



IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: 2025-138694

Not Reportable

In the matter between:

ARAMUGAM GOVENDER

Applicant

and

THE KWAZULU-NATAL OFFICE OF THE PREMIER

Respondent

Heard: 11 September 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 23 September 2025.

JUDGMENT

ALLEN-YAMAN J

Introduction

[1] By way of an urgent application, the applicant sought an order in the following terms,

- 2.1 That the enforcement of the arbitration award issued under GPSSBC Case No GPBC 3086/2018 be authorised to proceed forthwith.*
- 2.2 That the enforcement of the arbitration award issued under CCMA Case no BCKN 197/23 be authorised to proceed forthwith.*
- 2.3 Declaring that the stay of enforcement granted on 8 November 2023 has lapsed and is no longer of force or effect.*
- 2.4 Declaring that the interim stay granted on 12 August 2024 expired on its return date of 5 September 2024 and is no longer in operation.'*

[2] The respondent opposed the application and, having done so, sought by way of a counter-application an order that the applicant be declared to be a vexatious litigant, together with relief ancillary thereto.

Background

[3] On 16 August 2023 an arbitration award was issued in favour of the applicant under case number GPBC 3086/2018 ('the award') in terms of which the arbitrator found that he had been dismissed by the respondent on 1 April 2017, and that such dismissal had been both substantively and procedurally unfair. The applicant was awarded retrospective reinstatement, albeit that it was appreciated by the arbitrator that such reinstatement could not be given physical effect in light of the fact that the applicant had reached the compulsory age of retirement in the intervening period. The arbitrator calculated the backpay which was due to him in the amount of R9 449 997.48.

[4] Acting in terms of s143(3) of the LRA, the applicant applied to the CCMA to certify the award, which was done on 13 October 2023. The respondent on the other hand was dissatisfied with the outcome of the arbitration, and applied to review the award under case number D601/2023 on 19 October 2023.

[5] As the respondent had neither furnished security in terms of s145(8), nor applied to stay the enforcement of the award in terms of s145(3) contemporaneously with the delivery of its review application the applicant sought to enforce compliance, to that end having caused the Sheriff of the High Court to attach certain of the respondent's assets on 6 November 2023. The respondent, in turn, applied to this court on an urgent basis to stay enforcement and to be exempt from the provision of security. When the matter came before this court on 8 November 2023 the parties were *ad idem* as to the further conduct of proceedings and a consent order was then made an order of this court. It read,

- '1. *The non-compliance by the Applicant under the rules of court regarding the form and time limits and manner of service is condoned.*
2. *The operation of the arbitration award under case no: GPBC 3086/2018 dated 16 August 2023 is suspended pending the determination of payment issue of security by the Applicant.*
3. *The Second Respondent be and is hereby interdicted and restrained from removing the goods and items already attached and listed in the notice of attachment in execution (inventory annexed herewith as Annexure "A") being the property of the Applicant, pending the finalisation of the review proceedings already instituted.*
4. *The First Respondent acting through the Second Respondent be and are hereby forthwith interdicted and restrained from attaching further and removing property belonging or found in the Applicant's properties wherever they are situated pursuant to the arbitration award under review.*
5. *The Second Respondent is directed to release from attachment all the goods/items listed in Annexure "A" forthwith.*
6. *That paragraphs 3 and 4 herein above shall operate as an interim relief and mandamas pending the finalisation of the review application.*
7. *The First Respondent shall file his answering affidavit on or before 22 November 2023.*
8. *The Applicant shall file its replying affidavit on or before 6 December 2023.*
9. *The Applicant is ordered to pay the Second Respondent's costs of execution.*
10. *Costs of this application are reserved.'*¹

¹ Reference to the applicant in the order was reference to the respondent in the present application.

[6] There is no evidence before this court that any further steps were taken in relation to that application and the order taken by consent accordingly remained in place.

