



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-135221

In the matter between:

EMFULENI LOCAL MUNICIPALITY

Applicant

and

AUBREY DAVID TAUNYANE

First Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

Second Respondent

NONHLANHLA SITHOLE N.O.

Third Respondent

Heard: 19 August 2025

Delivered: 20 August 2025

This judgment was handed down electronically by uploading it on *CaseLines* and/or circulating it to the parties' legal representatives. The date for hand-down is deemed to be 19 August 2025.

JUDGMENT

MAKHURA, J

[1] In terms of section 158(1B) of the Labour Relations Act¹ (LRA), this Court may not review a commissioner's ruling or decision made in an interlocutory application before the issue in dispute has been finally determined, except if the Court "*is of the opinion that it is just and equitable to review the decision or ruling made before the issue in dispute has been finally determined*". This provision came into effect on 1 January 2025.

[2] It is astounding that more than 10 years after the enactment of section 158(1B) and many judgments of this Court on review applications² and urgent interdict of uncompleted arbitration proceedings³, and the Labour Appeal Court⁴ (LAC) later, this Court is still routinely confronted with applications of this nature.

[3] In these proceedings, the Municipality unsuccessfully applied for legal representation before the third respondent commissioner. In her ruling, the commissioner noted that the employee was dismissed for contravening a suspension

¹ Act 66 of 1995, as amended.

² *Ngobeni v Passenger Rail Agency of SA Corporate Real Estate Solutions & others* (2016) 37 ILJ 1704 (LC); *South African Broadcasting Corporation (SOC) Limited v Commission for Conciliation, Mediation and Arbitration and Others* [2019] ZALCJHB 318; (2020) 41 ILJ 493 (LC); *Technology Corporate Management (Pty) Ltd v Moue and Others* [2023] ZALCJHB 122; *Pailpac (Pty) Ltd v NUMSA obo Mthwane* (Unreported and Unpublished Case No. D619/23) dated 13 March 2024; *City of Johannesburg Metropolitan Municipality v Mphefo and others* [2024] ZALCJHB 287 (*Mphefo*).

³ *Passenger Rail Agency of South Africa (Pty) Ltd v Mathobela and Others* [2024] ZALCJHB 446 (*Mathobela*); *Bojanala Platinum District Municipality v Fourie and Others* [2025] ZALCJHB 306 (*Fourie*).

⁴ *Moolman v Commission for Conciliation, Mediation and Arbitration and Others* [2024] ZALAC 339 (*Moolman*); *South African Cabin Crew Association obo Members v South African Airways (SOC) Ltd and Others* [2025] ZALAC 45 (*SA Cabin Crew*).

condition. She found that there is nothing complex about the charge or case. She correctly noted that the central issue for determination is whether the first respondent employee violated the suspension condition, specifically whether he was insubordinate or had committed gross misconduct.

[4] The Municipality alleged in its application for legal representation that it could not obtain assistance from officials of other municipalities and that its officials are conflicted as they are due to testify against the employee. The commissioner found that there was no evidence to suggest that the Municipality could not find any official from other municipalities to represent it in the proceedings. She found the submission made by the Municipality in this regard “*alarming*”, that it “*sought to cast aspersions on many individuals who may represent the Respondent from the said institutions*”, and that such an allegation must be corroborated by evidence if it were to be accepted.

[5] The allegation that there was no official from the Municipality to represent it suggests that all its officials in the labour relations and legal units of the Municipality would be called as witnesses to testify against the employee on a charge of contravention of a suspension condition. This allegation was not substantiated. No details of the officials in these units were provided, and why, even if they were due to testify, they could not represent their employer and present the case on its behalf. It is, in any event, improbable that a charge of this nature could require all the managers and senior managers of these units to give evidence.

[6] For the Municipality to succeed in these proceedings, it must show that there are exceptional circumstances that warrant the Court’s intervention and stay the arbitration proceedings⁵. The LAC most recently held in *SA Cabin Crew*⁶ that:

⁵ *Booyesen v The Minister of Safety and Security & others* [2011] 1 BLLR 83 (LAC); (2011) 32 ILJ 112 (LAC) at para 54; *Moolman*, fn 4 above.

⁶ *Ibid*, fn 4 above.

‘Exceptional circumstances justifying judicial intervention in incomplete proceedings have been found to exist where such intervention was necessary to prevent illegality, to prevent grave injustice, or where justice could not otherwise be achieved.

