THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case No: JR38/2024

In the matter between:

DIHLABENG LOCAL MUNICIPALITY **Applicant**

and

THE SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL (SALGBC) **First Respondent**

THE SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATON (SALGA) **Second Respondent**

INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION (IMATU) **Third Respondent**

SOUTH AFRICAN MUNICIPAL WORKERS UNION (SAMWU) **Fourth Respondent**

Heard: **20 August 2025**

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date for handing down judgment is deemed to be 12 November 2025.

JUDGMENT

DE KOCK, AJ

Introduction

[1] This matter comes before this Court as an application to declare clause 18.1 of the collective agreement[1] (2023 agreement) unlawful. The application is brought in terms of the provisions of section 158(1)(a)(iv) and/or section 158(1)(g) and/or section 158(1)(h) of the Labour Relations Act[2] (LRA) and on the basis that clause 18.1 is inconsistent with (i) the applicable provisions of the Local Government: Municipal Systems Act[3] (MSA) and (ii) the applicant's Employment Practice Policy (EPP) and is thus unlawful. The application is further brought in terms of the provisions of the Promotion of Administrative Justice Act[4] (PAJA), or on the principle of legality.

Collective Agreement

[2] The applicant seeks clause 18.1 of the 2023 collective agreement to be declared unlawful. Clause 18.1 of the 2023 agreement reads as follows:

> "18. APPOINTMENTS AND PROMOTIONS
>
> 18.1 All appointments into positions that are by their very nature permanent positions below Sections 54A and 56 shall be on permanent basis except

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[1] Collective Agreement for the Free State Division of the SALGB 14 July 2023.
[2] Act 66 of 1995, as amended.
[3] Act 32 of 2000.
[4] Act 3 of 2002.

for the positions that are linked to the term of political office in terms of S24(1) of the Municipal Structures Act 117 of 1998."

[3] The Court, however, notes that the parties also concluded a collective agreement in 2016[5] (2016 agreement), which contains a similar clause 18.1, *albeit* the wording slightly differs from the 2023 agreement:

"18. APPOINTMENTS/PROMOTIONS

18.1 All appointments into positions that are by their very nature permanent positions below Sections 54A and 56 shall be on permanent basis except for the positions that are linked to the term of office of the political office bearers, sections 54A and 56 managers."

[4] The relevance of the 2016 agreement versus the 2023 agreement will be addressed below in relation to the delay in bringing the application for a declarator to this Court. The two clauses are essentially the same insofar as it requires all appointments into positions that are by their very nature permanent positions shall be on a permanent basis.

<u>Nature of the application</u>

[5] The applicant brings this application in terms of section 158(1)(a)(iv), section 158(1)(g), and section 158(1)((h) of the LRA. Section 158(1)(a)(iv) provides that the Labour Court may make a declaratory order. Section 158(1)(g) provides that the Labour Court may "*review any decision taken or any act performed by the State in its capacity as employer, on such grounds as are permissible in law*". Section 158(1)(h) provides that the Labour Court may review any decision taken or any act performed by the State in its capacity as employer, on grounds permissible in law.

[6] This Court is satisfied that section 158(1)(a)(iv) read with section 158(1)(g) is applicable. The conclusion of a collective agreement under the auspices of the SALGBC is a function provided for in terms of section 23 read with section 31 of

[5] Collective Agreement for the Free State Division of the SALGB 27 October 2016.

the LRA, and a party has the right to seek review of the provision contained in the collective agreement on the grounds of legality.

[7] This Court also considers the application in terms of section 158(1)(h), on the basis that SALGA, representing organs of State, concluded a collective agreement with IMATU and SAMWU as an act performed by the State in its capacity as employer.

PAJA review or principle of legality

[8] This Court must determine whether the application is governed by PAJA or the principle of legality. The applicant brought the application in terms of PAJA, or alternatively, on the principle of legality.

[9] The starting point in determining is the definition of “administrative action” in section 1 of PAJA. Section 1 reads as follows:

> “1. Definitions
>
> In this Act, unless the context indicates otherwise—"administrative action" means any decision taken, or any failure to take a decision, by—
>
> (a) an organ of state, when—
> (i) exercising a power in terms of the Constitution or a provincial constitution; or
> (ii) exercising a public power or performing a public function in terms of any legislation; or
>
> (b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision,
>
> which adversely affects the rights of any person and which has a direct, external legal effect, but does not include…”

[10] The exclusions in section 1(b)(aa) to (ii) are not relevant and have not been included above. This Court already found above that SALGA, in concluding the agreement, performed an act of the State as an employer. The mere fact that

SALGA performed an act of the State, as an employer, does not automatically lead to the conclusion that the act so performed constitutes "administrative action" in terms of PAJA. The conclusion of a collective agreement is based on agreement between parties in a bargaining council founded on an agreement under the LRA. Although SALGA represented organs of State, the legal effect, binding consequences, and enforceability of such an agreement are subject to the LRA, not PAJA.

[11] The Constitutional Court in *Association of Mineworkers and Construction Union and Others v Chamber of Mines of South Africa and Others*[6] (*AMCU*) stated:

> "[83] That their exercise of power entailed public law consequences does not mean that it was "administrative action" as defined in PAJA. This is because the decision to conclude an agreement that the statute, upon fulfilment of the conditions it specified, extends to non-parties, was not "of an administrative nature". The parties were not administering policy or statutory powers; they were agreeing amongst themselves. Their agreement had wide-ranging public consequences. But in concluding it they did not act administratively. Their conduct was public, but not administrative, in nature." (footnotes omitted).

[12] Based on *AMCU*, this Court finds that concluding the 2023 agreement was not "*of an administrative nature*" and therefore PAJA does not apply. The application must be determined on the principle of legality, which is sufficiently catered for in an application brought under section 158(1)(a)(iv) read with section 158(1)(g) and section 158(1)(h) of the LRA

[13] The empowering provision for collective agreements is the LRA. The applicant has conceded that the collective agreement was concluded in terms of the LRA

[6] [2017] 38 ILJ 831 (CC); 2017 (3) SA 242 (CC); 2017 (6) BCLR 700 (CC); [2017] 7 BLLR 641 (CC) at paras 69-70.

and the relevant legislation governing collective agreements is labour legislation and not PAJA.

Procedural irregularity regarding notice or motion

[14] The applicant delivered a notice of motion seeking the following relief:

14.1 That the employment of 265 temporary employees be declared illegal, alternatively *void ab origine*.

14.2 That the applicant be exempted from compliance with the provision of clause 18.1 of the 2023 agreement.

14.3 That clause 18.1 of the 2023 agreement is illegal or *void ab origine* and must be set aside in respect of its applicability to the applicant.

[15] The founding affidavit contains averments directly supporting this notice of motion. The applicant, in paragraph 6.3 of the founding affidavit, states that the application is primarily based upon employment aspects since the applicant's position is that of an employer and the position of several employees will be relevant in the determination of this issue. This averment is directly linked to the relief sought in the notice of motion in respect of the 265 employees.

[16] The applicant, in paragraph 20, sets out the employees appointed on fixed term contracts, or temporarily appointed in positions of temporary workers, learners, graduates, and interns. The total number of employees so appointed is stated to be 265 employees. The employment of these employees, with the employees' details not being provided as to when they were appointed, how long they have been appointed and what their current status is, is blamed on the insistence or interference by an erstwhile Mayor, which was done without compliance with the applicant's EPP (Employment Practice Policy and Recruitment Selection and Appointment Policy).

[17] In paragraphs 30 to 34, the applicant refers to a compliance order that was issued on 14 June 2023 by the Regional Secretary, as well as to an arbitration

award issued 30 August 2023 following the compliance order not having been complied with. In paragraph 34 the applicant refers specifically to the 265 temporary employees who are in a similar position to the six employees that were referred to in the compliance order and the arbitration award.

[18] In paragraph 35 the applicant seeks an order declaring the decisions that led to the employment of such employees and/or their retention in the applicant's employment structures to be declared unlawful and to be set aside. Again, this refers specifically to the relief sought in the Notice of Motion with regard the appointments of the 265 employees. The applicant does not seek in this paragraph for clause 18.1 to be declared unlawful but that the decisions that led to the employment of the 265 employees and/or their retention must be declared unlawful.

[19] The applicant continues in paragraphs 36 and 37 to state that the Regional Secretary was not empowered to issue the compliance order and that both the compliance order and the award are null and void. The applicant's contentions in this regard forms the subject matter of another application referred by the applicant to this Court. If the intention of the applicant was to declare clause 18.1 unlawful in this current application before this Court, it is unclear why the applicant referred to the compliance order and the arbitration award other than to find that these averments are made in support of the relief sought in the Notice of Motion.

[20] The applicant, at paragraph 53, states that the arbitration award in respect of the five members of IMATU was taken on review to the Labour Court in terms of section 145(1) of the LRA. No details of this application were provided.

[21] It is, however, important to note that the applicant states in clear terms that this application focusses on the plight of the applicant and the 265 other temporary employees. In paragraph 54, the applicant states that their position is that they simply cannot appoint 265 employees to permanent positions due to budgetary constraints which will hamper the applicant at the time of deposing the founding

affidavit. Clearly, these averments are directly relevant to the relief sought in the Notice of Motion regarding the 265 employees.

[22] The applicant, at paragraph 57.7 of the founding affidavit, states that the temporary employees are either occupying posts which exist on the applicant's staff establishment for which posts no job description had been approved yet, or simply occupy positions which do not exist on the applicant's staff establishment. The Court notes that no details are given as to which of these temporary employees occupies posts on the staff establishment with no job description, and which employees occupy position that do not exist on the staff establishment. This Court is therefore asked to simply accept the bare allegation with no supporting proof.

[23] In paragraph 57.8 the applicant makes a bare allegation that some of the temporary employees might not be appointable for various reasons, without identifying what those reasons are. In paragraph 58 the applicant states that the appointment of these temporary employees into permanent positions would be in contravention of the MSA and the applicant's EPP and will thus be unlawful.

[24] In paragraph 66 the applicant seeks to have the appointment of the 265 employees declared as unlawful and be set aside. This is despite the applicant's failure to join these 265 employees to this application and without providing this Court with details as to their initial appointments and their current employment status. In paragraph 68, the applicant seeks to have the appointment order of the commissioner to be set aside. This is despite the applicant already having instituted separate legal proceedings regarding the compliance order and the arbitration award. In paragraph 78 the applicants states that the impact on the budget of the applicant, should clause 18.1 not be set aside for the applicant, would be insurmountable for the applicant.

[25] The above are just some averments made in the founding affidavit in support of the Notice of Motion. IMATU and SAMWU were required to file opposing affidavits in response to the relief sought in the Notice of Motion and the founding

affidavit, which they did. At no stage before the opposing affidavits were delivered did the applicant indicate that the wrong Notice of Motion was used and there was no attempt made to seek leave of this Court, in the absence of reaching an agreement with IMATU and SAMWU, to amend the Notice of Motion.

[26] IMATU, in their opposing affidavit, raised various points *in limine*. IMATU refers in specific to prayer 1 of the Notice of Motion, which seeks to declare the employment of 265 unidentified employees to be illegal, alternatively *void ab origine*. IMATU states that these 265 employees are not identified anywhere, nor are they cited as respondents. In respect of prayer 2, wherein the applicant seeks an exemption from a provision in a collective agreement, IMATU states that section 30(1)(k) of the LRA provides for applications for exemptions in terms of the bargaining council's constitution, and that section 24 of the collective agreement sets out the exemption procedure. The Labour Court, according to IMATU's contentions, lacks jurisdiction in respect of prayer 2.

[27] In respect of prayer 3, which is that the applicant seeks an order declaring clause 18.1 of the collective agreement to be illegal or *void ab origine* only in respect of the applicant, IMATU states that the setting aside of clause 18.1 cannot be applied only to the applicant, as it would apply to all entities in local government, none of whom are cited or joined.

[28] SAMWU similarly delivered an opposing affidavit and took issue with the Notice of Motion. SAMWU takes serious issue with the first prayer, which involves an order being sought that the employment of 265 temporary employees be declared illegal, alternatively being *void ab origine*. SAMWU takes issue with the fact that the employees were not identified and that they were accordingly not joined and cited. SAMWU also takes issue that no case has been made out at all for the declaratory relief that the applicant seeks in respect of the 265 employees.

[29] SAMWU raised similar concerns to that of IMATU in respect of the second prayer contained in the Notice of Motion, i.e., regarding the relief sought that the

applicant be exempted from compliance with clause 18.1. SAMWU again raised similar concerns regarding prayer 3 wherein the applicant seeks relief in respect of its applicability only in respect of the applicant.