[7] The respondent's review application was enrolled for hearing on 16 July 2024 on which date it was dismissed, with reasons having been provided on 5 September 2024. In the meantime, alive to the fact that the review application had been dismissed, the applicant again sought to execute against the respondent's assets in satisfaction of the award. To this end, the sheriff attempted to execute a writ, but was denied entry by officials of the respondent who initiated an urgent application in this court to prevent continued execution. Whilst the application itself was not placed before this court, the order granted on 12 August 2024 read as follows,

- '1. *The Applicant's failure to comply with the time limits referred to in section 68(2) of the Labour Relations Act No 66 of 1995 (as amended) ("the LRA") is hereby condoned, and that the matter is dealt with as one of urgency in terms of Rule 8 of the Rules for the conduct of proceedings in the Labour Court.*
2. *A rule nisi is hereby issued calling upon the Respondent to show cause, if any, to this Honourable Court on 5 September 2024 at 10h00 or so soon thereafter as the matter may be heard, why an order in the following terms should not be granted:*
 - 2.1 *the Respondent herein is declared to be in contempt of the consent order taken before the Honourable Madam Justice Allen-Yaman under case number D601/23 on 8 November 2023;*
 - 2.2 *the Respondent is hereby interdicted and restrained from taking any steps, including enlisting the services of the Sheriff of this Court or his Deputy or any other private or state functionary, to enforce the Arbitration Award issued under case number GPBC 3086/2018 dated 16 August 2023, pending the delivery of the written judgment in the review application under case number D601/23 and the lapsing of the dies for noting an appeal;*
 - 2.3 *further and/or alternative relief.*
3. *Pending the outcome of this application, paragraph 2.2 above is to operate as an interim order with immediate effect.*

4. *Costs reserved.*²

- [8] It was on the return day, 5 September 2024, that this court gave its written reasons for its order of 16 July 2024. On the applicant's undisputed version, the interim order which had been granted on 12 August 2024 was then neither confirmed nor extended.
- [9] The respondent noted an application for leave to appeal against the dismissal of its review application, which leave was granted in December 2024. Whilst the outcome of the application for leave to appeal was awaited, the applicant initiated two contempt applications. The first was heard on 7 November 2024 and was dismissed on 22 November 2024, with the second having been heard on 6 December 2024 and dismissed on 20 February 2025.
- [10] On 14 August 2025 the applicant initiated the present application.

Urgency

- [11] The respondent took issue with the applicant having initiated his application on an urgent basis, it having been the respondent's case that the applicant failed to address the requirements for urgency adequately, if at all, and, moreover, his claim was for payment of a sum of money only, in circumstances in which this court has reiterated that such claims do not, as a matter of course, found grounds for urgency. The respondent is correct that the applicant's case for urgency falls short of that which a litigant is required to establish for it to be entitled to a hearing on the urgent roll – he failed to provide particularity concerning the severe financial prejudice he claimed to be experiencing, and nor did he explain the irreparable harm he claimed he would sustain in the event that he is obliged to await a hearing in due course.
- [12] That having been said, this court has a discretion when it comes to deciding whether to deal with matters on an urgent basis. In the present case, the applicant has been without employment since 2016 and armed with an award in

² Reference to the applicant in the order was reference to the respondent in the present application.

his favour since 2023. In view of the fact that a full set of affidavits was exchanged and the issues fully ventilated, to strike the matter from the roll for lack of urgency would simply result in another court in due course being required to entertain the application on its merits once again. In the circumstances, this court will enrol the matter and determine the application and the respondent's counter-application on their respective merits.

Applicant's Application

[13] It is the applicant's case that there is presently no lawful impediment to his demanding compliance with the award:

- The order granted on 8 November 2023 was interim in nature, intended (subject to the fulfilment of the condition of the payment of security, which was never fulfilled) only to operate until the conclusion of the review application, which eventuality occurred on 16 July 2024.
- The further order granted on 12 August 2024 was also interim in nature, intended to operate until the time period for applying for leave to appeal had elapsed after reasons for the order of 16 July 2024 had been given. In any event, on 5 September 2024 (the return date and the date on which reasons for the order dismissing the respondent's review application were given) the interim order was neither confirmed nor extended and it accordingly lapsed.

[14] Distinct from the assertions made by the respondent in support of its claim that the applicant be declared to be a vexatious litigant, it contended that:

- The relief sought was not competent.
- The award is the subject of a pending appeal before the Labour Appeal Court under DA6/2025 and is accordingly, '*not subject to alteration*' by this court.

[15] In amplification of assertion that the relief sought by the applicant was not competent, the respondent relied on this court's previous judgments handed down when having dismissed the applicant's previous contempt applications. It

was the applicant's further case that the pending appeal automatically stayed enforcement of the award.

