



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: J614/2024

In the matter between:

KHAZAMULA PATRICK RAMUTHWALA

Applicant

and

HUDACO TRADING (PTY) LTD t/a AMBRO STEEL

Respondent

Heard: 14 June 2024

Delivered: 25 July 2025

This judgment was handed down electronically by consent of the parties' legal representatives by circulation to them via email. The date for hand-down is deemed to be 25 July 2025.

JUDGMENT

KUMALO, AJ

Introduction

[1] The Applicant seeks an order on an urgent basis that the Respondent be ordered to pay into his attorneys' trust account an amount of R1,376,361.49 being what he claims is the backpay for the period 13 June 2016 to 30 April 2024 together with interest thereon calculated at the rate of 15.5% per annum from 1 December 2017 to the date of payment less the amount of R210,570.24 being the amount paid on 4 May 2024.

[2] Further, the Applicant seeks an order that the Respondent furnish within 90 calendar days to his attorneys, a schedule showing how the tax deductions for the period 14 June 2016 to 30 April 2024 were calculated and remitted to the South African Revenue Services.

[3] The Applicant further seeks an order that the Respondent be directed to provide his attorneys with confirmation that it has inserted his original starting date of employment in his other relevant documents including UIF, Provident Fund etc., and his original job title to name but a few.

[4] The application is opposed by the Respondent on various grounds including an allegation that the Applicant has failed to establish urgency, has failed to establish the existence of a *prima facie* or clear right that it needs to protect or enforce, a well-grounded apprehension of irreparable harm, the balance of convenience and/or that there is no adequate alternative remedy available.

Background

[5] There is a long history of litigation between the parties in this matter that I do not intend to dwell on in the current application. Suffice to state that the dispute between the parties has been through the CCMA, the Labour Court and the Labour Appeal Court.

[6] The Applicant is an employee of the Respondent and was engaged as a driver with effect from 23 January 2012. He was dismissed on 13 June 2016. He referred an unfair dismissal dispute to the CCMA and on 13 November 2016, an

arbitration award in his favour was given which found that his dismissal was substantively unfair and ordered his reinstatement retrospectively.

[7] The Respondent filed a review application with this Court and on 22 July 2022, the said review application was dismissed. Leave to appeal was served and filed and this application was dismissed on 15 September 2022. The Respondent petitioned the Labour Appeal Court which petition was unsuccessful.

[8] In 2022, the Applicant brought an urgent application under case number J1244/22 which is not relevant for the purposes of this judgment except for the fact that the Respondent had contended in its papers that the Applicant's claim had prescribed. That dispute went as far as the Labour Appeal Court which confirmed that the award of R210,570.24 was valid and had not prescribed as alleged by the Respondent.

[9] The Applicant seeks the payment of the amount of R1,376,361.49 on an urgent basis into the trust account of his attorneys of record.

Applicable legal principles on urgency

[10] Urgent applications are regulated in terms of Rule 38 of the New Rules of the Labour Court.¹ Rule 38(2) provides that the application must be accompanied by an affidavit which must also contain the reasons for urgency and why urgent relief is necessary.

[11] An applicant that approaches the Court on an urgent basis essentially seeks the Court's indulgence and to be afforded preference in order to prevent prejudice and harm that may occur or persist if the conduct complained of continues.

[12] Central to the determination of whether the matter is urgent is whether, the applicant has, in the founding affidavit explicitly set forth the circumstances which render the matter urgent, and the reason why substantial relief cannot be attained at

¹ GN 4475 of 2024: Rules Regulating the Conduct of the Proceedings of the Labour Court.

a hearing in due course. Put succinctly, the applicant is required to set out adequately, in the founding affidavit, the reasons for urgency and give cogent reasons why urgent relief is necessary.

[13] In *East Rock Trading 7 (Pty) Ltd & another v Eagle Valley Granite (Pty) Ltd & Others*²:

‘... 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.’

[14] If one is to take into consideration the provisions of Rule 38 and the principles set out in the authorities existing on the subject matter, it is evident that urgency is not there for the taking, and an applicant seeking urgent relief must adequately and in detail, set out in the founding affidavit, the reasons why the matter before Court should be treated with urgency.

