IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-036061

In the matter between:

DEPARTMENT OF PUBLIC WORKS & ROADS
NORTHWEST PROVINCE **Applicant**

and

NOLUFEFE PRIMROSE YUZE **Respondent**

Heard: **20 March 2025**

Delivered: **30 May 2025**

This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date and time for hand-down is deemed to be on 30 May 2025.

JUDGMENT

MAFA-CHALI, AJ

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Introduction

[1] In this opposed urgent application, the applicant seeks an order staying the execution of the order granted in this Court by AJ Kumalo on 19 February 2025 under case no 2024-097472, pending the final determination of the applicant's rescission application.

[2] The applicant also prayed that an order be granted for the applicant to file a rescission application in a period of twenty (20) days from the date of the order for this application.

Background

[3] The Respondent, Primrose Yuze, was employed by the applicant on a fixed-term contract which was to expire on 31 July 2024, and she was based in the office of the Member of Parliament (MEC) of the applicant (Department of Public Works and Roads, North West Province).

[4] In or around April 2023, the applicant issued a letter to the Respondent to confirm her absorption on a permanent basis, but subsequently withdrew the said letter in July 2023, indicating that the letter was erroneously issued.

[5] In February 2024, the respondent institutes proceedings in this Court to challenge the withdrawal of the absorption letter, which application was opposed by the applicant. It is apparent that the application is currently still pending and not finalised.

[6] On 29 August 2024 after the expiry of the fixed-term contract, the respondent launched an urgent application to this Court to interdict the applicant from terminating her services and the applicant to continue paying the respondent her monthly remuneration, pending the finalisation of the application under case no J297/20 which is challenging the withdrawal of the absorption letter. This urgent application was set down on 3 September 2024 before this Court. On 3 September 2024, the Court refused to grant the order and stood down the matter down to 6

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September 2024, and further directed the respondent to provide clarity on the manner of service on the applicant. The application was then heard and finalised on 6 September 2024 in the absence of the applicant.

[7] The respondent subsequently obtained a Court order on 19 February 2025 interdicting the applicant from terminating the respondent's services and to continue to pay the respondent her monthly remuneration, pending the finalisation of the application under case no J297/2024.

[8] The respondent's attorneys issued a letter to the applicant on 10 March 2025, asserting that the Court order interdicting the applicant from terminating the respondent's services and she will report for duty and also demanded to be remunerated arising from the unlawful termination of her services. The applicant sent a letter of response to the applicant on 13 March 2025, rejecting the demand and indicating the intention to challenge the Court order, and further indicating that the respondent must not report for duty on 14 March 2025 pending the determination of this urgent application.

[9] On 14 March 2025, the respondent's attorneys sent another letter to the applicant and indicated that the applicant will report for duty in terms of the Court order until such time as the order is set aside or as directed by the competent court. This then led to this urgent application launched by the applicant seeking an order to stay the execution of the Court order dated 19 February 2024 pending the institution of the rescission application within twenty (20) days from the granting of the relief sought. This urgent application is opposed by the respondent.

Submissions by the applicant

[10] The applicant submitted that its attorneys of record is the State Attorney and the respondent failed to make a proper service of the urgent application on 29 August 2024 upon the State Attorney; as the application was served to the applicant's employees by email and this was against the established rules of the Court and practice directives governing service and notification of proceedings. The

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applicant viewed the respondent's conduct of proceedings as improper, unethical and prejudicial to the applicant.

[11] It was further submitted by the applicant that the respondent's legal representatives failed to invite the State Attorney to the caselines platform despite the fact that they were aware that the State Attorney was on record, which is a clear non-compliance with Rule 4.1 of the Practice Directive of 2024.

[12] On 5 September 2024, the applicant's official, Mr David Manamela advised the respondent's attorneys to direct all correspondences pertaining to the matter to the State Attorney in Mafikeng; and the respondent's attorneys effected service to State Attorney by email not in compliance with rule 9(2)(b) of the Labour Court Rules. Service effected by email must be accompanied by an affidavit of a person who effected service providing proof of the correct email address, and confirmation that the email was sent and confirmation of the name of the person who telephonically acknowledged receipt of the email. The service by the respondent remained defective and irregular as it failed to confirm that the urgent application was properly transmitted, and also confirm with the State Attorney's acknowledgement of receipt of the service by email.

