



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J43/25

In the matter between:

PULE MOEKETSANE

Applicant

and

THEMBA DLAMINI

Respondent

Heard: 27 May 2025

Delivered: 26 August 2025

JUDGMENT

PEER, AJ

Introduction

[1] This is an application for contempt of a certified arbitration award.

[2] It is instituted by the applicant, a former employee of the Performing Arts Centre of the Free State (PACOFs), against the CEO of PACOFs, Mr Themba Dlamini (Dlamini).

[3] The applicant seeks an order holding Dlamini in contempt of a certified arbitration award and for him to be incarcerated, or for alternate relief to be granted.

[4] A *rule nisi* was issued on 27 February 2025 calling Dlamini to show cause why he should not be held in contempt. The *rule nisi* was extended on 22 April 2025 in order for the applicant to effect personal service of the *rule nisi* on Dlamini. This was done on 13 May 2025 by the Sheriff.

[5] Both parties duly represented appeared before the court on the further return date of 27 May 2025.

Background

[6] The applicant was employed as a Maintenance Manager at PACOFs.

[7] He was charged with and dismissed for misconduct on 11 May 2022. Aggrieved with the outcome, the applicant referred an alleged unfair dismissal dispute to the CCMA.

[8] The CCMA arbitration ran for an unprecedented 29 days. An award was issued on 5 June 2024.

[9] The commissioner found that the applicant's dismissal was procedurally and substantially unfair, and ordered that he be reinstated with back pay, amounting to R1263 485.48. The applicant was to return to work on 3 July 2024, and payment of the back pay was to be made by 30 June 2024.

[10] On 22 July 2024, the applicant caused the award to be certified in terms of section 143 of the Labour Relations Act¹ (LRA).

[11] PACOFS instituted a review application around 22 July 2024. On 2 August 2024, a purported security bond was filed by PACOFS with the Registrar.

[12] On 1 July 2024, PACOFS was notified by the Registrar of this court to collect the records that were dispatched by the CCMA.

[13] On 28 October 2024, PACOFS served the record.

[14] Since the record was filed outside the 60-day period, the applicant contends that the review application is deemed withdrawn.

[15] The applicant also disputes PACOFS' compliance with furnishing security in terms of sections 145(7) and (8) of the LRA.

[16] The applicant further contends that the certified award is now executable and enforceable.

[17] The applicant complains that PACOFS has refused to comply with the certified award.

[18] In the circumstances, the applicant seeks to hold Dlamini in contempt of the arbitration award, as the authorised officer of PACOFS responsible for giving effect to the award.

Deemed withdrawal of the review application and status of the security bond

[19] Prior to dealing with the specific requirements of contempt, the court first deals with whether the review application is deemed to be withdrawn and the status of the purported security bond filed by PACOFS.

¹ Act 66 of 1995, as amended.

[20] The applicant has challenged the validity of the security bond filed by PACOFS.

[21] The purported security bond was signed by Dlamini on behalf of PACOFS, and the material part reads as follows:

‘NOW THEREFORE, I the undersigned THEMBA DLAMINI, the CHIEF EXECUTIVE OFFICER of the applicant confirm that the applicant has in its salary bill recurring expenditure in the salaries for the third respondent and such future commitment not failing within the exclusions of section 66 of the Public Finance Management Act, 1999. I am custodian of the pay-point reports and ensure that the monthly pay point certificates are received/ approved monthly. The applicant is held firmly bound to the third respondent, to discharge a sum not exceeding R1263 485.48 on demand and within 30 days of the application for review or any appeal pursuant thereto, being dismissed by the court, Labour Appeal Court or the Constitutional Court, as the case may be.’

[22] The purported security bond does not appear to be in the conventional form usually accepted as security. However, while raised peripherally in the founding affidavit, the court is reluctant to consider the status of and set aside this document when PACOFS is not before the court, the setting aside of the purported security bond was not the application before the court, and the matter was not fully and sufficiently ventilated on the papers or during argument. The court therefore makes no finding on the status of the purported security bond and assumes for purposes of this application that the security bond is valid.

