



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: 2025-117625

In the matter between:

LWANDLE MGIDLANA

Applicant

and

POSTBANK SOC LIMITED

First Respondent

**THE MINISTER OF TECHNOLOGIES AND
DIGITAL TECHNOLOGIES**

Second Respondent

MS NIKKI MBENGASHE

Third Respondent

Heard: 30 July 2025

Order: 30 July 2025

REASONS FOR THE ORDER

PHAKEDI, AJ

Introduction

[1] On 30 July 2025 this Court struck off the urgent application brought by applicant from the roll. The applicant was not represented during the proceedings and he has requested reasons for the order made on 30th July 2025.

[2] In his notice of motion, the applicant sought various orders in the following terms:

- 2.1. That this matter be heard as one of urgency in accordance with Rule 38 (1) of the Labour Court Rules, and that the Court dispense with the ordinary forms, time limits and rules relating to service;
- 2.2. Directing the First Respondent to immediately complete, certify, and submit all documentation necessary for the Applicant's Temporary Total Disability (TTD) claim, including all employer-related forms and records submitted prior to termination;
- 2.3. Directing the First Respondent to issue and/or complete all UIF documentation required for the Applicant to access unemployment insurance benefits, including but not limited to UI19, UI2.7, and UI2.8 forms;
- 2.4. Directing the First Respondent to release and facilitate payment of the Applicant's accumulated leave and all documentation required to initiate withdrawal of pension benefits, including relevant exit forms and employer confirmations;
- 2.5. Interdicting the First Respondent from applying any alleged "sick leave debt" or deductions as grounds to withhold post-employment benefits unless and until it complies fully with paragraphs 2 to 4 above;
- 2.6. Declaring the method of service adopted in this application, including electronic delivery via Court Online and email, to be sufficient in terms of Rule 4(1)(aA) of the Labour Court Rules;
- 2.7. Directing the First Respondent to file a written report or confirmatory affidavit within five (5) days of service of this order confirming compliance with paragraphs 2 to 4 above;
- 2.8. Ordering the Respondents to pay the costs of this application on an attorney and client scale, alternatively on a punitive scale;
- 2.9. Directing that the Third Respondent be ordered to show cause why a *de bonis propriis* costs order should not be made against her in terms of

section 162 of the Labour Relations Act, for her alleged conduct that contributed to this litigation;

2.10. Granting further and/or alternative relief as this Honourable Court deems appropriate.

[3] The application was opposed by first and third respondents and subsequent to hearing both parties and considering their submissions, the following order was made:

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

Brief background facts and parties' submissions

[4] The Applicant was employed by the first respondent as Manager: Supply Chin Management until his dismissal on 12 May 2025. Subsequent to his dismissal, he then launched a review application under case number 2025-096034 and that matter is yet to be determined.

[5] The applicant on or about 19 July 2025 filed an urgent application seeking condonation for non-compliance with the rules of service. In support of the urgency of his matter, he submitted that he is suffering ongoing financial harm as a result of loss of income emanating from his dismissal which also led to the termination of his medical-aid. He submitted further that the termination of his medical aid has severely limited his access to chronic medical condition treatment and cannot fully function without medication.

[6] He also stated that the respondents are also exacerbating his condition by refusing to complete his UIF forms, process his pension funds payout and refusing to pay his accumulated annual leave payouts.

[7] On 20 July 2025, he filed a supplementary affidavit addressing the unauthorised cancellation of his medical aid by Discovery Health Medical Scheme, and a number of POPIA concerns. He filed a further supplementary affidavit on 22 July 2025 titled 'waiver, estoppel and unlawful withholding of benefits' and a further

affidavit was filed on 24 July 2025 raising some concerns regarding legal representation. On 25 July 2025, he once again filed a supplementary affidavit objecting to legal representation and indicated that he had received a payment of R37 304.81 on 24 July 2025 without any explanation from the first respondent. He indicated further that the money was paid into a dormant bank account resulting in bank charges depleting the said deposited funds.

[8] He filed a further affidavit dealing with punitive costs in the event that he succeeds against the first and third respondents. He stated in this affidavit that the first respondent had been refusing to settle all the statutory and contractual monies due to him since 12 April 2025. He filed a further affidavit on 29 July 2025 dealing with the unexplained payment which was made into his bank account.

[9] The respondents in their affidavit raised a number of points *in limine* regarding jurisdiction of the court and the fact that urgency is self-created in this matter. The respondents submitted that the applicant was dismissed on 12 May 2025 and he only launched his application on 19 July 2025 when he had already been without income for over a month. The applicant had frustrated the application by filing multiple affidavits without the leave of the court. It was submitted that the urgency in this matter is self-created and the applicant has failed to demonstrate any irreparable harm if the order is not made in his favour. Furthermore, it was submitted that the first respondent has completed the pension forms, paid the outstanding leave days in the amount of R37 304.81 and it is the applicant who is not cooperating when it comes to the completion of UI19 forms.

[10] It was submitted further that the termination of the applicant's employment contract resulted in the termination of his medical aid and he lost this benefits when he ceased to be an employee of the first respondent on 12 May 2025.

[11] The applicant was not represented and the court then requested the respondents' legal team to engage with him and assist him with the completion of the outstanding forms in order to ensure that he gets the help he needs. However, both parties after an adjournment indicated that their talk did not yield any positive results.

Lack of urgency

[12] The applicant admitted that he was dismissed on 12 May 2025 but did not provide an explanation as to why it took him approximately ten weeks to launch the current application. The bulk of his complaints had been overtaken by events, such as the payment of his outstanding leave days in the amount of R37 304.81. The other issue is that the respondent submitted supporting documents from the Department of Labour indicating that his claim was being processed as at 29 May 2025 and the respondent was cooperating with the Department of Labour. He further indicated that he had lodged a complaint with the Pension Fund Adjudicator and the first respondent also submitted that the necessary forms had been submitted for pension payout.

[13] The applicant did not furnish any explanation as to why he should be allowed to jump the queue of litigants and why he cannot obtain relief in due course. His response was that he needed money to pay for his consultations with his doctor and for his medical aid to be reinstated. As such, the court did not shut the door on his face and struck the matter off the roll for lack of urgency.

[14] Rule 38 of the Rules for conduct of proceedings in the Labour Court deals with urgent applications and provides that:

- ‘(1) A party that applies for urgent relief must file an application that complies with the requirements of the rules relating to applications generally.
- (2) The affidavit in support of the application must also contain:
 - (a) the reasons for urgency and why urgent relief is necessary.’

[15] In *Roets N.O. and another v SB Guarantee Company (RF) (PTY) Ltd and others*¹ the High Court held as follows:

‘In my view, urgency which is self-created in a sense that an applicant sits on its laurels or take its time to bring an urgent application can on its own lead to a decision that a matter is struck off the roll ...’

¹ (36515/2021) [2022] ZAGPJHC 754 at para 26.

[16] In *Dynamic Sisters Trading (Pty) Ltd and another v Nedbank Ltdd* the Court held that:

‘this Court has consistently refused urgent applications in cases when the urgency relied upon was clearly self-created. Consistency is important in this context as it informs the public and legal practitioners that Rules of Court and Practice Directives can only be ignored at a litigant's peril. Legal certainty is one of the cornerstones of a legal system based on the Rule of Law’.²

Costs

[17] The court exercised its discretion and not award costs against the applicant.

[18] For the above reasons, the order as set out above was issued.

GC Phakedi

Acting Judge of the Labour Court of South Africa

² (081473/2023) [2023] ZAGPPHC 709 at para 18.