[30] The applicant, faced with these various challenges raised in the opposing affidavits of IMATU and SAMWU, delivered a replying affidavit wherein the applicant, in essence, unilaterally attempts to amend the Notice of Motion initially delivered. The basis of doing this in the replying affidavit, according to the applicant, is that the applicant only realised after receiving the two respective opposing affidavits that the incorrect Notice of Motion was delivered. The alleged correct Notice of Motion that should have been issued was an amended Notice of Motion, which the applicant attached to the replying affidavit.

[31] This Court must therefore address two issues arising from the replying affidavit. The first issue is whether the applicant is allowed to amend its Notice of Motion in a replying affidavit in the absence of agreement having been reached with the opposing parties and filing an amended Notice of Motion and absence an agreement, without the leave of this Court. This Court was at no stage approached with an application for leave to amend the Notice of Motion. The second issue, should the first issue be answered in the affirmative, is whether the applicant's explanation of delivering the wrong Notice of Motion is acceptable to this Court.

[32] This Court, without hesitation, rejects the allegation that the wrong Notice of Motion was delivered. This is so given the contents of the founding affidavit, which speaks directly to the relief sought in the Notice of Motion. If the wrong Notice of Motion was delivered, there is no explanation why the founding affidavit addresses the compliance order, the arbitration award, and the reference to the 265 employees. The Notice of Motion was delivered, supported by a founding affidavit and the applicant is bound to the Notice of Motion filed in the absence of having sought leave to amend the Notice of Motion, and thereafter having delivered an amended Notice of Motion.

[33] An applicant in motion proceedings is not entitled to raise new grounds in its replying affidavit, or to amend a Notice of Motion already delivered without seeking leave of this Court to do so. The applicant, having realised the many shortcomings in the initial Notice of Motion, simply abandoned two of its prayers and in respect of the third prayer, unilaterally amends the prayer from seeking relief only in respect of the applicant to now seeking a declarator that clause 18.1 is unlawful. In other words, the initial pleaded prayer 3 is amended in the replying affidavit.

[34] The applicant is not allowed to amend the initial relief sought by delivery of a replying affidavit. The applicant is bound to its initial Notice of Motion, as supported by the founding affidavit. The fact that the applicant has abandoned prayer 1 and 2 is indicative of the applicant realising that the relief sought was not sustainable for obvious reasons, as addressed by IMATU and SAMWU in its opposing affidavits. The Court therefore finds that, insofar as prayer 1 of the notice of motion is concerned, the application is defective due to the 265 employees not having been joined as respondent parties, and the applicant's failure to provide this Court with the necessary facts to determine prayer 1. In respect of prayer 2, the application cannot be determined as the issue of seeking an exemption is specifically provided for in the LRA and in the constitution of the SALGBC.

[35] The only relief that remains is whether clause 18.1 should be declared unlawful only in respect of the applicant. This Court accepts IMATU and SAMWU's opposition to such relief, as this Court is not empowered to declare clause 18.1 unlawful only in respect of the applicant. Clause 18.1 is either unlawful in its entirety, or it is not. The applicant, in any event, as already found above is not entitled to change the relief that they are seeking in a replying affidavit.

[36] In any event, even if this Court was to allow the amendment of a Notice of Motion in a replying affidavit, the applicant would face a further difficulty in respect of asking this Court to declare clause 18.1 unlawful in the absence of all other

municipalities having been cited and/or joined to these proceedings. This Court is unable to grant such an order. All municipalities affected by clause 18.1 must be allowed an opportunity to either support or oppose an application to declare clause 18.1 unlawful. This Court must accept that SALGA had a mandate to conclude the 2016 and the 2023 agreements, but this does not mean that the lawfulness of clause 18.1 can be determined only by those parties who signed the 2023 agreement.

[37] SALGA has not opposed this application. However, this does not mean that SALGA agreed, as the bargaining agent of all municipalities, that the application can be applied to all municipalities and not only to the applicant, as per the Notice of Motion. At the time that the replying affidavit was filed, pleadings closed and SALGA was never afforded an opportunity to respond to the attempted amendment of prayer 3 in the replying affidavit. The attempt to amend the Notice of Motion, and in specific prayer 3 thereof, in the replying affidavit constitutes a serious procedural irregularity and if accepted, will result in both SALGBC and SALGA being bound by relief sought after the fact and not at the commencement of the application insofar as clause 18.1 is to be declared unlawful in respect of all municipalities and not only the applicant.

[38] The application, for this reason alone, must fail. The applicant, being bound to the relief sought in the Notice of Motion, is not entitled to a declaratory order that is only applicable to the applicant, as already found above. This Court therefore does not accept the applicant's attempt to amend its Notice of Motion in its replying affidavit.

<u>The joinder defect and prejudice to the 265 unidentified employees</u>

[39] An independent threshold issue that independently warrants dismissal is the applicant's failure to join the 265 temporary employees who are directly and substantially affected by the relief sought in the Notice of Motion. This defect operates on two levels: procedural and substantive.

[40] Procedurally, the applicant seeks an order in prayer 1 declaring the employment of 265 temporary employees as illegal, alternatively *void ab origine*. Yet these 265 employees have not been identified, nor cited as respondents. They were not afforded an opportunity to present evidence, make submissions, or challenge the characterisation of their employment status. This is a fundamental procedural irregularity.

[41] Substantively, any declaration that clause 18.1 is unlawful (whether general or specific to the applicant) has direct and immediate consequences for these 265 employees' employment status and security. According to the applicant's own founding affidavit, if clause 18.1 is declared unlawful, the applicant would be relieved of the obligation to permanently appoint these employees. The declaration sought would thus potentially terminate or materially alter these employees' employment status and their contractual right to fair labour practice.

[42] In such circumstances, these 265 employees have a direct and substantial interest in the outcome and must be joined to afford procedural fairness. The applicant has failed to provide:

42.1 Identification details.

42.2 Appointment dates.

42.3 Contract durations.

42.4 Current employment status.

42.5 Which employees occupy posts within the staff establishment versus outside the staff establishment.

42.6 Which employees might be "genuinely temporary" versus potentially permanent.

[43] The failure to join the 265 employees prevents this Court from undertaking a proper assessment of which, if any, of the 265 employees would be prejudiced

and in what manner. It renders the application incapable of disposal without causing substantial and unquantifiable prejudice to right-holders who have had no opportunity to participate.