[13] Regarding urgency, the applicant submitted that Rule 8 of the Labour Court Rules allows an urgent application where the applicant is able to demonstrate urgency and substantial prejudice. Rule 16A of the Labour Court Rules also permits a rescission of an order granted in the absence of a party if good cause is shown. This application is urgent in that the respondent reported for duty on 10 March 2025 despite the request by the applicant not to report for duty pending the finalisation of the disputes, but the respondent refused to do so, alleging that she cannot stop reporting for duty unless the applicant obtains a Court order.

[14] The Court order came to the applicant's attention on 7 March 2025, although it was granted on 19 February 2025. The applicant could not take immediate action before the respondent reported for duty on 10 March 2025.

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[15] On 10 March 2025 and 11 March 2025, the applicant engaged in consultation and decided to obtain legal services of private attorneys on the matter, and they were appointed on 12 March 2025. Consultations with attorneys and counsel were only done on 12 March 2025, and a decision was taken to make an urgent application to the Court to stay the execution of the order pending the finalisation of the rescission application.

[16] The applicant has allowed the respondent to render the services, and she is to be remunerated monthly, causing severe financial prejudice. If the execution proceeds, the applicant will suffer irreparable harm as it will be forced to comply with the order that was granted procedurally and unfairly as the applicant was denied an opportunity and right to participate in the proceedings in order to place its version before the Court, in violation of section 34 of the Constitution. The respondent will suffer no real prejudice if the execution is temporarily halted pending the rescission hearing. The applicant will not get a substantial redress in due course if the matter is not heard on urgency.

[17] The applicant has established and met the four (4) requirements for an interim order in that it has established a *prima facie* right in that the order for the respondent was granted against the applicant in absentia, and the execution thereof shall have adverse consequences on the applicant's rights.

[18] It was submitted that the applicant will suffer irreparable harm if this order is not granted and it will be forced to comply with an order that was granted and it will be forced to comply with an order that was granted procedurally and unfairly. The respondent is reporting for work each day, and the applicant suffers financial harm which is irreparable. The respondent is demanding payment from the applicant, relying on the order, further exacerbating the financial prejudice to the applicant.

[19] Failure to stay the execution will result in undue expenditure of the applicant's funds, and this will cause substantial and irreparable harm and prejudice. If the order is executed before the rescission application is determined, the applicant must reinstate the respondent unlawfully as its employee, causing financial loss and wasteful expenditure of the applicant's funds as well as operational disruptions. It is

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a violation of due process rights for the applicant not to be given an opportunity to oppose the initial order. The applicant shall suffer an irreparable harm if this order is not granted. If the order is refused, the applicant will suffer great prejudice, whereas the respondent will suffer no real prejudice if the execution is temporarily halted pending the rescission application.

[20] The balance of convenience favours that the application be granted, as if the order is granted, both parties will be able to deal with the pending rescission application without any prejudice to either party. Granting the order will afford an opportunity for the pending proceedings to be fully ventilated before the Court.

[21] It was submitted that the applicant has no other alternative remedy in law to get the respondent to stay the execution of the order pending the final determination of the rescission application. As the respondent refused to report for duty pending the final determination of the rescission application, the only way to protect against the execution of the order is to obtain the urgent stay of the execution until the rescission application is finalised.

[22] It was submitted that there are reasonable prospects of success in setting aside the judgment order as it was procedurally and irregularly obtained in non-compliance with the practice directive, as the State Attorney was not invited to the caselines. Lack of service is non-compliance with Rule 9(2)(b) of the Labour Court Rules, as the service by email did not come to the attention of the State Attorney, and it was not confirmed by a service affidavit that receipt of the urgent application was telephonically acknowledged by the State Attorney. There is also non-compliance with Rule 6.1 of the Directive 1 of 2024 in that at the close of the urgent court roll on Thursday, the application was not served on the applicant, but it was alleged it was issued by the Court the same day on 29 August 2024, with no proof of such issuance of the application provided, whereas the order was heard granted 19 February 2025, over 5 months since the application was issued.

