



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR268/22

In the matter between:

WORKFORCE STAFFING

First Applicant

DABUR SA (PTY) LTD

Second Applicant

and

TIYANI MAKHUBELE N.O.

First Respondent

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

Second Respondent

**GIWUSA on behalf of ZONDO, MAKE AND 28
OTHERS**

Third Respondent

Heard: 20 August 2025

Delivered: 13 November 2025

Summary: The Court dismissed a lapsed review application under Rule 11, confirming its jurisdiction to grant finality over withdrawn reviews based on the City of Tshwane judgment, but made no order as to costs.

JUDGMENT

COOK, AJIntroduction

- [1] This matter is an opposed application under Rule 11 of the old Labour Court Rules¹.
- [2] The First and Second Applicants (the Applicants) seek that the Third Respondent's (GIWUSA) review application under case number JR268/22 be dismissed with costs.

Background

- [3] On 11 February 2022, GIWUSA (General Industries Workers Union of South Africa), on behalf of the employees, served a review application, together with a condonation application for the late filing of the review.
- [4] In the review application, GIWUSA sought to review and set aside the arbitration award issued under case number JAEK6479-20. GIWUSA sought that the commissioner's ruling be substituted with one that the 29 members' dismissals were unfair and that they should be retrospectively reinstated with back-pay, without loss of benefits accrued during the period of their unfair dismissal and ordering costs against any party that opposed the application.
- [5] The Applicants contended that:

- 5.1 GIWUSA failed to comply with clause 11.2.2 of the Practice Manual², which states that:

'For the purpose of Rule 7A(6), records must be filed within 60 days of the date on which the applicant is advised by the registrar that the

¹ GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.

² Practice Manual of the Labour Court of South Africa, effective 2 April 2013, repealed with effect from July 2024.

record has been received.’³

5.2 GIWUSA was supposed to file a transcribed record of the proceedings at the Labour Court on or before 25 May 2022.

5.3 GIWUSA failed to comply with 11.2.2 of the Practice Manual to file the record within the prescribed time. GIWUSA did not request the Applicants to consent to an extension of time, nor did they approach the Judge President in chambers for an extension of time.

[6] In the opposing answering affidavit, it was submitted that:

6.1 The review application had not lapsed because the registrar did not send a notice to uplift the record to GIWUSA, and GIWUSA only uplifted the record on 7 June 2022 after follow-ups.

6.2 Accordingly, the application was premature.

[7] The Applicants refuted this, stating that the upliftment date of 7 June 2022 contradicted the file and record request form, which indicated that Joshua Hlungweni uplifted the record from CWAO on 23 February 2022.

Analysis

[8] In oral submissions, GIWUSA’s representative stated that he would deviate from the heads and address the Court solely on the issue of costs.

[9] In support of this limited focus on costs, it was submitted that GIWUSA never sought to have the matter reinstated and, as per clause 11.2.3, the review was automatically deemed to have been withdrawn. As a result, it was submitted that the Court does not have the requisite jurisdiction to issue a declaratory order to the effect that the matter is withdrawn because it has already been withdrawn. It was submitted that once a review application is

³ At paragraph 23 of the founding affidavit, page 9 of the indexed pleadings.

withdrawn, it cannot be entertained by the court.⁴ It was further submitted that, since there was no dispute before the Court, Rule 11 was unnecessary and, as a result, no costs should be awarded.

[10] However, the Labour Appeal Court (LAC) in the recent judgment of *City of Tshwane Metropolitan Municipality v South African Local Government Bargaining Council and Others*⁵ (the *City of Tshwane Metropolitan Municipality* case) directly addressed “the much-ruminated issue of whether the Labour Court has jurisdiction to entertain an application for the dismissal of a deemed withdrawn or archived review application”.⁶

[11] The LAC concluded:

[23] There is, however, nothing in *Macsteel* and *E Tradex* that impedes the Labour Court from entertaining a Rule 11 application to dismiss a lapsed review application. A lapsed review application is not dead as a doornail; hence, it can be revived on good cause, as correctly found in *Aspen*. Therefore, a respondent party that seeks, *inter alia*, irrefutable finality for purposes of execution or due to inordinate delay can avail itself of the Rule 11 application. To the extent that the Labour Court has jurisdiction to entertain an applicant for the reinstatement of the lapsed review application, that power extends, by implication, to the Rule 11 dismissal application.⁷ However, caution must be exercised to prevent the proliferation of litigation and to avoid negating the paramount statutory mandate for a speedy and cost-effective resolution of labour disputes.

