



IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: 2025-117172

Not Reportable

In the matter between:

VUYO NCOKAZI

Applicant

and

MECSA CONSTRUCTION (PTY) LTD

First Respondent

BARGAINING COUNCIL FOR THE
CIVIL ENGINEERING INDUSTRY

Second Respondent

EUGENE VAN ZUYDAM N.O.

Third Respondent

CCCC-MECSA JOINT VENTURE

Fourth Respondent

SMEC

Fifth Respondent

SANRAL

Sixth Respondent

MINISTER OF DEPARTMENT OF TRANSPORT

Seventh Respondent

Heard: 19 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties and / or their legal representatives by email. The date and time for handing-down is deemed 10h00 on 1 September 2025

JUDGMENT

ALLEN-YAMAN J

[1] On 22 July 2025 the applicant initiated an application in which he sought orders in the following terms,

'1. This Court condones the non-compliance by the Applicant with Rules 8 and any other relevant Rule of this Court and that the Applicant's non-compliance with the prescribed time periods and forms of service be condoned.

2. The application be heard as one of urgency.

3. That a rule nisi be issued:

3.1 The CCCC-MECSA Joint Venture (JV) be declared as not the former employer of the Applicant.

3.2 Christo Vermeulen and John Sambo be declared to not meeting the requirements of key staff in respect of Project Director and Construction Manager of the Mtentu Bridge. The Approval of Christo Vermeulen by the Fifth Respondent as Project Director be reviewed and set aside.

3.3 The dismissal of the Applicant be declared substantively and procedurally unfair.'

[2] By the time the application came before this court on 30 July 2025 an answering affidavit had been delivered by the firm of attorneys Edward Nathan Sonnenbergs Inc (ENS), deposed to by Mr Nathaniel Komane who alleged that he did so in support of the first respondent's opposition to the application. The applicant took issue with his authority to depose to an affidavit on behalf of the first respondent in light of the fact that Mr Komane had described himself as the Project Human

Resource Executive for the 'CCCC MECSA Unregistered Joint Venture.' This court explained to the applicant that the manner in which authority is to be challenged, if a challenge to authority is raised, is to act in terms of Rule 7 of the High Court Rules. The applicant was then given the opportunity to deliver a Notice in terms of Rule 7 (in which event the application would be required to be adjourned to a later date) or to proceed with the application with the answering affidavit being accepted as having constituted the first respondent's opposition to his application. The applicant indicated that he wished to proceed in terms of Rule 7 and the application was then adjourned to 19 August 2025 to enable him to deliver the appropriate notice.

[3] Pursuant to the postponement of the matter the applicant delivered a Supplementary Notice of Motion (Additional Relief) in which he expanded upon the relief he initially sought,

'3. That a rule nisi be issued:

3.6 The First Respondent be ordered to pay the Applicant for damages.

3.7 The Fourth Respondent be declared to not be capable of legally instructing employed persons working for registered companies with juristic identities and the CCCC-MECSA JV tender with SANRAL therefore be terminated. If this is not granted, the Applicant be granted reinstatement with retrospective salaries and benefits.

3.8 The First Respondent be declared to not have the tender of the Mtentu bridge.

3.9 The First Respondent be ordered not capable of performing his contractual obligations and to pay the Applicant the remaining salaries of this project as per the approved program by a competent person.

3.10 A decision be made regarding a Rule 7 notice.'

[4] The applicant annexed a further affidavit to his Supplementary Notice of Motion in which, *inter alia*, he alleged that,

'4. On 30 July 2025, the Honourable Labour Court has exercised its discretion in relation to Rule 7(1) of the High Courts, with the leave of the Court on good cause shown at the hearing before judgment, as was disputed,

whereafter the First Respondent's representative (ENS Inc and / or Mr Jan Norval) may no longer act unless he satisfies the court that he is authorised so to act, and to enable him to do so, the court has postponed the hearing of the action or application to 19 August 2025.

5. The First Respondent's representative is hereby called upon to prove that he is authorised to act on behalf of the First Respondent, as alluded to via email and to the Court.

6. The First Respondent's representative is also called upon to prove that he can act in this Honourable Court since he is an attorney and not an Advocate, via a certificate of admission to the High Court.

7. It is not necessary to deal with the merit aspect as the Court was already satisfied that good cause has been shown to suspend the matter for this notice to be served, if it were not so, the Court could have decided otherwise and proceeded with the hearing on 30 July 2025.'