Submissions by the respondent

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[23] The respondent raised submitted that the applicant's urgency must be struck off the roll as it was self-created, as the applicant was at all relevant times aware that the matter was pending at Court.

[24] At no point between 7 March 2025 and the day the order was served did the applicant's attorneys endeavour to engage the respondent; and subsequent to 13 March 2025 when the applicant's attorneys approached the respondent, the applicant knew fully well that there is a possibility that the respondent would return to her employment at some point if an order was granted in her favour.

[25] The applicant served this urgent application on the respondent's attorneys on 15 March 2025 at 18h00, and this was on Saturday, which is not a working day, and the matter was enrolled on 20 March 2025. In terms of Directive 6 of 2024, the urgent case roll shall close at noon on Thursday for the following Tuesday. The applicant has not set out sufficient grounds for gross deviation from the Court Rules and directives. The respondent was not afforded sufficient time to prepare and oppose the application as she was afforded only one day, that is 17 March 2025, to file the notice to oppose and answering affidavit on 18 March 2025, less than one full Court day. An indulgence requested by the respondent's attorneys to oppose and file the answering affidavit on or before 20 March 2025 was refused by the applicant's attorneys.

[26] The respondent contended that the applicant does not stand to suffer any harm at all should she continue with her employment. She will suffer irreparable harm if she does not report for duty, in that she will no longer receive a salary. The applicant is attempting to delay the prospects of the respondent to receive her salary, and she will have no income, and as such, she will not be able to afford her day-to-day expenses. If the applicant gets the interim relief, the respondent will be without an income, and she is the breadwinner at home with children to support.

[27] The balance of convenience does not favour the applicant. If the interim interdict is granted, the respondent and her children will be prejudiced for reasons set out above. She will suffer financial prejudice because of the delay of the Court in delivering judgment in the application.

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[28] The applicant has not satisfied the requirements for the interim relief. The applicant sought from the respondent not to report for work in order to familiarise itself with the matter and to make an informed decision. The respondent did not have a problem with the indulgence provided that the respondent was allowed to report for duty. There was no further communication from the respondent, but they then launched the urgent application. The applicant could have engaged the respondent further on reaching a settlement, but did not do so.

[29] The respondent views herself as a permanent employee of the applicant. Her contract linked to the term of the MEC was terminated without her knowledge by the applicant through the letter of permanent contract emanating from the organisational structuring. The applicant unlawfully attempted to withdraw her permanent appointment without following the Public Service Directive Guidelines for irregular appointments.

[30] The applicant elected not to oppose the urgent application launched by the respondent with this Court pending finalisation of the declaratory order under case number J297/24. The respondent could not be sure that the applicant was represented by the State Attorney in the declaratory application, and also in the subsequent urgent interdict.

[31] The applicant was served with the urgent application on 29 August 2024. Acting Justice Kumalo stood the application down from 3 September 2025 to 6 September 2025 and ordered the respondent's attorneys to confirm receipt of the urgent application by the applicant and to file the service affidavit. On 4 September 2025, the applicant was called to confirm receipt of the application. Mr David Manamela was reached, and he indicated that he did not receive the email, and asked that it be resent. On 5 September 2024, the urgent application was sent to Mr David Manamela, who then later enquired what happened on 3 September 2024 and an email response was sent to him.

[32] Mr David Manamela sent an email on 5 September 2024 that the respondent's attorneys correspond with the State Attorney, and the same was done

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by the respondent's attorneys on 4 September 2024 by email. Mr Letsoalo of the State Attorney was contacted directly on his cell number 0834180067 on 4 September 2025 by the respondent's attorneys to acknowledge receipt of the urgent application. Therefore, the applicant and the State Attorney were aware of the urgent application, as Acting Justice Kumalo wanted to satisfy himself of the service of the urgent application upon the applicant, and he granted the order after satisfying himself with the service affidavits as such on 6 September 2024. Both the applicant and the State Attorney were served on the correct email addresses.

