



**THE LABOUR COURT OF SOUTH AFRICA
AT CAPE TOWN**

Of interest to other judges

Case no: 2025-162901

In the matter between:

MOSES GE MTHETHWA

Applicant

And

**WESTERN CAPE GOVERNMENT -
DEPARTMENT OF CULTURAL
AFFAIRS AND SPORT**

Respondent

Heard: 26 September 2025

Delivered: 1 October 2025

Summary: (Urgent – Application for provision of payslips, formal written notice of suspension and declaratory relief – terms of suspension clearly set out in arbitrator's sanction – no right to detailed notice from employer setting out terms of unpaid suspension - Right to obtain details of remuneration under s 33 of BCEA to be exercised using enforcement mechanism in Chapter 10 of the Act – Failure to demonstrate an absence of a suitable alternative remedy – Struck off for lack of urgency – Applicant's persistence with application when it had plainly become moot warranting cost order)

JUDGMENT

LAGRANGE, J

Nature of the application

- [1] This is an urgent application, in which the applicant, Mr G Mthethwa ('Mthethwa') seeks an order of substandard of relief in the following terms:

"2. Declaring that the First Respondent's refusal and/or failure to provide the Applicant with: [a] A written payslip for the months of August 2025 and September 2025 In Terms of Section 33 of the Basic Conditions of Employment Act 75 of 1997 ["BCEA"]; and [b] A written notice of implementation of the unpaid suspension sanction in compliance with section 34 of the BCEA is unlawful, unfair, and in breach of the Applicant's statutory rights.

3. Directing the First Respondent to immediately issue and serve upon the Applicant:

[a] The payslips for August 2025 and September 2025; and [b] A written notice setting out the conditions and terms of the unpaid suspension.

4. Directing the First Respondent to provide such documents to the Applicant no later than 48 hours after the Court order."

(sic)

- [2] The application was launched on 11 September 2025 and was opposed.
[3] The application was enrolled for hearing on 23 September

Brief chronology

- [4] This application is a sequel to a previous urgent application (case number 2025-132692) brought by Mthethwa in which he unsuccessfully applied to stay the imposition of a sanction of two months' unpaid suspension imposed by an arbitrator in a pre-dismissal hearing under section 188A Of the Labour Relations Act, 66 of 1995 ['the LRA'] for misconduct.

- [5] Mthethwa brought this application primarily to obtain the documents so he could provide proof to his various creditors that he received no income for the two months of August and September while he was suspended and to make suitable arrangements with them.
- [6] The respondent ('the department') did serve an answering affidavit on Mthethwa during the course of the morning on 23 September. For reasons which remain somewhat obscure, the document was not uploaded on Caselines. Ultimately, the court decided that it would be best for the matter to be disposed until 26 September so that the filing of the answering affidavit could be addressed and the applicant could file a replying affidavit. When the matter resumed on 23 September, the answering and replying affidavits had both been filed by been uploaded on Caselines. Regrettably, it was necessary to postpone the application, but given the difficulties of unravelling the technicalities around the failure to upload documents, I am reluctant to attribute any blame for the delay on Mthethwa.
- [7] On 6 August 2025 Mthethwa's requested a formal notice of the deduction of his total salary stating, amongst other things, how the amount was calculated and the breakdown of deductions. The following day, the department advised him that it made the deduction in compliance with the award which it was entitled to make under Section [1] [b] of Basic Conditions of Employment Act, 75 of 1997 ['the BCEA'], which did not require it to consult or provide the kind of details he requested. Nonetheless, it did provide him with a copy of the Persal printout of his payslip for August. The printout indicated that it was a salary inquiry relating to Western Cape Cultural Affairs. It provided: his name, Persal number, position as a museum officer, the 15th August payment date, and showed null entries for his gross salary, deductions and net salary.
- [8] In his response on 7 August, Mthethwa thanked the department for "providing the payslips for July and August 2025" (emphasis added). He insisted that he was still entitled to a breakdown of the deduction on the payslip as required by section 34 [2] of the BCEA¹. He claimed that the payslip without a breakdown of

¹ Section 34(1) and (2) reads:

"34 Deductions and other acts concerning remuneration

the deduction failed to meet the requirement of that section because it did not identify the amount and reason for the deduction on the payslip. He claimed that the arbitration award stated that the sanction was described as one that “*would be proper*” and as such was not binding. The employer should have issued a formal notice before implementing the deduction. He then sought a copy of the internal instruction or directive authorizing the deduction, the total amount to be deducted each month and the payroll codes to be used for the deduction and whether SARS the UIF and other entities were notified of the deduction. He described these requests as a formal request for disclosure in terms of section 23 of the Constitution and section 29 of the BCEA.