[5] In response, the first respondent delivered a Power of Attorney in the form of an affidavit, in terms of which Mr Prince Charles Nonkonyana alleged as follows,

'6. ENS has been instructed to represent the First Respondent in all matters relating to the Applicant since his unfair dismissal referral to the Second Respondent.

7. I, in my capacity as a director of the First Respondent, authorised ENS to act on behalf of the First Respondent in proceedings before the Second Respondent; in the urgent application under case number 2025-092237 in this Honourable Court; and in the present matter.

8. For the avoidance of doubt:

8.1 The First Respondent nominates, constitutes, and appoints ENS, with power of substitution, as its true and lawful agent and attorney to act in its name, place and stead, and to perform all acts deemed necessary to represent the First Respondent in relation to the application instituted by the Applicant.

8.2 The First Respondent authorises ENS (with power of substitution) to sign all documents on its behalf in connection with the application instituted by the Applicant, including but not limited to notices.

8.3 *The First Respondent ratifies all actions taken, and to be taken, by ENS in representing its interests in relation to the Applicant. This includes ENS's representation in prior proceedings before the Second Respondent, as well as in the urgent application under case number 2025-092237 before this Honourable Court.'*

[6] Attached to such affidavit was a document alleged to have been the resolutions taken by the directors of the first respondent in terms of s74 of the Companies Act, 2008,

'1. Resolution Number 1: Appointment of ENS as the Company's Attorneys of Record

The appointment of ENS as the attorneys of record of the Company with respect to the Dispute Matters¹ and all other ancillary matters, be and is hereby noted, accepted and approved.

2. Resolution Number 2: General Authorisation

Any one or more of the Directors ("Authorised Person"), be and are / is hereby authorised, instructed and empowered to:

2.1 negotiate and settle the terms of, and sign and / or despatch any document, instrument, certificate, confirmation, deed or notice which may be incidental or necessary to give effect to these resolutions ("Approved Documents");

2.2 be and is hereby authorised to conduct business with ENS on behalf of the Company;

2.3 amend any of the Approved Documents, including, to the extent required, to render them unconditional; and

2.4 generally to do all such things and sign all documents and procure the doing of all things (including the making of all relevant applications, filings and submissions to governmental bodies, Courts, administrative bodies, agencies, departments or regulatory, self-regulatory or other authorities or organisations) as are, in the discretion of the Authorised person, necessary for or incidental to giving effect to the above resolutions, contemplated herein and the performance of all acts required thereunder.

¹ Previously defined to include the various disputes mentioned by Mr Nonkonyana in his affidavit

3. *Resolution Number 3: Ratification*

To the extent that anything referred to in any of the above resolutions has been done prior to the passing of these resolutions, then the relevant action (and the relevant conduct of the relevant Directors as the authorised persons in this regard) is hereby unconditionally and irrevocably ratified, confirmed and approved.'

[7] In addition, the first respondent delivered a supplementary answering affidavit in which it addressed the additional relief sought by the applicant in his Supplementary Notice of Motion.

[8] Dissatisfied with the proof of authority furnished by the first respondent, the applicant delivered a second Supplementary Notice of Motion (Additional Relief) in which he prayed for further orders,

'3. That a rule nisi be issued:

3.7 That the joinder of the Eight Respondent, Nine Respondent, Tenth Respondent, Eleventh Respondent, Twelfth Respondent and the Thirteenth Respondent be granted.

3.8 That the Eight Respondent, Ninth Respondent, Tenth Respondent, Eleventh Respondent, Twelfth Respondent and the Thirteenth Respondent be declared guilty of fraud.

3.9 That an order of this court in case 2025-092237 be rescinded.'

[9] The parties proposed to be joined were Mr Jan Norval, an attorney of ENS, as eighth respondent, ENS itself as ninth respondent, and the four individuals who had signed the resolution provided in response to the applicant's Rule 7 Notice in their capacity as directors.

[10] A notice of opposition in which the proposed eighth and ninth respondents appointed ENS to represent them in the present proceedings was subsequently delivered on 14 August 2025.

[11] During the course of the hearing it became apparent that the applicant had subsequently served two additional documents on the first respondent. The first, of which this court had sight during the course of the hearing, was a further affidavit deposed to by the applicant the day before the hearing in which he sought to supplement his grounds of urgency. The second, the existence of which was drawn to this court's attention in the course of the applicant addressing the court in reply, was a further Rule 7 notice in which the applicant sought to challenge the authority of ENS to represent both itself and Mr Norval. In view of the fact that neither of those processes had been filed at court, this court ruled that both would be disregarded.

