



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: 2026-014300

In the matter between:

DR GAVIN ADAMS

Applicant

and

THE DIRECTOR GENERAL:

**DEPARTMENT OF HIGHER EDUCATION AND TRAINING
(DR NKOSINATHI SISHI)**

Respondent

Heard: 3 February 2026

Delivered: 3 February 2026

JUDGMENT

JACOBS AJ

Introduction

- [1] This is an *ex parte* application for contempt of court ito Rule 58 of the Rules of this court.

Historical context

[2] The important historical facts herein are:

- 2.1 The Applicant applied for the position of Regional Manager with the Respondent in 2018.
- 2.2 The Applicant was not shortlisted or appointed to the position at the time and he referred an unfair labour practice dispute to the General Public Service Sectoral Bargaining Council. His referral and his demand to be appointed to the post were dismissed by the arbitrator.
- 2.3 The Applicant subsequently launched review proceedings in this court and the arbitration award was set aside. An order made on 30 June 2021 inter alia directed that 'The Third Respondent is ordered to shortlist Dr Gavin Adams should he apply for the re-advertised post'.
- 2.4 In 2021 and 2022 the post was again advertised.
- 2.5 In September 2025 the post was again advertised and the Applicant applied but was not shortlisted.
- 2.6 The Applicant now seeks to hold the Respondent in contempt for the failure to shortlist him in 2025.

The contempt application

[3] In terms of the Notice of Motion the Applicant seeks:

- 3.1 An order nisi calling upon the Respondent, Dr Nkosinathi Sishi, in his capacity as Director-General: Department of Higher Education and Training, to appear personally before this Honourable Court on a date to be determined by the court, to show cause why he should not be held to be in contempt of court for failing to comply with the Labour Court order granted on 30 June 2021 under case number C839/2019, which order reviewed and set aside the bargaining council award under case number GPBC600/2019;
- 3.2 An order directing the Respondent to remain in attendance at Court on the return date until excused by the presiding Judge;

- 3.3 An order granting the Respondent leave to deliver an explanatory affidavit, on or before a date to be determined by the court, setting out the reasons (if any) why the Respondent should not be held to be in contempt of court, provided that the filing of such affidavit shall not excuse the Respondent from appearing personally in Court on the return date unless the Court directs otherwise;
- 3.4 An order authorising and directing the Sheriff to effect service of this application (including the Founding Affidavit and annexures) and the Court's order nisi, personally on the Respondent alternatively on a responsible and duly authorised official at the Respondent's principal place of business, at 123 Francis Baard Street, Pretoria;
- 3.5 An order that costs be reserved for determination on the return date; and
- 3.6 Further and/or alternative relief.

Evaluation

- [4] The requirements of a contempt of court order are trite. In the context of the current matter, the order granted on 30 June 2021 is relied on to satisfy the first requirement – that an order against an alleged contemnor must have been granted.
- [5] The second requirement, that the order must have come to the attention of the Respondents, was addressed by the Applicant by referring to email correspondence between him and individuals within the Department and between members of the Department during late 2021 to January 2022.
- [6] From the judgement of 30 June 2021, it is also evident that the Respondent was represented at proceedings before the court at the time. There is sufficient evidence to show that the Respondent was aware of the order.
- [7] In addressing the third requirement, that there must be non-compliance with the order by the Respondent. The Applicant presented sufficient evidence to show that the post in question was indeed advertised in or about September 2025, and that he had applied therefor. He was apparently also not shortlisted.

- [8] The Applicant, at par 23 of his founding affidavit, states that the post was advertised in 2021 and 2022. He however does not disclose whether he had applied for the post in 2021 or 2022 and whether he was shortlisted at the time or not.
- [9] Comparing the 2018 advertisement, quoted at par 7 of the judgement of 30 June 2021, and the 2025 advertisement, it is apparent that there are some changed requirements for the post. The Applicant did not indicate whether or not he satisfied the changed requirements.
- [10] The order of 30 June 2021 ordered the Respondent to shortlist the Applicant should he apply for the re-advertised post. The order to shortlist the Applicant will not be enforceable in perpetuity. From a reading of the judgement and order of 30 June 2021, and for practical reasons, it must be accepted that the order to shortlist the Applicant would apply to the first occasion after the date of the judgement that the particular position was re-advertised, not on each future occasion.
- [11] The post was re-advertised in 2021 and in 2022. In response to a question from the court, the Applicant advised that he had not applied for the advertised position in 2021, but that he did apply in 2022 but no appointment was made.
- [12] The Applicant did not seek recourse in the court order of 30 June 2021 at that time. The order of 30 June 2021 cannot be extended to the 2025 advertisement. It therefore follows that there is no order against the Respondents that could apply to the 2025 situation.
- [13] Applicant as lay person may be granted some procedural leniency. The prayer for an order *nisi* and the unexpected formulation of the relief sought, may be overlooked and dealt with in terms of the prayer for further and/or alternative relief. Leniency to a lay person can however not dilute the evidentiary burden. The papers before court does not show that there was an order that was applicable to the advertisement in 2025. There can be no contempt.
- [14] In the result, the following order is made:

Order

1. The application is dismissed
2. No order of costs is made.



W Jacobs

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: In person

For the Respondent: No Appearances