[23] The court turns to deal with the deemed withdrawal of the review application, which was ventilated extensively on the papers and during the argument.

[24] Rule 37 of the 2024 Labour Court Rules provides the following:

‘(14) Transcribed records must be delivered within 60 days of the date on which the applicant is advised by the registrar that the record has been received.

(15) If the applicant fails to file a transcribed record within the prescribed period, the applicant will be deemed to have withdrawn the application, unless the applicant has during that period requested the respondent's consent for an extension of time and consent has been given.

Any consent given must be expressed in writing and filed with the registrar.

(16) If consent is refused, the applicant may, on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time. The application must be accompanied by proof of service on all other parties, and answering and replying affidavits may be filed within the time limits prescribed by rule 35.

(17) The Judge President will then allocate the file to a judge for a ruling, to be made in chambers, on any extension of time that the respondent should be afforded to file the record.

(18) An application that is deemed to have been withdrawn may not be reinstated without an order of court, granted on application by the defaulting party, on good cause shown.'

[25] It is not disputed that the record was filed outside the 60-day period.

[26] In the answering affidavit, Dlamini states that upon receipt of the transcribed record, it "*appeared incomplete*". Dlamini adds that the incompleteness of the record suspends the 60-day time period. However, Dlamini states that by 25 October 2025, "*it was discovered*" that the record was in fact complete, but there were misprints.

[27] The admission by Dlamini that the record was, in fact, complete puts rest to his contention that the 60-day period was suspended. As a matter of fact, it was not. The record was not filed within the prescribed period, and the review application, together with the purported security bond, which suspends the execution of the award, was accordingly deemed to be withdrawn. The fact that the applicant disputes a portion of the record does not obviate the need for PACOFS to have complied with the 60-day time period.

[28] PACOFS has filed an application to reinstate the review application. Rather conveniently, this application was filed by PACOFS two court days prior to this hearing, on 23 May 2025. Notably, this application in itself is an admission that the review application is deemed to be withdrawn. In the reinstatement application, PACOFS seeks an order for its non-compliance with Rule 37 to be condoned, including the non-compliance of filing the record within the 60-day prescribed period. PACOFS further seeks an order for the review application to be reinstated. This is an express acknowledgement and admission that the review application has been deemed to be withdrawn. Notably, the deponent to the affidavit in support of this application is Dlamini himself. It is therefore clear that Dlamini personally makes this admission, and as CEO, he is the officer responsible for the review application and its deemed withdrawal.

[29] Counsel for PACOFS sought to argue to the effect that the pending reinstatement application should serve as a bar to this contempt application being considered and possibly granted. However, he could not direct me to any authority for this specific contention. I suspect that this is because there is no such authority supporting such a contention.

[30] The status *quo* as it stands, is that there is no pending review application, and the enforcement of the arbitration award is not suspended. At the expiry of the 60-day period, PACOFS was again expected to comply with the award. The curtain of protection afforded by the pending review application, together with the purported security bond, fell away at this stage, and the applicant was entitled to enforce and execute the award.

Requirements for Contempt

[31] Having found that there is no pending review application and that PACOFS was obliged to comply with the award, I now turn to deal with whether the requirements for contempt have been met.

[32] The requirements for contempt are trite and have been confirmed by the Constitutional Court, the SCA, and this court. They are:

- 32.1 The existence of an order;
- 32.2 Service of the order, or knowledge thereof on the part of the contemnor;
- 32.3 Non-compliance with the order; and
- 32.4 Wilfulness and *mala fides*.

[33] The applicant bears the onus of proving the above requirements beyond a reasonable doubt. However, once the applicant proves the order, service or knowledge, and non-compliance, then wilfulness and *mala fides* are presumed, and the respondent bears an evidentiary burden to create reasonable doubt on wilfulness and *mala fides*. Should the respondent fail to do so, then contempt would be established beyond a reasonable doubt.²

[34] Prior to assessing the current matter against the above-stated requirements, the court must comment on the state of pleadings. The founding affidavit is by no means a specimen of perfection. However, the court takes into account that it was drafted by the applicant himself and/or his union representative and not by a trained legal representative. The court therefore interprets it more generously and has regard to the annexures attached thereto. The answering affidavit was filed two court days prior to the hearing, and there was accordingly no opportunity for the applicant to file a replying affidavit. This too is a consideration.

