



IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: 2025-168718

Not Reportable

In the matter between:

THEMBA HOWARD NKABINDE AND OTHERS

First to Two Hundred
and Fortieth Applicants

and

ARBITRATOR L DLAMINI

First Respondent

SOUTH AFRICAN LOCAL
GOVERNMENT BARGAINING COUNCIL

Second Respondent

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Third Respondent

Heard: 14 October 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 October 2025

JUDGMENT

ALLEN-YAMAN J

Introduction

[1] The applicants applied for orders as follows,

- '1. *Dispensing with the ordinary rules relating to service and time limits, and that the matter be heard as urgent in terms of Rule 38 and condoning the Applicant's non-compliance with the time periods prescribed by the Rules of this Honourable Court.*
2. *Reviewing and setting aside the decision of the 1st Respondent of refusing to give a written ruling on the 11th of September 2025 under case number PMD072502 under the auspices of the Second Respondent.*
3. *An order in the following terms, in relation to the notice of motion under case number PMD072502:*
 - 3.1 *That the 2nd to the 143rd Respondents be joined as parties to these proceedings.*
 - 3.2 *That the 1st Respondent be ordered to provide the Applicants with the scoring sheets pertaining to the 2nd to the 143rd Respondents.*
 - 3.3 *That the 1st Respondent be ordered to provide the Applicants with the scoring sheets of the Applicants.*
 - 3.4 *That the 1st Respondent be ordered to provide the Applicants with the CVs of the 2nd to the 143rd Respondents.*
 - 3.5 *That the 1st Respondent be ordered to furnish the Applicants with the email addresses and/or work addresses of the 2nd to the 143rd Respondents.*
 - 3.6 *That the 1st Respondent be ordered to provide the Applicants with the police clearance certificates and vetting documents of the 2nd to the 143rd Respondents.*
 - 3.7 *That the 1st Respondent be ordered to provide the Applicants with a list of all employees appointed as warrant officers during the years 2024 and 2025.*
 - 3.8 *That the 1st Respondent be ordered to furnish the Applicants with the interview questions and answers of both the 2nd to 143rd Respondents and the Applicants.*
 - 3.9 *That the Applicants be compensated for the prejudice for the Unfair Labour Practice as a result of the 1st Respondent's conduct.*

4. *Alternatively, compelling the First Respondent, Commissioner Lindokuhle Dlamini, to issue a written ruling confirming his oral determinations made during the arbitration proceedings on 11 September 2025;*
5. *Further alternatively, remitting the matter between the Applicants and the 3rd Respondent back to the 2nd Respondent for determination de novo by a commissioner other than the 1st Respondent.*
6. *Directing that the costs of this application be paid by the First Respondent and any other Respondents who may oppose the application thereof.*
7. *Granting further and/or alternative relief as this Honourable Court may deem just and equitable in the circumstances.'*

[2] The application was opposed by the third respondent which, additionally to having addressed the merits, raised various preliminary issues, including that of lack of urgency.

[3] At the time when the application was launched the applicants' referral had been enrolled for arbitration on 30 and 31 October 2025 and their joinder / disclosure application had not yet been determined. It is difficult to understand on what basis they approached this court on an urgent basis rather than simply to have addressed the issue of the outstanding application at the outset of those proceedings. Be that as it may, as a full set of affidavits had been exchanged and the issues fully ventilated at the hearing of the matter, to strike the matter off the roll for lack of urgency would have resulted in no more than another court being required to deal with the application in due course. In the circumstances, this court will exercise its discretion and enrol the matter to be dealt with as an urgent application.

Background

[4] In the course of 2024 the third respondent invited suitably qualified individuals to apply for appointment to one of eighty two posts of Warrant Officer in its Metropolitan Police Department. The applicants in the present proceedings were amongst the number of those who applied for consideration, but who were ultimately unsuccessful. The failure on the part of the third respondent to have

appointed them to the advertised posts led to their having referred a dispute to the second respondent, which was allocated case number PDM072502.

- [5] By the end of August 2025 the dispute had been scheduled for arbitration proceedings on 11 September 2025, in anticipation of which the applicants had initiated an interlocutory application in which they sought the relief which is set out in paragraph 3 of the present application. By the time of the hearing on 11 September 2025, the third respondent had delivered a notice of opposition, but had delivered no answering affidavit. The applicant provided no record of the proceedings of 11 September 2025 to this court, which resulted in it being required to attempt to discern what may have transpired on that day from the affidavits currently before it, and the correspondence which had been attached.

- [6] On the applicant's version,

'During the proceedings, the Applicants' attorneys formally raised the above issues, and the Commissioner, after hearing both parties, indicated that a ruling on disclosure had already been issued in related matters arising from the same facts and that the Respondent is bound to comply with it.'