[12] Before this court may consider the merits of the applicant's application, two preliminary issues are to be decided. The first is the question of authority, and the second is that of urgency.

Authority

[13] Insofar as the issue of authority is concerned, it must be understood that at no stage on 30 July 2025 or at any time thereafter did this court indicate that '*good cause*' existed for ENS to be called upon to establish its authority to act on behalf of the first respondent. As stated, the applicant raised the issue and this court did no more than to draw his attention to the appropriate mechanism to be utilised in the event that he wished to persist with such a challenge. The applicant indicated that he did and the application was adjourned to afford him such opportunity.

[14] In consideration of the issues raised by the applicant in the affidavit he deposed to on 13 August 2025, his objections to the first respondent's ostensible opposition to his application went far beyond the initial concerns expressed by him relating to the capacity in which Mr Komane had deposed to his affidavit. In summary, he argued that:

- Directors do not have the authority to represent a company, the power to do so being vested only in its board of directors in terms of s66(1) of the Companies Act, 2008. As such, the resolution relied upon was defective and invalid for want of authority on the part of the first respondent's board.

- The individuals who held themselves out to be the directors of the first respondent had not proven who they were who they purported to be, not having provided any documentary proof that they held such designation.
- The resolution of the directors was not certified.
- The resolution was passed on 11 August 2025, with the result that there was no proof that Mr Nonkonyana had been authorised to act prior thereto.
- Mr Nonkonyana failed to provide any proof of his assertion that he had authorised ENS Inc to represent the first respondent.
- Rule 7 of the High Court Rules requires an attorney to file an existing Power of Attorney, and not draft a new one. The Power of Attorney was given on 11 August 2025 in circumstances in which Edward Nathan Sonnenbergs Inc had already delivered a Notice of Opposition and appeared on behalf of the first respondent, despite that an attorney is not permitted to act on behalf of a client without a Power of Attorney.

[15] The relevant parts of Rule 7 are as follows,

'(1) Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.

(2) ...

(3) ...

(4) Every power of attorney filed by an attorney shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to

law; provided that where a power of attorney is signed on behalf of the party giving it, proof of authority to sign on behalf of such parts shall be produced to the registrar who shall note that fact on the said power.

(5) ...'

[16] The origin of the Rule and its predecessor were explained in Erasmus, Superior Court Practice,

'Prior to the amendment of the rule in 1987, the filing of a power of attorney was necessary whenever a summons was issued. No power was required in applications because the applicant himself or herself signs the affidavit, or it is signed on his or her behalf and on his or her authority. Under the amended rule, powers of attorney need be filed only when an attorney's authority to act is challenged by the other party, and in the case of appeals.'

[17] The court in Le Bonheur Wine Estate (Pty) Ltd v Stellenbosch Vineyards (Pty) Ltd (17111/2021) [2025] ZAWCHC 260 (20 June 2025) seemingly understood the position to have been that which prevailed prior to 1987,

*'In terms of rule 7, an attorney can only act for a 'party' who is properly before court if the attorney is duly authorised to act by virtue of a valid power of attorney in its favour. Although rule 7(1) does not make it obligatory for the power of attorney to be filed at court, the document must nevertheless exist because a cited defendant may, within prescribed time limits, call on the attorney to prove his/her authority to act.'*²

[18] That court cited no authority for its proposition that a Power of Attorney must have existed at the outset. Such proposition is at odds with the wording of s7(1) itself which requires, if the issue is raised, no more than that the court be satisfied that the attorney is authorised to act, not that the court be provided with a pre-existing Power of Attorney. Moreover, this court is not aware of any substantive law regulating the giving of instructions by clients to their attorneys, nor requiring that attorneys are permitted to represent their clients as litigants only in circumstances in

² At paragraph 52

which a Powers of Attorney have been executed in their favour. In light of these issues, this court is respectfully unable to concur with the conclusion reached by the court in Le Bonheur that the authority of an attorney to act on behalf of a client may only be established by the production of a Power of Attorney, executed in favour of the attorney prior to having placed him or herself on record in litigation on behalf of a client.

[19] Before this court is a Power of Attorney, executed on 11 August 2025 in the form of an affidavit. Absent any evidence contravening the content thereof, there is no reason for this court to reject that which was evinced thereby:

- (1) The first respondent's Board of Directors resolved, *inter alia*:
 - to appoint ENS as the first respondent's attorneys of record;
 - to authorise any one of its directors to do all things deemed by him or her to be necessary in relation to the applicant's various disputes with it; and
 - to ratify, unconditionally and irrevocably, anything previously done by either a director or ENS in relation to the applicant's various disputes with the first respondent.
- (2) Mr Nonkonyana is a director of the first respondent.
- (3) Mr Nonkonyana instructed ENS Inc to represent the first respondent in both the present proceedings, and those which preceded it.
- (4) Mr Nonkonyana executed a written Power of Attorney in which ENS were authorised to represent the first respondent in all proceedings relating to the applicant.

