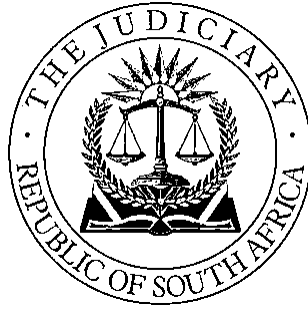




**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not reportable

CASE NO: 2025 - 016818

In the matter between:

**ZITHA SUZAN TINTSWALO  
AND 114 OTHERS**

**Applicants**

and

**CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY**

**Respondent**

**Heard: 18 February 2025**

**Delivered: 10 March 2025**

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**JUDGMENT**

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**VUKEYA, AJ**

[1] The 115 applicants, who are all employed as Metropolitan Officers at the Johannesburg Metropolitan Municipality, listed under paragraphs 3.1 to 3.115 of the applicant's founding affidavit, bring an application on an urgent basis against the City

of Johannesburg Metropolitan Municipality (the Respondent), and seek the following relief:

- '1. That the application be heard as one of urgency in terms of rule 38 of the Rules for the Conduct of Proceedings in the Labour Court and condoning non-compliance with the prescribed forms and time limits for service of the documents as provided for in the rules;
2. That the Respondent be interdicted from continuing with the recruitment process of appointing Sergeants as per their circular bearing circular number 006/2025 pending the finalization of the Bargaining Council referral;
3. That the Respondent retracts the advert of Sergeants posts pending the finalization of the Bargaining Council referral; and
4. That the Respondent pay the costs of this application in the event of opposition, on an attorney client scale.'

[2] The factual matrix in this application are briefly that on 28 June 2023, the respondent advertised posts of sergeants within the Johannesburg Metropolitan Police Department (JMPD). It is common cause that all the applicants applied for the advertised posts and that they were invited to attend interviews. Subsequently thereafter, the minutes of the interviews were sent for screening and for vetting at Group Forensic and Investigations (GFIS).

[3] The applicants allege that after this process, they were not informed of the outcome of the interviews and were prompted to send out a petition on 15 August 2024 to enquire about the appointments and or the outcome of the interviews. In response to the petition, Mr Dominic Zondo, the Deputy Director: Human Capital Management of the respondent advised in a letter dated 29 August 2024, that the process of recruitment and selection was followed until the stage of screening or vetting. He further indicated that the GFIS unit responsible for screening or vetting of candidates, exceeded the six months period prescribed in section 8.2.1.m of the Talent and Acquisition Policy and that the Talent and Acquisition Policy does not provide for further extension beyond the prescribed six month period if it lapses. He further advised that in circumstances where the period of six months lapses, the re-advertisement of the position takes place for all candidates to re-apply.

[4] Soon after the above response, on 4 September 2024, the applicants received letters, from the respondent, informing them that their applications were unsuccessful. This came as a surprise to them as they were under the impression that the recruitment process had been interrupted by the lapse of time as prescribed by the Talent and Acquisition Policy and that a determination had not been made regarding whether their applications were successful or not, they averred. When none of the applicants who attended the interviews were appointed, the applicants decided to refer a dispute of promotion to the Bargaining Council.

[5] The applicants' version is further that they sent correspondence to the respondent on 15 October 2024 to request the respondent to give them an undertaking that it will not advertise the posts pending finalisation of the Bargaining Council arbitration process. It is also the version of the applicants that the respondent proceeded to make an undertaking on 16 October 2024 wherein it undertook not to re-advertise the posts until it has consulted with the relevant department and then it would revert to the Applicants. It is common cause that the respondent advertised the posts internally on 29 January 2025.

[6] The applicants were aggrieved by the Respondent's action to advertise the posts internally even after it had given an undertaking not to do so, as they allege. They then brought this application to interdict the respondent from continuing with the recruitment process and to force the respondent to retract the advert pending the finalization of the Bargaining Council's dispute resolution process.

[7] The respondent opposed the application and amongst some of the contentions made in its answering affidavit, was the issue of urgency. At the hearing of the application, I ruled that the application shall proceed as one of urgency, and withheld my reasons to provide them in the main judgment. I therefore pause here to provide reasons for my ruling.

#### Urgency

[8] Rule 38 of the Rules for the Conduct of Proceedings in the Labour Court provides that a party that applies for urgent relief must file an application that complies with the requirements of the rules relating to applications generally. The affidavit in support of the application must also contain (a) reasons for urgency and why urgent relief is necessary; (b) the reasons why the requirements of the rules were not complied with, if that is the case; and (c) if a party brings an application in a shorter period than that provided for in terms of section 68(2) of the Labour Relations Act<sup>1</sup> (LRA), the reasons why a shorter period of notice should be permitted.