[16] As regards the order of 8 November 2023, the order envisaged the payment of security in terms of s145(3) of the LRA. The interim interdictory relief agreed to in paragraphs 3 and 4 was not, however, contingent upon the payment thereof. Paragraph 3 expressly interdicted the applicant from removing the goods which had been attached *'pending finalisation of the review proceedings,'* and paragraph 6, in terms of which both paragraph 3 and 4 were given immediate effect, made it clear that those paragraphs were to operate *'pending the finalisation of the review application.'*

[17] Albeit that it was not the respondent's pleaded case that the order of 8 November 2023 had any effect *post fact* the determination of the review, Mr Luthuli for the respondent argued that *'pending the review'* was intended to mean *'pending the review and all possible appeal processes which could follow thereafter.'* Not only did he present this court with no authority for such a proposition but the respondent's founding affidavit in support of its application to stay which led to the consent order of 8 November 2023 did not envisage the suspension of enforcement for any period of time beyond the determination of its review application by this court.

[18] Firstly, the application to stay was made contemporaneously with an application to have been exempt from the provision of security in terms of s145(7), a process which itself provides that upon the payment of the appropriate amount of security an award will be stayed pending the outcome of the review. Mr Kuhn, who deposed to the founding affidavit in the stay application on behalf of the respondent, asserted that,

'I am advised that the onus lies with an applicant who must show that it has assets of a sufficient value to meet its obligations should the Arbitration Award be upheld by the court on review.'

'The Applicant has sufficient budget and assets to settle the debt if the review application was decided in favour of the First Respondent.'

*'Accordingly, the interest of justice demand that the fulfilment of the award and execution on the Applicant's property be stayed pending the decision of this Court on Review.'*³

Nowhere in the respondent's affidavit in support of its stay application was the notion that the award was sought to be stayed beyond the determination of the review in this court ever mentioned.

[19] As regards the order of 12 August 2024, that order was interim in nature, intended to operate until its return date of 5 September 2024. The applicant's assertion that it lapsed on that date was undisputed by the respondent. Nevertheless, even if it had been confirmed on the return date, it would have lapsed on 13 December 2024, being the date on which the respondent was granted leave to appeal this court's judgment in its review application.

[20] In the circumstances, the applicant is correct that no order of this court currently operates as a bar to enforcement of the award and the applicant is entitled to the declaratory relief sought by him as regards the orders of 8 November 2023 and 12 August 2024. The issues that remain to be determined are the correctness or otherwise of the respondent's contentions that the relief sought by the applicant is not '*competent*', and / or that its appeal operates as an automatic bar to enforcement of the award.

[21] The first of its assertions was premised upon the findings of this court in two applications for contempt which had been initiated by the applicant.

[22] The first of the applicant's contempt applications was heard on 7 November 2024, with judgment having been delivered on 22 November 2024. It is evident that the applicant then sought that the respondent be held in contempt of court for having failed to have complied with the consent order of 8 November 2023 insofar as the applicant alleged that the respondent had failed to provide security, despite the order having obliged it to do so. The applicant's Notice of Motion sought relief, *inter alia*, as follows,

'declaring that the Respondent be and is hereby in contempt of paragraph 2 of the court order granted by the above honourable court on the 8th November 2023 under the above case number.'

[23] No issue may be taken with the court's conclusion that,

*'A close conspectus of paragraph 2, which the applicant states that the respondent failed to comply with, does not require the applicant to provide security at all. It rather requires the operation of the arbitration award under case number GPBC 3086/2018 to be suspended pending the determination of the payment issue of security. Simply put, the respondent was never ordered to pay security at all.'*⁴

[24] It is not, however, clear why the court went further and made findings regarding compliance with the award itself, seemingly an issue that was not before it,

*'In casu, the respondent filed a review application and, thereafter, an application for leave to appeal. In addition, there is a further application which suspends the operation of the arbitration award; it thus follows that the operation of the arbitration award is suspended pending the determination of the review application. The purpose of contempt proceedings is to compel compliance. This court cannot compel compliance with an arbitration award whose operation was suspended or stayed by the Honourable Madam Justice Allen-Yaman's court order dated 8 November 2023.'*⁵

[25] Although the aforementioned remarks were made obiter, it should be noted that at the time when the judgment was delivered, no court order stayed the operation of the award: the consent order of 8 November 2023 had lapsed upon the determination of the review on 16 July 2024, and the interim order of 12 August 2024 had lapsed upon the failure on the part of the respondent to have extended it on 5 September 2024. Be that as it may, the only issue for determination before the court was whether the respondent ought to be found to have been in contempt of court for having failed to provide security in accordance with the applicant's appreciation of the order of 8 November 2023.