[15] *In casu*, it is not clear on what basis the Applicant approached this Court for the relief he seeks. What is clear though is that the Applicant’s claim is based on what he alleges is the outstanding balance of his backpay emanating from the CCMA award that ordered his retrospective reinstatement. He alleges that this amount is calculated with effect from 13 June 2016 to 30 April 2024. He further claims an interest thereof of 15.5% per annum commencing 1 December 2017 to date less tax and the R210,570.24 which apparently was paid.

[16] Applicant states that this matter became urgent on 27 May 2024 when the settlement negotiations between the parties collapsed and what he termed

² [2011] ZAGPJHC 196 (23 September 2011) at para 6.

“charitable time-limits” expired without the Respondent showing any willingness to cease its unlawful and intentional refusal or failure, or omission or delay the payment of his back-pay.

[17] This Court has serious difficulties understanding how in these circumstances, the failure of the parties’ negotiations would create urgency. It was further submitted that the urgency arose due to the Respondent’s failure to honour its undertaking that it would make a payment accordingly. This again does not create urgency required that would prompt this Court to indulge the Applicant’s matter on an urgent basis.

[18] The Applicant further submitted that he is in a dire financial position due to the Respondent’s refusal to pay his backpay. He further alleges that he is the main breadwinner and has financial obligations that he has to fulfil. Financial hardships can hardly be regarded as sufficient reason to approach the courts on an urgent basis. Almost every individual person who loses their job for whatever reason would invariably be confronted with serious financial problems. If it were to be the case that such would justify approaching the courts, surely the courts would be inundated with such applications and the system would collapse.

[19] It is probable that, due to the fact that Applicant was not gainfully employed for a lengthy period of time, he would have financial gaps, and it would take him time to recover from them. This, however, does not justify that his matter be heard on an urgent basis.

[20] Further, I am of the view that there are other remedies available to the Applicant to pursue that I believe are adequate in these circumstances. Section 77(3) of the Basic Conditions of Employment Act³, provides this Court with concurrent jurisdiction with civil courts to hear and determine any matter concerning the contract of employment, irrespective of whether any basic condition of employment constitutes a term of the contract.

³ Act 75 of 1997.

[21] Clearly, there is a dispute between the parties regarding the amount owed as backpay. The Applicant could have approached this Court in terms of section 77 or approached the civil courts to claim the amount owed to him.

[22] The fact that the parties have been involved in lengthy court processes does not entitle any of the parties to “jump the proverbial queue” and approach this Court on an urgent basis. A proper reading of the Applicant’s papers indicates as much that he is aware of his other alternative remedies but is reluctant to follow same because of the lengthy period they may take.

[23] There are other issues that the Applicant raised in this application that I am of the view that those could have been dealt with internally than having raised them before this Court. Those are the issues that relate to the correction of his job title and employment dates etc. I do not believe that requires this Court’s urgent attention.

[24] I must state that this court aligns itself with the views expressed in *Sihlali and Others v City of Tshwane Metropolitan Municipality and Another*⁴ when it expressed the following views:

‘... It is good practice for practitioners practicing in this court to keep themselves abreast with the judgments of this court particularly those arising from the urgent court. There is a developing trend that points to the fact that the urgent court is being abused. Might I state, an urgent court is meant for urgent matters. This court should not be detained to use its scarce, valuable time entertaining self-created urgent matters. Practitioners should exercise greater care when considering approaching this court on urgency in matters where substantial redress is obtainable in due course.’

[25] The Applicant, in my view, brought an urgent application in a situation where he could have substantial redress in due course but opted instead to clog this Court’s roll.

[26] In the premises, the following order is made:

⁴ [2021] ZALCJHB 199; (2017) 38 ILJ 1692 (LC) at para 29.

Order

1. The application is struck off the roll for lack of urgency.
2. There is no order as to costs.

M. Kumalo

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant:

Instructed by:

For the Respondent:

Instructed by: