



THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Not Reportable

Case No:2025-115944

In the matter between:

**ACTING SHERIFF OF THE HIGH COURT
MAGISTRATE COURT, MTHATHA**

Applicant

and

SIVUYISIWE VICTORIA BENZI

First Respondent

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

Second Respondent

COMMISSIONER VUYANI VICTOR NGUDLE N.O.

Third Respondent

COMMISSIONER MBULELO SAFA N.O.

Fourth Respondent

**THE SHERIFF OF THE HIGH COURT
& MAGISTRATES COURT, CALA N.O.**

Fifth Respondent

Heard: 25 July 2025

Date of Judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 12h00 on 29 July 2025.

Summary: urgent application to stay enforcement of award and to be exempted from furnishing security – point *in limine* of *res judicata* raised – point *in limine* upheld and application dismissed with punitive costs.

JUDGMENT

DE KOCK, AJ

Introduction

[1] This matter came before the court as an urgent application to stay the enforcement of the arbitration award certified on 22 May 2025. The first respondent, however, raised a point *in limine* claiming that the matter is *res judicata*. It is therefore necessary for the court to first determine the point *in limine* before determining the urgent application to stay the enforcement of the arbitration award, as well as the application to be exempted from furnishing security.

Res judicata

[2] The applicant previously brought an urgent application to stay the enforcement of the very same arbitration award. The urgent application was heard on 11 July 2025. Whitcher J, after hearing the application, issued an order dismissing the application with no order as to costs.

[3] The applicant thereafter brought the current urgent application to stay the enforcement of the very same arbitration award, but added to the relief sought that the applicant be exempted from furnishing security. The application is based on the same grounds relied on in seeking the stay of the enforcement of the award on 11 July 2025.

[4] The Constitutional Court, in respect of the defence of *res judicata*, stated that: ‘*Res judicata* is the legal doctrine that bars continued litigation of the same case, on the same issues, between the same parties. *Claassen* defines *res judicata* as –

“[a] case or matter is decided. Because of the authority with which in the public interest, judicial decisions are invested, effect must be given to a final judgment, even if it is erroneous. In regard to *res judicata* the enquiry is not whether the judgment is right or wrong, but simply whether there is a judgment.”¹

[5] Since the application was already dismissed on 11 July 2025, the application before this court is *res judicata*. This court notes that it has the power to determine whether the application of *res judicata* ought to be relaxed in the interests of justice. This is not one of those instances where the applicant has shown sufficient reason for this court to do so. The applicant’s attempt to show that this application is different from the application already dismissed by arguing that it now seeks relief that the applicant be exempted from furnishing security, over and above the second attempt to stay the enforcement of the award, must be rejected. This is a very poor attempt, to say the least, and based on poor legal advice. So too is the applicant’s attempt to argue that the first application was dismissed on a procedural point.

[6] The applicant was required to apply for exemption from providing security, as is required in section 145 (7) and (8) of the Labour Relations Act² (LRA), at the time when it applied for the award to be reviewed. The applicant failed to do so. The applicant was then required, when they approached the court with the urgent application on 11 July

¹ *S v Molaudzi* 2015 (2) SACR 341 (CC) at para 14.

² Act 66 of 1995, as amended

2025, to also apply for exemption from the requirement to furnish security. They failed to do so, and the application to stay the enforcement of the award was clearly dismissed on the merits of the application. The failure to furnish security was but one of the considerations to be taken into consideration whether the application ought to have been granted. It was only after the first urgent application was dismissed that the applicant, very belatedly so, again approached the Labour Court with an application to be exempted simultaneously with yet another application for a stay of the enforcement of the award.

[7] This court has no jurisdiction to determine an application that was already heard and dismissed on 11 July 2025. The now added and belated relief sought that the applicant be exempted from furnishing security does not constitute a new application, as the essence of the relief sought is that the enforcement of the award must be stayed, which has already been heard and dismissed. The first respondent's right to finality of an application already heard and dismissed must be respected and protected by this court.

[8] The first respondent's point *in limine* of *res judicata* must therefore be upheld.

Costs

[9] The court must show its complete displeasure with the applicant's abuse of court processes. This application, being *res judicata*, not only caused the first respondent to incur unnecessary legal costs to oppose the application but also wasted this court's time in having to deal with the same application twice in two weeks. Such an abuse of court processes and complete disregard of the court order of 11 July 2025, deserves that a cost order be made against the applicant on a punitive scale.

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

Order

1. The point *in limine* of *res judicata* is upheld.
2. The application is dismissed.
3. The applicant is ordered to pay the first respondent's costs on an attorney-and-client scale.

C de Kock

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: TL Bashe from Bashe Mhlontlo & Company Inc.

For the First Respondent: M Qotoyi from Mbulelo Qotoyi Attorneys