



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J137/25

In the matter between:

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Applicant

KATLHOLO WABILE N.O.

Second Applicant

and

NYAKADZINO DOMINIC ZIVAI HWATA

Respondent

Heard: 30 July 2025

Delivered: 3 September 2025

JUDGMENT

SASS, AJ

Introduction

1 This matter was enrolled for hearing on Wednesday 30 July 2025 for the return day of a *rule nisi* issued on 22 May 2025 by the Honourable Acting Justice Cithi in respect of the Applicant's Contempt of Court application.

2 In terms of that *ex parte* provisional order (i.e., the *rule nisi*), the Respondent was, *inter alia*:

2.1 subpoenaed to appear before this Court on 30 July 2025 to show cause, if any, why the Second Applicant's contempt ruling dated 10 February 2025 (the CCMA's contempt ruling), should not be confirmed, alternatively, be varied or set aside; and

2.2 invited to explain his conduct by way of an affidavit.

3 On 30 July 2025, the Respondent appeared before this Court in terms of the *rule nisi* but the Applicants failed to appear. In the absence of the Applicants, the Respondent sought an order in, *inter alia*, the following terms:

3.1 the discharge of the *rule nisi* issued against the Respondent;

3.2 striking the matter off the roll due to the non-appearance of the Applicants; and

3.3 costs in his favour.

4 Counsel for the Respondent submitted that the only relief that this Court could grant in the circumstances was the discharge of the *rule nisi* and the striking of the matter from the roll, notwithstanding the reservation expressed by this Court that, besides the relief being sought by the Respondent, it could also potentially, in the exercise of its discretion, grant an extension of the *rule nisi* and extend the return date from 30 July 2025 to a later date in order for it to determine on that later date whether the CCMA contempt ruling should be confirmed, alternatively, be varied or set aside.

5 In light of the above, the Court requested the Respondent to file written submissions in support of the relief he was seeking, and the *rule nisi* granted on 22 May 2025 was extended on 30 July 2025 pending receipt of the Respondent's

written submission and this Court's decision on the appropriate relief to grant in the circumstances in light of the non-appearance of the Applicants.

Events that transpired after the matter was heard on 30 July 2025

6 On 31 July 2025 and prior to receiving the Respondent's written submissions:

6.1 I was informed that an employee of the First Applicant, Vongani Mishack Nghonyama, was present in Court for the return day of the Contempt of Court application, having erroneously believed that 31 July 2025 was the return day and not 30 July 2025.

6.2 I directed a secretary of the Labour Court to inform Mr Nghonyama that if the decision of this Court, which decision was still to be made at that time, was to discharge the *rule nisi* granted on 22 May 2025 in light of the non-appearance of the Applicants on 30 July 2025, the Applicants could apply to this Court to revive the *rule nisi*, and as part of any such subsequent application, would need to file an affidavit setting out, *inter alia*, the reasons for their non-appearance on 30 July 2025. It is my understanding that this was communicated to Mr Nghonyama.

6.3 Mr Nghonyama provided the abovementioned secretary with -

6.3.1 3 (three) lever-arch files containing the indexed and paginated pleadings and documents for this matter, all reflecting a '22 July 2025' date stamp of this Court; and

6.3.2 the First Applicant's replying affidavit in the Contempt of Court application deposed to on 25 June 2025 reflecting a '09 July 2025' date stamp of this Court, along with two service affidavits that he had deposed to on 09 July and 21 July 2025 respectively.

7 These lever-arch file and affidavits did not form part of the court file on 30 July 2025 when the matter was heard and appears to have been in the possession of the First Applicant on that date.

8 The Respondent's written submissions were received later during the day on 31 July 2025.

9 On 01 August 2025, Mr Nghonyama filed an affidavit at this Court in which he, *inter alia*, sought to explain the reasons for his and the First Applicant's non-appearance on 30 July 2025.