[44] Furthermore, the existence of 265 unidentified temporary employees suggests potential systemic non-compliance with labour legislation and the MSA, which reinforces the necessity for proper identification and joinder.

[45] Accordingly, this Court finds that the failure to join the 265 temporary employees constitutes an independent and fatal defect requiring the application to be dismissed.

Legal Principles on Delay

[46] The applicant faces further insurmountable difficulties in this application. South African administrative and procedural law recognises that applications to the Courts are subject to a principle of reasonableness regarding temporal proximity to the events in question. While the LRA prescribes specific timeframes for certain applications (such as the six-week window for section 145 reviews), the LRA does not expressly prescribe a timeframe for applications under section 158(1)(a)(iv), section 158(1)(g) and section 158(1)(h) of the LRA.

[47] In the absence of an express statutory timeframe, the common law principle applies that such applications must be brought within a reasonable time. This principle is rooted in the need for finality, the prevention of prejudice through delayed litigation, and respect for the temporal architecture of the statutory dispute resolution framework.

[48] In *Associated Institutions Pension Fund v Van Zyl and Others*[7], the Supreme Court of Appeal held as follows:

> "…Since PAJA only came into operation on 30 November 2000 the limitation of 180 days in s 7(1) does not apply to these proceedings. The validity of the

[7] 2005 (2) SA 302; [2004] 4All SA 133 (SCA).

defence of unreasonable delay must therefore be considered with reference to common-law principles. It is a longstanding rule that courts have the power, as part of their inherent jurisdiction to regulate their own proceedings, to refuse a review application if the aggrieved party had been guilty of unreasonable delay in initiating the proceedings. The effect is that, in a sense, delay would "validate" the invalid administrative action… The *raison d'être* of the rule is said to be twofold. First, the failure to bring a review within a reasonable time may cause prejudice to the respondent. Secondly, there is a public interest element in the finality of administrative decisions and the exercise of administrative functions…

…The scope and content of the rule has been the subject of investigation in two decisions of this Court. They are the *Wolgroeiers* case and *Setsokosane Busdiens (Edms) Bpk v Voorsitter, Nasionale Vervoerkommissie, en 'n Ander* 1986 (2) SA 57 (A). As appears from these two cases and the numerous decisions in which they have been followed, application of the rule requires consideration of two questions:

(a) Was there an unreasonable delay?

(b) If so, should the delay in all the circumstances be condoned?

(See *Wolgroeiers* at 39C-D.)

…The reasonableness or unreasonableness of a delay is entirely dependent on the facts and circumstances of any particular case… The investigation into the reasonableness of the delay has nothing to do with the Court's discretion. It is an investigation into the facts of the matter in order to determine whether, in all the circumstances of that case, the delay was reasonable. Though this question does imply a value judgment it is not to be equated with the judicial discretion involved in the next question, if it arises, namely, whether a delay which has been found to be unreasonable, should be condoned…"

[49] The High Court in *Enoch Mgijima Local Municipality and Another v Dingani and Another*; In re: *Enoch Mgijima Local Municipality and Another v Dayi*; In re: *Enoch Mgijima Local Municipality and Another v Siqhaza*[8] held as follows:

> "[111] The legal position on delay has been explained a number of times by our courts. Relevantly for this matter in light of its peculiar facts, the Constitutional Court had this to say in *Gijima Holdings*:
>
> '*Khumalo* also says that courts have a 'discretion to overlook a delay'. Here is what we said:
>
> '(A) court should be slow to allow procedural obstacles to prevent it from looking into a challenge to the lawfulness of an exercise of public power. But that does not mean that the Constitution has dispensed with the basic procedural requirement that review proceedings are to be brought without undue delay or with a court's discretion to overlook a delay.' …
>
> *Tasima* explained that this discretion should not be exercised lightly:
>
> 'While a court should be slow to allow procedural obstacles to prevent it from looking into a challenge to the lawfulness of an exercise of public power, it is equally a feature of the rule of law that undue delay should not be tolerated. Delay can prejudice the respondent, weaken the ability of a court to consider the merits of a review, and undermine the public interest in bringing certainty and finality to administrative action. A court should therefore exhibit vigilance, consideration and propriety before overlooking a late review, reactive or otherwise.' …
>
> From this, we see that no discretion can be exercised in the air. If we are to exercise a discretion to overlook the inordinate delay in this matter, there must be basis for us to do so. That basis may be gleaned from facts placed before us by the parties or objectively available factors. We see no possible basis for the exercise of the discretion here. That should be the end of the matter."

[8] [2020] ZAECGHC 42; [2020] 3 All SA 135 (ECG) at para 111 and 112.

[50] In *Weltevrede Kwekery (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others*[9] (*Weltevrede)* the Labour Court held as follows regarding what time frame would be regarded as "*within a reasonable time*":

> "4. The applicant submits that no application for condonation is required and the review was launched within a reasonable time. It was pointed out to Mr Kantor for the applicant that prior to the 2002 amendment of the LRA, the case law had equated the standard of a reasonable period for delivering an application for review in terms of s158(1)(g) to the same standard as set for the review of arbitration awards in terms of s145 of the LRA, i.e. six weeks (*Rustenberg Platinum Mines Ltd v Monnapula & others* [2003] 9 B LLR 909 LC at para 34 page 914; *Ruijgrok v Foschini (Pty) Ltd & another* (1999) 20 ILJ 1284 LC at 1287 para 16-22).
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> 5. The 2002 amendment to s158(1)(g) gave effect to the practice that had been established through the case law. Mr Kantor persisted that the reference to "subject to section 145" in s158(1)(g) was to the grounds of review and not the time limit. I disagree. There is nothing in the wording of s158(1)(g) that lends itself to such a qualification.
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> 6. The review should have been launched within six weeks from 17 August 2004. It was launched more than five months later. That is not within a reasonable time, even on the applicant's version. The applicant was aware of and could have acquainted itself of all the information relevant for this application when it received the condonation ruling. There is, therefore, no reasonable explanation that can be distilled from the pleadings for such a long period of delay.

[51] The Labour Court in *SACCAWU obo Manzana and others v Pick 'n Pay, Kimberley and others*[10] *(SACCAWU)* also held a reasonable time to be about six weeks. In *POPCRU obo Timla v M.A Nozigqwaba and Others*[11] the Court held as follows:

[9] (2006) 27 ILJ 182 (LC) at paras 4-6.
[10] [2003] 10 BLLR 1065 (LC) at paras 14-5.
[11] Case No: JR773/2014 heard on 18 December 2014 and judgment delivered on 13 February 2015 at para 5.