- [9] On 19 August 2025, Mthethwa reiterated his request for a payslip and for a breakdown of deductions for the period of two months during which he was being suspended, as well as a schedule showing how the unpaid suspension was calculated and applied. He threatened to approach the this court or the Department of Employment and Labour for enforcement of his rights under sections 33 [1] and 33 [2] of the BCEA. The department responded promptly the same day, pointing out that the award stipulated the period of his suspension and that it was without pay for the two months in question. The email stated that the award was binding and it was obliged to implement it. In the circumstances, the department said it failed to understand how it was contravening section 33

(1) *An employer may not make any deduction from an employee's remuneration unless-*

- (a) *subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or*
- (b) *the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.*

(2) *A deduction in terms of subsection (1) (a) may be made to reimburse an employer for loss or damage only if-*

- (a) *the loss or damage occurred in the course of employment and was due to the fault of the employee;*
- (b) *the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;*
- (c) *the total amount of the debt does not exceed the actual amount of the loss or damage; and*
- (d) *the total deductions from the employee's remuneration in terms of this subsection do not exceed one-quarter of the employee's remuneration in money.”*

[1] of the BCEA². Under cover of another email on 19 August, the department sent Mthethwa payslips for August and September.

[10] Apart from this correspondence, on 19 August, Mthethwa also reiterated his request for confirmation of the conditions attaching to his suspension, namely whether he could enter the workplace, contact colleagues and any other restrictions which applied to him.

[11] At 16h20 on 22 September, the department emailed Mthethwa, asking him to urgently withdraw the application because it had not provided him with both payslips, which rendered the matter moot. At the hearing, Mthethwa claimed he did not receive this last communication because he only had access to the internet through an internet café.

[12] When the hearing resumed on 26 September, Mthethwa was asked by the court why he was not satisfied with the payslips which the department had sent him on 7 August and 19 September. His explanation was that the payslips the department sent him were ones that he could have typed on a computer and did not display the employer's letterhead. He also claimed his creditors would not accept the arbitration award as proof of his suspension: they would only accept a document from his employer. It must be mentioned that Mthethwa provided no

² Section 33(1) states:

33 Information about remuneration

(1) An employer must give an employee the following information in writing on each day the employee is paid:

- (a) The employer's name and address;*
- (b) the employee's name and occupation;*
- (c) the period for which the payment is made;*
- (d) the employee's remuneration in money;*
- (e) the amount and purpose of any deduction made from the remuneration;*
- (f) the actual amount paid to the employee; and*
- (g) if relevant to the calculation of that employee's remuneration-*
 - (i) the employee's rate of remuneration and overtime rate;*
 - (ii) the number of ordinary and overtime hours worked by the employee during the period for which the payment is made;*
 - (iii) the number of hours worked by the employee on a Sunday or public holiday during that period; and*
 - (iv) if an agreement to average working time has been concluded in terms of section 12, the total number of ordinary and overtime hours worked by the employee in the period of averaging."*

evidence in his affidavits about which creditors had refused to accept the arbitration award, or payslips provided by the department as proof of his unpaid suspension nor of the various reasons any creditor had allegedly given for rejecting the documents.

Evaluation

[13] In an application for urgent final relief, apart from establishing a clear right, a party must establish the circumstances which make the matter urgent and why they could not obtain substantial relief in due course³. The Labour Court adopts the same approach to urgency as the High Court, as reflected in *Maqubela v*

³ This is reflected in Rule 6(12)(b) of the Uniform Rules of the High Court. Rule 6 deals with urgent applications. Rules 6(12)(a) and (b) state:

“6 (12)

(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as it deems fit.

(b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which it is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.”

The High Court in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) commented on the implication of Rule 6(12) thus:

“[6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.”

*South African Graduates Development Association and Others*⁴ where the court held:

“[32] Whether a matter is urgent involves two considerations. The first is whether the reasons that makes the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. In all instances where urgency is alleged, the applicant must satisfy the Court that indeed the application is urgent.”

Existence of a clear right

- [14] Mthethwa sought on an urgent basis to assert a right to be issued with payslips under section 33 of the BCEA and a notice issued by the employer about his unpaid suspension and the conditions attaching thereto, which he claimed to derive from section 34 of the BCEA.
- [15] To address the second issue first, no provision of s34 obliges an employer to issue a written notice setting out the terms and conditions of a period of unpaid suspension. The section deals only with the question when deductions may be lawfully made. Insofar as he felt the department should explain the basis of deductions of his entire salary made in September Subsection, this was authorized by the arbitration award itself. Subsection 34 [1] [b] provides, amongst other things, that an employer may make a salary deduction required by an arbitration award.
- [16] While on this issue, it is disingenuous of Mthethwa suggest that the arbitration award merely said that it would be proper to impose a sanction of two months unpaid suspension and to argue that department still needed to make own decision on the sanction to impose. The arbitration award could not have been clearer. Having found him guilty on both charges, the arbitrator concluded as follows:

“The applicant is acutely aware that the misconduct he committed is insubordination, it is clear from his closing arguments though he does not come clean in showing remorse for his misconduct which led to the closure of the museum. A sanction which would be proper, sensible and appropriate correct applicant’s behavior should be a sanction short of dismissal. In terms

⁴ (2014) 35 ILJ 2479 (LC)

of the disciplinary code and procedures resolution 1 of 2003, clause 7.4 [a] (iv), the applicant is suspended without pay for two months, starting from zero 1 August 2025 to 30 September 2025.”

