



**THE LABOUR COURT OF SOUTH AFRICA
JOHANNESBURG**

Of interest to other judges

CASE NO: 2025-168041

In the matter between:

MADONSELA ZANDILE

Applicant

and

LEGAL PRACTICE COUNCIL

First Respondent

NZUZA CHARITY

Second Respondent

BRIEL IGNATIUS

Third Respondent

SISOL LABOUR PROJECTS

Fourth Respondent

MAGOBATLOU SOLOMON

Fifth Respondent

TOKISO DISPUTE SETTLEMENT (PTY) LTD

Sixth Respondent

AHMED CACHALIA

Seventh Respondent

ASMALL FAATHIMA

Eighth Respondent

RW ATTORNEYS

Ninth Respondent

ADV PULE SELEKA SC

Tenth Respondent

ADV LUZELLE ADAMS

Eleventh Respondent

Heard: 21 October 2025

Delivered: 19 November 2025

Summary: (Urgent – Application for reconsideration of an urgent order granted in the respondent's absence – High Court Rule 6(12)(c) – Principles applicable to granting such relief considered – previous order set aside and replaced with an order dismissing the original application - Costs)

JUDGMENT ON RECONSIDERATION

LAGRANGE, J

Nature of the application

[1] This is an application brought on an urgent basis in terms of rule 71 of the Labour Court Rules read with rule 6(12)(c) of the Uniform Rules of Court, in which the LPC seeks to substitute a default order granted on 19 September 2025 with an order dismissing the applicant's urgent application with costs. In the absence of an equivalent rule in the Labour Court Rules the provisions of Rule 6(12)(c) which provide for an urgent order to be reconsidered without having to follow the normal procedure for launching a rescission application.

[2] The order sought to be reconsidered reads:

"1. THAT the forms and service provided in the Labour Court Rules; Labour Court Directives; the Labour Court Practice Manual and the Labour Relations Act 66 of 1995 (as amended) are dispensed with and the matter is treated as one of urgency in terms of Rule 38 of the Labour Court Rules;

2. THAT the First to the Eleventh Respondents are interdicted with proceeding with any disciplinary processes under the auspices of the First, Sixth and Seventh Respondent under Cla; and any further subsequent appeal processes;

3. THAT the First to the Eleventh Respondents are interdicted from proceeding with enforcing the taxed costs or obtaining a writ of execution under LC CASE NO:2025-043836 or enforcement of the said court order of the 14th day of April 2025 pending the finalisation of appeal processes under CCT149/2025 and LC CASE NO: 2025-043836 any further subsequent appeal processes;

4. THAT the First to the Eleventh Respondents pay the costs of this application on an attorney and client scale, each Respondent paying for the other to be absolved.”

[3] For the sake of elucidation, the case numbers in the order above refer to the following matters, which are elaborated upon in more detail later in the judgment:

3.1 TCR015442 is the internal disciplinary enquiry reference number used by the LPC/Tokiso for Ms Madonsela’s disciplinary hearing.

3.2 CCT149/2025 is the Constitutional Court matter number for Madonsela’s direct-access or alternatively leave-to-appeal bid arising from the earlier Labour Court judgment against her.

3.3 Case number 2025-043836 the Labour Court case number of the earlier (first) urgent application before Tlhotlhemaje J, in which judgment was delivered on 14 April 2025, dismissing the application and granting costs. The present urgent interdict and later processes (including the conditional leave application mentioned below) are framed pending the application for leave to appeal under this case.

Background

[4] It is necessary to contextualise this application which occurs in the context of a seemingly interminable litigious wrangle the parties are engaged in. The origins of the saga lie in the institution of serious disciplinary charges against the applicant Ms Z Madonsela (‘Madonsela’), who is the respondent in this reconsideration application, and her employer, the

Legal Practice Council ('the LPC'), which is applying for the reconsideration of the default judgment.