[20] In the circumstances, this court is satisfied that Mr Nonkonyana has been authorised by the first respondent's Board of Directors to act on its behalf and, to that end, has instructed ENS to represent the first respondent in the present proceedings in this court.

[21] Returning to the applicant's initial objections to Mr Komone having deposed to an affidavit on behalf of the first respondent in opposition to his claim, the Supreme Court of Appeal made it clear in Ganes and Another v Telkom Namibia Ltd 2004 (3) SA 615 (SCA) that a deponent to an affidavit in legal proceedings need be the holder of no particular authority,

*'The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of proceedings and the prosecution thereof which must be authorised.'*³

[22] To the extent that the applicant sought to bolster his argument that ENS could not have been authorised to represent the first respondent, he referred this court to s161 of the LRA. That section, however, does no more than identify the capacity of various individuals who are entitled to appear and represent others in this court and the fact that a director is permitted to appear on behalf of the company of which he or she is a director does not preclude such director from instructing a firm of attorneys to do so.

[23] In consideration of the aforementioned, it is the finding of this court that ENS is duly authorised to represent the first respondent in these proceedings.

Urgency

[24] The urgency for which the applicant contended was predicated only upon that part of the relief sought by him in his initial Notice of Motion which related to the review of the award, his contentions having related to his need to be urgently reinstated to his previous employment by the first respondent.

[25] In this regard, the bases upon which the applicant relied to assert an entitlement to this court's urgent intervention related exclusively to the nature of the work he performed prior to his dismissal, the resumption of which he argued was critical to his career. The applicant had previously been employed in his capacity as a Candidate Engineer on the construction of the Mtentu Bridge which, when

³ At paragraph 19

completed, is anticipated will be the highest bridge in Africa and one of the longest man-span balanced cantilever bridge in the world. The applicant asserted,

‘Therefore, if the Applicant’s unfair dismissal was to remain and not be expeditiously resolved, the Applicant will lose the unique experience which he would otherwise be getting and as such, suffer extreme professional and personal prejudice. If the Applicant receives this experience, the Applicant’s professional development would exponentially increase not only in South Africa but in the global labour market. Substantial redress at a later stage will therefore not be possible as this experience cannot be reversed.’

[26] Whilst it appears that from an engineering perspective work on a project such as the Mtentu Bridge Project would be interesting and would provide the applicant with useful work experience, the same could be said of many other jobs in many other fields of employment. As with many other employees, the applicant was dismissed by his employer and is prevented from tendering his services until and unless the decision to dismiss him has been set aside. He challenged the fairness of that decision by way of arbitration proceedings and, dissatisfied with the outcome of that process, he has initiated a review application. By all accounts he is in no different a position than that of many other employees so placed. The applicant’s desire to return to work on the basis of the nature of the work itself cannot, without more, serve to elevate his application to one which is required to be determined on an urgent basis.

[27] In addition to having argued that the nature of the work itself and the benefits he would derive from participation therein warranted the application being dealt with on an urgent basis, the applicant asserted that his Constitutional rights to trade and fair labour practices were being infringed whilst he remained excluded from his previous employment.

[28] Direct reliance on the right to fair labour practices is impermissible by virtue of the principle of subsidiarity, explained by this court in Letimile v Cape Town International Convention Centre Company SOC Ltd (2023) 44 ILJ 1300 (LC),

‘Succinctly stated, the principle of subsidiarity means that where legislation gives effect to constitutional rights, it is impossible to go behind that legislation by relying on the Constitution directly.’⁴

[29] The applicant’s Constitutional right to freedom to trade is a right unrelated to the rights which are given effect to in the LRA and would be unaffected by the principle of subsidiarity (an impediment which will be returned to hereunder). The fact of his dismissal and his consequent exclusion from the Mtentu Bridge Project does not infringe that right at all. His dismissal does not and cannot preclude him from freely exercising his right to trade, for he is at liberty to take up employment elsewhere. All that has happened is that by virtue of the termination of his contract of employment, he has been precluded from exercising that right in favour of the first respondent at a particular place of employment, which facets of employment are neither guaranteed or protected under the right to freedom to trade.