[Emphasis added]

It is incomprehensible that Mthethwa, or for that matter any third party, reading that passage could be confused about what it meant or whether it was a recommendation to the employer or a decision by the arbitrator. There was no need for the department to supplement the arbitrator's determination. The full passage reveals how selective Mthethwa's partial interpretation of it is.

- [17] Moreover, on 25 September 2025 despite the absence of an obligation on the department to elaborate on the award of the arbitrator, the head of the department provided him with a letter to assist him. It read:

*“NOTIFICATION OF UNPAID REMUNERATION FOR MR. M MTHETHWA -
DEPARTMENT OF CULTURAL AFFAIRS AND SPORT*

Please be advised that, following due internal processes culminating in an arbitration award issued under the auspices of the General Public Service Sectoral Bargaining Council (GPSDSBC), Mr M. Mthethwa, an employee of the Department of Cultural Affairs and Sport was not remunerated (including all benefits and allowances) for the months of August and September 2025. The official's remuneration will be reinstated in October 2025.”

- [18] Turning to the payslip issue, there is no question that section 33 of the BCEA entitles Mthethwa to be provided with a payslip. To all intents and purposes, the details provided in the Persal extracts provided all the information he was entitled to, save perhaps for a minor discrepancy that only part of the department's name appeared on the documents, and the address was missing.
- [19] The important question to answer is whether Mthethwa's only means of obtaining this information was by bringing this application. Chapter 10 of the BCEA provides enforcement mechanisms for various basic conditions of employment. In particular, s69 provides that a labour inspector may issue a compliance order to an employer who does not comply with a provision of the Act. In the event of non-compliance, the Director-General may apply to the CCMA to have that order made an arbitration award, under s 73 of the BCEA. Mthethwa made no mention in his affidavit of approaching the labour

inspectorate, though he did allege from the bar that he had but was told it did not assist employees of government departments. This seems highly improbable, apart from being legally incorrect, but in any event his statement from the bar does not constitute evidence. There was actually no evidence of him attempting to obtain redress by alternative means.

[20] In short, there is a primary statutory process for obtaining compliance with s 33 which Mthethwa did not invoke, nor did he provide any evidence of why he could not obtain timeous redress using that mechanism. The existence of an alternative remedy alone is a bar to seeking urgent relief by means of an urgent application.

[21] The department argued that his demand to be issued with payslips had become moot by 23 September when the application was enrolled for hearing, because he had received the payslips by 19 September, so there was no further relief he could expect from the court. When confronted with this proposition in court, Mthethwa's response was to argue that the payslips were insufficient because they were not on a departmental letterhead. However, when he received the payslips, he accepted them as such and made no complaint that they were deficient in any way. Furthermore, the confirmatory affidavit in support of the department's application for condonation for not filing its answering affidavit in the time period determined by Mthethwa, explained that, when an employee is on suspension, it is not possible for the department to generate a Persal Salary Advice in the format which contains a letterhead. Despite this, Mthethwa persisted in pursuing his application on 26 September.

[22] In conclusion, I am satisfied that the application must fail on urgency because he had an alternative statutory remedy for obtaining a payslip which he failed to invoke. Even if that was not the case, the application was rendered moot by the substantial compliance of the department with the provision of the payslips.

[23] Given that Mthethwa had accepted the payslips provided without further complaint and that he has no right to be issued with a particularised notice of suspension, no purpose was served by requiring the court to entertain his application. Consequently, he put the department to needless expense apart from wasting the court's time. His persistence with the application served no

practical purpose and was vexatious in nature, which warrants a cost order against him. While a punitive cost order could probably be justified, because his request for payslips was a legitimate one, an ordinary cost award is appropriate. Whatever, he might have thought before he had an opportunity to digest the answering affidavit on 23 September, it should have been clear to him before the matter resumed three days later that it was pointless to pursue the application further and he should have removed it from the roll. Accordingly, he should at least be held liable for the department's costs incurred after 23 September 2025.

Order

1. The application is struck off the roll for lack of urgency.
2. The Respondent's filing of its answering affidavit outside the period specified in the Applicant's notice of motion is condoned.
3. The Applicant must pay the Respondent's costs, including the costs of counsel, for the hearing on 26 September 2025.

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R Lagrange

Judge of the Labour Court of South Africa

Appearances

For the Applicant:

In person

For the Respondents:

L Dzai instructed by the
State Attorney