[33] The applicant did not indicate that it intends to oppose the urgent application, hence, the respondent did not invite it on the caselines. The applicant did not appear in court on 6 September 2024, hence, the urgent application was granted on an unopposed basis. The application was never heard on 17 September 2024, but the order was delayed and only issued and granted by the Court on 19 February 2025, after the respondent's attorneys made several follow-up communications requesting the order with the office of the Acting Judge President on 10 September 2024, 27 September 2024, 22 October 2022, 25 October 2024, 29 November 2024, 6 February 2025 and 13 February 2025. Judgment was ultimately received on 27 February 2025, when the office of the Acting Judge President was already suggesting to rehear the matter before another judge.

[34] It was denied that the respondent would suffer no real prejudice if the execution of the order is temporarily halted pending the rescission application. The respondent already suffered prejudice as it has already been 5 months since the urgent application was heard on 6 September 2024 until the order was delivered in February 2025. The respondent has been out of work since July 2024 with no income and no financial ability to take care of her family. It will be unreasonable for the applicant to expect the respondent not to report for duty in instances where the Court order was granted and the respondent has not been receiving a salary since July 2024.

Applicable legal principles

Urgency

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[35] Rule 8 of the Labour Court Rules[1] provides for urgent applications. An applicant that approaches the Court on an urgent basis essentially seeks an indulgence and to be afforded preference, in order to prevent the prejudice and harm that may materialise or persist if the conduct complained of continues. Central to a determination of whether a matter is urgent is whether the applicant has, in the founding affidavit, set forth explicitly the circumstances which render the matter urgent and the reason why substantial relief cannot be attained at a hearing in due course. Thus, it is required of an applicant to set out adequately in his or her founding affidavit the reasons for urgency and to give cogent reasons why urgent relief is necessary.

[36] In *Jiba v Minister: Department of Justice & Constitutional Development & others*[2], the Court applied Rule 8 of the Labour Court Rules as follows:

> 'Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self created when seeking a deviation from the rules.'

[37] It was succinctly described by the Court in *Maqubela v SA Graduates Development Association & others*[3] that:

> 'Whether a matter is urgent involves two considerations. The first is whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. In all instances where urgency is alleged, the applicant must satisfy the court that indeed the application is urgent. Thus, it is required of the applicant adequately to set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary…'

[1] GN 4775 of May 2024: Rules Regulating the Conduct of Proceedings of the Labour Court (effective 17 July 2024).
[2] (2010) 31 ILJ 112 (LC); [2009] 10 BLLR 989 (LC) at para 18.
[3] (2014) 35 ILJ 2479 (LC); [2014] 6 BLLR 582 (LC) at para 32.

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[38] The factors the applicant must show are set out in *Mojaki v Ngaka Modiri Molema District Municipality & others*[4], in which the court referred with approval to the following dictum from *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*[5]:

> '… An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is 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. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.'

[39] The applicant argued that the urgency of the application is based on the fact that the respondent is reporting for duty as a result of an order that was improperly and unlawfully obtained by the respondent, 19 February 2025 as the urgent application was not properly served on the applicant in terms of Rule 9 (1)(b)(iv) and Rule 9(2)(b) of the Labour Court Rules.

[40] In terms of Rule 9(1)(b)(iv), a document that must be served on any party may be served in any one of the following ways:

> 'if the party is the State or any organ of state defined in terms of section 239 of the Constitution, or any department of national or provincial government (collectively referred to as an "organ of State"), by serving a copy both on a responsible employee in the office of the state attorney situated in the area or province in which the process is initiated, and the responsible office of the organ of State against which the claim is brought."

[41] It is therefore mandatory to effect service on the State Attorney of the urgent application in the province, as the applicant is the provincial department as stipulated in Rule 9 (1)(b)(iv). It was not optional for the direct service by email on the applicant

[4] (2015) 26 ILJ 1331 (LC); [2014] ZALCJHB 433 at para 17.
[5] [2011] ZAGPJHC 196.

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itself, as was done by the respondent on 29 August 2024. Subsequent service on the State Attorney made on 5 September 2024 for the urgent application to be heard on 4 September 2024 was clearly a very short notice for the applicant to oppose and file the answering affidavit. Failure to comply with such a mandatory provision renders the service process defective. The respondent also acknowledged that the applicant's representative, the State Attorney, was not invited to the caselines. The reason provided was that the respondent did not know if the State Attorney was also representing the application in this matter as well.