‘No time period is set by the LRA within which applications in terms of section 158(1)(g) must be lodged but decisions such as *SACCAWU obo Manzana and Others v Pick ‘n Pay, Kimberley and Others* and *Weltevrede Kwekery (Pty) Ltd v CCMA and Others* state that such an application should be launched with a reasonable time and that the six week time period set for applications in terms of section 145 constitutes a guideline in this regard.’ (footnotes omitted).

[52] The Constitutional Court in *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal*[12] referred to the judgments of the Labour Court in *Weltevrede* and *SACCAWU* stating that in some instances, in the context of the LRA, the Courts have held a reasonable time to be about six weeks. The Court, however, went further and held as follows:

“[43] Previously, section 39 of the PSA stipulated a 12-month prescription period in which a claimant could bring an action against the state for any act or omission made in terms of the Act. The time limit was subsequently repealed by section 2(1) of the Institution of Legal Proceedings Against Certain Organs of State Act (Repealing Act). At all relevant times, the PSA thus prescribed no time limits for reviews of conduct in terms of the Act.

[44] But what do we make of the Legislature’s decision to remove these time limits? Does this mean that litigants are not constrained by any requirement to act timeously? In my view, the Legislature’s decision to remove the 12-month prescription period opens the actions of public functionaries in terms of the PSA to ongoing scrutiny and transparency. Bearing in mind the purpose of the Repealing Act, the repeal of section 39 allows that an applicant cannot automatically be non-suited on the basis of a delay. Nevertheless, it is a long-standing rule that a legality review must be initiated without undue delay and that courts have the power (as part of their inherent jurisdiction to regulate their own proceedings) to refuse a review application in the face of an undue delay in initiating proceedings or to overlook the delay. This discretion is not

[12] [2013] ZACC 49; (2014) 35 ILJ 613 (CC) at para 42 and fn 26.

open-ended and must be informed by the values of the Constitution. However, because there are no express, legislated time periods in which the MEC was required to bring her application, there is no requirement that a formal application for condonation needs to have been brought.

[45] In the previous section it was explained that the rule of law is a founding value of the Constitution, and that state functionaries are enjoined to uphold and protect it, inter alia by seeking the redress of their departments' unlawful decisions. Because of these fundamental commitments, a court should be slow to allow procedural obstacles to prevent it from looking into a challenge to the lawfulness of an exercise of public power. But that does not mean that the Constitution has dispensed with the basic procedural requirement that review proceedings are to be brought without undue delay or with a court's discretion to overlook a delay.

[46] Section 237 of the Constitution provides:

"All constitutional obligations must be performed diligently and without delay."

[47] Section 237 acknowledges the significance of timeous compliance with constitutional prescripts. It elevates expeditious and diligent compliance with constitutional duties to an obligation in itself. The principle is thus a requirement of legality.

[47] This requirement is based on sound judicial policy that includes an understanding of the strong public interest in both certainty and finality. People may base their actions on the assumption of the lawfulness of a particular decision and the undoing of the decision threatens a myriad of consequent actions.

[48] In addition, it is important to understand that the passage of a considerable length of time may weaken the ability of a court to assess an instance of unlawfulness on the facts. The clarity and accuracy of decision-makers' memories are bound to decline with time. Documents

> and evidence may be lost, or destroyed when no longer required to be kept in archives. Thus the very purpose of a court undertaking the review is potentially undermined where, at the cause of a lengthy delay, its ability to evaluate fully an allegation of illegality is impaired." (footnotes omitted)

[53] Based on the aforesaid, this Court is of the view that the six week period set for applications in terms of section 145 constitutes a guideline in determining whether the application was brought within a reasonable time with some flexibility based on the circumstances of each case.

[54] It is therefore clear that there is a dual enquiry into the delay of a party to bring an application in terms of section 158(1)(a)(iv) and/or section 158(1)(g) and/or section 158(1)(h) of the LRA. As to what is reasonable entails a factual enquiry upon which a value judgment is made to the relevant circumstances, including any explanation given for the delay.[13] The Court exercises a judicial discretion in deciding whether an unreasonable delay should be condoned. In doing so, the Court must consider the relevant circumstances, including any explanation, but also the two reasons for the 'delay rule' viz. the prejudice caused to the other party, and the public interest in achieving finality and certainty regarding the making of administrative decisions and the performance of administrative functions.[14]

[55] The assessment of "*reasonableness*" requires a holistic consideration of; the length and degree of delay; the explanation offered for the delay; prejudice to the respondents, the prospects of success on the merits, the broader interests of justice, including the need for finality and respect for concluded legal proceedings. No single factor is determinative; rather, the Court must weigh them together.

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[13] Cora Hoexter and Glenn Penfold, *Administrative Law in South Africa* (Juta, 3ed, reprinted 2022) at 721. See, too, *Setsokosane Busdiens (Edms) Bpk v Voorsitter, Nasionale Vervoerkommissie, en 'n Ander* 1986 (2) SA 57 (A) at 75C-E; [1985] ZASCA 121; and, more recently, *Madikizela-Mandela v Executors, Estate Late Mandela and others* 2018 (4) SA 86 (SCA); [2018] 1 All SA 669 (SCA) at para 10.
[14] *Gqwetha v Transkei Development Corporation Ltd and Others* 2006 (2) SA 603 (SCA); [2006] 3 All SA 245 (SCA) at 612E-613A.

[56] The above principles must be applied to the matter at hand, as set out in the paragraphs that follow.

Is there a delay in bringing the application?

[57] Having found that the application was correctly brought in terms of section 158(1)(a)(iv) read with section 158(1)(g) and/or section 158(1)(h) of the LRA, and that the application must be considered as a legality review rather than a PAJA review, this Court is required to determine whether there was a delay in bringing the application. If so, whether the application was brought within a reasonable period. This is so because section 158(1)(a)(iv), section 158(1)(g) and section 158(1)(h) do not provide for a time limit in which such applications must be brought, hence the requirement that it must be done within a reasonable time.

[58] The applicant's case, relying on PAJA, is that the application was brought within the prescribed 180 day-period provided for in section 7(1) of PAJA, alternatively that it was brought within a reasonable time insofar as the legality principle is applicable. This Court has already rejected the applicant's reliance on PAJA. This Court is, however, satisfied that bringing an application based on the legality principle within a period of 180 days would be sufficient to conclude that it was brought within a reasonable time.

