



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-130223

In the matter between:

GAUTENG DEPARTMENT OF INFRASTRUCTURE

First Applicant

GAUTENG DEPARTMENT OF HEALTH

Second Applicant

and

PUBLIC HEALTH AND SOCIAL DEVELOPMENT

First Respondent

PSA obo GOODHOPE MASEKO

Second Respondent

MOKHELE RASEBOKA

Third Respondent

RICHARD MAKHUMISANI

Fourth Respondent

TREVOR TABANE

Fifth Respondent

ADVOCATE RONNIE BRACKS N.O

Sixth Respondent

Heard: 5 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, and by publication on Caselines. The hand-down date is deemed to be 25 August 2025.

Summary: An urgent application to interdict arbitration proceedings pending the outcome of a leave to appeal.

JUDGMENT

GANDIDZE, J

Introduction

[1] On 1 August 2025, this court heard an urgent application jointly brought by the Gauteng Department of Infrastructure Development (GDoID) and the Gauteng Department of Health (GDoH), the first and second applicants respectively, for an order to interdict arbitration proceedings scheduled from 5 to 7 August 2025 under the auspices of the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC), the first respondent herein. That application was dismissed by Phakedi AJ on 4 August 2025. The current application, filed on 5 August 2025, also urgently seeks interim relief to prevent the same arbitration proceedings from going ahead pending the final determination of the application for leave to appeal against the judgment of Phakedi AJ.

[2] Only the second respondent, Dr Goodhope Maseko (Maseko), represented herein by his union, the Public Servants Association (PSA), opposed the application.

[3] On 5 August 2025, the matter was postponed to 6 August 2025 to allow the GDoID and GDoH, collectively called the applicants, to file a replying affidavit to Maseko's answering affidavit. When the matter was argued on 6 August 2025, the Court was informed that arrangements had been made to ensure the arbitration

proceedings would be held in abeyance pending this judgment. The Court reserved its judgment.

Background facts

[4] Maseko, a former employee of the GDoH, was dismissed for misconduct. He challenged his dismissal at the PHSDSBC, and the matter was assigned case number PSHC 999-24/25. It was the arbitration of this dispute, scheduled for 5 to 7 August 2025, that the applicants were unable to interdict before Phakedi AJ.

[5] The third to fifth respondents are Mokhela Raseboka (Raseboka), Richard Makhumisani (Makhumisani), and Trevor Tabane (Tabane). They are all former employees of GDoID, who were also dismissed for misconduct. Each of them has referred a separate alleged unfair dismissal dispute to the General Public Service Sector Bargaining Council (GPSSBC), and these disputes are still pending before the GPSSBC.

[6] The GDoH, Maseko's former employer, applied to the PHSDSBC to consolidate Maseko's dispute with those referred to the GPSSBC by Raseboka, Makhumisani, and Tabane. In support of the application, it was argued that Maseko, Raseboka, Makhumisani, and Tabane were dismissed for the same misconduct, following a joint disciplinary hearing chaired by a single presiding officer, with the same witnesses giving evidence. It was further submitted that the lengthy disciplinary process spanned approximately two years. The PSA was also said to represent two of the four former employees, namely Maseko and Raseboka. An additional submission was made, that without consolidation, separate arbitrations could result in conflicting awards, and that a joint arbitration process would prevent unnecessary delays in resolving the disputes, as the same witnesses would be required to testify four times before four arbitrators. The GDoH asserted that the application for consolidation was permitted under Rule 27(1) and (2), read together with Rule 31 of the Rules for the conduct of proceedings before the GPSSBC or the PHSDSBC.

[7] In a ruling dated 5 May 2025, Commissioner Ronnie Bracks (the Commissioner), the sixth respondent, issued a ruling refusing the consolidation

application. He reasoned that only the parties to the PHSDSBC can have a matter arbitrated by the PHSDSBC, and that a dispute involving parties who do not fall within the registered scope of the PHSDSBC must be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA). He concluded by stating that *“each council has a registered scope and here we are dealing with two bargaining councils each with their own jurisdiction and this precludes me from consolidating the matters as I do not have jurisdiction to do so”*.

