



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable
Case No: 2025-167342

In the matter between:

SINQOBILE EQUESTRAIN SECURITY SERVICES

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION AND
ARBITRATION**

First Respondent

COMMISSIONER ADRIAAN JAN VAN DER WALT

Second Respondent

AMCU OBO MEMBERS

and

Not Reportable
Case No: 2025-

167256

SINQOBILE EQUESTRAIN SECURITY SERVICES

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION AND
ARBITRATION**

First Respondent

COMMISSIONER MQONDISI NODONGWE

Second Respondent

AMCU OBO MABHODLA AND 66 OTHERS

Third Respondent

Heard: 8 October 2025

Delivered: 20 October 2025

Summary: Two separate urgent applications filed simultaneously, involving the same parties, based on papers that essentially make the same allegations and defences, for the stay of arbitration awards (Part A), pending the outcome of applications to review and set aside the arbitration awards (Part B).

JUDGMENT

GANDIDZE, J

Introduction

[1] The applicant filed two separate urgent applications simultaneously, case number 2025-167256 (Urgent 1), and case number 2025-167342 (Urgent 2). In both applications, the applicant sought orders:

- 1.1 Authorising the service of the application on LDA Inc. Attorneys, the third respondent's attorneys of record in terms of Rule 9(2)(c) of the Rules of Court;
- 1.2 Staying the enforcement of the arbitration awards issued by the second respondents pending the outcome of Part B of the applications:
 - 1.2.1 Award in case number ECGQ5552-23 dated 16 February 2024 and certified on 24 March 2025.
 - 1.2.2 Award in case number ECGQ466-24 dated 16 May 2024 and certified on 8 September 2025.¹
- 1.3 Costs against any respondent who opposes the applications.
- 1.4 Further and/or alternative relief.

¹ The applicant erroneously claims that the award was certified in March 2025.

- [2] The applications were scheduled for hearing on 23 September 2025, during court recess. AMCU's legal representatives, LDA Inc. Attorneys, attended the hearing after receiving a link to participate in an urgent court matter. They argued, among other points, that there was no proper service of the applications and that they had not been invited to Caselines to access the pleadings online. Lagrange J issued an order postponing both applications to 8 October 2025. The applicants were ordered to effect proper service of the applications, and the parties were to file further papers on specified dates. Additionally, AMCU was ordered not to take steps to enforce the awards pending the finalisation of the applications.
- [3] When the matter served before me on 8 October 2025, AMCU had filed answering affidavits in both cases. The applicant did not file replying affidavits, and in oral argument, Mr Vele confirmed that this was the approach that the applicant preferred to take.
- [4] At the hearing of the matter, only the pleadings for Urgent 2 were on Caselines, and not those for Urgent 1. Mr Cook, representing AMCU, clarified that the issues in both applications were the same, with the only difference being that each application dealt with a different arbitration award. He undertook that his instructing attorney would upload the papers related to Urgent 1 to Caselines and urged the Court to hear oral argument in both applications. Although not ideal, given that the matter had already been postponed on 23 September 2025, I entertained the request in the interests of the swift resolution of the disputes. I reserved judgment to allow the documents for Urgent 1 to be uploaded to Caselines, which was done immediately after oral argument. The Court is grateful to LDA Inc. Attorneys for their assistance, as the responsibility to ensure that the papers for both urgent applications were uploaded to Caselines lay with the applicant, the *dominus litis*.

Service of the application on LDA Inc. Attorneys

- [5] Lagrange J's order addressed the issue that the application had not been properly served. When the matter was heard on 8 October 2025, no problems

were raised regarding service, except that LDA Inc. Attorneys still could not access all the documents on Caselines. When the applicant was approached about the challenge, it had been obstructive. No replying affidavits were filed disputing that version. This will be taken into account when deciding the costs order to be granted.

[6] That the application was served on LDA Inc. Attorneys instead of on AMCU does not appear to be an issue. AMCU correctly states that the founding affidavit in Urgent 2 cites LDA Inc. Attorneys as the third respondent, rather than AMCU on behalf of members. However, the heading of the application correctly records the third respondent as AMCU on behalf of members.

[7] Before considering the merits of the application to stay the enforcement of the arbitration awards, I address the preliminary points raised by AMCU.

