



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 170/24

In the matter between:

NHLANHLA ERNEST TEBOGO MAVUNDLA

Applicant

and

GOTCHA SECURITY SERVICES (PTY) LIMITED

Respondent

Neutral citation: *Mavundla v Gotcha Security Services (Pty) Ltd* [2025] ZACC 11

Coram: Maya CJ, Madlanga ADCJ, Dambuza AJ, Goosen AJ, Kollapen J, Majiedt J, Mhlantla J, Opperman AJ, Rogers J, Theron J and Tshiqi J

Judgment: Goosen AJ (unanimous)

Decided on: 18 June 2025

Summary: Labour Relations Act 66 of 1995 — reinstatement of dismissed employee — claim for arrear remuneration — delay in factual reinstatement due to dispute about conditions imposed by employer — Labour Court order compelling unconditional reinstatement — employee entitled to claim arrear remuneration from original date of reinstatement

ORDER

On application for leave to appeal from the Labour Court:

1. Leave to appeal is granted.
2. The appeal is upheld, and the order of the Labour Court is set aside and replaced with the following:
“The respondent is ordered to pay the applicant the remuneration due to him for the period 1 August 2019 to 31 May 2021.”

JUDGMENT

GOOSEN AJ (Maya CJ, Madlanga ADCJ, Dambuza AJ, Kollapen J, Majiedt J, Mhlantla J, Opperman AJ, Rogers J, Theron J and Tshiqi J concurring):

Introduction

[1] This is an application for leave to appeal against an order of the Labour Court which dismissed a claim for payment of arrear remuneration pursuant to the reinstatement of an employee. The Chief Justice issued directions requiring the parties to file written submissions. Having received the submissions, this Court disposes of the matter without an oral hearing.

[2] The applicant, Mr Mavundla, was dismissed by the respondent, Gotcha Security Services (Pty) Limited (Gotcha Security), on 6 March 2019. He had been employed to provide VIP protection services. Mr Mavundla challenged his dismissal before the Commission for Conciliation, Mediation and Arbitration (CCMA) in terms of the Labour Relations Act¹ (LRA). On 22 July 2019, the CCMA made an award reinstating Mr Mavundla with effect from 1 August 2019. It also ordered Gotcha Security to pay

¹ 66 of 1995.

him an amount of R52 200 before 31 July 2019, as remuneration for the period from his dismissal to date of reinstatement.

[3] On 1 August 2019, Mr Mavundla reported for duty at Gotcha Security's place of business to resume his duties. Gotcha Security, however, refused to accept Mr Mavundla's tender of employment services. The reason it gave was that it was considering bringing a review application to challenge the arbitration award. Such application was, however, not pursued. Instead, on 25 September 2020, Gotcha Security sent a letter to Mr Mavundla inviting him to resume his duties on condition that he first produce a valid firearm competency certificate and an industry recognised registration² so that he could execute his duties as a VIP Protection Officer. He was given three days to comply with the conditions.

[4] Mr Mavundla disputed the obligation to comply with the conditions stipulated. He instituted contempt proceedings in the Labour Court on the grounds that Gotcha Security had failed to reinstate him in accordance with the award. The contempt proceedings came before Moshoana J on 28 May 2021. The Judge required the parties to engage with one another and to furnish him with a draft order. On the same day, Moshoana J issued an order that Gotcha Security reinstate Mr Mavundla with effect from 1 June 2021 and that no further conditions be imposed on Mr Mavundla upon his return to work. The order stated that Mr Mavundla's reinstatement was to be on the same terms and conditions that applied at the time of his dismissal. It also stipulated that Mr Mavundla was required to perform duties "as per his employment contract with the job title of a VIP Protection" and that he should "receive the keys to the vehicle and perform his normal VIP Driver duties."

[5] Mr Mavundla returned to work on 1 June 2021. Gotcha Security complied with the order and Mr Mavundla assumed his duties. Upon his return to work, however, he requested payment of his arrear salary for the period from 1 August 2019 to

² A registration issued by the Protection Services Industry Regulatory Authority.