- [5] Madonsela is the Secretary of the LPC's Curator's Unit and is currently facing several charges of serious counts of gross misconduct, including fraudulently issuing Fidelity Fund Certificates to the LPC's members and/or fraudulently falsifying members trust account audits, in exchange for money.
- [6] The enquiry first sat on 27 January 2025, but since then was postponed on 7 different occasions without the applicant yet having pleaded to the charges. The ensuing litigation, mostly on an urgent basis is outlined below.
- [7] The first urgent application was launched in March 2025 by Madonsela seeking a declaration that the LPC's disciplinary proceedings were unlawful, unconstitutional, and a breach of contract. On 14 April 2025, this was dismissed with costs, by Thlothlalemaje J, primarily on the basis that she had failed to establish exceptional circumstances warranting court intervention in incomplete disciplinary proceedings.
- [8] On 15 May 2025, Madonsela attempted to appeal directly against the judgment to the Labour Appeal Court, but the following day was directed by the Judge President to apply for leave to appeal to Thlothlalemaje J.
- [9] Undaunted, on 6 June 2025, Madonsela applied for direct access to appeal to the Constitutional Court. It appears no decision has been made on this application yet but, on 3 September 2025, the Constitutional Court Registrar directed Madonsela to reissue her application for direct access to that court under a new case number.
- [10] On 16 July 2025, the LPC decided to dismiss Madonsela, notwithstanding the stalled and incomplete disciplinary proceedings, claiming she had delayed the enquiry and was engaging in what it characterised as vexatious litigation.
- [11] Madonsela had launched a second urgent application on 19 July 2025, to stay disciplinary proceedings and the execution of the costs order from first judgment, pending the outcome of the Constitutional Court

application. This was dismissed by Daniels J on 24 July 2025, on the basis that at that stage there was no valid appeal pending, and direct access to Constitutional Court was impermissible.

- [12] By 21 August 2025, Madonsela had filed a third urgent application, seeking a declaration that the LPC's termination of her employment on 16 July was unlawful and in breach of contract. On 2 September 2025, Makhura J, handed down an order to the effect that her employment contract remained in force and ordered the LPC to reinstate her and pay outstanding salary and benefits. Madonsela was awarded her costs as well.
- [13] On 28 August 2025, Madonsela belatedly filed what might be characterized as a 'conditional' application for leave to appeal against the May judgment of Tlhotlhemaje J. The application is conditional in the sense that she will not proceed with that if she obtains leave to appeal directly to the Constitutional Court.
- [14] After Madonsela had been reinstated, the LPC reinstituted the disciplinary proceedings. This led to Madonsela launching her fourth urgent application on 17 September 2025, to stay the proceedings, pending compliance with the reinstatement order, the finalisation of her applications for leave to appeal the judgment of Tlhotlhemaje J in the Constitutional Court or Labour Court.
- [15] On 19 September Baloyi AJ granted Madonsela relief, which is reproduced above in paragraph 2 of this judgement. She was also awarded her costs on a punitive scale. It is this judgment which is the subject matter of the application for reconsideration.

Principles

- [16] An application for reconsideration, in essence, is a procedure for promptly trying to rescind an order handed down in urgent proceedings. Rule 6(12) of the Uniform Rules of the High Court provides:

“(12) (a) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such

manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit. d place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit.

(b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which it is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.

(c) A person against whom an order was granted in such person's absence in an urgent application may by notice set down the matter for reconsideration of the order."

(emphasis added)

- [17] Rule 71 of the Labour Court permits this court to adopt any procedure it deems appropriate, if the Labour Court Rules do not address a situation which arises and, in doing so, may have regard to the Uniform Rules. It is in accordance with this provision that Uniform Rule 6(12)(c) can be invoked in the absence of such a provision in the court's own rules. The following principles have been identified as ones that a court will take into account in exercising its discretion to reconsider an order granted in urgent proceedings:

*"Under the subrule, the court has a wide discretion and the factors which may determine whether an order falls to be reconsidered, include the reasons for the absence, the nature of the order granted and the period during which it has remained operative. Other factors to be taken into consideration will be whether an imbalance, oppression or injustice has resulted, and, if so, the nature and extent thereof, and whether alternative remedies are available. The convenience of the parties is another factor to be taken into consideration."*¹

- [18] It has been observed by the High Court that:

"[10] The purpose of Rule 6(12)(c) is to afford a respondent who was [10] An exposé of the vital considerations which underlie a

¹ Erasmus: Superior Court Practice, Van Loggerenberg, RS 25, 2024,

Rule 6(12)(c) application is to be found in the case of ISDN Solutions (Pty) Ltd v CSDN Solutions CC and Others 1996 (4) SA 484 (W) ([1996] 4 All SA 58) at 486H - 487B (SA) where Faber AJ commented as follows:

'The Rule has been widely formulated. It permits an aggrieved person against whom an order was granted in an urgent application to have that order reconsidered, provided only that it was granted in his absence. The underlying pivot to which the exercise of the power is coupled is the absence of the aggrieved party at the time of the grant of the order.

Given this, the dominant purpose of the Rule seems relatively plain. It affords to an aggrieved party a mechanism designed to redress imbalances in, and injustices and oppression flowing from, an order granted as a matter of urgency in his absence. In circumstances of urgency where an affected party is not present, factors which might conceivably impact on the content and form of an order may not be known to either the applicant for urgent relief or the Judge required to determine it. The order in question may be either interim or final in its operation. Reconsideration may involve a deletion of the order, either in whole or in part, or the engraftment of additions thereto.

The framers of the Rule have not sought to delineate the factors which might legitimately be taken into reckoning in determining whether any particular order falls to be reconsidered. What is plain is that a wide discretion is intended.' " ²

Evaluation

[19] I am satisfied that, even though there was some delay in bringing this reconsideration application, that the LPC acted promptly when it learnt of the judgment of Baloyi AJ. It is also important for it to be able to deal with the merits of Madonsela's application which resulted in a further delay of what are already unduly protracted enquiry proceedings, in which the alleged misconduct pertains to a core regulatory function of the LPC.

[20] The LPC's core rationale for non-attendance at the hearing and failure to oppose the application is that Madonsela had not initiated the urgent

² *Scott v Hough* 2007 (3) SA 425 (O)

application on the CourtOnline system, nor had it granted access to the LPC to a bundle of the case on Caselines. It places considerable reliance on a directive issued by the Judge President relating to the initiation of urgent applications using Caselines. The Judge President's Directive 1 of 2024 stated amongst other things:

"2. Initiating urgent applications

*2.1 All urgent applications must be initiated on the Court Online Portal and must be marked as "**urgent**."*

2.2 All urgent applications must comply with the provisions of Rule 38 of the Rules of the Labour Court².

2.3 All restraint of trade urgent applications must comply with Rule 39 of the Rules of the Labour Court."

- [21] It is not disputed that Madonsela's application was not properly initiated on the system and it did not invite the LPC to view the application bundle on Caselines. In the circumstances, the LPC decided not to take any steps to oppose the application nor to appear at court on 19 September because it assumed that in the absence of the application being properly initiated the application could not proceed. As soon as it learned of the default order, it took steps to launch the current application for urgent reconsideration of the order.
- [22] This is not a case where the LPC was unaware of the application. On 17 September 2025, Ms Madonsela served her urgent Notice of Motion electronically at 11:22 AM. The application was set down for hearing on 19 September 2025 at 10:00 AM. The notice of motion listed RW Attorneys as the LPC's attorneys and included their email address for service. This was the basis for the email service that followed. Later on 17 September, the urgent application was served by email on RW Attorneys using the addresses provided in the Notice of Motion. The LPC does not dispute that this email was received. On 18 September, according to the LPC, its representatives were informed by the applicant's team that Caselines was offline and that access to the case file could not be granted. The LPC says this reinforced its belief that the matter would not proceed.

[23] On 19 September, the applicant uploaded supporting documents to Court Online only at 11:25 AM after the hearing was due to be heard. In any event, the urgent application was called in court at 10:00 AM, but in the absence of a representative of the LPC or any indication it intended to oppose the application the court granted the urgent order by default.