[9] The most significant determination in an application of this nature is the question whether the applicant has in the founding affidavit, set forth explicitly, the circumstances which render the matter urgent, and the reasons why he alleges that he will not be afforded substantial redress at a hearing in due course.

[10] In trying to meet the above requirements the applicants stated in their founding affidavit that on 16 October 2024 the respondent gave them an undertaking that the posts will not be advertised given the fact that it was still going to have engagements with the relevant department and revert to them. They were not provided with the response as promised, and despite this, the respondent went ahead and unilaterally proceeded to re-advertise the posts without further engaging them or their legal representatives. The respondent re-advertised the positions regardless of the fact that there is a dispute pending before the Bargaining Council.

[11] The applicants aver that if the respondent proceeds with the recruitment process they will not be afforded substantial redress at a hearing in due course because the matter is still pending before the Bargaining Council and they cannot second guess the Council's ruling. They further averred that if they wait for the application to be dealt with in the normal course, they will have to wait for many months and experience more delays in the matter being heard. It is therefore submitted that they will not obtain substantial redress at a hearing in due course.

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<sup>1</sup> No. 66 of 1995, as amended.

[12] It is the applicants' submission that the consequences of not hearing the matter as an urgent one are that, if the respondent proceeds to make appointments, other candidates will be appointed while the applicants' matter is still pending in the Bargaining Council.

[13] The respondent disputed the averment made by the applicants that the application was urgent. It argued that the deponent to the applicant's affidavit already threatened on or about 14 October 2024, through his attorneys, to approach the court for an urgent interim interdict. She threatened to do so in the event the respondent fails to provide the applicants with an undertaking by no later than 18h00 on 17 October 2024, that it would not re-advertise the posts while the matter was pending at the bargaining council. This should be the genesis of the urgency, as argued by the respondent.

[14] The respondent proceeded to re-advertise the positions and duly published them on 29 January 2025. The respondent lamented that the applicant only approached the Court for urgent interim relief 12 days later and on 10 February 2025. The respondent further contended that the applicants seek to interdict and stop an advertising process for the posts which they threatened to interdict as long ago as 14 October 2024, should they not receive an undertaking. According to the respondent, this application is instead late by some 17 weeks (or more than four months), and therefore urgency has been self-created. It submitted that the application is an abuse of process, and should be dismissed, alternatively struck off the roll, with a punitive costs order.

[15] Counsel for the respondent referred the court to a case cited in its heads of argument namely, *Export Development Canada and another v Westdawn Investments (Pty) Ltd and others*<sup>2</sup> where the court stated that:

[8] The purpose of urgent proceedings is to enable a court to come to the assistance of a litigant in circumstances where the litigant will be unable to obtain relief in the ordinary course. The question of whether a matter is

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<sup>2</sup> [2018] 2 All SA 783 (GJ) at paras 8 to 10.

sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. In *East Rock Trading 7 (Pty) Ltd and another v Eagle Valley Granite (Pty) Ltd and others* (quoted with approval by Wepner J in *In re: Several Matters on the Urgent Court Roll*), Notshe AJ held:

‘It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his case in that regard.’

[9] Urgency is decided by reference to the applicant's papers alone. Nowhere in their founding papers do the applicants pertinently allege that they will not be able to obtain substantial redress in due course. ...

[10] The "formulaic recitation" by an applicant, in its founding papers in an urgent application, of the phrase "will not otherwise be afforded substantial redress in due course" which appears in rule 6(12)(b) of the Uniform Rules, will not if unsupported by the facts entitle the application to be enrolled and dealt with as one of urgency. Likewise, where an applicant omits to pertinently allege this phrase in its founding papers, but from an examination of the facts it is clear that the applicant will not be able to obtain substantial redress in an application in due course if the matter is not dealt with on an urgent basis, then its failure to do so is immaterial. This is because whether or not an applicant is in a position to obtain substantial redress in due course can only be determined after giving consideration to the facts and circumstances of a particular case."

[16] It was further argued that the applicants have provided a 'Formulaic' recitation of the phrase with no facts to support their averment that they will not be afforded substantial redress at a hearing in due course. Counsel further submitted that the applicants have failed to particularly address why this matter cannot be heard at a hearing in due course even on a semi-urgent basis as they could confine themselves to the normal court roll.