[8] Aggrieved by the ruling refusing condonation, on 11 June 2025, the applicants applied to this Court, seeking to review and set aside the consolidation ruling. In the review application, the court is urged to reconsider the decision not to consolidate the disputes, as consolidation could lead to a just and speedy resolution of the alleged unfair dismissal disputes. The further submission on review is that the matter raises an arguable point of law of general importance to trade unions, employees, and employers in the public sector.

[9] After the consolidation ruling was issued, the PHSDSBC scheduled Maseko's matter for arbitration from 5 to 7 August 2025, prompting the applicants to file an urgent application to interdict the arbitration proceedings. It was this application that Phakedi AJ dismissed in a judgment handed down on 4 August 2025. Phakedi AJ found that procedurally, the GDoID had not applied to join the review and the urgent applications. Substantively, Phakedi AJ determined that the dispute should have been treated as an interpretation dispute, as a provision in the Constitution of the PHSDSBC was the issue at hand.

[10] The evening of 4 August 2025 was a busy one for the applicants and their attorneys of record. That evening, an application for leave to appeal Phakedi AJ's judgment, as well as the current application, was compiled and served.

[11] The application for leave to appeal raises several grounds of appeal. In the first instance, it is argued that the finding that the dispute was one about the interpretation of the Constitution of the PHSDSBC is wrong, and that the applicants had no other remedy but to bring a review application to challenge the consolidation ruling. It is also submitted that Phakedi AJ erred in finding that this Court lacks

jurisdiction to deal with a dispute where the interpretation of the PHSDSBC Constitution is ancillary or incidental to the determination of the review application. Secondly, it is submitted that the consolidation ruling on jurisdiction was made only for convenience, and that it is for this Court to determine whether the PHSDSBC lacked jurisdiction to consolidate the disputes. Thirdly, Phakedi AJ is alleged to have failed to determine whether the applicants would suffer irreparable harm if the arbitration proceedings were not interdicted, rendering the review application moot. It is also submitted that Phakedi AJ's finding that the Maseko arbitration could proceed overlooks the fact that the GDoID was a party to both the review and urgent applications, contending that consolidation was required. Finally, Phakedi AJ is said to have attached more weight to the fact that some respondents opposed consolidation, ignoring that the PSA, which is representing Maseko and Raseboka, conceded that consolidation was desirable.

[12] In opposition to the application, the PSA on behalf of Maseko submits that the review application lacks prospects of success, as Phakedi AJ was correct that the dispute between the parties should be dealt with as an interpretation dispute, and that the PSA has a different understanding of the provision in the Constitution of the PHSDSBC relied upon by the applicants. According to the PSA, consolidating disputes at the PHSDSBC will set a precedent and lead to a situation where all public sector employees, even those who are not party to the PHSDSBC, will refer their disputes to the PHSDSBC, which grants earlier hearing dates. The submission is also that respondent employees who fall under the GPSSBC cannot be compelled to have their disputes arbitrated by a bargaining council to which they are not a party. The PSA argues that the applicants should have taken heed of the Commissioner's guidance to refer the matter to the CCMA or attend four separate arbitrations in the two bargaining councils. According to the PSA, granting the order sought will prejudice the now unemployed second to fifth respondents, who are ready for their dismissal disputes to be arbitrated, that reviews in this Court can take years to be disposed of, that consolidation is merely a convenience but not a right, and that should the applicants ultimately succeed with the review application, they can recover their costs. The PSA also clarifies that they did not agree that consolidation was desirable, but that they did not oppose the consolidation application.