[24] Albeit that the use of Caselines in urgent applications is somewhat novel, why the LPC took such a narrow view of the basis for determining if an urgent application had been launched is difficult to understand. Paragraph 5 of the same directive states:

“5. Service of urgent applications

5.1 Service of process in all urgent matters is to comply with the Rules of the Labour Court.”

[25] Madonsela served the application by email on the LPC’s attorneys and they received it. Accordingly, LPC had been properly served with the application, so it was apprised of the nature of the relief sought and when it would be enrolled for hearing. What the LPC failed to consider was that even if the application had not been properly uploaded that did not mean it had not been properly served with the application. It should not have been so sanguine about its own opinion that it could ignore the application it had received by email simply on account of the fact that it did not appear on Caselines, particularly where it was aware that M 1’s representatives were having difficulties uploading the pleading bundle on the system.

[26] Nonetheless, it appears to have been a *bona fide*, if mistaken belief on the part of the LPC, that the application could be ignored unless it was uploaded in a digital form in accordance with the directive. Accordingly, its failure to oppose the application was not an act of wilful indifference but based on a genuine misinterpretation of the status of the application in circumstances where the applicant was unsuccessfully attempting to upload the bundle.

[27] On the prospects of success, the LPC has addressed the issue of Madonsela not receiving her salary following her reinstatement. In fact, it had notified her in the process of rectifying it before the application was

heard on 19 September. It had also advised her it could not reinstate the medical benefits unless she signed certain forms relating to her readmission to the scheme. At the reconsideration hearing, it was argued from the bar that the reinstatement of her medical aid membership could not be resolved by signing the forms because she would not be placed in the same position vis-à-vis the medical scheme at the time she was dismissed. I accept that this might be an arguable issue but, even if true, this alone did not warrant granting relief on such an urgent basis. On the question of enforcing the cost order of the May judgment, the LPC has undertaken not to pursue this pending the outcome of the application for leave to appeal against that judgment, so this issue is not pressing.

- [28] Lastly, the suspension of the disciplinary proceedings pending the outcome of various leave to appeal applications does appear to be based on a mistaken perception on the part of Madonsela that staying the effect of Thlothlalemaje J's decision to dismiss her application for declaratory relief to halt the disciplinary enquiry, somehow establishes a right to be treated as if she had been successful pending the outcome of the leave to appeal applications. But preserving the *status quo ante* the decision of the learned judge did not confer any right *not* to be disciplined. In the Supreme Court of Appeal decision in *MV Snow Delta v Discount Tonnage Ltd*³ the court held:

“...an order of absolution from the instance or dismissal of a claim or application is not suspended pending an appeal, simply because there is nothing that can operate or upon which execution can be levied.”

(emphasis added)

³ 2002 (4) SA 746 (SCA) at para 6

Accordingly, there is no right to the main relief sought, which as things currently stand is probably also *res judicata* owing to the present status of Thlothlalemaje's judgment.

[29] Be that as it may, I am satisfied that the LPC would have formally opposed Madonsela's application if it had received confirmation that it had been initiated in accordance with the Judge President's directive. It acted in conformity with this belief by seeking confirmation about the application's Caselines status from the court. Even if the LPC should have taken a broader view on whether it was required to formally oppose the application solely because it had not been uploaded, I accept that this was a *bona fide* error and it was not in wilful default. Considering the substantive merits of its opposition to the application, which are discussed above, it is appropriate to set aside the previous ruling of Baloyi AJ and substitute it with an order dismissing the application. As the matter is decided on the substantive merits of the application, it unnecessary to separately address the urgency of Madonsela's application, save to note that it is possible it might have been struck off the roll on that basis.

[30] On the question of costs, it would not be proper to award the LPT its costs, because it is a result of its failure to properly oppose the original application in the first place that necessitated this application being launched.

Order

1. The application in accordance with Rule 6(12)(c) of the Uniform Rules of the High Court is heard as a matter of urgency in terms of Rule 38 of the Labour Court Rules, and any non-compliance with the Labour Court rules relating to time limits and service is condoned.
2. The default order of Baloyi AJ in this matter, handed down on 19 September 2025 is set aside.
3. The default order of 19 September 2025 is replaced with an order that:

3.1 The Applicant's application for urgent relief is dismissed.

3.2 No order is made as to costs.

R Lagrange
Judge of the Labour Court of South Africa

Appearances

For the Applicant:

M Kufa instructed by
Machaba Attorneys

For the First Respondent:

M Naidoo instructed by
RW Attorneys