[17] There are two crisp issues to deal with in this application to make a determination as to whether the application is urgent or not. Firstly, whether the applicants have on their own, caused the delay, which resulted in the application becoming urgent, and whether, if they confine themselves to bringing the application in the normal course, they will obtain substantial redress.

[18] The first contention stems from the fact that the applicants threatened the respondents as far back as 14 October 2024 that they would bring an urgent interdict against the respondent if the respondent does not give them an undertaking. It must be noted however that after the respondent was threatened with an application for an urgent interdict, it responded on 16 October 2024 and stated that the recruitment process will not proceed in the absence of a comprehensive response to the Attorneys request. Although the respondents deny that the letter dated 16 October 2024 was an undertaking, the applicants believed it to be and did not bring the urgent application until the posts were advertised on 29 January 2025.

[19] I am therefore disinclined to agree with the respondent that urgency arose soon after the applicants threatened the respondent with an urgent application for an interdict. My view is that urgency arose on 29 January 2025 when, after the undertaking was given to the applicants by the respondents not to advertise the positions, the respondent proceeded to re-advertise regardless. I therefore find that, if there is any urgency in the matter, it has not been self-created by the applicants.

[20] The second contention stems from the respondent's submission that the applicants have not, in their papers, satisfied the requirement for providing reasons why they allege that they will not be afforded substantial redress at a hearing in due course. As already mentioned above, the respondent is of the view that the applicants have provided a 'Formulaic' recitation of the phrase with no facts to support their averment that they will not be afforded substantial redress at a hearing in due course. I am in total disagreement with this view.

[21] The applicants deal with this issue succinctly under paragraph 7. These subparagraphs might be erroneously marked as 6.1 to 6.19, however, in these

paragraphs, the applicant briefly states that if the matter is heard in the normal course, it may take months to be finalised and the respondent will have already recruited new Sergeants to occupy the positions and the order of the Bargaining Council will be rendered moot.

[22] The purpose of the application is to interdict the respondent from continuing with the recruitment process of appointing Sergeants as per the advertisement, and to order the Respondent to retract the advert of Sergeants' posts pending the finalization of the Bargaining Council referral. The matter is already before the bargaining Council for consideration and it will be heard on 11 and 12 March 2025, this is common cause. What will happen if the matter is not heard as an urgent application but enrolled in the normal cause? I agree with the applicants that if the matter is not heard as an urgent application and the respondent does not halt the recruitment process then all the applicants' efforts of lodging a dispute with the Bargaining Council will be rendered futile.

[23] Despite the contended delay, which I condone because the applicant laboured under the impression that the respondent was not going to advertise the positions, it is apparent that if the applicants were to wait for the normal cause they would not obtain substantial redress. Therefore, the reasons provided for the delay and the fact that the applicants will not obtain substantial redress at a hearing in due course, justify a finding that the application qualifies to be heard as an urgent application. This means that non-compliance with the prescribed forms and time limits for service of the documents as provided for in the rules stand to be condoned.

[24] Based on the aforementioned reasons, I granted an order for the application to be heard as one of urgency.

#### The Main application

[25] From the factual matrix of this application, the following common cause factors can be extracted:



- 25.1 The applicants are all Metropolitan Officers employed by the respondent;
- 25.2 The respondent advertised positions of Sergeants in the Metropolitan Municipality during June 2023
- 25.3 All the applicants applied for these positions;
- 23.4 All the applicants attended interviews;
- 25.5 After receiving no outcome of the interviews they sent a petition to inquire;
- 23.6 Soon after the petition was sent, they received “regret” letters;
- 23.7 The posts were re-advertised by the respondent, and
- 25.8 The applicants referred the matter to the bargaining Council for dispute resolution.

[26] It is in dispute whether the respondent made an undertaking, through a letter in response to the petition, not to advertise the positions while the matter was pending at the Bargaining Council and whether the respondent made an undertaking not to advertise the positions while it was going to consult with the relevant department and revert to the applicants. Whatever the finding is on the above disputed facts, the court has to determine if such an undertaking is a valid undertaking and whether it is binding to the respondent.

[27] Perhaps it is prudent for me to highlight the contents of the alleged undertaking herein, for ease of reference. It reads thus:

“We acknowledge receipt of your letter to the City Manager dated 11 October 2024. We however wish to request your indulgence to consult with the department involved in the matter and revert with a comprehensive response to your good self. In the interim, we undertake not to proceed forthwith the recruitment process in respect of the positions in question until our response thereto. [my underlining]

Regards,  
MBULELO RUDA

GROUP EXECUTIVE DIRECTOR: GROUP CORPORATE AND SHARED SERVICES”

[28] What is clear from the onset is that the writer of the above correspondence is the Group Executive Director: Group Corporate and Shared Services of the respondent. He clearly states that he would like to first consult with the relevant department and then revert to the applicants. He clearly also undertakes to not proceed with the recruitment process until he has conveyed to the applicants the results of the consultation with the department.