31 May 2021. Gotcha Security failed to pay the remuneration he claimed to be due to him. Approximately two months after resuming his duties, Mr Mavundla was retrenched. He brought an application to the Labour Court claiming payment of the remuneration allegedly due to him for the period from 1 August 2019 to 31 May 2021.

Litigation history

Labour Court

[6] Before the Labour Court, Mr Mavundla's case was that he was entitled to the salary he would have earned from 1 August 2019 to 31 May 2021, since he was only reinstated on 1 June 2021. Gotcha Security, however, contended that Mr Mavundla was in fact reinstated on 25 September 2020, but had failed to comply with the conditions stipulated in his employment contract. It contended that the order of Moshwana J was silent as to payment of arrear remuneration because Mr Mavundla had compromised his claim for payment of arrear remuneration.

[7] The Labour Court (Nkutha-Nkontwana J) dismissed Mr Mavundla's claim. The Labour Court took the view that, in light of Moshwana J's order, Mr Mavundla's date of reinstatement was 1 June 2021. It held that the "impasse" between the parties, regarding the conditions of his reinstatement, was resolved by that order. It further held that, in accepting the terms of the Moshwana J order, Mr Mavundla had abandoned his claim to be reinstated with effect from 1 August 2019. The Labour Court reasoned that, until an employee's tender of service has been accepted by the employer, no contractual obligation exists between the parties. On this basis, it held that there was no contractual obligation upon Gotcha Security to pay Mr Mavundla his salary for the period between 1 August 2019 and 31 May 2021.

[8] The Labour Court subsequently dismissed Mr Mavundla's application for leave to appeal against its judgment for lack of any reasonable prospects of success. Mr Mavundla's application for leave to appeal to the Labour Appeal Court suffered the same fate on 20 February 2024.

*In this Court**Condonation*

[9] Mr Mavundla commenced the application for leave to appeal before this Court by filing it by email with the Registrar on 14 March 2024. He also served the application by email on Muller & Co Attorneys (Muller & Co), the attorneys who had acted for Gotcha Security in the Labour Court. During May 2024, it came to the attention of Mr Mavundla's attorneys that the Registrar had only received the application on 15 March 2024. Accordingly, on 30 May 2024, Mr Mavundla filed an application for condonation for the late filing of his application for leave to appeal. In that application he accepted that it had been filed one day late. He explained the delay on the basis that the email was dispatched to the Registrar after hours on 14 March 2024. He contended that Gotcha Security suffered no prejudice, that the delay was minimal and that he enjoyed reasonable prospects of success on the merits. On this basis, Mr Mavundla contended, it would be in the interests of justice to condone the late filing of the application.

Jurisdiction and leave to appeal

[10] Mr Mavundla submits that this Court's jurisdiction is engaged because the matter involves his right to fair labour practices in terms of section 23 of the Constitution as it concerns a decision that violates this right.

[11] He further submits that it is in the interests of justice for this Court to grant leave because the Labour Appeal Court's refusal to do so impaired his right of access to court. He contends that there are reasonable prospects of success in that this Court will find that the Labour Court was wrong when it found that he was reinstated from the date of the order granted by Moshwana J and not in terms of the arbitration award.

Merits

[12] Mr Mavundla submits that the Labour Court confused the legal principles relating to contracts of compromise or settlement with principles of waiver and thus misconceived the effect and context of Moshwana J's order. He contends that no

compromise or waiver was established. The purpose and effect of Moshoana J's order was to compel compliance with the terms of the arbitration award which reinstated him. The Labour Court was incorrect to hold, *mero motu* (of its own accord), that he had "abandoned" his claim to be reinstated on 1 August 2019 when he accepted the "new" date of reinstatement set by the Moshoana J order.