[24] In the present case, no reinstatement application served before the Labour Court. Before us, counsel for the City of Tshwane confirmed that there was no intention to seek reinstatement of the lapsed review application. The Labour Court cannot, therefore, be faulted for upholding the Rule 11 dismissal application. It was, in my view, not

⁴ *SG Bulk, a Division of Supergroup (Pty) Limited v Khumalo and Another (SG Bulk)* (J63/20) (2021) ZALCJHB 416, 13 May 2021 at para 9.

⁵ (JR616/19) [2025] ZALCJHB 517 (5 November 2025).

⁶ *SG Bulk* at para 1.

⁷ See *Greater Taung Local Municipality v SA Local Government Bargaining Council & others* (2023) 44 ILJ 761 (LAC) at para 16.

only expedient but also fair in the circumstances.’⁸

[12] In light of GIWUSA's concession, it is common cause that the review has been deemed to have been withdrawn. Relying on the *City of Tshwane Metropolitan Municipality* judgment, the Court finds that nothing impedes this Court from entertaining the Rule 11.

[13] A lapsed review application is not truly 'dead as a doornail'. To achieve irrefutable finality in this matter and prevent any attempts to raise the review from the 'dead', the Court, in the interests of expeditious resolution of the dispute and fairness, finds that the Applicants have established their case for the declaratory relief sought.

Costs

[14] The Applicants did not seek costs against the individual employees, but rather against their trade union and its representative. Specifically, the Applicant sought costs *de bonis propriis* to be granted jointly and severally against GIWUSA and CWAOW (Casual Workers Advice Office).

[15] The Court is not satisfied that this is an exceptional case that warrants costs *de bonis propriis*. CWAOW withdrew as attorneys of record on 10 August 2022. CWAOW, as the representatives of the GIWUSA, did not act in a manner that constitutes a material departure from the responsibilities of their office.

[16] In *Zungu v Premier of the Province of KwaZulu-Natal and Others*⁹, the Constitutional Court held:

‘The rule of practice that costs follow the result does not apply in Labour Court matters.’

[17] The Labour Appeal Court in *Members of the Executive Council v Finance*

⁸ See *Groom v Daimler Fleet Management (Pty) Ltd* (2021) 42 ILJ 2179 (LAC) at para 45.

⁹ (2018) 39 ILJ (CC).

*KwaZulu-Natal and Another v Dorkin N.O. and Another*¹⁰ held:

[19] The rule of practice that costs follow the result does not govern the making of orders of costs in this Court. The relevant statutory provision is to the effect that orders of costs in this Court are to be made in accordance with the requirements of the law and fairness.'

[18] GIWUSA's representative ultimately abandoned the other grounds of opposition and relied solely on a crisp issue of law, albeit belatedly. In doing so, it cannot be said that the representative did not act *bona fide*, negligently or even unreasonably.

[19] The Applicants themselves acknowledged that there are several conflicting judgments regarding Rule 11 applications to dismiss a matter and that each case is determined on its own merits.

[20] In the heads filed on behalf of CWAO, it was submitted:

The Third Respondent's attorneys, CWAO are a non-profit organisation solely relying on donor funding. The organisation does not even charge workers' disbursements for doing their cases as all resources no matter how trained are directed at protecting the rights of workers, therefore, it is very strange that the Applicants would want to claim costs de bonis propriis against purely altruistic organisations without substantiation.'

[21] A costs order against the trade union or its representative in these circumstances would likely have a chilling effect, potentially deterring them from advancing more meritorious cases in the future.

[22] In the circumstances, law and fairness would be served by making no order as to costs.

[23] Consequently, the Court makes the following order:

¹⁰ (2008) 29 ILJ 1707 (LAC).

Order

1. The First Respondent's review application under case number JR268/22 is dismissed.
2. There is no order as to costs.



A.L. Cook

Acting Judge of the Labour Court of South Africa

LABOUR COURT

Appearances

For the Applicant: N Rambachan-Naidoo

Instructed by: Hunts (inc. Borkums) Attorneys

For the Third Respondent: K. Poriazis

Instructed by: GIWUSA

LABOUR COURT