[29] Despite the fact that the respondent undertook to revert to the applicants, he never did but instead, it sent them “regret” letters and then re-advertised the positions. This in my view, means that the undertaking, if found to be a valid one, still persists. This, regardless of whether the undertaking was not to re-advertise the positions pending the outcome from the Bargaining Council or pending the results of the consultation with the relevant department.

[30] A further argument made on behalf of the respondent is that this court does not have jurisdiction to resolve or finally determine an unresolved dispute pending before the Bargaining Council, if the LRA requires the dispute to be resolved through arbitration, and, has only a very limited power to grant urgent interim relief in respect of disputes that must ultimately be determined by arbitration. It was argued in favour of the respondent that this Court will only intervene in such disputes in exceptional circumstances and if the intervention does not have the effect of usurping the jurisdiction of the bargaining council.

[31] What the applicant seeks is not an application for this court to resolve or determine an unresolved dispute which might be pending before the Bargaining Council. If it were to seek that kind of intervention then indeed, this court would have no jurisdiction. However, what the applicant seeks does not at all usurp upon the domain of the Bargaining Council but only halts the recruitment process of the respondent until the Bargaining Council has finalised the dispute resolution process pending before it. In light of the nature of the application, I am of the view that the arguments made by the respondent in this regard is misplaced and carries no water.

[32] I now deal with the question whether the response to the applicants' petition to the respondent constitutes an undertaking and if so, whether the undertaking is a valid one. The respondent stated that "*(i)n the interim, we undertake not to proceed forthwith the recruitment process in respect of the positions in question until our response thereto.*" An undertaking has to be construed against the backdrop of the factual matrix providing the context in and the purpose for which it was given. The letter was issued pursuant a correspondence from the applicants addressed to the respondent and requesting it to give them an undertaking that it will not re-advertise the posts pending finalisation of the Bargaining Council arbitration process. The respondent then, on 16 October 2024 responded by making the alleged undertaking not to re-advertise the positions until it has consulted with the relevant department. This is the context from which the undertaking must be construed to give it a sensible meaning.

[33] It is clear from the wording of the undertaking that the respondent undertook to not advertise the positions as requested by the applicant in the correspondence dated 15 October 2024. The real question is what the content of the undertaking was and whether its contents amount to an undertaking. An undertaking, simply defined, is a verbal or written pledge or promise to refrain from doing something or to do something. As appears from the correspondence itself, clearly the respondent gave the applicants a guarantee and made a promise that it would not re-advertise the positions until it had consulted with the relevant department. The letter therefore is an undertaking.

[34] This brings me to the next question, which is, whether the undertaking was not an undertaking binding on the respondent. What the respondent argued was that the undertaking does not meet the requirements of a legally binding undertaking. Counsel for the respondent submitted that a promise to be legally binding must be based on *justa causa*, and it must not be contrary to law or public policy. His submission was that the present undertaking is contrary to the Constitution of the Republic of South Africa, 1996 (the Constitution), as it goes against Local

Government: Municipal Systems Act<sup>3</sup> (the Systems Act) and policies enacted under this statute and therefore, cannot be legally binding.

[35] In terms of section 67 (1) of the Systems Act, a municipality, in accordance with applicable law and subject to any applicable collective agreement, must develop and adopt appropriate systems and procedures, consistent with any uniform standards prescribed in terms of section 72(1)(c) of the Systems Act, to ensure fair, efficient, effective and transparent personnel administration. This includes, amongst others, the recruitment, selection and appointment of persons as staff members; the promotion and demotion of staff and grievance procedures. This in my view also means that employees should be allowed to refer some of the decisions taken in terms of these systems and procedures to the Bargaining Council to resolve any dispute that may exist as a result of the decisions taken. This is not a privilege but a right.

[36] The respondent contends that the undertaking made by the respondent is not binding as it is contrary to the Systems Act, to the Constitution and also contrary to public policy. According to the respondent, keeping this promise would compromise the speed of service delivery and constitutional values enshrined in section 195 of Constitution. Section 195 does not only recognize the principle relating to service delivery but also recognizes the cultivation of other democratic values such as good human-resource management and career-development practices, with the aim to maximise human potential.