Respondent's submissions

Condonation

[13] Gotcha Security opposes the application for condonation. The basis of its opposition is pleaded in its answering affidavit to the application for leave to appeal where it is raised as a preliminary objection. The answering affidavit was filed on 26 June 2024. Gotcha Security states that it only received the application on 11 June 2024 when a copy was left at the offices of its attorneys, L Britz Attorneys. According to Gotcha Security the papers were emailed to its erstwhile attorneys, Muller & Co. They state that L Britz Attorneys had been on record as their attorneys since 2022. It is therefore contended that the application for leave to appeal was only commenced on 11 June 2024, which was more than two months out of time. Since there was no condonation application dealing with this period, condonation should be refused and the application dismissed on this ground. Gotcha Security claims that it has suffered prejudice because it had to expend resources on an application which was not prosecuted in accordance with the rules of this Court.

Jurisdiction and leave to appeal

[14] Gotcha Security submits that this matter does not engage our jurisdiction because it does not raise any issues of interpretation of the LRA. It contends that the issues raised in this matter are confined to Mr Mavundla's complaint that the Labour Court erred in the application of the principles relating to compromises and waivers which, it submits, do not concern labour law.

Merits

[15] According to Gotcha Security there are two issues that arise in this matter. The first is whether the order of Moshoana J deprived Mr Mavundla of a right to demand back pay. Secondly, whether the Labour Court raised the issue that Mr Mavundla abandoned his entitlement to arrear salary *mero motu* without affording the parties an opportunity to make submissions.

[16] On the first issue, Gotcha Security submits that the Labour Court correctly accepted that the order had been reached by agreement between the parties. Gotcha Security contends that Moshoana J's order must be interpreted with reference to the plain language used. The order is silent about whether Gotcha Security was in contempt, despite this being the basis upon which the application was brought. In the absence of an order declaring that it was in contempt as well as reference to Mr Mavundla's entitlement to reinstatement or payment of arrear salary, it must be understood as aiming to set a new date for reinstatement without conditions.

[17] Regarding the context in which the order was made, Gotcha Security submits that at the invitation of Moshoana J, the parties reached an agreement that did not include an order declaring that Gotcha Security was in contempt of the award. It contends that should such an order have been included, it would have had the effect of entitling Mr Mavundla to claim arrear salary as set out in the award. Gotcha Security further submits that the Moshoana J order was intended to allow Mr Mavundla to retain the title of a VIP Protection Officer but to be deployed to perform VIP Driver duties, thus avoiding the dispute regarding the provision of a firearm competency certificate and industry registration. In any event, Gotcha Security says, there is a factual dispute underlying Moshoana J's order. This does not raise a constitutional issue nor is it a question of law of general public importance. It therefore submits that leave to appeal must be refused.

*Analysis**Condonation*

[18] The order of the Labour Appeal Court dismissing Mr Mavundla's application for leave to appeal the Labour Court order was issued on 22 February 2024. He therefore had until 14 March 2024 to commence the application before this Court. Mr Mavundla filed the application with the Registrar by email on that day. The papers were also dispatched to Gotcha Security's attorneys, Muller & Co, on that date.

[19] Mr Mavundla's attorneys contacted Muller & Co and the Registrar to enquire about their receipt of the papers and to obtain proof of such receipt. The communication with Muller & Co initially went unanswered. Mr Mavundla was informed, however, that the Registrar had only received the application on 15 March 2024. Consequently, on 4 June 2024, Mr Mavundla lodged an application seeking condonation for filing the application one day out of time.

[20] In its answering affidavit to the main application, filed on 26 June 2024, Gotcha Security raises a preliminary challenge to the application on the basis that it commenced out of time. Gotcha Security contends that the application only commenced when it was served on its attorneys, L Britz Attorneys. This occurred when the papers were "left" at their offices on 11 June 2024. Gotcha Security states that there was no reason for service on Muller & Co, who were not their attorneys, and that L Britz Attorneys had been on record since 2022. It is therefore argued that there was no explanation for the substantial delay in commencing the application and that condonation should be refused.