[59] The applicant, however, faces a further difficulty regarding their submissions that the application was brought within a reasonable time based on the legality principle. In the absence of the 2016 agreement, this Court would have been satisfied that there was no undue delay and that the application was brought within a reasonable time from the conclusion of the 2023 agreement.

[60] However, the 2023 agreement cannot be considered in isolation in considering whether there was an undue or unreasonable delay in bringing this application seeking to declare clause 18.1 of the 2023 agreement unlawful. As stated above, the 2016 collective agreement contained the same or similar clause 18.1 of the 2023 agreement, which prescribed that all appointments into positions that are by

their very nature permanent positions shall be on permanent basis. The very same clause was therefore in operation since 2016. This Court is now asked to declare the same clause in the 2023 agreement as unlawful. This could have disastrous consequences to the parties and their constituents because, by implication, clause 18.1 of the 2016 agreement would also be unlawful should this Court find the 2023 agreement unlawful.

[61] There is no evidence before this Court as to what the impact of declaring clause 18.1 of the 2023 agreement unlawful would be when by implication clause 18.1 of the 2016 agreement would also have been unlawful. This is not an issue that this Court is required to determine, but it is an issue that must be considered within the context of whether the application was brought within a reasonable time.

[62] The applicant was aware, or ought reasonably have been aware of the 2016 agreement and despite its existence, the applicant failed to challenge the lawfulness of clause 18.1 of the 2016 agreement, which was in existence from 2016 to 2023 when the 2023 agreement was concluded. In fact, the deponent to the founding affidavit concedes that clause 18 has the same effect as the older clause 18 which applied during the previous years when the collective agreement was signed and enforced to certain extents. In other words, the alleged unlawfulness of clause 18.1 of the 2016 agreement was already effective, and probably implemented by all municipalities for some seven years prior to the 2023 agreement.

[63] The applicant fails to explain why, if they genuinely believed that clause 18.1 is unlawful, they did not challenge the 2016 agreement and why they failed to challenge the extension of the 2016 agreement, which came to an end in June 2020 and was extended to the end of June 2023. The applicant waited until 11 January 2024 to bring this application, over seven years after clause 18.1 of the 2016 agreement was agreed upon, and implemented, in the Local Government Sector.

[64] Insofar as the deponent states that the applicant was informed of the 2023 agreement on or about 20 July 2023, there is a deafening silence as to why the applicant only acted upon becoming aware of the 2023 agreement seeking to declare the very same clause that has been in existence since 2016 as unlawful. This Court is unable to conclude, based on the evidence before this Court, that the applicant was not aware of the 2016 agreement and the extension of that agreement in 2020. The applicant's argument that the application was brought within a reasonable time, citing becoming aware of the 2023 agreement on or about 20 July 2023, is therefore rejected by this Court. If the applicant wished to challenge the lawfulness of clause 18.1, they ought to have done so in 2016 when the agreement was concluded and implemented.

[65] The 2023 agreement, insofar as clause 18.1 is concerned, did not create a new obligation on the applicant, as the very same clause was already binding on the applicant since 2016. Bringing this application on 11 January 2024 can therefore not be held to have been brought within a reasonable time from the date that the applicant was aware, or became aware, of the provisions of clause 18.1.

[66] The applicant concedes in their founding affidavit that the 2023 agreement was concluded under the auspices of the SALGBC and as such in terms of the LRA. The same applies to the 2016 agreement, and the extension of the 2016 agreement, in June 2020, to the end of June 2023.

[67] The applicant faces another hurdle in bringing this application and relying on the 2023 agreement. The deponent to the founding affidavit refers to a compliance order issued by the regional secretary of the SALGBC on 14 June 2023. This Court notes that this compliance order is challenged in a separate application before this Court. This Court cannot therefore entertain the issue in this application. However, insofar as the deponent relies on the compliance order issued, it is critically important to note that the compliance order was issued in accordance with the 2016 agreement and not in accordance with the 2023 agreement. The 2023 agreement has not been concluded, and implemented, at

the time when the compliance order was issued on 14 June 2023. On the applicant's own version, the 2023 agreement was only concluded on 20 July 2023, more than a month after the compliance order was issued on 14 June 2023. In any event, the compliance order states very clearly that the compliance order is issued in terms of the 2016 agreement. This clearly supports the Court's finding above that the application was not brought within a reasonable time, as the application was brought into action following the compliance order issued in terms of the 2016 agreement.

[68] The Court considered the question whether the compliance order was the trigger of this application. Although the application may have been triggered by the compliance order of June 2023, it does not mean that the applicant was not aware of clause 18.1 in the 2016 agreement and that such clause would have created obligations on the applicant since 2016. Instead, it appears that despite clause 18.1 being in existence since 2016, the applicant abused the fixed term employment of staff in direct contradiction with the collective agreement, section 198B and the MSA. It is not sufficient for the applicant to rely on the compliance order, seeking to enforce the collective agreement, in avoiding the delay in challenging clause 18.1. This Court is further not privy to evidence whether there was previous compliance orders issued in terms of clause 18.1 and will not speculate that June 2023 was the first time that there was an attempt to enforce clause 18.1 of the collective agreement.

[69] The applicant, in this Court's view, purposefully chose to argue the "delay" in this application by relying on the 2023 agreement, and not on the compliance order being the trigger that led to this application, and purposefully failed to explain why they failed to address the delay based on the 2016 agreement. The reasons for this are obvious, as the 2023 agreement conveniently provided a basis to argue that the application was brought within a reasonable time. Be that as it may, this Court already rejected the reliance on the 2023 agreement as a basis to support their contention that the application was brought within a reasonable time.

[70] Accordingly, the Court finds that the delay in bringing this application constitutes a further ground on which the application must fail.

Overall delay analysis: Multiple measurements all support dismissal

[71] This Court must explicitly address the timing of this application by reference to multiple potential measurement points. The first measurement point is that the applicant had knowledge of clause 18.1 in July 2016 when the collective agreement was concluded. The application was filed on 11 January 2024, approximately eight years after clause 18.1 became legally binding on the applicant. This delay is manifestly unreasonable.

[72] The second measurement point is the extension of the 2016 agreement in June 2020. This application was filed approximately three and a half years after the 2016 agreement was extended. This constitutes a substantially excessive delay.

