



**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT CAPE TOWN)**

CASE NO: C34/2025

In the matter between:

ANTHONY DOUGLAS JAMES

Applicant

and

**GENESIS DISTRIBUTION PROJECTS (PTY) LTD
TASNEEM GOUS**

First Respondent

Second Respondent

Date of order: 24 June 2025

Reasons supplied: 4 September 2025

REASONS FOR ORDER

It is said that when orders of a court of law are flouted, the law is brought into disrepute because the court, as well as the administration of justice, suffer.¹ This is hardly an exaggeration. Furthermore: ‘Whenever a litigant fails or refuses to obey a court order, he or she thereby undermines the Constitution. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest.’²

Introduction

[1] This matter relates to the contempt of court by the respondents and the reasons for the order I issued on 24 June 2025.

[2] Although the order related only to contempt of court for respondent’s failure to comply with a certified arbitration award, I must also deal with the disrespectful manner with which the second respondent approached the orders issued on 18 March 2025 and 9 May 2025. Her failure to fully comply with those orders created complexities, wasted the applicant’s time and that of the court. Such conduct is relevant to the issue of costs.

Background facts

[3] The applicant was employed by the first respondent (“Genesis”) as a cutter, but he was not provided with an employment contract, or letter of appointment. Prior to his dismissal, on 31 May 2021, the applicant took instructions from the second respondent as well as her husband.³

[4] The applicant referred a dispute to the CCMA, under case reference number WECT15761-21, to challenge the fairness of his dismissal. When the first respondent failed to arrive for arbitration, on 10 August 2022, the applicant obtained

¹ *Bruckner v Department of Health & others* (2003) 24 ILJ 2289 (LC) at para [30]

² *Victoria Park Ratepayers Association v Greyvenouw CC* [2004] 3 All SA 623 (SE) para [5]

³ Replying affidavit, para 48, p167

an arbitration award by default (the “award”). As reflected in the award, the applicant testified that he earned R2000 per week, worked seven days a week, and he was not given any reason for his dismissal. The first respondent was ordered to reinstate the applicant with effect from 12 September 2022 and to pay him an amount of R25 980, 00 by 5 September 2022.

[5] However, when the applicant tendered his services to Genesis, on 12 September 2022, his tender was rejected. The applicant’s representative, at the time, advised Genesis to rescind the award. Despite this, no rescission application was brought, nor was any review application launched.

[6] The award was certified in accordance with section 143 of the Labour Relations Act No. 66 of 1995 as amended (the “LRA”). On 14 December 2022, the certified award was served on the first respondent by the Sheriff. The award was delivered to a manager, Mr Grant Du Plooy.

[7] Thereafter, on or about 9 January 2023, the Sheriff attended at Genesis once again. The Sheriff served the certified award upon Genesis and proceeded to attach moveable goods namely a “transfer machine”⁴ valued at R50 000, 00. This led to an ‘interpleader affidavit’ being filed by the second respondent in which she alleged that the “printer/copier” machine that had been attached was her personal asset, had cost a lot of money, and did not belong to Genesis.⁵

[8] During February 2024, the applicant approached the SASLAW pro bono clinic, who instructed his present attorneys of record.

[9] Unfortunately the first certified award went missing. Accordingly a second certification of the award was made on 20 May 2024. The newly certified award was served on the respondents via the Sheriff on 12 August 2024.

⁴ In the clothing and textile industry, transfer machines are used to transfer (or print) images onto garments.

⁵ Of course, this begged the question why the second respondent purchased the transfer machine for her personal needs.

[10] Genesis was deregistered on 6 February 2025 for failing to file its annual returns with the CIPC. Despite this, the sole director, the second respondent, continued to operate the business of Genesis.

[11] On 18 March 2025, Tshisevhe AJ issued an order *inter alia* ordering the second respondent to appear in court on 9 May to show cause why she should not be found guilty of contempt of court for failing to reinstate the applicant.

[12] On 14 April 2025, the contempt application, together with the order of 18 March, was served, by the Sheriff, at the second respondent's residential address, and accepted by her daughter. The award was, of course, attached to the contempt application.