[21] It is important to observe that Muller & Co were Gotcha Security's attorneys of record before the Labour Court. Although it is alleged that L Britz Attorneys have acted as their attorneys "since 2022", Muller & Co are recorded as Gotcha Security's attorneys in the judgment which is the subject of this application. The matter was heard by the Labour Court in April 2023 and judgment was delivered on 11 May 2023. The email address to which Mr Mavundla sent the application papers was

lezijl@muller.co.za. The proof of dispatch filed with this Court indicates that the email was delivered. The email address of Gotcha Security's present attorneys, lezijl@lbritzattorneys.co.za, suggests that that matter is being handled by the same attorney, albeit in a different firm of attorneys.

[22] Accepting that Muller & Co were the erstwhile attorneys until sometime in 2022, it is troubling that Gotcha Security and their present attorney chose not to explain the circumstances in which the matter came to be transferred to the new attorneys. As is apparent from the judgment of the Labour Court, it proceeded on the basis that Muller & Co were still on record when the case was argued before it and when the judgment was delivered. It is hardly surprising then that Mr Mavundla served the papers on Muller & Co. In any event, it is common cause that Gotcha Security received effective notice of the application and had the opportunity to enter opposition and file an answering affidavit. The only prejudice claimed by it is the prejudice caused by having to expend resources in answering the application. That is not the sort of prejudice which is relevant to determining whether condonation for failing to comply with the rules of court should be granted.

[23] As will be apparent from what follows, Mr Mavundla enjoys reasonable prospects of success. The interests of justice therefore favour the granting of condonation for the applicant's non-compliance. Condonation is granted.

Jurisdiction and leave to appeal

[24] Careful analysis of Nkutha-Nkontwana J's judgment shows that the gravamen of this Court's judgment in *Hendor*³ was misunderstood. In doing so, the Labour Court accepted that an order enforcing a prior order to reinstate an employee replaces the prior order and, in the absence of an order specifying an entitlement to payment of arrear remuneration, is to be treated as an abandonment of a claim to payment of remuneration.

³ *National Union of Metalworkers of South Africa v Hendor Mining Supplies (a division of Marschalk Beleggings (Pty) Ltd)* [2017] ZACC 9; 2017 (7) BCLR 851 (CC); (2017) 38 ILJ 1560 (CC).

In this case the finding of the Labour Court involves an employee's right to fair labour practices. It therefore engages this Court's constitutional jurisdiction.

[25] Furthermore, the tenability of the legal basis upon which the Labour Court proceeded is an arguable point of law of general public importance which this Court ought to consider. It follows that this Court has jurisdiction to entertain the matter. In light of the Labour Court's misapprehension of the effect of *Hendor*, which I shall set out more fully below, Mr Mavundla enjoys reasonable prospects of success. Leave to appeal must therefore be granted. It is worth emphasising that, in any event, the interests of justice favour the granting of leave to appeal.

Merits

[26] Mr Mavundla's claim was for payment of remuneration benefits due to him in terms of his contract of employment which had been restored pursuant to the order issued by Moshoana J. He sought payment of what was due to him from the period 1 August 2019 (the date of reinstatement provided by the arbitration award) to 31 May 2021 (the date immediately prior to his actual reinstatement). The Labour Court framed the question it was called upon to answer as being whether there was "a full restoration of [Mr Mavundla's] contract of employment during this period". In doing so, the Labour Court misconstrued the nature of the claim before it.

[27] The Labour Court relied upon *Kubeka*,⁴ where the Labour Appeal Court asserted, following this Court's judgment in *Hendor*,⁵ that a reinstatement order does not restore the contract of employment. The contract of employment is restored when the employer accepts the employee's tender of services pursuant to the order. However, despite this principle, the Labour Court went on to assert that the contract of employment was restored by Moshoana J's order and not the arbitration award.

⁴ *Kubeka v Ni-Da Transport (Pty) Ltd* [2020] ZALAC 55; [2021] 4 BLLR 352 (LAC); (2021) 42 ILJ 499 (LAC) at paras 35-6.

⁵ *Hendor* above n 3.