Issues to be determined

10 In light of the above and the non-appearance of the Applicants on 30 July 2025, the Court is required to determine the following:

10.1 whether to discharge the *rule nisi* issued on 22 May 2025 and strike the matter from the roll;

10.2 whether to extend the *rule nisi* further and to a later date when it can decide whether to confirm the CCMA's contempt ruling, alternatively, vary or set it aside; or

10.3 whether any other relief should be granted in the circumstances – such as possibly deciding whether to confirm the CCMA's contempt ruling, alternatively, vary or set it aside.

Analysis

11 Starting with the third alternative from the preceding paragraph, it is apparent from the events that transpired on 31 July and 01 August 2025 that the Applicants had filed a replying affidavit which they required the Court to consider before deciding whether to confirm the CCMA's contempt ruling, alternatively, vary or set it aside. The Respondent did not bring the existence of this replying affidavit to the Court's attention on 30 July 2025 and it is unclear whether he was aware of it. In the circumstances, it would not be appropriate for this Court to decide whether to confirm the CCMA's contempt ruling, alternatively, vary or set it aside, at this point, having regard to what had transpired on or after 30 July 2025.

12 Rule 58(4) of the Rules of this Court states the following: "*If a defence is raised by the respondent, the court may either hear the matter on the date on which the respondent was ordered to appear in court or postpone the matter.*" This rule therefore does contemplate that the matter will not necessarily be heard finally on the return day if the Respondent has raised a defence to the Contempt of Court

application of the Applicants. The Respondent has done so by virtue of his answering affidavit deposed to on 9 June 2025. Moreover, the Applicants have responded to that defence by virtue of the replying affidavit mentioned above (ostensibly filed on or about 09 July 2025, although a copy thereof was not in the court file on 30 July 2025).

13 The Court now turns to consider the first and second alternatives in paragraph 10 above.

14 The Court is not necessarily compelled to discharge the *rule nisi* if the Applicants are not present in court on the return day. The Court has a discretion to exercise in this regard, which it is required to exercise judicially, taking into account any potentially relevant factors, such as, *inter alia*, *prima facie* indications of the reasons for the absence of the Applicants, prejudice to the Respondent, the merits of the case etc.

15 The absence of the Applicants appears to be due to a misunderstanding on their part. This, however, only came to light on 01 August 2025 (after the matter was heard on 30 July 2025). Whilst the appropriate time to consider any explanation from the Applicants about their non-appearance might be as part of an application to revive a lapsed or discharged *rule nisi*, as explained in more detail below, this Court cannot completely disregard the contents of the affidavit filed on 01 August 2025 explaining the absence of the Applicants. The Respondent was also not made aware of the reason for non-appearance of the Applicants on 30 July 2025 and has not been placed in a position to respond to the explanation of the miscalculation/misunderstanding provided by the Applicants. It would therefore not be appropriate for the Court to excuse the non-appearance of the Applicants at this point. The appropriate time for this to be considered, if necessary, would be in an application to revive the lapsed or discharged *rule nisi* if indeed it lapses or is discharged.

16 To the extent that any prejudice may be suffered by the Respondent if the *rule nisi* was extended (and not discharged due to the non-appearance of the Applicants), such prejudice may be addressed sufficiently through an appropriate costs order in favour of the Respondent. Insofar as the prejudice to the Applicants in

the event that the *rule nisi* is discharged, the discharge would not have occurred save for their own misunderstanding/miscalculation and they would have recourse to the procedure set out in Rule 27 of the Uniform Rules of Court (Rule 27 of the URC) as addressed in more detail below.

17 As for the merits of the Contempt of Court application, the fact that a *rule nisi* was issued on 22 May 2025 is indicative of, at the very least, the presence of a *prima facie* case against the Respondent.