³ At paragraphs 28, 30 and 31

⁴ At paragraph

⁵ At paragraph

Whilst the court found that the respondent was not in contempt, such finding has no bearing on the present application.

- [26] By way of the second contempt application initiated by the applicant on 27 November 2024 pursuant to the respondent's review application having been dismissed, the applicant sought to have the respondent held to be in contempt of court on account of its failure to have complied with its obligations under the award. In dismissing his application, its reasoning for having done so was seemingly premised on the fact that at the time when the contempt application was initiated, the respondent had applied for leave to appeal against the judgment dismissing its review application,

*'Given KOTP's application for leave to appeal and when the application and the required submissions were filed, the contempt application falls to be dismissed with costs. Costs, because the contempt application was filed long after the aforementioned filings, and, on 15 October 2024, KOTP pertinently reminded Govender that they had filed all the necessary papers in their application for leave to appeal and pertinently warned him against his threat to bring this contempt application.'*⁶

- [27] Regardless of the court's reasoning for having dismissed the applicant's contempt application, it nonetheless observed that there had been no prior impediment to enforcement of the award,

*'A proper consideration of all his legal proceedings, save for the last one, indicates that in his own lay manner he had attempted to enforce his award when he had every right to do so given KOTP's failure to furnish security and thereby suspend the operation of the award.'*⁷

- [28] In consideration of the two judgments upon which the respondent relied as a basis for its assertion that the applicant's present application is not competent, this court can find nothing in either which suggests, let alone dictates, the conclusion the respondent seeks this court to arrive at.

⁶ At paragraph

⁷ At paragraph

[29] The final question is accordingly whether the applicant's enforcement of the award is automatically stayed by virtue of the respondent's appeal. The effect of an application for leave to appeal and an appeal is governed by s18 of the Superior Courts Act, 2013 which provides as follows,

- '(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal is suspended pending the decision of the application or appeal.
- (2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or an appeal, is not suspended pending the decision of the application or appeal.
- (3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.
- (4)
 - (a) If a court orders otherwise, as contemplated in subsection (1)-
 - (i) the court must immediately record its reasons for doing so;
 - (ii) the aggrieved party has an automatic right of appeal to the next highest court;
 - (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
 - (iv) such order will be automatically suspended pending the outcome of such appeal.
 - (b) "Next highest court" for purposes of paragraph (a)(ii), means-
 - (i) a full court of that Division, if the appeal is against a decision of a single judge of the Division;
 - (ii) the Supreme Court of Appeal, if the appeal is against a decision of two judges of the full court of the Division.
- (5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.'

[30] Whilst it may appear that the effect of s18(1) is to suspend only those decisions in which positive obligations are given effect, in Minister of Finance v Sakeliga NPC (previously known as Afribusiness NPC) and Others 2022 (4) SA 401 (CC) the Constitutional Court explained that the terms ‘operation and enforcement’ are not to be construed in a manner which limits the application of the provision,

‘Crucially, the Minister is aware of the import of section 18(1) of the Superior Courts Act. He says that in terms of this section the operation of the order of the Supreme Court of Appeal was suspended from the date the Minister lodged an application for leave to appeal to this Court on 23 November 2020. The law is, and always has been, clear on the issue. In Ntlemenza the Supreme Court of Appeal traces the law from the common law position before any statutory intervention. It quotes South Cape Corporation which held:

“Whatever the true position may have been in the Dutch Courts, and more particularly the Court of Holland ... it is today accepted the common law rule of practice ... that generally the execution of a judgment is automatically suspended upon the noting of an appeal, with the result that, pending the appeal, the judgment cannot be carried out and no effect can be given thereto, except with the leave of the court which granted judgement. To obtain such leave the party in whose favour the judgment was given must make special application ... The purpose of this rule as to the suspension of a judgment on the noting of an appeal is to prevent irreparable damage from being done to the intended appellant, either by levy under a writ of execution or by execution of the judgment in any other manner appropriate to the nature of the judgment appealed from.”

Plainly, execution of a judgment means giving effect to the judgment. And reference to “execution of the judgment in any other manner appropriate to the nature of the judgment appealed from” gives a wide meaning to the word “execution”. We should not be led to think it relates only to execution under a writ of execution. Put simply, it means giving effect to an order, whatever its nature. So, the suspension of the execution of a judgment means that the judgment cannot be carried out and no effect can be given thereto. And that applies to whatever it is that is required to be done or has to take place in terms of the judgment. ...

The position is now governed by section 18(1) of the Superior Courts Act. This section provides:

“Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal is suspended pending the decision of the application or appeal.”