[28] The Labour Court failed to appreciate that the proceedings before Moshoana J, in the form of a contempt application, were intended to compel Gotcha Security to comply with the order to reinstate the applicant on 1 August 2019. Those proceedings were initiated because Gotcha Security had sought to impose conditions, namely the provision of a firearm competency certificate and an industry recognised registration. That impasse was resolved when Moshoana J ordered reinstatement to occur without any conditions. Upon the tender of services on 1 June 2021 by the applicant, his tender was accepted unconditionally by Gotcha Security, in accordance with Moshoana J's order. Mr Mavundla's contract of employment was therefore restored from 1 August 2019, the date on which it was restored in terms of the arbitration award.

[29] This Court's judgment in *Hendor* is not authority for the proposition, as suggested by the Labour Court, that an order enforcing a reinstatement order *ipso facto* (automatically) replaces the original reinstatement order. All that is replaced is the date upon which the restoration of the contract of employment by mutual tender and acceptance must occur. There is no magic in the setting of a new date. The prior date will have come and gone because the employer did not reinstate the employee. That is precisely why the enforcement order was sought.

[30] This Court was evenly split in *Hendor* on the characterisation of the debt due to an employee upon reinstatement for purposes of prescription. It was however unanimous in finding that, upon restoration of the contract of employment by factual reinstatement, an employee is entitled to the benefits (including remuneration) which they would have been entitled to but for the dismissal, unless limited by the terms of the reinstatement order.⁶ *Hendor* is not authority for the proposition that a reinstated employee is only entitled to be paid as from the date of their factual reinstatement. In *Hendor*, because of appellate proceedings, the employees were only factually reinstated on 28 September 2009, but the Court was unanimous that by not later than 28 September 2009 the employees became entitled to their arrear remuneration for the

⁶ *Hendor* above n 3 at paras 10-13 (Madlanga J [as he then was]) and para 96 (Zondo J [as he then was]).

period from 23 April 2007 (when the employer should factually have reinstated them) to 28 September 2009.

[31] One final observation must be made. The Labour Court found that there had been a compromise of Mr Mavundla's claim for payment in circumstances where it was not pleaded as a defence, and no case had been advanced that he had waived his rights before Moshoana J. In this respect, the proceedings before the Labour Court were procedurally unfair.

[32] Gotcha Security's argument regarding the "interpretation" of Moshoana J's order as embodying a "compromise" of Mr Mavundla's claim is without substance or merit. The fact that Moshoana J did not find Gotcha Security to be in contempt is irrelevant to its meaning. Moshoana J may not have been satisfied that it had been established that Gotcha Security had wilfully disobeyed the arbitration award. He may have accepted that Gotcha Security had believed, wrongly, that it was entitled to impose conditions before reinstating Mr Mavundla. None of this matters. What matters is that Moshoana J issued an order requiring that Mr Mavundla be reinstated without conditions. He did so in the context of a dispute about conditions which bedevilled implementation of the reinstatement order. If Gotcha Security had understood that Moshoana J's order of reinstatement was based on a compromise of a claim for remuneration, it would undoubtedly have recorded that in the order.

Conclusion

[33] It follows that the Labour Court's judgment cannot stand, and that the appeal before this Court must be upheld. Mr Mavundla had claimed payment of remuneration which was due to him from the period 1 August 2019 to 31 May 2021. He is entitled to such an order. He has already been paid the remuneration which was due to him from the date of his dismissal until 31 July 2019, as required by the original arbitration award.

[34] No costs orders were made by the Labour Court and Labour Appeal Court. It does not follow, in a labour matter, that the costs should follow the result.⁷ Gotcha Security was entitled to defend the judgment it had obtained in the Labour Court before this Court. The principle of fairness governs the award of costs in labour matters. In this case there are no circumstances present which warrant a departure from ordinary practice. Accordingly, no cost order is made.

Order

[35] The following order is made:

1. Leave to appeal is granted.
2. The appeal is upheld, and the order of the Labour Court is set aside and replaced with the following:
“The respondent is ordered to pay the applicant the remuneration due to him from the period 1 August 2019 to 31 May 2021.”

⁷ *Zungu v Premier of the Province of KwaZulu-Natal* [2018] ZACC 1; 2018 (6) BCLR 686 (CC); (2018) 39 ILJ 523 (CC) at para 24.

For the Applicant:

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