[73] The third measurement point is from 20 July 2023 when the 2023 agreement was concluded. The application was filed approximately six months after the 2023 agreement was concluded. While the six months alone might fall within reasonable bounds, this measurement is improper because the 2023 agreement is not a fresh "wrong"; it merely continued the 2016 obligation.

[74] The fourth measurement point is the arbitration award issued on 30 August 2023. According to the applicant, the award was challenged in a separate review application in terms of section 145(1). This application was filed on 11 January 2024. This Court has not been informed of the progress of the section 145-review.

[75] On any measurement used, the application falls outside the zone of reasonable temporal proximity. Even the most charitable measurement, being from the 2023 agreement, six months is improper because the 2023 agreement is not a fresh "wrong". The most relevant measurements, from 2016, from the 2020 extension, or from the award deadline all demonstrate substantial delay.

[76] This Court therefore finds that the application was not brought within a reasonable time.

Interests of justice: balancing legality and finality

[77] The Constitutional Court in *Khumalo* recognised that while Courts should be slow to allow procedural obstacles to prevent examination of alleged unlawfulness, this does not mean the Constitution has dispensed with the requirement that review proceedings be brought without undue delay. This Court must exercise its discretion in deciding whether the interests of justice favour overlooking the substantial delay.

[78] There are several considerations operating against exercising discretion on the applicant's favour. The first critical consideration is the prejudice to the respondents, and more specifically the SALGBC and SALGA should this Court allow the applicant's attempt to amend the relief it seeks in the replying affidavit. Insofar as this Court must consider the application based on the Notice of Motion, the Court already found that an application seeking for unlawfulness only in respect of the applicant is not allowed. There is also the prejudice to the 265 unidentified temporary employees who have not been joined, and also the failure to join other municipalities.

[79] If this application is entertained despite the delay, these 265 temporary employees face an uncertain position, and their employment status could be retroactively destabilised in the absence of them having been joined or given the opportunity to participate. The delay has compounded prejudice to these 265 employees who potentially have been employed, on a temporary basis, for years.

[80] Another crucial consideration is the requirement for finality and certainty. The applicant has operated under clause 18.1 since the 2016 agreement without a challenge. Other municipalities potentially might have relied on clause 18.1 in good faith for the same period. A belated declaration would unravel expectations

across the entire Free State local government sector. The public interest in certainty is substantial.

[81] A further consideration is that the applicant's actions are reactive rather than principled opposition. Had clause 18.1 been manifestly unlawful, the applicant's silence for seven years is difficult to reconcile with commitment to legality. Mobilisation only after enforcement action suggests strategic litigation motivated by budgetary constraints rather than a principled legal challenge.

[82] A further consideration is that the applicant had prescribed procedures available and deliberately bypassed them. A Court should not reward this non-compliance by entertaining a belated application. This undermines respect for the LRA's temporal and procedural architecture. The Court in any event notes that the arbitration award has been taken on review in terms of section 145(1).

[83] It is this Court's finding that the interests of justice do not favour overlooking the delay. The applicant cannot take shelter in constitutional values regarding legality reviews when the applicant has itself engaged in deliberate procedural non-compliance and delays. This is not a case where an applicant acted reasonably and promptly but was caught by the passage of time. It is rather a case where the applicant had multiple timely and/or alternative remedies available and elected not to pursue them.

[84] To overlook the delay would incentivise parties to bypass prescribed procedures, allow deadlines to pass, and resort to delayed declaratory actions when strategic interests align. This would undermine the temporal architecture of the LRA and weaken the finality of disputes required in labour relations.

[85] Accordingly, the interest of justice favour maintaining the delay requirement as a procedural constraint. The application must fail on this ground.

<u>Substantive analysis whether clause 18.1 unlawful?</u>

[86] Notwithstanding the Court's findings on delay, joinder and procedural irregularities with the Notice of Motion, and in deference to the principle that Courts should examine alleged unlawfulness, this Court will address the applicant's substantive case regarding clause 18.1's lawfulness. This analysis provides guidance in an attempt to clarify legal principles regarding the alleged unlawfulness of clause 18.1.

[87] The applicant contends that clause 18.1 of the 2023 agreement is unlawful because it is contrary to the MSA and the EPP. To determine whether clause 18.1 is unlawful requires interpretation of the clause. The applicant failed to refer a dispute to the SALGBC seeking proper interpretation. Is clause 18.1 applicable to all temporary employees employed into posts on the staff establishment, or to all temporary employees employed by the applicant regardless of whether posts are on the establishment? This Court should not determine interpretation disputes when prescribed procedures exist in the collective agreements and the LRA.

[88] Nevertheless, this Court will address the substantive contention. The proper interpretation of clause 18.1 is that it excludes employees genuinely employed in temporary positions in line with the MSA and applicable labour legislation. Clause 6.4 of the EPP provides for the appointment of employees on a fixed term and temporary basis. Clause 6.4.2 provides that an employee in a post in a temporary position may only be appointed subject to clause 8 of Circular 1/2016, which means that such appointment may not exceed six months.

[89] Once temporary employment exceeds the permitted maximum duration, the employee is by operation of law employed in a position of a permanent nature.

[90] Clause 18.1 cannot be unlawful when it requires only that temporary employees employed in positions of a permanent nature be employed permanently. An employee employed as a temporary employee in accordance with the EPP cannot be said to be employed in positions of a permanent nature. Once their appointment exceeds the maximum duration, clause 18.1 applies.

[91] Clause 18.1 gives effect to the elementary principle of South African employment law against disguised employment. This Court accepts IMATU's argument in this regard. The provisions of section 198B of the LRA are directly applicable in cases where temporary employees earn below the threshold:

> "198B Fixed term contracts with employees earning below earnings threshold
>
> "(3) An employer may employ an employee on a fixed term contract or successive fixed term contracts for longer than three months of employment only if—
>
> (a) the nature of the work for which the employee is employed is of a limited or definite duration; or
>
> (b) the employer can demonstrate any other justifiable reason for fixing the term of the contract."
>
> "(5) Employment in terms of a fixed term contract concluded or renewed in contravention of subsection (3) is deemed to be of indefinite duration."

[92] The provisions of clause 18.1 are directly in line with section 198B. Clause 18.1 simply requires what section 198B mandates: that employees in positions of a permanent nature be employed on a permanent basis.