[42] In terms of Rule 9(2)(b), service is proved in court in any one of the following ways:

> '(b) if service was effected by email, by an affidavit of the person who effected service. The deponent must provide proof of the correct email address, confirm that the whole of the email was sent, and confirm that a named person telephonically acknowledged receipt of the whole of the email;'

[43] The service affidavit by the respondent's attorneys, dated 6 September 2024, is also defective in that it was made by the person who did not effect the service, no confirmation of the email addresses used, and no telephonic acknowledgement of receipt of the email by the person who received the email. Mr David Manamela, of the State Attorney, did not acknowledge receipt of the email for service of the urgent applications. There is also no service affidavit on the State Attorney by the respondent, and a telephonic acknowledgement of receipt of the urgent application on the State Attorney. Compliance in terms of this Rule is further also mandatory, and non-compliance makes it defective. Based on this, it can therefore not be concluded that there was a proper service of the urgent application by the respondent to the applicant. I therefore find that the respondent has failed to effect proper service of the urgent application in terms of the Rules of the Court.

[44] I fully agree with the applicant that failure by the respondent to effect proper service had deprived the applicant of the constitutional right in terms of section 34 of

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the Constitution[6] to participate in the proceedings on 6 September 2024 when the order was granted.

[45] The urgency of this matter has been shown clearly in the applicant's affidavit being necessitated by the respondent's reliance on the Court order to report for duty on 10 March 2025. The respondent has also been remunerated by the applicant pending this urgent application as she is rendering her services. The respondent is also demanding payment of her remuneration for the past months from the respondent. I am satisfied that the applicant has been able to established that it suffers and continues to suffer financial prejudice as a result of the Court.

[46] The urgency cannot be said to be self-created, as argued by the respondent. If the applicant is not granted the urgent application, the applicant will be forced to comply with the order that was not properly and lawfully obtained.

[47] The inability of obtaining substantial relief in due course is a weighty factor in favour of granting the urgent relief, because to deny it effectively bars an applicant from accessing its primary remedy, to stay the execution of the order pending the determination of the rescission application of the order granted on 19 February 2025.

[48] Urgency must not be self-created by an applicant as a consequence of the applicant not having brought the application at the first available opportunity, as the Court said in *Association of Mineworkers & Construction Union & others* v *Northam Platinum Ltd & another*[7]*.*

> '… the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to court immediately, or risk failing on urgency…'

[6] Constitution of South Africa, Act 108 of 1996.
[7] (2016) 37 ILJ 2840 (LC); [2016] 11 BLLR 1151 (LC) at para 26.

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[49] In this case, it can be said that the applicant acted immediately upon service of the order and after realising the insistence of the respondent to report for work in terms of the order, pending the rescission application by the applicant.

[50] The Court must also further consider the interests of the respondent party, and in particular, the prejudice the respondent may suffer if the matter is urgently disposed of.

[51] In *Association of Mineworkers & Construction Union & others v Northam Platinum Ltd and Another, supra*, the Court held again as follows:

> 'But it is not just about the applicant. Another consideration is possible prejudice the respondent might suffer as a result of the abridgement of the prescribed time periods and an early hearing.'[8]

[52] Emanating from the provisions of Rule 8 of the Labour Curt Rules and the principles set out in the authorities stated above, it is evident that urgency is not there for taking and an applicant seeking an urgent relief must adequately and in details set out in the founding affidavit the reasons why the matter before the Court should be treated with urgency.

[53] In *casu,* the question is whether the applicant has made out a case for urgency. For any argument to be sustained, the applicant must have acted with due haste when knowledge of the respondents' prejudicial behaviour or actions is gained, as it is trite that an applicant is not entitled to rely on urgency that is self-created.

[54] I find that this application can be entertained on an urgent basis as it has met the legal requirements of urgency, and the urgency is not self-created.

Analysis

[55] The requirements for interim relief, as sought by the applicant *in casu,* have already been set out in *Setlogelo v Setlogelo*[9]. They are:

[8] Ibid at para 24.