[13] As I mentioned in the introductory paragraph, the current application seeks an interim order to prevent the arbitration proceedings scheduled for 5 to 7 August 2025, or any subsequent dates for the Maseko arbitration, pending the outcome of the application for leave to appeal before Phakedi AJ. The matter was argued on 6 August 2025, and the Court required time to consider it; the judgment could only be delivered after 7 August 2025. Although no new dates have been set for the resumption of the Maseko arbitration, the applicants have requested an order that the PHSDSBC not schedule the matter for arbitration on future dates, and therefore, the orders sought are not moot.

Urgency

[14] The current application was drafted, served, and filed on the same day that the Phakedi AJ judgment was handed down, namely 4 August 2025. The urgent application sought to interdict the Maseko arbitration proceedings, which were set to commence on 5 August 2025, and to prevent any other hearing dates from being allocated until the application for leave to appeal had been disposed of. The sole respondent, PSA obo Maseko, who opposed the application on its merits, did not contest the urgency. The matter is urgent.

Requirements for urgent interim relief

[15] Section 158(1)(a) of the Labour Relations Act¹ (LRA), empowers this Court to grant urgent interim relief. The requirements for interim relief were set out in *Setlogelo v Setlogelo*² as (a) a *prima facie* right, even if it is open to some doubt, (b) reasonable apprehension of irreparable or imminent harm if the interdict is not granted, (c) the balance of convenience must favour the grant of the interdict, and (d) the applicant must have no other remedy. In exercising its discretion in applications for interim relief, the Court does not consider these requirements in isolation, but rather in interaction with one another.

¹ Act 66 of 1995, as amended.

² 1914 AD 221 at 227.

[16] The applicants sought an order interdicting the arbitration proceedings set for 5 to 7 August 2025, pending the outcome of their application for leave to appeal against Phakedi AJ's judgment. This judgment is sought to be appealed against on the basis that Phakedi AJ erred when he found that the applicants ought to have referred a dispute about the interpretation of the Constitution of the PHSDSBC.

[17] While Phakedi AJ will determine whether there are reasonable prospects that another court would arrive at a different conclusion to that which she did, for purposes of this application I am required to express a *prima facie* view on whether the applicants have a *prima facie* right to the relief which they seek, even if such right is open to some doubt. Phakedi AJ, and ultimately the appeal court (should leave to appeal or a petition be granted), will finally determine the matter.

[18] The GDoH, Maseko's former employer, applied to the PHSDSBC, to consolidate Maseko's alleged unfair dismissal dispute with the disputes of Raseboka, Makhumisani and Tabane, filed at the GPSSBC. That application was refused for the reasons given by the commissioner, as recorded elsewhere in this judgment. Phakedi AJ refused the application to interdict the Maseko arbitration proceedings, reasoning, *inter alia*, that the GDoID, which was not party to the consolidation ruling, had not applied to be joined to the review and urgent applications.

[19] In my view, the review and urgent applications constitute fresh proceedings instituted before this court, and the GDoID and the GDoH are applicants in those two applications. The GDoID did not have to apply to join the review and urgent applications, but could be an applicant as they decided to do. On this basis alone, I express the *prima facie* view that Phakedi AJ's finding that GDoID could not be a party to the review and urgent applications, without having applied to be joined, may well be erroneous. I express this *prima facie* view in a context where it does not appear to be in dispute that the GDoID has a direct and substantial interest in what this court will ultimately decide regarding the consolidation of the disputes. This is not a case of misjoinder.

[20] Phakedi AJ also found that the applicants ought to have referred a dispute about the interpretation of the Constitution of the PHSDSBC. I agree with the applicants that once the commissioner ruled on the consolidation application, and that outcome aggrieved any party, the only recourse was to approach this court with an application to review and set aside that ruling, which was final and binding until set aside on review. Referring an interpretation dispute would not undo the consolidation ruling.

[21] Therefore, based on those *prima facie* views, the applicants have demonstrated a *prima facie* right to the relief they seek, even though open to some doubt, and the Maseko arbitration proceedings must be interdicted pending the outcome of the application for leave to appeal before Phakedi AJ.