[93] Section 67(2) of the MSA provides that systems and procedures be adopted and that, to the extent that they deal with matters under applicable labour legislation and affecting the rights and interests of staff members, it must be consistent with such legislation. Section 198B is directly relevant to the employment of temporary employees appointed to positions of a permanent nature. Once appointments fall foul of section 198B by exceeding the three-month threshold, the employees are employed in positions of an indefinite duration, or differently worded in positions of a permanent nature and, per section 198B, are deemed permanently employed.

[94] Clause 18.1 simply gives effect to section 198B of the LRA and section 67(2) of the MSA. There is nothing unlawful regarding clause 18.1. As soon as the nature of temporary employees becomes of a permanent nature, the obligation is on the municipal manager to take appropriate steps to ensure that their posts appear on the staff establishment and that job profiles are drafted. It cannot be left to a municipality to use and abuse temporary employment provisions in complete ignorance of labour legislation.

[95] The municipal manager must be guided by labour legislation. Labour legislation cannot be made subordinate to the use and abuse of temporary employees by a municipality and then be allowed, years after the fact, to seek their appointments unlawful though a belated application.

[96] Furthermore, section 71(3) of the MSA specifically requires that municipalities must comply with collective agreements concluded by organised local government on behalf of local government in the bargaining council. The applicant does not allege that SALGA acted outside its mandate when they concluded the 2016 and 2023 agreements.

[97] Section 55(1)(b) of the MSA provides that the municipal manager is responsible and accountable for the management of the municipality's administration in accordance with the MSA and other applicable legislation. Insofar as administration includes staff employment, the municipal manager is bound by labour legislation protecting employees' rights. Section 55(1)(h) states that the municipal manager is responsible for promoting sound labour relations and compliance with applicable labour legislation.

[98] The Local Government: Municipal Staff Regulations[15] issued under section 72 and 120 of the MSA addresses appointment of staff on fixed term contracts:

> "Appointment of staff on fixed term contract

[15] Government Gazette No. 890 dated 20 September 2021.

30. (1) Despite regulation 29, a municipality may, in exceptional circumstances and within its administrative and financial capacity, appoint a person or persons on fixed term contract without adhering to the procedures and processes as contained in this chapter.

(2) The application of sub-regulation (1) is subject to the provisions of section 198B of the Labour Relations Act."

[99] The Regulations make it abundantly clear that fixed term contracts of employment are subject to section 198B, and any employment contrary to section 198B will result in such employees' employment being deemed of an indefinite duration.

[100] Section 52 of the MSA addresses inconsistency with applicable labour legislation:

"52. Inconsistency with applicable labour legislation

In the event of any inconsistency between a provision of this Chapter, including the Code of Conduct referred to in section 69, or a regulation made for the purposes of this Chapter, and any applicable labour legislation, the labour legislation prevails."

[101] This section must be read with section 210 of the LRA, which reads as follows:

"210. Application of Act when in conflict with other laws

If any conflict, relating to matters dealt with in this Act, arises between this Act and the provisions of any other law save the Constitution or any act expressly amending this Act, the provisions of this Act will prevail."

[102] The combined effect of section 52 of the MSA and section 210 of the LRA establishes an unambiguous hierarchy: labour legislation, and in particular the LRA, is paramount. Collective agreements cannot derogate from the LRA unless specifically provided for. Clause 18.1, far from derogating from the LRA, gives effect to section 198B and the principle against disguised employment. It does

not conflict with section 66 of the MSA or any other MSA provision. Rather, it represents labour legislation taking precedence, which is precisely what section 210 of the LRA and section 52 of the MSA mandate.

[103] The applicant has not established that clause 18.1 is inconsistent with the MSA or the EPP. The argument that the municipal manager’s section 66 MSA power to manage the municipality’s budget and staff appointments is superior to labour legislation is unfounded. Section 55(1) requires the municipal manager to promote sound labour relations and comply with labour legislation. Budgetary constraints, no matter how severe, cannot justify non-compliance with labour legislation or collective agreements duly concluded under the LRA.

[104] The applicant’s reliance on budgetary constraints and claims that appointing 265 employees to permanent positions would be insurmountable reveals the true motivation. The applicant’s actions are not a principled legal challenge to alleged unlawfulness, but a strategic attempt to avoid labour obligations due to budgetary challenges. Section 66 of the MSA, properly interpreted, does not provide a license to ignore labour legislation or to circumvent collective agreements.

<u>Conclusion</u>

[105] For the reasons set out above, the application must fail on multiple independent and cumulative grounds. These grounds are the procedural defect (impermissible attempt to amend Notice of motion in the replying affidavit); the joinder defect (the non-joinder of the 265 temporary employees); the unreasonable delay (the application not having been brought within a reasonable time); alternative remedies available and bypassed; interests of justice do not favour overlooking delay; and substantive law favours the respondents.

<u>Costs</u>

[106] Under section 162(1) of the LRA, this Court has wide discretion regarding costs. The Court is mindful of the *dictum* of the Constitutional Court in *Zungu v Premier*

of the Province of Kwa-Zulu Natal and others[16] when it comes to the issue of costs in employment disputes. However, the applicant's conduct in bringing this application warrants a cost order.

[107] The applicant filed a fundamentally defective Notice of Motion with 265 unidentified employees; attempted to cure the defect through an impermissible amendment in the replying affidavit; failed for some eight years to challenge an alleged unlawful clause; bypassed prescribed dispute resolution procedures; and pursued a belated declaratory application.

[108] This conduct is not merely an unsuccessful assertion of legal rights. It reflects procedural non-compliance and strategic litigation choices that caused IMATU and SAMWU to incur substantial costs. The applicant was not engaged in a good-faith attempt to vindicate clear legal rights but sought to avoid labour law obligations through delayed and strategically-timed litigation.

[109] This Court exercises its discretion and orders that the applicant must pay the costs of IMATU and SAMWU, including the costs of counsel.

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

<u>Order</u>

1. The application is dismissed.

2. The applicant is ordered to pay IMATU and SAMWU's costs, including the costs of counsel.

C. de Kock

Acting Judge of the Labour Court of South Africa

[16] (2018) 39 ILJ 523 (CC); [2018] 4 BLLR 323 (CC).

Appearances:

For the Applicant:	L Hollander
Instructed by:	Lessing & Van Jaarsveld Attorneys Inc.
For the Third Respondent:	S Harvey
Instructed by:	Francois Du Plessis Attorneys
For the Fourth Respondent:	S Grobler SC
Instructed by:	Kramer Weihman Attorneys