



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-166235

In the matter between:

**MOLAETSA WA BOTSHELO &
PROJECTS CC t/a CRE8WORK**

Applicant

and

MAPAYA, MALOSE PETER

First Respondent

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Second Respondent

THE SHERIFF: GERMISTON NORTH

Third Respondent

Heard: 2 October 2025

Order: 7 October 2025

This judgment is handed down electronically by circulation to the parties' legal representatives by email and/or uploading on *CaseLines*. The date of hand-down is deemed to be 7 October 2025.

JUDGMENT

MAKHURA, J

- [1] The applicant approached this Court on an urgent basis for an order to stay the enforcement of the arbitration award pending the finalisation of the review application instituted under case number JR1057/20. Further, the applicant seeks to be exempted from furnishing security in terms of section 145(7) and (8) of the Labour Relations Act¹ (LRA).
- [2] In the alternative, the applicant seeks to be directed to furnish in the amount of R2,907.65, which it submits is the equivalent value of the maximum potential outstanding salaries in accordance with the first respondent's fixed term contract of employment. Further alternatively, this Court should declare that the movables already attached on 15 September 2025 constitute sufficient security.
- [3] The arbitration award in this matter is dated 29 July 2020. It ordered the applicant to reinstate the first respondent (employee) and pay him an amount of R56 000.00 in arrears wages, which is an equivalent of his eight months' remuneration at R7 000.00 per month.
- [4] The applicant challenged the award on review in terms of section 145 of the LRA, under case number JR1057/20. The founding affidavit in support of the review application was signed in August 2020, and the review application was filed on 2 September 2020. The applicant signed a supplementary affidavit on 14 October 2020. The answering affidavit was filed on 29 January 2021, and a replying affidavit on 4 February 2021.
- [5] Thereafter, the next court process took place on 14 June 2022, when the applicant filed an application for a date or a notice in terms of rule 22B of the then applicable Rules of this Court². On 22 June 2022, the Registrar directed the

¹ Act 66 of 1995, as amended.

² GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.

parties to file heads of argument. The applicant's chronology of events after 22 June 2022 is set out in the founding affidavit as follows:

'On 17 October 2022, Cre8work's erstwhile legal representatives duly delivered the heads of argument...

On 4 April 2025, the enforcement award was issued by the CCMA.

On 15 September 2025 the Sheriff attended the premises of Cre8work in order to attach property in accordance with the Inventory annexed hereto, in which movables to the value of R 65,000.00 (sixty-five thousand Rand), resulting in the necessity to institute this application.'

- [6] The applicant then submitted that the Registrar has not allocated a date for the hearing of the review application. As is apparent from the above chronology of events, the applicant's founding affidavit is devoid of any averments or facts relating to its action or steps taken to obtain a date for hearing from 18 October 2022 until 15 September 2025 and now, a period well over 35 months.
- [7] In his answering affidavit, the employee alleged through his attorneys of record that on 22 September 2025, he inspected the review file and established that the last pleading or process filed was the rule 22B notice. He then submitted that the review application (on the face of it) is deemed to have been dismissed and that there is no pending review application before this Court.
- [8] The applicant, in its reply, denied that the review application is deemed withdrawn as alleged by the employee or at all. The reason for the denial is recorded as follows:

'No Directives or Orders have been issued in the review application under case number JR 1057-20, in terms of which the application has been dismissed, archived, or deemed withdrawn. Similarly, neither Mr Mapaya, nor any other party, has made application for any specific or declaratory relief to dismiss or confirm a quasi-dismissed status for the review application.'

It is respectfully denied that the above Honourable Court's Rules Published in GN R1665 of 14 October 1996 (repealed on 13 July 2024) hereinafter referred to as the "repealed Rules" contained any provision for a review application to be deemed dismissed. Similarly, the (former) Practice Manual of 1 April 2013 which expanded upon the (former) Rules does not make provision for an application to be deemed dismissed.' (Own emphasis)

- [9] The issues before this Court are, firstly, whether the application is urgent or not. The employee has argued that the application is not urgent and that any urgency is self-created. Secondly, if the matter is urgent, whether the applicant is entitled to the stay of the enforcement of the award. This latter enquiry will necessarily involve the issue of security, whether it was furnished or not and if so, whether the Court is satisfied with the furnished security. If no security was furnished, whether the Court should entertain the application for exemption (in part or in full) on an urgent basis and grant the relief of exemption with or without conditions, or refuse it, on an urgent basis.
- [10] According to the applicant, the application is urgent because on 15 September 2025, the sheriff knocked on its doors and demanded payment in terms of the now certified award. In other words, the urgency in this case was triggered by the demand for compliance with and enforcement of the award.
- [11] In my view, the urgency of this matter was designed by the applicant because of its decision to disregard section 145(7) and (8) and its non-compliance with the provisions of the Practice Manual³. First, section 145(7) of the LRA expressly states that the institution of the review application does not suspend the operation of the award. Section 145(8) informs a review applicant of what he or she must do to suspend the operation of the award. The applicant "*must*", unless this Court directs otherwise, furnish security of 24 months' remuneration in the case of a reinstatement or re-employment award or an equivalent of the amount of compensation awarded.