[30] Moreover, in consideration of the provisions of the LRA which give effect to employees’ rights to fair labour practices, the LRA which provides, *inter alia*, that employees have the right not to be unfairly dismissed and that any challenge to the fairness of a dismissal must be arbitrated or adjudicated. The right to review a resultant arbitration award does not give effect to the right not to be unfairly dismissed, it gives effect to the right to fair and rational administrative action.

[31] To the extent that this court has recognised that the process of review is required to be dealt with expeditiously, the term ‘expeditiously’ must be understood within the context of the time periods prescribed in the LRA and the Rules for this court. The applicant referred this court to two of its own decisions, which he asserted were authority for his argument that his review application was required to be dealt with on an urgent basis: Madikizela v CCMA and Others (D382/22) [2024] ZALCD 42 (7 November 2024) and NEHAWU obo Seloba v Office of the Premier, Limpopo and Others (2025) 46 ILJ 1244 (LC).

[32] In Madikizela this court restated the principle that the purpose of the LRA is, amongst other things, the effective resolution of labour disputes, and that the

⁴ At paragraph 7

processes established in the LRA are intended to bring about the expeditious resolution thereof.⁵

[33] The principles relating to the need to deal with labour disputes in general, and review applications in particular, without unwarranted delay were explained in NEHAWU,

‘The purpose of the LRA is inter alia the effective resolution of labour disputes and the processes introduced by the LRA are intended to bring about the expeditious resolution of labour disputes. The detrimental implications of delays are obvious.

This Court has accepted that a review application is by its nature an urgent application and that it requires prosecution with diligence and urgency. This is supported by the Practice Manual wherein an applicant, in a review application, is required to ensure that all the necessary papers in the application are filed within 12 months of the date of the launch of the application and where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown as to why it should not be archived.

This Court and the Labour Appeal Court have considered the status of the Practice Manual and held that in essence, the manual promoted uniformity and consistency in practice and procedure and set guidelines on standards of conduct expected of those who practise and litigate in the Labour Court and it promotes the statutory imperative of expeditious dispute resolution.

The amendments to section 145 of the LRA, which took effect on 1 January 2015, are specifically aimed at expediting the prosecution of review applications and inter alia require that an application on review must apply for a hearing date within six months of launching the review application. A review application requires urgent prosecution without undue delay.’⁶

⁵ At paragraph 13

⁶ At paragraphs 13 - 16

[34] Both cases dealt with the failure on the part of the litigants involved to have complied with the time periods imposed in the Practice Manual, and neither is support for the proposition advanced by the applicant that review applications are by virtue of their inherent nature required to be dealt with on the extremely truncated time frames utilised in the present application.

[35] Both the LRA and the Rules of this court prescribe certain time frames applicable to review applications. The first of these is to be found in s145(1)(a) of the LRA which requires review applications to be initiated within a period of six weeks of the date on which the applicant became aware of the award sought to be reviewed. S145(5) requires an applicant in review proceedings to apply for a date for the hearing of the application not later than six months after that date on which the review application was initiated. Between these two provisions, the Rules prescribe time frames for the taking of the intervening steps, including a period of sixty days for the delivery of the record. Whilst this court, the Labour Appeal Court and the Constitutional Court require review applications to be dealt with expeditiously, this is not without regard to the time frames which have been established. The authorities relied on, and others, are support for no more than the requirement that an applicant in a review application is required to adhere thereto.

[36] In consideration of the grounds upon which the applicant relied to found urgency, this court does not find that he has made out a case for the application to be dealt with as a matter of urgency, and the application will accordingly be struck from the roll.

Costs

[37] Had the application been limited to the review itself, this court would likely have applied the usual principle that an individual seeking to protect a right will not be ordered to pay costs if unsuccessful. However, given the evolution of the applicant's case, wherein he seeks relief far removed from any which could conceivably be linked to the preservation of his own rights as an employee, the first respondent's argument that his application has been actuated *mala fide* may be

found to have some merit. In view of the fact that the application will be struck from the roll for lack of urgency, the merits of the applicant's application are yet to be decided. In such circumstances, this court is of the belief that the court determining the application in due course will be best placed to consider the issue of costs in relation to the factors relevant to such determination in terms of s162 of the LRA. The costs of the present proceedings will be reserved.

Order

1. The application is struck from the roll for lack of urgency.
2. The costs are reserved for determination by the court determining the application in due course.

K Allen-Yaman
Judge of the Labour Court of South Africa

Appearances

Applicant:

In person

First Respondent:

Mr I Lawrence with Mr J Norval, Edward Nathan Sonnenbergs Inc