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55.1 A *prima facie* right;

55.2 A well-grounded apprehension of irreparable harm if interim relief is not granted and the ultimate relief is eventually granted;

55.3 The balance of convenience in favour of the granting of the interim relief; and

55.4 The absence of any other adequate ordinary remedy.

Prima facie right

[56] The applicant for an interim interdict must show that it has a right, although the right might be open to doubt, and a right which is being infringed on or which he or she apprehends will be infringed. The right may arise out of contract, delict, or it may be founded in the common law or on some statute. The right set out by an applicant for interim relief need not be shown on a balance of probabilities. Where the interim relief is sought *pendente lite,* the applicant is required to furnish proof which, if uncontested and believed at the trial, would establish his or her right.[10]

[57] In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*[11] *(OUTA),* the Constitutional Court held that:

> 'Under the *Setlogelo* test the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm.'

[58] Therefore, it means that the applicant has a *prima facie* right to approach the court to stay the execution of the Court order granted in its substance pending the rescission application determination. But following the dicta in *OUTA,* the mere right to approach the court is not sufficient. The applicant has to show that the *prima facie*

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[9] 1914 AD 221 at 227.
[10] See: *Webster v Mitchell* 1948 (1) SA 1186 (W). See also: *City of Johannesburg Metropolitan Municipality v Mphefo and Others* (J787/2024) [2024] ZALCJHB 287 (30 July 2024) at para 19.
[11] [2012] ZACC 18; 2012 (6) SA 223 (CC) at para 50.

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right is threatened by an impending or imminent irreparable harm, which I find the applicant in this case has shown.

Irreparable harm

[59] The applicant must show irreparable harm or damage and a well-grounded apprehension of a prejudicial act on the part of the respondent.

[60] I agree that the applicant will suffer irreparable harm if this order is not granted, and it will be forced to comply with an order that was granted and procedurally and unfairly so. The respondent is demanding payment from the applicant, relying on the order, further exacerbating financial prejudice on the applicant. At the same time, the respondent has shown that she shall be prejudiced and suffer financially due to the loss of income if this order is granted.

[61] The Court must also further consider the interests of the respondent party, and in particular, the prejudice the respondent may suffer if the matter is urgently disposed of. I have however taken into account that should the respondent succeed in the rescission application and the main application, the respondent's prejudice shall be mitigated as she shall be afforded a substantial redress to be granted back pay for the period that she would have been absent from work on the basis of the successful court order.

[62] In *Emalahleni Local Municipality v Phooko NO and Others*[12], it was held that irreparable harm will invariably result if there is a possibility that the underlying *causa* may ultimately be removed, i.e. where the underlying *causa* is the subject matter of an ongoing dispute between the parties.

[63] In *casu,* the parties are involved in an ongoing dispute regarding the withdrawal of the permanent appointment letter by the applicant, and the matter is still pending in this court. Subsequently, there is also the order granted by this Court on 19 February 2025 following the urgent application launched by the respondent to

[12] [2021] ZALCJHB 61; (2021) 42 ILJ 2196 (LC).

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interdict the applicant from terminating the services of the respondent. This application seeks to remove the underlying *causa* to stay the execution of the order of 19 February 2025 pending the determination of the rescission application.

Balance of convenience

[64] The Court has to consider the balance of convenience, and in exercising its discretion, to weigh the prejudice to the applicant if the relief sought is withheld against the prejudice to the respondent if the order is granted. It is the balancing of respective harms and an assessment of which of the parties will be least seriously affected or prejudiced by being compelled to endure what may prove to be a temporary injustice until the just answer can be found at the end of the trial.

[65] I find that the balance of convenience favours that the application be granted, as if the order is granted, both parties will be able to deal with the pending rescission application. Granting the order will grant an opportunity that the applicant be given an opportunity to rescind the order, and if successful, then the parties will be able to fully ventilate before this court whether the applicant must be interdicted from terminating the respondent's services and the applicant to continue paying the respondent her monthly remuneration, pending the finalisation of the application under case no J297/2024.

[66] Indeed, once the Labour Court has decided the matter, the parties will have certainty as to the way forward. If the Court finds in favour of the applicant, it will be the end of the matter.