Existence of an order

[35] In the current matter, it is common cause and in any event established beyond a reasonable doubt that there is an arbitration award ordering the applicant's reinstatement with back pay. Further, it is common cause and similarly established beyond a reasonable doubt that this award was certified in terms of section 143 of the LRA

² See *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA); [2006] ZASCA 52 at para 42; *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)* [2015] ZACC 10; 2015 (5) SA 600 (CC); *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* [2021] ZACC 18; 2021 (5) SA 327 (CC) at para 37 and *Public Servants Association of SA on behalf of Msibi v Department of Correctional Services & another* (2024) 45 ILJ 2049 (LC); [2024] ZALCJHB 183.

[36] The court therefore finds that this requirement has been established beyond a reasonable doubt.

Service or Knowledge of the Order

[37] This requirement formed a contentious aspect both in Dlamini's answering affidavit as well as during argument. Dlamini repeatedly contended that the certified award was not served on him personally. He also contended that he was not personally aware of it.

[38] However, the applicant produced a Sheriff's return of service which provided:

'On this 11th day of November 2024 at 10:09 I served this ENFORCEMENT OF AWARD upon Mr T L Dlamini, CEO ostensibly a responsible employee and not less than 16 years of age...'

[39] The return of service confirms personal service of the certified award on Dlamini.

[40] Counsel for Dlamini argued that this return was not in a replying affidavit and therefore should be ignored. He was also given an opportunity to take instructions from his client regarding this proof of service. His response was to the effect that his client could not comment on it at this stage.

[41] There is no merit to this. The Rules of this court provide at Rule 9(2)(c) that service may be proved in court by a Sheriff's return of service. Therefore, a replying or service affidavit was not necessary. The court also takes into account that there was, in any event, no opportunity to file a replying affidavit.

[42] In the circumstances, the court is satisfied beyond a reasonable doubt that there was personal service on Dlamini. By virtue of receiving personal service, he was aware of the certified award. Dlamini's denial of service and personal knowledge is far-fetched and untenable.

Non-compliance with the order

[43] There can be no dispute about the failure to comply with the certified award. There has to date been no payment of the back pay amount, nor has the applicant been reinstated. This is in the face of a review application deemed to be withdrawn, and the certified award being fully executable and enforceable.

[44] Accordingly, the court finds beyond a reasonable doubt that this requirement is also met.

Wilfulness and Mala fides

[45] The applicant having satisfied the court of the above three requirements means that wilfulness and *mala fides* are presumed. The court must now consider whether Dlamini has established, on the evidence, a reasonable doubt on wilfulness and *mala fides*.

[46] In the answering affidavit, in dealing with *mala fides* and wilfulness, Dlamini goes no further than averring that he had no reason to believe that there were issues with the review proceedings and that all indications were indicative of positive progress. He also contends that he was not aware of the certified award.

[47] I find this response inadequate.

[48] Firstly, Dlamini makes it clear that at each step of the review application, he was kept abreast of developments by PACOFS' attorneys.

[49] Dlamini further accepts that in October 2025, PACOFS was satisfied that the record was in fact complete. At this stage, however, the 60-day period expired, and the review application was deemed withdrawn. PACOFS, under the leadership of Dlamini, was expected to either swiftly give effect to the arbitration award or bring the reinstatement application without further hesitation.

[50] The reinstatement application was rather conveniently brought two court days before the hearing of this application. Dlamini is the deponent to it. It was clearly done with the intention of frustrating this application, as well as compliance with the certified award. If it was *bona fide*, such a reinstatement application would have been brought months earlier.

[51] Secondly, the court has already found that the certified award was served on Dlamini personally, and he would therefore have been aware of it.