18 The Respondent's counsel relied on a number of authorities in the written submissions.

19 Reliance was placed on the case of *Fischer v Fischer*¹. The *Fischer* case, however, dealt with a situation where the *rule nisi* had lapsed because the Applicant had failed to take steps within the time period laid down in terms of the *rule nisi* that was issued, and the Court held that it did not have the power to revive a *rule nisi* in those circumstances. Notwithstanding this, the *Fischer* case is credited with giving rise to Rule 27(4) of the URC. Rule 27(4) reads as follows: "(4) After a rule nisi has been discharged by default of appearance of the applicant, the court or a judge may revive the rule and direct that the rule so revived may not be served again". Therefore, where a *rule nisi* is discharged by default of appearance of the applicant on the return day, the Uniform Rules of Court allow for an applicant to bring an application in terms of Rule 27(4) to revive the life of the discharged rule. In this Court, an applicant would be able to rely on Rule 27(4) URC read with Rule 71 of the Rules of this Court. The creation of Rule 27(4) and the wording thereof does point towards the discharge of the *rule nisi* being the appropriate order/relief where the applicant does not appear on the return day (i.e., by default of appearance by the applicant).

20 Reliance was also placed on the case of *South African Broadcasting Corporation v CCMA and Others*². In the *SABC* case, however, the Court held that the non-appearance of the applicant may justify the dismissal of the matter or the striking off of a matter as it reflects a lack of intent to pursue the case. For the reasons as already addressed above, it does not appear that there is no intention on

¹ 1965 (4) SA 644 (W)

² [2007] ZALC 22

the part of the Applicants to pursue the case and there is no reasonable basis for this Court to interpret the absence of the Applicants on 30 July 2025 as such.

Conclusion

21 This Court may discharge the *rule nisi* due to the non-appearance of the Applicants on the return day. Whilst it is not necessarily obliged to do so, the discharge of the *rule nisi* would be the most appropriate and conventional relief in the circumstances if one has regard to Rule 27(4) procedure and the rationale for its creation (to address the revival of a *rule nisi* which has been discharged due to the non-appearance of the applicant). This relief is essentially the relief as envisaged by Rule 27(4) in these circumstances.

22 This relief does not, necessarily, bring an end to the matter or preclude the Applicants from pursuing further steps in relation to the CCMA's contempt of ruling. This relief does, however, at least in the interim (if the Applicants do elect to bring an application to revive the discharged *rule nisi*), relieve the Respondent of the burden placed on him of an interim *ex parte* provisional order of contempt of court. This outcome is just and equitable in the circumstances and achieved through the discharge of the *rule nisi*.

23 The Applicants may, should they so choose, proceed with an application in terms of Rule 27(4) of the URC read with Rule 71 of the Rules of this Court. In such an application, the Applicants will have an opportunity to provide a satisfactory explanation to this Court for their absence on 30 July 2025.

Costs

24 With respect to the issue of costs, and in terms of section 162 of the LRA, this Court has a wide discretion. The Constitutional Court has provided some guidance as to how this discretion is to be exercised.

25 In *Union for Police Security and Corrections Organisation v SA Custodial Management (Pty) Ltd and Others*³ that Court said:

³ (2021) 42 ILJ 2371 (CC) at para 35.

‘In the labour context, the judicial exercise of a court’s discretion to award costs requires, at the very least, that the court must do two things. First, it must give reasons for doing so and must account for its departure from the ordinary rule that costs should not be ordered. Second, it must apply its mind to the dictates of the fairness standard in s 162, and the constitutional and statutory imperatives that underpin it ...’

26 In *Booi v Amathole District Municipality and Others*⁴ that Court also said:

‘However, this is a labour matter and this court’s jurisprudence is settled: the ordinary rule that costs follow the result does not apply in labour matters. Rather, what emerges from the provisions of the LRA, and the jurisprudence is that courts, when awarding costs in labour disputes, must consider what fairness demands and err on the side of not discouraging parties from approaching the courts for the peaceful resolution of labour disputes. [\[54\]](#) Further, if costs are to be awarded in labour matters, there must be reasons that justify a court’s decision to depart from the position that a losing party should not be mulcted in costs in labour disputes...’