[22] If the interdict is refused, and the Maseko arbitration commences in the meantime, and Phakedi AJ later grants leave to appeal, the applicants would suffer the irreparable harm that they would have commenced conducting the arbitration proceedings separately and in two bargaining councils, relying on the evidence of the same witnesses who would be required to give the same evidence more than once. There is the real risk, as pointed out by the applicants, that conflicting arbitration awards may well be issued. There is also the cost to taxpayers should four separate arbitrations run simultaneously before different Commissioners. There is no question that four separate arbitrations running concurrently will result in delays in the finalisation of all four matters, as the same witnesses and representatives will be required in both arbitration proceedings.

[23] Commencing with the Maseko arbitration proceedings in the meantime, and then Phakedi AJ later grants leave to appeal against her judgment, would result in a situation where the commenced Maseko arbitration proceedings would have been in vain. The arbitration proceedings would have to be recommenced, this time involving the GDoID, Raseboka, Makhumisani and Tabane.

[24] On the facts of this matter, consolidation may not be merely a matter of convenience to the parties, as argued by the PSA. Running four separate arbitrations in two separate bargaining councils, with the same representatives and

witnesses, will undoubtedly result in the delayed finalisation of all four arbitrations, compounded by the risk of conflicting arbitration awards despite the same evidence.

[25] In saying the above, I am not in any way making a pronouncement on whether the PHSDSBC can arbitrate a dispute involving non-parties, or the correct interpretation of the Constitution of the PHSDSBC. Those are issues for Phakedi AJ to consider when she determines the application for leave to appeal. Ultimately, it is for the court hearing the review application to determine and to dispose of that issue finally in due course. I merely express the *prima facie* view that the applicants have demonstrated a *prima facie* right to an interdict, even if such a right is open to some doubt.

[26] I find that the applicants have effectively shown that irreparable harm would result if the Maseko arbitration proceeds before Phakedi AJ has decided on the application for leave to appeal. The balance of convenience supports interdicting the Maseko arbitration proceedings for the reasons outlined above.

[27] Although there is some merit to the PSA's submission that interdicting the Maseko arbitration proceedings until Phakade AJ has considered the application for leave to appeal will cause delays in starting the Maseko arbitration, to his prejudice, the submission might have been overstated given that once the parties file their submissions in the application for leave to appeal, Phakedi AJ will decide the matter in chambers, and a judgment will be issued within a few days or weeks. It does not take years, as argued by the PSA, for applications for leave to appeal to be decided.

[28] Interdicting the Maseko arbitration proceedings is the only remedy available to the applicants. The PSA submitted that a costs order could be granted in favour of the applicants. The norm is not to award costs in applications for leave to appeal, but rather for costs to be awarded in the appeal.

[29] Furthermore, an application to postpone the Maseko arbitration proceedings was unlikely to succeed, as the PHSDSBC had scheduled the matter for arbitration following the issuance of the consolidation ruling. Once the consolidation ruling was issued, there was no longer an obstacle to initiating the Maseko arbitration

proceedings, according to the PHSDSBC, unless this Court intervened to interdict the arbitration proceedings.

[30] I am satisfied that the requirements for interim interdictory relief have been satisfied.

Costs

[31] This being an application for interim interdictory relief, and the fact that this judgment does not make any final pronouncements on the parties' rights, an appropriate order is that each party pay its own costs.

[32] In the premises, I make the following order:

Order

1. The matter is urgent.
2. The first respondent, its agents and employees are interdicted from setting down for arbitration case number PSHC 999-24/25, pending the hearing and determination of the applicants' application for leave to appeal Phakedi AJ's order issued on 4 August 2025 in case number 2025- 122304.
3. There is no order as to costs.

T Gandidze
Judge of the Labour Court of South Africa

Appearances

For the Applicant:	Ms K Mashishi
Instructed by:	Malatji & Co Attorneys
For the second respondent:	Mr K Mahapa of the Public Servants Association