Judicial intervention is all the more justified where a review is instituted *in medias res* to challenge and set aside a ruling premised on a material error of law...’⁷

[7] The Municipality must therefore show that these proceedings are necessary to prevent an illegality or a grave injustice and that justice could not be achieved in due course if the arbitration is allowed to proceed.⁸ The Municipality relied on this Court’s judgment in *City of Johannesburg Metropolitan Municipality v Mphefo and others*⁹ (*Mphefo*). However, this judgment is of no assistance to the Municipality because there, the applicant sought the Court’s intervention pending finalisation of a review application against a jurisdictional ruling, which has the effect of disposing of the issue in dispute.

[8] The Municipality contends that exceptional circumstances warranting this Court’s intervention at this stage exist. First, the Municipality filed a review application. Second, in light of the pending review application, which has prospects of success. Therefore, it has established a *prima facie* right for the interdict. Third, the Municipality contends that the charges against the employee are complex and require a person with legal expertise. Fourth, the dispute presents:

‘an opportunity to foster precedent in respect of the intersection between a fiduciary duty of the employee to the employer and duty of a union official to the union.’

⁷ Ibid at paras 27 – 28.

⁸ See also *Moolman* at para 45, where the LAC stated that intervention may be warranted where, if allowed to stand, the ruling would cause irreparable harm.

⁹ [2024] ZALCJHB 287.

[9] The above is allegedly an issue that cannot be traversed by lay persons. Fifth, the Municipality sought assistance from officials of other municipalities but was unsuccessful as they had “*their work-related responsibilities and commitments*”.

[10] In opposition, the employee argued that the matter is not urgent, that the application does not meet the requirements for an interim relief, and the Municipality failed to prove exceptional circumstances.

[11] The Municipality has no *prima facie* right because it has no right to legal representation in misconduct arbitration proceedings. The right to legal representation is attained by filing a review application to challenge the legal representation. On the face of it, considering the legal principles and the facts of this matter, the review application is doomed. It is outrageous for a Municipality that charged and dismissed its employee for violating a suspension condition to claim that this charge and the entire unfair dismissal dispute involve complex legal issues requiring legal representation. The argument relating to legal precedent is flimsy, absurd and ludicrous. As the commissioner concluded, the allegation that the Municipality sought aid from other municipalities is unsupported and will remain so throughout these proceedings. The officials who are purportedly conflicted because they are witnesses and cannot represent the municipality's case have not been referred by the Municipality to the commissioner or this Court. Nonetheless, the above hardly constitute exceptional circumstances.

[12] This Court has found that a review of a jurisdictional ruling, which has the consequence of disposing of the issue in dispute, would justify the intervention of this Court.¹⁰ Equally, a review of a condonation ruling was found by this Court to warrant an urgent stay of the arbitration proceedings.¹¹ I cannot conceive of any grave injustice or

¹⁰ See: *Mphefo & Mathobela* above.

¹¹ *Mining Qualifications Authority v Commission for Conciliation, Mediation and Arbitration and Others* [2025] ZALCJHB 120.

any illegality that could warrant this Court's intervention to stay the arbitration proceedings pending a review of a legal representation ruling because in such cases, the applicant has an alternative remedy, has an opportunity to challenge the interlocutory ruling in due course and therefore no irreparable harm could ensue.

[13] The Municipality would not suffer any illegality or injustice if the arbitration proceedings continue. Indeed, the Municipality has not even attempted to make out this case in its founding affidavit. For the above reasons, this application stands to be dismissed.

[14] The employee sought costs. In her heads of argument, Ms Phakedi, who appeared for the employee, sought costs *de bonis propriis*. This case was not raised in the employee's answering affidavit with particularity to allow the Municipality's attorneys to respond. Whilst I accept that the Municipality and its attorneys should have known better, I am not convinced that a case for an extraordinary costs order of this nature has been made out or that the Municipality's attorneys acted so negligently to warrant the Court's rebuke.

[15] I am, however, persuaded that the application is meritless and constitutes an abuse of the court processes. Accordingly, a deviation from the principle in this Court that costs do not follow the result is justified. The employee should not be saddled with the costs of opposing this application.

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

Order

1. The application is dismissed with costs.

M. Makhura
Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr O. Leketi

Instructed by: Raphela Attorneys

For the First Respondent: Ms G.C. Phakedi of Phakedi Attorneys

LABOUR COURT