[13] On 9 May 2025, the following occurred:

13.1 Early in the morning, Mr Gous sent correspondence and documents to applicant's attorneys purporting to constitute: (1) an application for condonation / postponement, (2) a request for further particulars and discovery, and (3) a notice of opposition and an answering affidavit.

13.2 In one of those documents, the second respondent states that the applicant could not have been employed by the first respondent because the applicant alleged he was employed from 8 June 2020 until 28 May 2021 but first respondent was only incorporated on 24 May 2021.

13.3 The second respondent failed to attend court. Instead, Mr David Gous, her husband, arrived and informed the court that she was too ill to attend. Mr Gouws produced a medical certificate from a general practitioner stating:

"This is to certify that TASNEEM GOUS attended this practice on 8 May 2025. To my knowledge, she will be unfit to attend work, from 8 May 2025 to 16 May 2025. Due to: Illness."

13.4 The court informed Mr Gouws that these documents were insufficient to excuse the second respondent. Mr Gouws was asked if he wished to testify about her illness, and the seriousness of her condition. Mr Gouws agreed to do so. He testified that his wife suffered from rheumatoid arthritis, she was bedridden, and mobile for just one or two days each week.

13.5 Mr Gouws volunteered other information.⁶ He advised that, in the Genesis Group, there were many different 'departments' including photography, marketing, cutting, and manufacturing. The first respondent performed the manufacturing, and the applicant was only employed through the cutting department. Mr Gous advised further that the cutting department was an unregistered entity, named Cape Cutting Services, which he owned.

13.6 Despite initially being willing to talk about the business of Genesis, when he was sworn in, Mr Gous clammed up.

13.7 The hearing was postponed to 24 June. In the presence of Mr Gouws, the court ordered the second respondent to file a *detailed affidavit* within ten days setting out *inter alia* the nature of Genesis's business, the details of Genesis bank account, and the relationship of Genesis to Cape Cutting Services.

[14] The order issued on 9 May was served on the second respondent, personally, by the Sheriff, on or about 14 May. Despite this, the second respondent did not comply - she did not file the detailed affidavit she had been ordered to file. Instead, in the several affidavits deposed to by the second respondent on or about 21 May, she alleged that:

14.1 Genesis's business is that of 'clothing production,' but it never had a "cutting room" and it never engaged in that work;

⁶ This was not evidence given under oath and was not regarded as evidence for the purposes of the order given on 24 June 2025.

14.2 The applicant was employed by an (unidentified) “independent third party service provider” which operated from the same premises as Genesis,

14.3 The entity, for which the applicant worked, provided cutting services to the first respondent but it was not part of the Genesis Group.⁷

[15] The second respondent attached to one of her affidavits a medical report which had been issued in September 2024. In the report, her medical practitioner recorded that the reasons for the second respondent’s visit (in September 2024) was pain in her left shoulder, pain in her right shoulder, morning stiffness, and a sore throat.

[16] In his founding affidavit, in the contempt application, deposed to on 20 February 2025, the applicant states that second respondent continues to operate the business of the first respondent despite its deregistration. The applicant referred to the Genesis website (for online sales) which indicates that the business was still functioning as of 19 February 2025. Screenshots from its Facebook profile indicates that the business remained active between 5 January and 9 February 2025. The second respondent did not reply to these allegations in any of the affidavits that she filed. There was no reason to reject the allegation that the second respondent has continued to operate the business of the first respondent despite its deregistration.

[17] On 24 June, the second respondent attended court. Following argument by the parties, an order was issued in the following terms:

1. Declaring the second respondent guilty of contempt of court for non-compliance with the certified CCMA arbitration award under case number WECT 15761-21.
2. In terms of section 200B of the Labour Relations Act 66 of 1995 (“the LRA”), ordering the second respondent, within a period of ten (10) days

⁷ This contradicted the information that Mr Gous volunteered to the court on 9 May 2025. See paragraph 13.5 above.

from this order, to reinstate the applicant on the same terms and conditions of employment into the business formerly conducted under the ambit of the first respondent, which the second respondent continues to operate as a going concern, alternatively any other business that carries on any associated or related activity or business to the business of the first respondent.