AMCU's preliminary points

Applications filed in the wrong Court

[8] The arbitration awards subject to the urgent applications were issued and certified by the Gqeberha CCMA. The applicant lodged both urgent applications with the Cape Town Labour Court. This is contrary to Rule 3(1) of the Rules Regulating the Conduct of the Proceedings of the Labour Court, 2024², which states that proceedings must be initiated at the seat of the court nearest the place where the dispute, which is the subject matter of the proceedings, arose, unless the Judge President directs otherwise. The disputes arose in Gqeberha, where they were arbitrated. The applicant has not claimed that the Judge President issued a directive permitting it to file the urgent applications in this Court.

[9] However, dismissing the applications on this point without considering their merits might give the applicant a loophole to submit new applications to the Gqeberha Labour Court. Judicial resources are better conserved if this Court decides the application without setting a precedent that applications filed at the wrong seat contrary to the rules will always be entertained by the Court.

² Government Notice 4775B of 2024.

The applicant is forum shopping and abusing Court processes

- [10] The award in case number ECGQ5552-23 was issued in February 2024, and the award in case number ECGQ466-24 was issued in May 2024.
- [11] According to AMCU, the applicant applied to the Commission for Conciliation, Mediation and Arbitration (CCMA) to rescind the award in ECGQ5552-23, which was dismissed. The version remains undisputed.
- [12] AMCU also alleges that in August 2024, the applicant filed review applications challenging both arbitration awards in the Johannesburg Labour Court. The award in case number ECGQ5552-23 was sought to be reviewed under case number JR1347/24, and the award in case number ECGQ446-23 was sought to be reviewed under case number JR1374/24. AMCU further alleges that those review applications are deemed withdrawn because the applicant did not file the record within the prescribed time periods and did not seek AMCU's consent to extend the filing deadline. The applicant did not dispute this version, which is also accepted.
- [13] Based on the above facts, the applicant's conduct in filing the current applications in this Court, with Part B being fresh review applications, instead of addressing its failures regarding the review applications pending in the Johannesburg Labour Court, amounts to forum shopping and, worse, an abuse of the Court's processes.
- [14] AMCU also alleged that before filing the current applications, in July 2025, the applicant filed a review application in the Cape Town Labour Court under case number 2025-167256, seeking to challenge the arbitration award in ECGQ5552-23.
- [15] AMCU pleaded that when the Sheriff visited the applicant's premises in July 2025 to seize the applicant's property to satisfy the award in case number ECGQ5552-23, the Sheriff was provided a copy of the review application filed in the Cape Town Labour Court, which sought to challenge the award. This application was never served on AMCU or LDA Inc. Attorneys.

- [16] AMCU also pleaded that when its legal representatives learnt of the review application through the Sheriff, they opposed it on 26 August 2025, out of caution. They also raised concerns about the non-service of the application, and noted that the relevant papers had not been uploaded to Caselines. Shabangu, the Human Resources representative at the applicant, maintained that the Sheriff had served the review application correctly and stated that LDA Inc. Attorneys would be invited to Caselines once the review record had been uploaded. At the time of deposing the answering affidavits in the urgent applications, no further communication had been received from the applicant regarding the July review application filed in this Court.
- [17] In September 2025, the applicant filed the current applications, which are divided into two parts. Part A seeks a stay of the enforcement of the arbitration awards, pending the outcome of Part B of those applications. Part B seeks a review of the arbitration awards. This effectively means that the applications before the Court amount to a third review application concerning the award in case number ECGQ5552-23, and a second review application concerning the award in case number ECGQ446-23. This is impermissible. A party cannot submit a review application in one Labour Court, allow that review application to be deemed withdrawn, and then, to circumvent that legal obstacle, lodge another review application in a different Court. Doing so constitutes abuse of Court processes and a waste of judicial resources and warrants censure. To make matters worse, the applications were set down for hearing during the Court recess. This is totally unacceptable and an extreme abuse of Court processes. A copy of this judgment must be provided to the Registrars of all Labour Courts to prevent ongoing abuse of Court process by the applicant and to ensure that no further review applications regarding the same arbitration awards are accepted.
- [18] That should be the end of the current applications, but below I briefly address the requirements for urgency and interim relief.

