants' pleadings should contain the legal basis of the claim under which the Applicants have chosen to invoke the Court's competence. The Court must interpret the formal terminology of the notice of motion, the contents of the supporting affidavits to establish what the legal basis of the Applicants' claim is.[6]

[23] The second respondent contends that the Applicants must specifically indicate on what provision of the legislation the Applicants rely on to found jurisdiction.[7]

[24] It is apparent from the Applicants' Notice of Motion and Supporting Affidavits that they seek intervention in pending retrenchment proceedings that is subject to facilitation in terms of section 189A. A pleading should not be read pedantically, nor should a court overemphasise precise formalistic requirements – it is the substance of the allegations that should properly be considered[8]. On this basis it is obvious t at the Applicants' relief is premised on Section 189A (13).

[25] The Applicants allege that the second respondent is not engaged in meaningful discussions with them in their failure to consider the potential investor/ buyer. This falls within the purview of section 189A (13) if established. This Court's jurisdiction is therefore engaged.

<u>Has the second respondent complied with a fair procedure</u>

[26] The Applicants relief hinges on a finding that the second respondent has not complied with a fair procedure[9]. On the facts, there is nothing that supports this contention at all. In fact, the contrary seems true.

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[6] *Gcaba v Minister for security and Others* 2019 (1) SA 238 (CC) at para 75. See also *My Vote Counts CC v Speaker of the National Assembly* 2016 (1) SA 132 (CC).
[7] Relying on *Mothotoana v Johannesburg Social Housing Company SOC Ltd* (2025/082814) [2025] ZALCJHB 420 (8 September 2025) and *Tshabalala v Mutenga and Another* (2025/205156) [2026] ZALCJHB 28 (2 February 2026).
[8] *MN v AJ* 2013 (3) SA 26 (WCC), para 24 and *Suid Afrikaans Onderlinge Brand en Algemene Versekerings Maatskappy Bpk v Van der Berg en Andere* 1976 (1) SA 602 (AD) at 607E.
[9] *National Union of Metal Workers of South Africa obo Members and Another v South African Airways (SOC) Limited (In business rescue) and Others* (J424/20) [2020] ZALCJHB 70; 2020 (7) BCLR 888 (LC) at para 7 (SAA).

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[27] The Applicants' contention is that the second respondent is offering VSP's without considering the potential investor/ buyer. The second respondent disputes this and says that no offer to buy the business had been made. They also say that there is no requirement that they must wait for an offer before offering the employees VSP's.

[28] In *SAA*[10], Van Niekerk J confirmed that nothing prevents an employer from offering a voluntary severance package as a measure to avoid retrenchment and that if a VSP is offered and accepted as a means to avoid the need for or even contemplate retrenchment, the contract of employment is terminated by mutual agreement and there is no dismissal.

[29] The offering of the VSP's does therefore not make the process unfair at all. On the evidence before the Court, it is apparent that there was meaningful consultation duly facilitated by the CCMA commissioner that culminated in a negotiated agreement to offer the VSP's on the terms agreed upon.

[30] The second respondent has therefore complied with a fair procedure. This finding in and of itself non-suits the Applicant. I will consider whether a case is made out for the setting aside of the VSP's, nevertheless.

Is a case made out for setting aside the VSP's

[31] Second respondent submits that contractual arrangements must be honoured where the parties have entered into the contract freely and voluntarily[11]. The Applicants have not put up any evidence to suggest that the VSP's were not entered into freely and voluntarily. Second respondent contends that when parties settle disputes in full and final settlement, they should not be lightly released from an undertaking seriously and willingly embraced.[12] I agree.

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[10] *SAA supra* at para 36.
[11] With reference to *Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd* 2018 (2) SA 314 (SCA).
[12] *Gbenga-Oluwatoye v Reckitt Benckiser South Africa (Pty) Ltd and Another* 2016 (12) BCLR 1515 (CC) at para 24.

[32] The Applicants have not satisfied this Court that interference is warranted on the facts. The facts, on the contrary, show a fair, facilitated process undertaken which culminated in VSP's on agreed upon terms.

[33] The Applicants' remaining member is not without relief, the facilitation process continues and he therefore has the possibility of challenging a dismissal as being either procedurally or substantively unfair subsequently.

[34] Absent a finding of procedural unfairness, which is necessary for this Court to intervene, it is unnecessary for this Court to determine whether the grounds for an interim interdict have been met.

[35] It follows therefore that the application must be dismissed.

Costs

[36] Both parties sought costs. This Court has a broad discretion to make orders for costs according to the requirements of the law and fairness. The Court must strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and allowing matters to be brought or be opposed that should not have been brought or opposed in the first place.

[37] The Applicants approached this Court in good faith seeking to protect the rights of its members. They were not successful this time around, but they should not be discouraged from approaching this Court when they have a deserving case to do so. Each party should therefore pay their own costs.

Conclusion

[38] In the premise the following order is made:

1. The application is dismissed.
2. Each party will pay their own costs.

[redacted]

C. May
Acting Judge of the Labour Court of South Africa

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Appearances:

For the Applicants	:	PM Seloga instructed by S Mokoena Attorneys, Johannesburg
For the first and second respondent:		V M Mndebele instructed by Webber Wentzel, Johanesburg

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