



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: 2025-115635

In the matter between:

SAMSON SEFOTLE MODIBA

Applicant

and

ROAD ACCIDENT FUND

First Respondent

THE ACTING CHIEF EXECUTIVE OFFICER

Second Respondent

THE BOARD OF THE ROAD ACCIDENT FUND

Third Respondent

Heard: 30 July 2025

Delivered: 30 July 2025

Reasons: 13 August 2025

REASONS FOR ORDER

PHAKEDI, AJ

Introduction

[1] On 30 July 2025, this Court removed the urgent application brought by the applicant from the roll at the instance of the Applicant. Subsequent to hearing both parties and considering their submissions, the following order was made:

- ‘1. The application is removed from the roll.
2. There is no order as to costs.’

Brief background facts and parties’ submissions

[2] At the start of proceedings, the Applicant’s counsel indicated that there were ongoing talks between the parties with the view of settling the matter. However, Counsel for the respondents indicated that his clients do not have any objection to the applicant removing the matter from the roll on condition that he tenders the wasted costs. The matter was stood down until 14h00 to accommodate the Applicant’s counsel to obtain instructions from his client in respect of tendering the respondents’ wasted costs. However, despite such a lengthy indulgence, the applicant could not tender wasted costs, and both parties argued their cases in respect of costs.

[3] The Applicant submitted that jurisdiction in this matter was brought in terms of section 77 (3) of the Basic Conditions of Employment (the BCEA)¹ and as an alternative relief to the breach of contract, he sought an interim relief in terms of section 158 (1)(a)(i) of the Labour Relations Act (LRA)². Applicant’s counsel submitted that because the Applicant is also relying on the provision of the LRA, the Court must not award costs against him as it is a court of law and equity.

[4] Section 77(3) of BCEA provides that:

‘The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.’

¹ Act 75 of 1997.

² Act 66 of 1995, as amended.

[5] The Respondents submitted that they were invited by the Applicant to the urgent court and they had to employ the services of two counsel, including a Senior Counsel. They indicated that conciliation took place on 29 July already, and the applicant had sufficient opportunity to remove the matter from the roll at the earliest opportunity, but instead opted to file a replying affidavit. It was submitted that the consequences of a removal from the roll are the same as those arising from the matter being struck off the roll.

Costs in the Labour Court

[6] Although the applicant invoked the provisions of the BCEA and the LRA, the matter was not argued on merits but removed from the roll. The Labour Appeal Court in *Passenger Rail Agency of South Africa and Others v Ngoye and Others*³ held that:

‘While there are provisions in the legislation, notably section 77(3), that endow the Labour Court with authority to adjudicate contractual claims, in my view, these provisions must be interpreted by having regard to the objectives sought to be achieved by the labour law dispensation as a whole. I do not believe that the intention of the legislature in enacting section 77(3) was to give the Labour Court jurisdiction over disputes that arise from dismissals and ULPs which should, in the first instance, be categorised as unfair dismissal disputes or unfair labour practice disputes and dealt with by the CCMA. In dealing with employment disputes, our first point of reference should be the constitutional right to fair labour practices, which is given effect in the LRA.’

[7] Costs in the Labour Court are regulated in terms of section 162 (1) of the LRA, which provides that the Labour Court may make an order for the payment of costs, according to the requirements of the law and fairness. Since the matter was not argued on merits but removed from the roll, the Court did not award costs. As a general proposition and considering the dictates of fairness, the Court saw no legitimate reason to depart from the general principle that costs do not follow the result in employment disputes before the Labour Court.

³ (2024) 45 ILJ 1228 (LAC) at paras 28.

[8] The general approach is that the awarding of costs in the Labour Court is discretionary. It is trite that the Court in exercising its discretionary powers must not act capriciously, upon wrong principles, in a biased manner, for insubstantial reasons, or commit a misdirection, or an irregularity or exercise its discretion improperly or unfairly.⁴

[9] The Constitutional Court in *Booi v Amathole District Municipality and Others*⁵ dealt with the issue of costs in the Labour Court and held as follows:

‘However, this is a labour matter and this Court’s jurisprudence is settled: the ordinary rule that costs follow the result does not apply in labour matters. Rather, what emerges from the provisions of the LRA and the jurisprudence is that courts, when awarding costs in labour disputes, must consider what fairness demands and err on the side of not discouraging parties from approaching the courts for the peaceful resolution of labour disputes. Further, if costs are to be awarded in labour matters, there must be reasons that justify a court’s decision to depart from the position that a losing party should not be mulcted in costs in labour disputes.’

[10] The above-mentioned principle was clearly espoused in *Member of the Executive Council for Finance, KwaZulu-Natal v Dorkin N.O*⁶, where the Court held:

‘In making decisions on cost orders this Court should seek to strike a fair balance between, on the one hand, not unduly discouraging workers, employers, unions and employers’ organisations from approaching the Labour Court and this Court to have their disputes dealt with, and, on the other, allowing those parties to bring to the Labour Court and this Court frivolous cases that should not be brought to court. That is a balance that is not always easy to strike but, if the court is to err, it should err on the side of not discouraging parties to approach these courts with their disputes. In that way these courts will contribute to those parties not resorting to industrial action on

⁴ *Coates Brothers Ltd v Shanker and Others* (2003) 24 ILJ 2284 (LAC) at para 5.

⁵ (2022) 43 ILJ 91 (CC) at para 60.

⁶ 2008 (29) ILJ 1707 (LAC) at para 19.

disputes that should properly be referred to either arbitral bodies for arbitration or to the courts for adjudication.’

[11] The matter was removed from the roll at the instance of the Applicant, and either of the parties may still re-enrol it for final determination. For the above reasons, the order as set out above was issued.

GC Phakedi
Acting Judge of the Labour Court of South Africa.