³ The Practice Manual of the Labour Court of South Africa, 2 April 2013 (repealed with effect from 16 July 2024).

- [12] Mr Atcheson, appearing for the applicant, submitted that section 145(7) and (8) do not impose an obligation on employers who wish to challenge the award on review to furnish security. Further, he submitted that unless there is imminent harm, that is, unless the employee decides to enforce the award, the applicant did not have to furnish security.
- [13] Mr Atcheson's submission is only correct technically for employers who have no issue with the compliance and implementation of the award pending the determination of the review application, whilst challenging the award on review. In my view, section 145(7) and (8) obliges employers who would like to avoid the implementation of the award pending the review application to furnish security, or to apply to this Court for exemption or to "*direct otherwise*". This application for exemption must be launched as soon as the applicant decides to challenge the award or at the time of filing the review application. Therefore, employers who want to avoid the enforcement and/or implementation of the award pending determination of the review application must furnish security or apply for exemption at the time of filing the review application, and not at a later stage particularly in an urgent application.⁴
- [14] The applicant now applies, five years after the review application was launched, for exemption. No reasons are provided why this could not have been done earlier. This is a self-designed urgency, and the application for exemption is not urgent. The absence of security and the decision of this Court not to entertain the exemption application on an urgent basis means that the whole application falls to be struck off the roll. The argument by Mr Atcheson that the Court may direct the applicant to furnish security to its satisfaction within a prescribed period is of no assistance to the applicant.

⁴ In *Panorama Park Retirement Village v Commission for Conciliation, Mediation and Arbitration & others* (2020) 41 ILJ 1200 (LC); [2020] ZALCJHB 8, Tlhotlhamajie J bemoaned the increasingly-common practice whereby employers apply for an exemption from security at a belated stage, and labelled it as "*an affront to the very purpose of the provisions of ss 145(7) and (8)... and must come to an end*". The Court said that the application for exemption must be made at the time of launching the review application and not at some later stage in an urgent application.

[15] Even if the application is entertained on an urgent basis, there is no pending review application before this Court. The now repealed Practice Manual applies to the application. Clause 11.2.7 of the Practice Manual provided that:

‘A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive.’

[16] In terms of the above provision, the applicant was required to ensure that all the necessary papers (pleadings, notices and records) are filed within 12 months, and the registrar is informed in writing that the application is ready for allocation of a hearing. The 12 months from 2 September 2020, when the review application was filed, expired on 2 September 2021. It is common cause that the registrar was only informed on 14 June 2022 that the application is ready for allocation of a hearing. This was outside the 12 months period. Therefore, the applicant’s failure to act in accordance with clause 11.2.7 resulted in the application being archived and regarded as having lapsed.

[17] The consequence of the file having been archived is that the application is regarded as having been dismissed.⁵ To revive the application and bring the file out of the archives, the applicant must apply to the Court per clause 11.2.7 and show good cause.⁶ There is no such application before this Court. On the record before me, this Court has no jurisdiction over the review application. Accordingly, it would be incompetent for the Court to order the stay pending a non-existent review application.

⁵ See clause 16.2 of the Practice Manual (as repealed).

⁶ See also: *Samules v Old Mutual Bank* (2017) 38 ILJ 1790 (LAC); [2017] 7 BLLR 681 (LAC) at paras 4, 16 and 17.

[18] The review application has been archived and consequently dismissed. The applicant did not apply to retrieve the file from the archives or revive the application. Further, the application would still fail because of the unreasonable and unaccounted delay from October 2022 to 15 September 2025. Mr Atcheson submitted that after the application for allocation of a hearing date, it was not for the applicant to chase after the registrar to follow up on the allocation of a date. Well, three years of inaction is too long to ignore. When it is unexplained, it becomes unreasonable.

[19] The application fails on urgency, and it would have in any event failed on the merits. The employee seeks costs. The review application was launched in August 2020, more than five years ago. The applicant did not furnish security as required by section 145(7) and (8) of the LRA. I say "*as required*" because the applicant did not intend to comply with or implement the award pending the determination of the review application. The Court declines to entertain its application for exemption from furnishing security because the applicant waited five years to institute it. The order sought is incompetent because the review application is no longer pending before this Court. The applicant should have known that the review had lapsed. This urgent application is a non-starter. There is no reason why the employee should be out of pocket for opposing this misdirected and abuse of the court processes application.

[20] In the premises, the following order is made:

Order

1. The application is struck off the roll for lack of urgency, with costs.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr R. Atcheson

c/o DH Hinrichsen Attorneys

For the First Respondent: Mr C. Grove

c/o CGG Attorneys

LABOUR COURT