Miscellaneous points

- [19] Ms. Tinyiko Shabangu (Shabangu), an employee of the applicant, deposed to the founding affidavits in both applications. Her authority to depose to the affidavits was challenged, and the issue could have been clarified in a replying affidavit. No replying affidavits were filed.
- [20] Shabangu also states in the founding affidavit that legal submissions are made based on the advice of the applicant. It is not specified who within the applicant provided the legal advice that Shabangu refers to. Shabangu, from HR, advised herself on the matter. It is difficult to determine whether adequate consideration of the pleadings and legal principles was given before the current applications were filed. This is another relevant factor in determining a costs order to be granted.

Urgency

- [21] An applicant seeking the Court's indulgence to be heard urgently must, in terms of rule 38, set out (a) the reasons for the urgency and why urgent relief is necessary; (b) the reasons why the requirements of the rules were not complied with, if applicable; and (c) if a party applies in a shorter period than that provided for in section 68(2) of the LRA, the reasons why a shorter notice period should be permitted.
- [22] The applicant submits that the matter is urgent due to an imminent risk of execution following the certification of the arbitration awards and the possibility that the Sheriff may attach the assets at any moment. The submission is further that the applicant acted promptly and diligently upon receiving notice of the certification and enforcement steps and initiated the urgent applications.
- [23] The current applications were filed around mid-September 2025.
- [24] The arbitration award in case number ECGQ5552-23 was certified in March 2025, and according to AMCU, the Sheriff made an attachment in May 2025. Attempts to remove the applicant's property in satisfaction of the writ of

execution have been thwarted because the applicant refuses the Sheriff entry onto its premises. Since the award was certified in March 2025, and the Sheriff attached the applicant's property in May 2025, it cannot be said that an urgent application launched in September 2025, and during court recess, to stay that execution was brought without delay. Any urgency has been self-created.

[25] AMCU admits that the award in case number ECGQ466-24 was certified in September 2025. AMCU also clarified that it had not instructed the Sheriff to execute that award. Even if I accept that the execution of the award is likely to follow certification, the applicant's own pleaded case conflicts with the facts. It alleged that the award was certified in March 2024, when in fact the award was certified in September 2025.

[26] On the facts, the timing of when the awards were certified becomes irrelevant because the review applications challenging those awards were lodged in the Johannesburg Labour Court in 2024, and those applications are now considered withdrawn. It is not permissible for the applicant, as it has done, to abandon those review applications and approach a different Court with new review applications, along with applications to stay execution. As I have found, that conduct constitutes an abuse of Court processes.

[27] Ordinarily, matters that are found not to be urgent are struck off the roll, but in this case, in the interests of finality, the Court will decide the matter on its merits too.

The law in applications to stay execution

[28] I am required to determine whether the applicant has satisfied the requirements for interim relief, namely, (a) a *prima facie* right, (b) irreparable harm, (c) the balance of convenience, and (d) the absence of an alternative remedy.

[29] These criteria should be considered within the context that the Court has broad discretion in applications to stay, which must be exercised judicially.

Ultimately, the question is whether a real and substantial injustice will occur if the stay is not granted.³

[30] In *Chillibush Communications (Pty) Ltd v Gericke & others*⁴ the Court stated thus:

[18] ... The most important consideration in the exercise of the discretion is whether there is a pending underlying cause of action arising from the arbitration award.'

The arbitration awards

[31] The arbitration award in ECGQ5552-23 concerns claims for premium allowances, made against the applicant, by several AMCU members, who are either employees or former employees of the applicant, under section 73A of the Basic Conditions of Employment Act⁵, (BCEA). The claims were upheld in default, as the applicant was not in attendance. This is the primary reason for seeking to review and set aside the award.

[32] The arbitration award in case number ECGQ466-24 upheld the claims for bonus and accrued leave. The applicant disputes the way the amounts awarded to the individual employees were calculated, states that its key witness on the leave claims was not available on the day of the arbitration proceedings, which limited the applicant's ability to present a complete defence to the monetary claims, and that the CCMA lacked the jurisdiction to enforce some of those claims.

[33] Only Part A of the applications is being considered. Despite this, Mr Vele dedicated most of his oral submissions to criticising the awards, which arguments might have been relevant for the determination of Part B of the applications.