27 This Court may therefore award costs, and when doing so, what is required is a proper consideration of the dictates of fairness to both parties, followed by an exposition of the reasoning why, despite the general principle in employment law disputes that costs do not follow the result, it nonetheless decided to award costs.⁵

28 The present case is unfortunately one which may justify a departure, albeit conditionally only, from the ordinary principle that costs do not follow the result.

29 The First Applicant is a statutory body and national public entity responsible for the resolution of labour disputes through conciliation, mediation and arbitration. It is the *dominus litis* in this matter. It pursued and obtained an interim *ex parte* provisional order of contempt of court against the Respondent. It should have been present in court on 30 July 2025. It should have ensured that the replying affidavit,

⁴ (2022) 43 ILJ 91 (CC) at para 60.

⁵ As said in *SA Custodial Management (supra)* at para 34: ‘Do the principles I have enunciated dictate that costs can never be ordered against a party in labour matters? I think it is clear from this court’s jurisprudence that the answer to this question is a resounding ‘no’. This court has previously affirmed the principle that costs are discretionary to the court adjudicating a matter. That applies no differently to labour matters ...’.

service affidavits and/or lever arch files, which it had in its possession on 31 July 2025 and which was not part of the court file on 30 July 2025, was part of the court file on 30 July 2025. The First Applicant, in exercising its right of access to the Courts must do so in a responsible manner and in compliance with the processes of the Court.⁶ The First Applicant's absence on 30 July 2025 and its retention of court papers in its possession which should have been in the court file, is a departure from this.

30 In the present circumstances, the interests of justice will not be best served by not making any order as to costs whatsoever. This is a case in which a balance must be struck though. The Respondent incurred legal costs by engaging legal representatives for the proceedings on 30 July 2025. Should the Applicants proceed with an application to revive the discharged *rule nisi*, the Respondent may have to incur further legal costs in opposing such an application and further legal costs in opposing the Contempt of Court application if the *rule nisi* is revived. If the Applicants do not proceed with the revival application, then the Respondent will not incur further legal costs.

31 It is therefore just and equitable in the circumstances to not permit the First Applicant to avoid any consequences at all in respect of the Respondent's costs occasioned by the absence of the Applicants on 30 July 2025 if they do decide to proceed with a Rule 27(4) application.

32 For all the reasons as set out above, this Court exercises its discretion by deciding that a conditional costs award against the First Applicant is justified, and the First Applicant should be ordered to pay the Respondent's wasted costs of the day on 30 July 2025 on the party and party scale (including the costs of one counsel) only in the event that the First Applicant either: (i) applies to revive the discharged *rule nisi*; alternatively (ii) institutes a *de novo* Contempt of Court application in relation to the CCMA's contempt ruling dated 10 February 2025.

33 In the circumstances, the following order is made:

⁶ See *Ntombela and Others v United National Transport Union and Others* (2019) 40 ILJ 874 (LC) at para 70; *Mashishi v Mdladla NO and Others* (2018) 39 ILJ 1607 (LC) at para 14; *Ngobeni v Passenger Rail Agency of SA Corporate Real Estate Solutions and Others* (2016) 37 ILJ 1704 (LC) at para 14.

Order

34 The *rule nisi* issued by this Court on 22 May 2025, and extended on 30 July 2025 in order for this Court to consider whether or not to discharge the *rule nisi* in light of the non-appearance of the Applicants on the return day of the *rule nisi* on 30 July 2025, is discharged.

35 The Respondent is awarded his wasted costs of the day on 30 July 2025, on the party and party scale, including the costs of 1 (one) counsel, but only in the event that the First Applicant either: (i) applies to revive the discharged *rule nisi*; alternatively (ii) institutes a *de novo* Contempt of Court application in relation to the CCMA's contempt ruling dated 10 February 2025.

M. Sass

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants – No appearance.

For the Respondent – Advocate Prince Mafu