3. Ordering the second respondent, within twenty (20) days from the date of service of the order, to pay the applicant the back-pay in the CCMA award in the amount of R25,980.00 plus interest thereon at a rate of 8.25% per annum from 5 September 2022 to date of this order.

4. In the event that the second respondent fails to comply with the orders set out in paragraphs 2 and/or 3 above, ordering the second respondent to pay a fine in the amount of R25,000.00 (Twenty-Five Thousand Rand and Zero Cents), to the Registrar within ten (10) days from the date of non-compliance with the order in either paragraphs 2 or 3 above.

5. In the event that the second respondent persists with her failure to comply with the order set out in paragraph 2, and after the aforesaid fine has become due or has been paid to the Registrar, ordering that the second respondent be committed to prison, pending compliance with the order set out in paragraph 2.

6. Confirming the extended *rule nisi* reflected in this court's orders of 18 March 2025 and of 9 May 2025 respectively, to the following extent:-

6.1. That the second respondent shall, within ten days from date of service of this order, furnish the applicant and the Registrar with bank statements of the first respondent's erstwhile bank account for the past six months;

6.2. That, in the event the second respondent fails comply with the order set out in paragraph 3, and upon receipt of the aforesaid bank account details, the Registrar shall be authorized to issue a writ of execution instructing the Sheriff to attach any funds in the bank account, in satisfaction of the back-pay portion of the arbitration award as reflected in paragraph 3 hereof.

7. Ordering that the second respondent shall be liable for the costs of 24 June 2025.

8. Authorizing service of this order on the second respondent by email to the following email: g[...].

Legal principles and analysis

Status of the arbitration award

[18] It is an established principle of our law that it is impermissible to ignore an apparently binding ruling, decision, or award on the basis that it is invalid.⁸ The validity of the decision must be tested in appropriate proceedings and the power to pronounce that the decision is defective, and invalid, lies with the courts.

[19] Thus, a ruling, decision or award remains effective until properly set aside⁹ and, until then, a decision that was erroneously taken has lawful consequences.

[20] It is clear that the proper functioning of the State would be severely compromised if all administrative acts could be given effect to, or ignored, depending upon the view taken of the validity of the act in question.

Contempt of court

[21] The leading judgment on contempt remains *Fakie*.¹⁰ There, the Supreme Court of Appeal per Cameron JA (as he then was) undertook a detailed consideration of the nature of such proceedings and the applicable principles, summed up as follows:

‘[42] To sum up:

⁸ *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA) at paras [26], [32] and [37]

⁹ *Merafong City v AngloGold Ashanti Ltd* 2017 (2) SA 211 (CC) at paras [41] and [42]

¹⁰ *Fakie NO v CCII Systems (Pty) Ltd* (653/04) [2006] ZASCA 52; 2006 (4) SA 326 (SCA)

1. The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.

2. The respondent in such proceedings is not an 'accused person', but is entitled to analogous protections as are appropriate to motion proceedings.

3. In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.

4. But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.

5. A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.'

(Emphasis added.)

[22] The principles enunciated in *Fakie* have been followed in subsequent judgments, including by the Constitutional Court.¹¹

[23] Rule 58 of the Labour Court Rules involves, at least initially, an application launched on an *ex parte* basis in the motion court, where the applicant seeks an order requiring the respondent to appear and show cause why a finding of contempt

¹¹ *Phoko and Others v Ekurhuleni Metropolitan Municipality (No 2)* (CCT19/11) 2015 (6) BCLR 711 (CC) at para 25.

of court should not be made.¹² Rule 58(3) provides as follows regarding the aspects to be addressed in the supporting affidavit:

“(3) The affidavit in support of the application must clearly set out how service of the relevant court order was effected upon the respondent; who accepted the service on behalf of the respondent; the responsible person (whom the applicant seeks the court to find to be in contempt) of the respondent who was aware of the court order and is deliberately refusing to comply therewith; in what respect the respondent has failed to comply with the order and other allegations that will constitute the grounds for obtaining the order sought.”