[37] The Constitution guarantees the right to fair labour practices under section 23, and this should entail the right of an employee not to be prevented from exercising any right conferred by the LRA or from participating in any proceedings in terms of it. The applicants have a right to approach the Bargaining Council and to have the dispute between them and the respondent resolved by the Council. When Mbulelo Ruda, the Group Executive Director: Group Corporate and Shared Services, made an undertaking to the applicants not to re-advertise the positions, he was representing the applicants' employer. There was nothing wrong with the

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<sup>3</sup> No. 32 of 2000.

undertaking, it was made in good faith and it was based on considerations of fairness and justice, to prevent prejudice and injustice to the applicants, and retracting it will not be in the interests of justice and will only prejudice the applicants. My view is that having been made by a Group Executive Director of the respondent with the purpose to promote good human-resource management and career-development practices within the institution; the undertaking is legally valid and binding on the respondent.

[38] I am inclined to agree with the applicants that if the application is not granted they will suffer immense prejudice because if the respondent decides to appoint Sergeants while the matter is still pending in the Bargaining Council, the decision of the Council will be rendered meaningless and moot.

[39] In *United Technical Equipment Co (Pty) Ltd v Johannesburg City Council*<sup>4</sup> it was stated that the granting of an interdict is discretionary and that the remedy of the interdict itself is unusual<sup>5</sup>. In *Setlogelo v Setlogelo*<sup>6</sup>, the court held that the requisites for the right to claim a final interdict are well known and these are: a clear right, injury actually committed or reasonably apprehended, and the absence of similar protection by any other ordinary remedy. The test formulated in *Setlogelo supra* is that, to succeed in obtaining an interim interdict an applicant has to establish: a prima facie right, though open to some doubt; a reasonable apprehension of irreparable and imminent harm to the right; the balance of convenience; and the applicant must have no other satisfactory remedy.

[40] The starting point is to determine whether the interdict sought by the applicants is interim or final. The parties are engaged in a process of dispute resolution at the bargaining Council, which has been placed for hearing on 11 and 12 March 2025. The applicants seek an interdict which will operate pending the finalisation of the Bargaining Council referral. If granted, the duration of the interdict will not be an indefinite one as it is dependent on the finalisation of the hearing by the Bargaining Council and the actual outcome of it will be irrelevant.

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<sup>4</sup> 1987 (4) SA 343 (T).

<sup>5</sup> See also: *Transvaal Property Investment Co v SA Townships Mining and Finance Corp* 1938 TPD 521.

<sup>6</sup> 1914 AD 221 at 227.

[41] From the facts as they are *in casu* it is clear that the applicants seek an interim interdict for which they have to prove a *prima facie* right, though open to some doubt; a reasonable apprehension of irreparable and imminent harm to the right; the balance of convenience; and absence of an alternative remedy. It can be deducted from the facts that the applicants, by virtue of being the employees of the respondent, and having the entitlement to approach the Bargaining Council for dispute resolution, have a *prima facie* right which in my view, deserves protection. The applicants are entitled to have the dispute resolved by the Bargaining Council without the threat of a possibility of engaging in a fruitless exercise because, if their rights are not protected, the order of the Bargaining Council will become moot, even if it favours them.

[42] As stated above, the order of the Bargaining Council will become moot and meaningless even if the Bargaining Council decides in favour of the applicants because the respondent will have appointed new recruits in the advertised positions. If that happens, the applicants will suffer irreparable harm as they will have to keep their current positions and maintain the *status quo* despite the fact that the order of the Bargaining Council favours them. The only way to prevent an injustice is to allow the applicants an opportunity to ventilate the issues pending between them and the respondent as similar protection by any other ordinary remedy does not exist.

[43] It is therefore my respectful view that the applicants have satisfied the requirements of an interim interdict and that they have made out a good case for the granting of the relief prayed for.

[44] In the result, the following order is made:

Order

1. The provisions of the Rules of the above Honourable Court relating to times and manner of service referred to therein are dispensed with and the matter is dealt with as one of urgency in terms of Rule 38 of the Rules for the Conduct of Proceedings in the Labour Court.

2. The respondent is interdicted from continuing with the recruitment process of appointing Sergeants as per their circular bearing circular number 006/2025 pending the finalization of the Bargaining Council referral.
3. The respondent retracts the advert of Sergeants posts pending the finalization of the Bargaining Council referral.
4. The respondent to pay the costs of this application on Attorney and Client scale, including costs of two Counsels.

L. Vukeya

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant: Adv Vukeya  
Instructed by: Patience Chavalala Attorneys

For the applicant: Adv Buirski  
Instructed by: SGV Inc