[67] Therefore, in my view, the balance of convenience favours the applicant.

Alternative remedy

[68] The final requirement for the grant of an interim interdict is the absence of another adequate remedy.

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[69] The applicant submitted that it has no alternative remedy available but to approach this Court for relief, as the respondent refused not to report for duty pending the final determination of the rescission application, and the only way to protect against the execution of the order is to obtain the urgent stay of the execution until the rescission application is finalised. The respondent, however, argued that the applicant failed to engage the respondent's attorneys but rather rushed to court on an urgent basis without discussing the alternative remedy. It is my considered view that such failure of further engagements is not fatal to the applicant's application under the circumstances. On the contrary, it may have delayed the launching of the urgent application should the parties not be able to agree after prolonged negotiations.

[70] I have taken cognisance that the applicant sent the letter to the respondent's attorneys, indicating that it has received the order granted on 19 February 2025 without its knowledge and is in the process of familiarising itself with the contents of the court file in order to make an informed decision. The respondent was also asked in a letter not to report for duty pending the finalisation of the rescission application, but the request was rejected.

[71] Under the circumstances, it is my considered view that the applicant did not have any other remedy than to seek an interim interdict, staying the execution of the order pending the finalisation of the rescission application.

Conclusion

[72] The dispute in an application for an interim interdict is therefore not the same as that in the main application to which the interim interdict relates. In an application for an interim interdict the dispute is whether, applying the relevant legal requirements, the *status quo* should be preserved or restored pending the decision of the main dispute. At common law, a court's jurisdiction to entertain an application for an interim interdict depends on whether it has jurisdiction to preserve or restore the *status quo*. It does not depend on whether it has the jurisdiction to decide the main dispute.

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[73] In *National Gambling Board v Premier of KwaZulu-Natal and Others,*[13] the Constitutional Court considered interdict proceedings and held that:

> 'An interim interdict is by definition
> "a court order preserving or restoring the *status quo* pending the final determination of the rights of the parties. It does not involve a final determination of these rights and does not affect their final determination."'

[74] The relief sought by the applicant is interim in nature as it is to stay the execution of the order pending the final determination of the rescission application. There was no proper service of the urgent application on the State Attorney, and the State Attorney was also not invited to the caselines. The State Attorney was served with the urgent application, although belatedly so. Subsequently, the Court order was obtained improperly and irregularly. Nothing in law would justify the respondent to incur wasteful expenditure for paying the respondent's salary on the basis of this Court order obtained on 19 February 2025, under the circumstances it was obtained.

[75] I am therefore satisfied that the applicant has met the requirements as it has stated reasons for the urgency and why the urgent relief is sought, and given reasons why the requirements of the Rules of the Court were not complied with. The urgency of the matter suffices for the deviation from the Court rules and directives.

[76] It is clear that there is a dispute about the applicant's withdrawal of the permanent appointment letter issued to the respondent, which must be left to the Court to determine if the withdrawal was done following proper procedures in terms of the Public Service Commission Directives. I therefore find that the applicant is entitled to the interim relief *pendente lite.*

Costs

[77] The applicant has sought a cost order against the respondent. The respondent has also opposed the application and prayed for costs.

[13] [2001] ZACC 8; 2002 (2) SA 715 (CC) at para 49.

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[78] The rule of practice, that costs follow the result, does not apply in labour matters, but the Court has a wide discretion in respect of costs in consideration of the requirements of law and fairness.

[79] In my view, this is a case where the interest of justice will be best served by making no order as to costs.

[80] In the premises, I make the following order:

Order

1. The forms and service set forms in the Rules of this Court are dispensed with in terms of Rule 8, and this application is heard as a matter of urgency.
2. An order is made to stay the execution of the order granted on 19 February 2025 under case no 2024-097472 pending the final determination of the applicant's rescission application.
3. The applicant is directed to file the rescission application within a period of twenty (20) days from the date of this order.
4. There is no order as to costs.

G. Mafa-Chali
Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Advocate V Mukwevho
Instructed by:	Kganare & Khumalo Incorporated Attorneys
For the Respondent:	Leigh-Ann Govender, Vermeulen Attorneys

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