Existence of court orders and/or certified arbitration award

[24] The arbitration award was certified on or about 28 September 2022, and certified again on 20 May 2024. The award ordered *inter alia* the first respondent to reinstate the applicant. The award, as certified, falls within the scope of section 143(4) of the LRA and the reinstatement of the applicant must therefore be enforced by contempt proceedings.

[25] As explained, the court issued two orders prior to the order I made on 24 June:

25.1 On 18 March 2025, the second respondent was ordered *inter alia* to attend court on 9 May 2025.

25.2 On 9 May 2025, the second respondent was ordered *inter alia* to: (1) appear on 24 June, and (2) file a detailed affidavit (within ten days) setting out the nature of the first respondent's business, details of the first respondent's bank account, and the relationship of the first respondent to Cape Cutting Services.

¹² Rule 58(1)

Service of the certified award and the court orders

[26] In this matter, there can be no dispute that the certified award was served on the first and the second respondents. Initially, the award was served on the first respondent by email by the CCMA. Thereafter, the Sheriff served it and filed the returns with this court. The order of 9 May 2025 was served on the second respondent by the Sheriff on 14 May 2025.

Non-compliance with the court orders

[27] First, I consider the second respondent's non-compliance with the orders issued on 18 March and 9 May:

27.1 Despite the order of 18 March, the second respondent failed to attend court on 9 May. At best, the medical certificate (produced on 9 May) showed that the second respondent was ill, but not that she was incapable of attending court (which she subsequently did). It is trite that a medical certificate constitutes hearsay evidence¹³ and is inadmissible - unless admitted in the interests of justice in terms of the Law of Evidence Amendment Act.¹⁴ It was not admitted into evidence. It is apparent that second respondent's failure to comply with the order of 18 March was in bad faith.

27.2 I believe the second respondent's failure to comply with the order issued on 9 May was also in bad faith. The second respondent was ordered to file a *detailed affidavit* relating to various critical issues. Instead, she filed an affidavit that was vague and obscure. No excuse was provided for this.

Non-compliance with the certified award

¹³ *Mgobhozi v Naidoo NO & others* (2006) 27 ILJ 786 (LAC)

¹⁴ No. 45 of 1988

[28] There is no dispute that first respondent did not comply with the certified award before its deregistration. The award was issued on 10 August 2022 and the first respondent was deregistered some two and half years later, on 9 February 2025.

[29] The second respondent maintained that the award could not be enforced against first respondent (because it never employed the applicant) but she never bothered to explain why she took no steps to review or rescind the award.

[30] The second respondent made it clear, through her submissions, as well as her affidavits, that she has no intention of complying with the award.

Wilfulness and male fides

[31] On the established principles, once the applicant proves the existence of the certified award, service, and non-compliance, then the respondents bear an evidential burden in relation to wilfulness and mala fides. Should the respondents fail to advance evidence that establishes reasonable doubt as to whether non-compliance was wilful and mala fide, then these elements of contempt are also established beyond reasonable doubt.

[32] The second respondent failed to advance any evidence that established reasonable doubt that the non-compliance with the certified award was wilful and male fide. The second respondent's 'defence' was that the first respondent did not employ the applicant. She persisted with this, despite never taking steps to establish the defence through legal means. Plainly this did not establish reasonable doubt as to wilfulness or male fides.

[33] Because wilfulness cannot be proved in the normal course, it is usually based on inference from the respondent's conduct and the circumstances of each matter.¹⁵ It is in this context that the following must be noted:

¹⁵ *Bruckner* cited in fn. 1, at para 27

33.1 The second respondent's affidavits and submissions, coupled with the information voluntarily shared with the court, strongly indicate that she did not wish to play open cards with the court.

33.2 Despite being ordered to reveal the detailed information, concerning the relationship between Genesis and the entity which she alleges employed the applicant, the second respondent refused to do so.

33.3 The second respondent suggested that she has no knowledge of the applicant. However, there was much more information to be revealed. This was made clear by her husband.