The Commissioner further acknowledged that the joinder of additional respondents was proper, given their direct and substantial interest in the dispute.

These pronouncements were made orally during the proceedings and were further confirmed in subsequent correspondence between the Applicants' attorneys and the Commissioner dated 11 and 12 September 2025 respectively.'

- [7] On the third respondent's version,

'As I stated earlier in this answering affidavit, the first respondent issued a verbal directive and confirmed it in writing on 12 September 2025. The powers of the first respondent to issue a directive have not been challenged, and the directive itself has not been challenged.'

The applicants should follow the directive.'

- [8] The first respondent's recordal of the events of the day was encapsulated in his email of 12 September 2025, in which he noted that he had issued a directive in terms of s138 of the LRA,

'After a thorough assessment of the issue off the record, I have directed the parties to engage each other and sort out the following:

- 1. That the issue of discovery (disclosure) of documents is now academic since there is a ruling issued pursuant to Rule 29 application by the law firm representing the applicants with respect to other applicants for the same issue. All that is required between the parties is either the Respondent voluntarily co-operate and avail the required documents or the ruling is enforced in terms of section 142A of the LRA.*
- 2. The parties were further directed to meet and deal with a pre-arbitration process and produce a signed minute which will clearly indicate the issues in dispute and those that are common cause. This will also include the number of witnesses from each side. Also finalise the issue of consolidation of the disputes since the legal representatives on this are also representing other clients who are also aggrieved about the same issue under consideration herein. Lastly, the parties are expected to prepare the bundles of documents in a collaborative manner in order to avoid duplication and the submission of irrelevant documents.'*

- [9] At the hearing of the matter, the third respondent drew this court's attention to the existence of a Ruling which had been issued by the second respondent pursuant to the initiation of the present application. In accordance with that Ruling issued, seven disputes referred to the second respondent by approximately 1000 applicants have been consolidated, and are jointly enrolled on 14, 17 and 18 November 2025. The referral under PMD072502 is included as one of the disputes so consolidated.

Analysis

- [10] It is clear that the first respondent did not issue a Ruling in respect of the applicants' application, written or otherwise, on 11 September 2025. It is evident from his email of 12 September 2025 that, relying on the provisions of s138(1) of the LRA, he issued a directive concerning the manner in which he required the parties to proceed in relation to the production of documents.

- [11] Albeit that the first respondent did not issue a Ruling on 11 September 2025 (or thereafter), in consideration of the first of the applicants' claims, the applicants did not establish an actual refusal on the part of the first respondent to do so in the future.
- [12] Insofar as the applicants' application related to the production of documents the directive made reference to an ancillary matter under PMD 042501. It is clear that the documentation sought under PMD 72502 far exceeds that which was to be produced under the Rulings issued under PMD 042501 on 14 July 2025 and 15 September 2025 respectively, and it is accordingly not clear on what basis the first respondent believed that the Rulings under PMD 042501 could have availed the applicants under PMD 72502. In the absence of the record of proceedings of 11 September 2025, this court can take that issue no further. Despite the comments made by first respondent regarding the Rulings under 042501, nothing before this court evinces that he regarded those Rulings as having been dispositive of the issue of the production of documents under PMD 72502; extraneous to those comments he directed the parties to follow a process in terms of which the parties themselves could potentially resolve the matter without the necessity of any further Ruling being required to be made.
- [13] The directive did not deal with the issue of the joinder of the further respondents at all.
- [14] In the absence of any obvious refusal on the part of the first respondent to have issued a Ruling, this court is unable to discern any decision taken by the first respondent which could be reviewed and set aside, and the relief sought in paragraph 2 of the applicants' Notice of Motion cannot be granted.
- [15] Under paragraph 3 of their Notice of Motion the applicants asked this court to issue as an Order the very Ruling which the first respondent was asked to make. The third respondent questioned the provision of the LRA upon which the applicants relied in having sought such relief. In review proceedings, in keeping with trite principles of administrative law, it is open to an applicant to ask this court in an appropriate case to substitute its decision for that of the

original decision maker where the original decision has been reviewed and set aside. As has been found, in the present matter, a decision has yet to be taken. The only circumstance of which this court is aware that this court would be entitled to take a decision in the absence of the decision maker having done so is when it is clear that the functionary does not intend to do so. In the present matter, nothing before this court evinces a refusal on the part of the first respondent to take a decision, and nor does the lapse of time evince that there is no likelihood of him doing so in the future. In the circumstances, the applicants have not established an entitlement to the relief so sought.

