

**IN THE NATIONAL BARGAINING COUNCIL FOR THE PRIVATE SECURITY SECTOR
("NBCPSS") HELD IN BRAAMFONTEIN**

In the matter between

NATIONAL BARGAINING COUNCIL FOR THE PRIVATE
SECURITY SECTOR

APPLICANT

AND

THOMPSON KHUSELA (PTY) LTD

1st RESPONDENT

UBUNTU SERVICES WORKER CO-OPERATIVE SERVICES LTD

2nd RESPONDENT

JURISDICTIONAL RULING

CASE NUMBER:

LEVOCAS/2025/C1/KG/GP

DATE OF RULING:

25 FEBRUARY 2026

NAME OF COMMISSIONER:

RAMATOBANE MAODI

Central office Park, Block Q, No.400

16th Road, Randjespark

Midrand, 1685

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Details of application and representation

1. This jurisdictional ruling follows an arbitration proceeding in the above matter that was held on 09 December 2025, at 9:00am.
2. The matter was opposed and decided on paper.
3. The parties for easy of reference, shall retain their original citation as per the primary matter.

Issue to be decided

4. I am required to decide whether or not the Council has jurisdiction over the members of the second respondent, a registered worker co- operative.

Background to the dispute

5. On or about 27 May 2025, the Council issued a compliance order against the first and second respondent. The respondents failed to comply with the Compliance Order and as a result, the Council referred the matter for arbitration.
6. The disputes relate to the defendants 's alleged non-compliance with the Council 's collective agreements.
7. On the date of the arbitration on 09 December 2025, the second respondent raised a jurisdictional point to the effect that the Council lacks jurisdiction to enforce the compliance order on the basis that it is a registered worker co-operative and the persons in the compliance orders are members as defined in the Co-operatives Act.
8. The respondents contended that the members are not employees as defined in LRA and fell outside of the scope of the application of the Council 's collective agreements.

Summary of Submissions received

The Respondents

9. The individuals concerned are members, not employees. They do not receive “wages” but participated in surplus distributions consistent with co-operative principles. The co-operative governance is member - driven without hierarchical employer control.
10. Members willingly join the co-operative and sign membership agreements. In the event of a dispute, they are compelled to seek the relief that the said agreement be set aside for reasons at their disposal.
11. On the established jurisprudence, these facts cannot support a dominant impression of employment.
12. Because no employment relationship exists, Council lacks jurisdiction under its registered scope. It cannot treat the co-operative as an “employer” within the bargaining unit and may not assume jurisdiction based on a generational assertion of sectoral coverage.
13. The attempt to obtain an abstract, sector – wide ruling over all co- operatives is inconsistent with the Glamaour fashions decision and with established labour – law principles.
14. They submit that the Council lacks jurisdiction to entertain the dispute. The matter should be dismissed in limine.

In reply

15. The applicant ‘s submissions misconstrue the statutory framework, reverse the legal onus and rely on conjecture. On proper application of the LRA, the Co-operatives Act and binding precedent, the only sustainable conclusion is that the applicant lacks jurisdiction over the second respondent.

The Applicant

16. The inspection at the premises of the first respondent on or about 24 March 2025, uncovered that the first respondent had a total of 403 employees as well as about 1 214 “members”.
17. The inspection came as a result of a tip-off that those so called “members “of the second respondent are hosted and work exclusively for the first respondent.
18. The inspection revealed that ;
 - (i) Those workers from the second respondent were in first respondent ‘s uniform.
 - (ii) They were placed at first respondent ‘s sites.
 - (iii) The manner in which they conduct their work is subject to the control and direction of the first respondent.

- (iv) The hours of work are subject to the control and direction of the first respondent were outsourced from the second respondent.
- (v) The tools of trade are provided by the first respondent compliance order was generated on the basis of the information they received from the Respondent.

Analysis of submissions received

19. It is trite that Co-operatives Amendment Act 6 of 2013 (effective 1 April 2019) amended the Co-operatives Act of 2025 to strengthen the regulatory framework.
20. Section 71 of the Co-operatives Amendment Act is substituted for item 6 of part 2 of Schedule 1 of the Co-Operatives Act and provides as follows:

“Application of Labour Legislation

- 6 (1) An employee of a worker co-operative is any member or non-member of a co-operative who satisfies the definition of ‘employee’ as defined in the Labour Relations Act, 1995 (Act No. 66 of 1995).
- (2) All worker co-operatives must comply with labour legislation.
- (3) despite subsection (1), a co-operative may apply to a bargaining council with jurisdiction over the sector within which the co-operative operates or, where there is no such bargaining council, to the Minister of Labour for full or partial exemption from the need to comply with applicable labour legislation in respect of employees of the co-operative.
- (4) the bargaining council or the Minister of Labour, as the case may be, may only grant an exemption in terms of sub-section (3) if reasonably satisfied that there are good grounds for doing so.
- (5) The Minister must, in consultation with the Minister of Labour, within six months from the date of commencement of the Co-operatives Amendment Act, 2013, and thereafter from time to time, make regulations determining what constitutes good grounds for the purposes of subsection (4).”

21. The new provisions of the Co-operatives Amendment Act of 2013 specifically and categorically state that an employee of a Worker Co-Operative is any member or non-member of a Co-Operative who satisfies the definition of ‘employee’ as defined in the LRA. It goes on to state that all Worker Co-Operatives must comply with labour legislation.
22. The only exception that exists, is when the worker co-operative has applied to a bargaining council with jurisdiction over the sector within which the co-operative operates or, where there is no such

bargaining council, to the Minister of Labour for full or partial exemption from the need to comply with applicable labour legislation in respect of employees of the worker co-operative.

23. There were no submissions and evidence before me that any of the respondents have applied for any such exemption and accordingly, the LRA is applicable in relation to the members of the second respondent regardless of whether they are members of a co-operative or not.
24. Section 213 of the Labour Relations Act (LRA) provides that an employee is anyone, other than an independent contractor, who works for another person or who assists in conducting the business of an employer.
25. The members of the second respondent meet the threshold of an employee as defined in the LRA for the following reasons;
 - (a) There was no evidence or submissions that the members are independent contractors;
 - (b) They were placed at the site of the first respondent by the second respondent;
 - (c) They are performing security services on behalf of the second respondent at the site of the first respondent.
 - (d) They are entitled to be remunerated for performing security services.
26. The logical conclusion is that the nature of the relationship between the first and first second respondent is a contractual one.
27. It then follows that the manner in which the members of the second respondent conduct their work , hours of work and tools of trade are subject to the control and direction of the second respondent to be on site of the first respondent in terms of their contract or service level agreement.
28. In **Mokgwankwa v Commission for Conciliation, Mediation and Arbitration and Others (JR374/24)[2025] ZALCJHB 484 (14 October 2025)** the court held in paragraph [36] that the Co-operatives Amendment Act of 2013 expressly includes a member of a co-operative within the definition of an employee as defined in the LRA.
29. Therefore the Council does not lack the jurisdiction to arbitrate the dispute of the members of the second respondent because they are not excluded from the definition of an employee in terms of section 213 of the LRA by operation of any legislation.

Ruling

30. The Council has the requisite jurisdiction to deal with the dispute.
31. The Council may reschedule the matter for arbitration in accordance with its rules in the event the dispute remains unresolved before another Commissioner.

32. The parties are ordered to conclude, sign and submit written pre - arbitration minutes seven (7) days prior to the date of arbitration.
33. There is no order as to costs.

DATED AND SIGNED AT BRAAMFONTEIN ON 25 FEBRUARY 2026.



Ramatobane Maodi
NBCPSS Commissioner