[34] Accordingly, the second respondent's non-compliance with the certified award was both wilful and mala fide, and these requirements were established beyond reasonable doubt.

Deregistration of the first respondent

[35] The applicant revealed that a CIPC search¹⁶ indicated that on or about 9 February 2025, the first respondent was placed into final deregistration. Section 83(2) and (3) of the Companies Act No. 71 of 2008 provides as follows:

(2) The removal of a company's name from the companies register does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register.

(3) Any liability contemplated in subsection (2) continues and may be enforced as if the company had not been removed from the register.

[36] These provisions indicate that the removal of a company from the CIPC register does not affect the liability of any former director or shareholder in respect of

¹⁶ Annexure FA19, p110 of the paginated pleadings

any act or omission that occurred before the removal from the register. In the circumstances, the deregistration of the first respondent did not relieve the second respondent of liability - particularly in respect of her refusal to comply with the arbitration award, between September 2022 and February 2025.

Section 200B of the LRA

[37] In our common law, separate juristic personality may be disregarded in narrowly confined circumstances. These were captured by the Supreme Court of Appeal in *Butcher Shop and Grill CC v Trustees for the Time Being of the Bymyam Trust*¹⁷ as follows:

37.1 Whenever a company is used as a façade, even though it was not originally incorporated with any deceptive intention. The facts and circumstances of each instance will be decisive.

37.2 A court has no general discretion to disregard a company's separate legal personality whenever it considers it just to do so.

37.3 As a matter of policy, the separate corporate personality ought to be upheld. However where fraud, dishonesty or other improper conduct are present, the need to preserve the separate identity must be balanced against the policy considerations in favour of piercing the corporate veil.

37.4 The purpose of piercing the corporate veil is to fix the person or persons responsible for abuse with liability. The misuse or abuse of the distinction between the corporate entity and those who control it should result in some unfair advantage to them.

[38] Section 20(9) of the Companies Act No. 71 of 2008 provides that a court may disregard the separate personality of an entity where there has been an “unconscionable abuse” of the separate juristic personality of the company.

¹⁷ 2023 (5) SA 68 (SCA)

[39] In 2015, the LRA introduced its own formulation of the test as to when the Labour Courts may hold persons, businesses, or entities, other than the employer liable for the failure of the employer to comply with its obligations under the LRA or any other employment law. Section 200B states:

‘(1) For the purposes of this Act and any other employment law, “employer” includes one or more persons who carry on associated or related activity or business by or through an employer if the intent or effect of their doing so is or has been to directly or indirectly defeat the purposes of this Act or any other employment law.

(2) If more than one person is held to be the employer of an employee in terms of subsection (1), those persons are jointly and severally liable for any failure to comply with the obligations of an employer in terms of this Act or any other employment law.’

(Emphasis added)

[40] Section 200B(1) requires that there must be an associated or related activity or business and such activity or business must be conducted by or through the employer, where the intention or effect is directly or indirectly to defeat the purposes of the LRA or any other employment law. In this matter, the applicant submits that section 200B(1) is applicable.¹⁸

[41] In *Masoga & another v Pick n Pay Retailers (Pty) Ltd & others*¹⁹ the Labour Appeal Court held as follows:

“[46] Section 200B(1) is relatively wide and open-ended...While that may seem to be a test, read with s 200B(2) it is clear that s 200B of the LRA does

¹⁸ See para 54 of its founding affidavit.

¹⁹ (2019) 40 ILJ 2707 (LAC)

not postulate a general test for determining whether a particular person or entity is the true employer of a particular employee..

[47] The effect of s 200B, while crucial, is merely to fix or extend the liability that would ordinarily be that of the employer, as per the traditional tests, to another or others, who carry on an associated or related activity or business by or through an employer. They are regarded as employers for the purposes of liability. But it is only if they are in an associated or related business with the employer which is intended to defeat, or has the effect of defeating, the purposes of the LRA or any other employment law, either directly or indirectly, that they would be treated as the employer. The purpose for this is clear from s 200B(2). They are regarded or treated as such for the purposes of liability — they are held jointly and severally liable for a failure to comply with the obligations of an employer in terms of the LRA or any other employment law. In other words, s 200B(1) defines ‘employer’ for a very specific purpose and that purpose is found in s 200B(1) read with s 200B(2). The section cannot be utilised generally for making persons or entities the employer(s) of others.