³ See: *Gois t/a Shakespeare's Pub v Van Zyl & Others* (2003) 24 ILJ 2302 (LC); 2011 (1) SA 148 (LC), *Van Rensburg and Another NNO v Naidoo and Others NNO*; *Naidoo and Others NNO v Van Rensburg NO and Others* 2011 (4) SA 149 (SCA); [2010] 4 All SA at para 51 and 52.

⁴ (2010) 31 ILJ 1350 (LC).

⁵ Act 75 of 1997.

Prima facie right

- [34] The applicant asserts that it has the right to challenge the arbitration awards by submitting review applications, as it has done.
- [35] The review applications were filed in August 2024, and the applicant permitted those applications to be deemed withdrawn. A review application that is deemed withdrawn remains withdrawn unless an application to reinstate it is filed and successfully granted. Instead of applying to reinstate the withdrawn review applications, the applicant attempted to forum shop and abuse the Court's processes by filing new review applications in a different Labour Court. It cannot do so.
- [36] The fact is that when the current applications were filed, there were no live review applications before the Court, hence the applicant's attempt to include a Part B to the applications seeking to review the awards. It cannot do so. If there are no review applications before the Court, then there is no pending underlying cause of action. The applicant has failed to demonstrate a *prima facie* right to have the awards stayed.

Irreparable harm

- [37] The applicant submitted that if the enforcement of the awards is not stayed, the pending review applications will become academic and obstruct the applicant's legal remedies. It further submitted that if the Sheriff proceeds with the execution, it will interfere with its security operations, cause reputational damage, and lead to financial prejudice that cannot be reversed even if the review applications succeed.
- [38] There are no review applications properly before the Court, so there can be no question of review applications being rendered academic or succeeding at some point in future.
- [39] No doubt enforcing arbitration awards will harm the applicant if its assets are attached. However, this is a consequence of having an arbitration award

issued against a party and not following through with a process to challenge an award with which a party disagrees.

- [40] The applicant also exaggerated the total amount owed for one of the awards, claiming it exceeds a million rand. AMCU's assertion that only approximately R300 000 is owed was not disputed. The applicant inflated the amount owed to gain the Court's sympathy, another example of an abuse of the Court's processes.

Balance of convenience

- [41] The applicant submits that the urgent applications are not meant to delay justice but to prevent the premature enforcement of arbitration awards. It also argues that the harm it would suffer if the arbitration awards are enforced significantly outweighs the harm caused by delayed payments to the affected individuals.
- [42] Thus far, the applicant has successfully delayed the execution process concerning the award in case number ECGQ552-23 since March 2025 by obstructing the Sheriff's attempts to remove its property for sale at auction. It has also delayed the execution process for both awards by submitting the current applications.
- [43] By now, it should be clear to the applicant that there is no longer an obstacle to enforcing the arbitration awards. Such enforcement is no longer premature. The awards were issued in 2024, yet more than a year later, the affected individuals have still not received the sums owed to them.

No alternative remedy

- [44] The applicant submits that if the execution process continues, it will be forced to liquidate assets or cease operations, which would jeopardise its ability to continue providing services and retain staff. It also states that once execution takes place, the harm cannot be reversed through monetary compensation, given the size of the award and the operational impact.

[45] The applicant could have pursued to finality the review applications it filed in the Johannesburg Labour Court. It abandoned those review applications, and they are deemed withdrawn. No explanation is given for this state of affairs. It has an alternative remedy of pursuing the review applications which are pending in the Johannesburg Labour Court.

Conclusion

[46] The applicant has failed to make out a case for the relief it seeks. The application was hopeless, an abuse of the Court's processes and a waste of the Court's and AMCU's resources, and an insult to the affected employees who are owed monies, which I am sure will alleviate their financial difficulties. This is an application that should never have come before the Court.

[47] The requirements of law and fairness dictate that the applicant should be ordered to pay AMCU's costs, for all the reasons mentioned above, which need not be repeated.

[48] In the premise, I make the following order:

Order

1. The matter is not urgent.
2. The applications to stay the execution of the arbitration awards are dismissed.
3. The applicant is ordered to pay AMCU's costs.

T Gandidze

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Mr Vele, an employee of the applicant

For the Respondent: Mr Cook

Instructed by: LDA Inc. Attorneys

LABOUR COURT