This too is in line with the common law position which has already been explained. And “operation” which the section couples with “execution” (“operation and execution”) does not alter the legal position stated above.⁸

[31] The award itself is not a decision of this court. The respondent’s appeal, on the other hand, is against the decision to dismiss its review. On the face of it, the two processes may appear unrelated, and the award may appear to be unaffected by s18(1). However, as the dismissal of the review gave rise to the applicant’s entitlement to payment in terms of the award, on the authority of the Constitutional Court, the respondent’s appeal against the decision to dismiss its review has the effect of suspending the award itself, as s18(1) *“applies to whatever it is that is required to be done or has to take place in terms of the judgment,”* - in this instance, payment in terms of the award.

[32] A similar conclusion was arrived at when an analogous situation arose in Confuscore (Pty) Limited v Ehlers N.O and Others (2919/2016) [2019] ZALMPPHC 2 (1 February 2019). In that matter, the respondents had purchased three immovable properties at a sale in execution and the applicants had applied to court to set such sales aside. Their application was dismissed, the result of which was that the sales were upheld as having been lawful. By virtue of the applicants having noted an appeal against the dismissal of their application, however, the respondents were deprived of access to the properties. Despite that the initial decision of the court did no more than dismiss the applicants’ application, their subsequent appeal operated as an impediment to the respondents’ enforcement of their rights of ownership as a

consequence of the operation of s18(1). In the circumstances, they were obliged to apply to court in terms of s18(3) to enforce their rights of ownership pending the appeal.

[33] Similarly, the respondent's appeal has had the effect of suspending the applicant's rights in terms of the award. Absent an order in his favour in terms of s18(3), enforcement of the award remains suspended pending the outcome of the respondent's appeal.

Respondent's Counter-Claim

[34] By way of a counter-application the respondent sought an order in the following terms,

- '1. *Declaring that the Applicant herein is a vexatious litigant.*
2. *Directing that no legal proceedings shall be instituted by the applicant herein, Mr Arumugam Govender against the Respondent herein without the leave of this Honourable Court, or any Judge thereof and such leave shall not be granted unless the Court or the Judge determining the matter, is satisfied that the proceedings are not an abuse of the process of the court and that there is/are prima facie grounds for the proceedings, as contemplated in section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956.*
3. *That the Applicant is directed to pay the costs of this application on a scale as between attorney and client.'*

[35] The present application constitutes the second attempt on the part of the respondent to obtain such relief, a similar counter-application having served before this court in response to the applicant's contempt application of 27 November 2024, which counter-application was dismissed.

[36] On the face of it, the applicant has done no more than seek to obtain payment of an award in his favour which award this court has previously upheld. Insofar as the declaratory relief sought by the applicant in the present application is

⁸ At paragraphs 12 – 15, with reference to Ntlemenza v Helen Suzman Foundation 2017 (5) SA 402 (SCA) and South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd 1977 (3)

concerned, the applicant's understanding of the effect of the orders of 8 November 2023 and 12 August 2024 has been found to have been correct and he is entitled to orders to this effect. As to the remainder of the relief sought by him the applicant, as a layperson, could not have been expected to have appreciated the effect of s18(1) of the Superior Court's Act, 2013.

[37] Save that the applicant has launched a further application, which differed from his previous contempt applications, there is no basis for this court to conclude that the applicant has '*persistently and without reasonable grounds*' instituted legal proceedings against the respondent. In the circumstances, the respondent's counter-application will be dismissed.

Costs

[38] In consideration of the issues involved in this matter, this court is not of the view that an award of costs is warranted.

Order

Applicant's Application

1. The applicant's application is enrolled as an urgent application and the applicant's non-compliance with forms and periods of service is condoned to the extent necessary.
2. It is declared that the stay of enforcement of the award issued under case number GPBC 3086/2018 lapsed on 16 July 2024 and, with effect from that date, was of no force and effect.
3. It is declared that the stay of enforcement of the award issued under case number GPBC 3086/2018 lapsed on 5 September 2024 and, with effect from that date, was of no force and effect.

4. The relief sought by the applicant under paragraphs 2.1 and 2.2 of his Notice of Motion dated 14 August 2024 is dismissed.
5. There is no order as to costs.

Respondent's Counter-Application

1. The respondent's counter-application is dismissed.
2. There is no order as to costs.

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

Appearances

Applicant:

In person

Respondent:

Mr S Luthuli, instructed by the State Attorney, KZN