[48] That s 200B was not intended as a general test is further borne out by the wording of that section. It, effectively, contains a deeming provision. While it contemplates that a single person may be the employer, it does not provide criteria for determining what makes that one person the employer, other than for the purposes of liability in a situation where that one person is party to a simulated arrangement or sham, the true intent or effect of which is to defeat the purposes of the LRA or any other employment law; and there is a failure by that person to comply with the obligations of an employer (i.e. in terms of those provisions). Any other person or entity which is complicit in this subterfuge is treated as an employer for the purposes of liability. She, he or it is jointly and severally liable with anyone else held to be an employer, in terms of the section, and in respect of the employer’s obligations under the LRA and/or those laws.

[49] The rationale for s 200B is set out in the memorandum of objects that accompanied the 2014 LRA Amendment Bill. The purpose of the section is said to be ‘to prevent simulated arrangements or corporate structures that are intended to defeat the purposes of the LRA or any other employment law, and to provide for joint and several liability on the part of persons found to be employers under this section for any failures to comply with an employer’s obligations under the LRA or any employment law. This is particularly important in the context of subcontracting and outsourcing arrangements if these arrangements are subterfuges to disguise the identity of the true owner.’

(own emphasis)

[42] Based on the undisputed facts, I find that the first and second respondents engaged in simulated arrangement, subterfuge or sham, the intent or effect of which was to defeat the purposes of the LRA. The intent or effect of these arrangements was to obscure the true identity of the applicant’s employer, and to shield it from liability for its obligations under the LRA. The respondents chose not to redeem their rights under the LRA, and instead opted to take shelter using the cover of corporate personality. The conclusion is inescapable that (despite orders by this court) the second respondent purposefully obscured from the court, and the applicant, the extent of the first respondent’s business and the nature of its relationship with the (alleged) employer of the applicant. There can be no doubt that the second respondent is the controlling mind of the first respondent and the Genesis Group, including its so-called “cutting department”.

[43] For the abovementioned reasons, I granted an order holding the second respondent liable, as the deemed employer of the applicant in accordance with section 200B(1), for the obligations of the applicant’s employer. It bears mentioning the most natural inference, consistent with all the proved facts, is that the business of Genesis (and the Genesis Group) is still being operated by the second respondent.

Costs

[44] It is settled that this court when considering an order of costs, exercises a discretion, and must have regard to the requirements of law and fairness as dictated by the provisions of section 162 of the LRA. In the exercise of its discretion, the court is required to provide reasons for its departure from the ordinary rule that costs should not ordinarily be awarded. The court must seek to strike a fair balance between not unduly discouraging parties from approaching the court for relief, and on the other hand, to provide a deterrent against parties who bring frivolous applications to the court.

[45] As I indicated earlier, the second respondent approached this matter with reckless abandon. She failed to fully comply with orders issued on 18 March and 9 May. She submitted a medical certificate which did not demonstrate that she was medically unfit to attend court and instead despatched her husband to make excuses to the court. She filed affidavits which were exceedingly vague - despite the express requirement by order of the court that she provide detailed explanations. She failed to take the court into her confidence.

[46] The disrespectful manner with which the second respondent approached this court is worthy of rebuke. Law and fairness demands that the second respondent bear the applicant's costs. It is trite that costs may be awarded to an applicant who is represented on a pro bono basis.²⁰

Conclusion

[47] These are the reasons for the order issued on 24 June 2025.

RN Daniels

Judge of the Labour Court of South Africa

Appearances

For the Applicant:

²⁰ *Zeman v Quickelberge and another* (2011) 32 ILJ 453 (LC) at para [77]

Mr J Horn

Cowen Harper Madikizela Attorneys

For the Respondents:

Self-Represented

LABOUR COURT