[16] Sought in the alternative under paragraph 4 of its Notice of Motion, the applicants ask this court to order the first respondent to reduce the verbal statements made by him on 11 September 2025 to writing. Save for certain remarks attributed to him in the course of the hearing on 11 September 2025 concerning joinder, his directions were reduced to writing on 12 September 2025 in his email to the parties.

[17] As to the final part of the applicants' application, nothing before this court suggests that the first respondent has conducted himself in a manner which evinces that it would be inappropriate for him, as the arbitrator appointed to the matter, to deal with the applicants' application and to make a determination in due course, if called upon to do so.

[18] It is accordingly the finding of this court that the applicants failed to make out a case for the relief sought by them, by reference to their own founding affidavit alone. Given that the application is to be dismissed on its merits, it is unnecessary for this court to make any findings concerning such preliminary points as have not otherwise been dealt with herein.

[19] Compounding the failure on the part of the applicants to have made out a case for any form of relief was the delivery of the consolidation Ruling on 13 October 2025. Had proper consideration been given to the effect thereof, it would have become apparent to the applicants that: (1) their own individual arbitration would not proceed on 30 and 31 October 2025, and (2) the litigants in those matters would, of necessity, have to meet to discuss the further conduct of the

consolidated proceedings. Such discussions (as envisaged by the first respondent albeit with reference to the applicants' referral alone) may well result in all the parties reaching agreement concerning both the issues of the joinder of the selected incumbents to the each of the various matters as respondents, as well as the production of documents. In the event that such an agreement does not materialise nothing prevents the applicants from requiring the arbitrator appointed thereto (whether the first respondent or another) to determine their as yet undetermined joinder / disclosure application.

Costs

[20] The third respondent asked for an order of costs against the applicants' attorney *de bonis propriis*. In so doing, it referred this court to the decision of this court in Sepheka v Du Point Pioneer (2019) 40 ILJ 613 (LC),

'Considering when costs orders de bonis propriis are justified I refer to Stainbank v SA Apartheid Museum at Freedom Park and Another where the Court said:

"Although the courts have the power to award costs from a legal practitioner's own pocket, costs will only be awarded on this basis where a practitioner has acted inappropriately in a reasonably egregious manner. However, there does not appear to be a set threshold where an exact standard of conduct will warrant this award of costs. Generally, it remains within judicial discretion. Conduct seen as unreasonable, wilfully disruptive or negligent may constitute conduct that may attract an order of costs de bonis propriis."

In Candy and Others v Coca Cola Fortune (Pty) Ltd the Court held:

"In terms of s162(3) of the LRA, 'the Labour Court may order costs against a party to the dispute or against any person who represented that party in those proceedings before the Court'. Clearly this would include the power to make a costs award de bonis propriis against a representative. In Moloi and Another v Euijen and Another, the court said that 'costs de bonis propriis are awarded against legal practitioners in cases which involve delinquencies such as dishonesty, wilfulness or negligence in a serious degree'. Factors for consideration referred to in Moloi were whether the representative acted dishonestly in his dealings with the court, whether he indulged in contemptuous

conduct, whether he perpetrated a fraud on the court, whether he misled or placed false evidence before the court and whether his conduct smacked of wilfulness or negligence to a serious degree. The court in Indwe Risk Services (Pty) Ltd v Van Zyl: In re Van Zyl v Indwe Risk Services (Pty) Ltd said that ‘where the court is of the view that there is a want of bona fides or where the representative had acted negligently or even unreasonably’ the court would consider awarding costs against such a representative.”¹

[21] Having considered the factors relevant to an order of costs *de bonis propriis*, this court is not of the view that such an order is warranted in the present matter. Whilst the application has been found not to have merit, it was not such that the applicants’ attorney’s conduct in having launched the application or at any time thereafter can be regarded as being deserving of censure.

[22] To the extent that the third respondent asked, when opposing the application, for an order of costs against the applicants themselves, it is clear that there is an ongoing employment relationship between the parties. Moreover, whilst the application itself will be dismissed, it has as its genesis the need on the part of the applicants to be provided with the documents which they require to enforce their rights in terms of the Labour Relations Act, which documents the third respondent has yet to provide to them.

[23] In the circumstances, this court will make no order as to costs.

Order

1. The ordinary rules relating to service and time limits are dispensed with and the matter is heard as an urgent application in terms of Rule 38.
2. The application is dismissed.
3. There is no order as to costs.

¹ At paragraphs 36 and 37

K Allen-Yaman

Judge of the Labour Court of South Africa

Appearances

Applicants:

Mr Malale of Malale Nthapeleng Attorneys

Third Respondent:

Mr Mndebele, instructed by MBA Incorporated