[52] Further, on 20 January 2025, the applicant directed correspondence to PACOFS informing them that the review application has been deemed to be withdrawn and the applicant indicated his intention to institute these proceedings. Dlamini has not disavowed himself of this correspondence nor addressed it in his answering affidavit.

[53] Dlamini has not explained why, after this correspondence or after service of the certified award, he took no steps to either comply or to reinstate the review application within a reasonable period of time thereafter.

[54] Notably, prior to instituting the review application PACOFS, through an HR representative, addressed correspondence to the applicant indicating that a review application was being instituted and that the applicant must refrain from commencing duties as ordered in the arbitration award. The applicant responded, requesting Dlamini to confirm the said instruction. Dlamini responded with a handwritten, signed and stamped response confirming the communication from the HR representative. Dlamini has not disputed this correspondence.

[55] Dlamini was therefore at all material times personally involved in the review application and the decision to bar the applicant from returning to work. He has also not disputed that, as CEO, he is the officer who exercises ultimate responsibility on behalf of PACOFS to ensure compliance with the award.

[56] The applicant has made PACOFS aware of the non-compliance, and served the certified award on Dlamini personally, yet there has still not been compliance.

[57] Dlamini has accordingly not discharged the evidentiary burden to create reasonable doubt. Aside from what has been set out above, there is no acceptable explanation from Dlamini regarding his failure as CEO to ensure that PACOFS gives effect to the certified award. The court accordingly finds that the non-compliance with the certified award was wilful and *mala fide*.

[58] In the circumstances, the court holds Dlamini in civil contempt of the certified award.

Remedy

[59] The purpose of civil contempt is to ensure compliance with court orders, rather than to serve as punishment. Therefore, while the applicant seeks a direct custodial sentence for Dlamini, the court does not deem this to be appropriate.

[60] Instead, there should first be an opportunity for Dlamini, as CEO, to ensure that PACOFS complies with the arbitration award.

[61] Should this not take place, a fine in the amount significantly higher than the back pay owed to the applicant should be paid by Dlamini.

[62] The court therefore finds that the appropriate sanction for Dlamini's contempt is the payment of a fine amounting to R4 000 000.

[63] This sanction will be wholly suspended for a period of 10 court days from the date of this judgment.

[64] Should the applicant be reinstated prior to the expiry of the 10-day period and receive back pay from 11 May 2025 until the date of reinstatement, calculated at R48 732.46 per month, then the sanction will fall away in its entirety.

[65] If the applicant is not reinstated or he does not receive his back pay by the expiry of the 10-day period, then the sanction would automatically and immediately be enforceable and executable. For the avoidance of doubt, no further contempt application to this court is required to give effect to this sanction.

[66] The court does not deem it necessary to make an order as to costs.

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

Order

1. Themba Dlamini, in his capacity as CEO of PACOFS, is found guilty of the civil offence of contempt of Court by his conduct of failing to ensure that PACOFS complies with the arbitration award dated 5 June 2024 and certified in terms of section 143 of the LRA on 22 July 2024.
2. Themba Dlamini is imposed with a fine amounting to R4 000 000, payable to the Registrar of the Labour Court at Arbour Square, 6th Floor Labour Courts, 86 Juta Street, Braamfontein.
3. The fine is wholly suspended for a period of 10 court days from the date of this judgment on condition that Themba Dlamini ensures that PACOFS reinstates the applicant and pays him his back pay due to him from 11 May 2022 until the date of his reinstatement, calculated at R48 732.46 per month.
4. If the applicant is reinstated and receives his full back pay by the expiry of the 10-day period, order 2 will automatically fall away.
5. If the applicant is not reinstated or does not receive his full back pay by the expiry of the 10-day period, order 2 will automatically and immediately be enforceable and executable.
6. There is no order as to costs.

Y. Peer

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant:	Union Official: Sipho Grootboom
For the Respondent:	PT Masihleho
Instructed by:	RC Ishmail Attorneys

LABOUR COURT