(1) Reportable: Yes
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 2511/2022

In the matter between:

KELA SECURITIES (PTY) LTD	**Applicant**
and	
VINCENT JOSEPH FREEMANTLE	**First Respondent**
COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION	**Second Respondent**
JUSTICE ZINZISWA GUMEDE *N.O*	**Third Respondent**

Heard: **4 February 2026**

Delivered: **13 February 2026**

This judgment was handed down electronically by consent of the parties' representatives by circulation to them via email. The date for hand-down is deemed to be on 13 February 2026.

JUDGMENT

PRINSLOO, J

<u>Background facts</u>

[1] The First Respondent (Respondent) was employed by the Applicant as its chief financial officer in October 2020. He resigned in July 2022 and referred an unfair dismissal dispute to the Second Respondent (CCMA). The dispute

was arbitrated in the absence of the Applicant and on 24 August 2022 a default arbitration award was issued in favour of the Respondent. The Third Respondent (arbitrator) found that the Respondent was unfairly dismissed and the Applicant was ordered to pay him compensation.

[2] The Applicant subsequently applied for rescission of the default award, which application was dismissed on 26 September 2022. In the rescission ruling the arbitrator considered the fact that the notice of set down from the CCMA was received by the Applicant on 26 July 2022 (for proceedings on 11 August 2022), but that the Applicant failed to attend the proceedings because *"they had to attend to some urgent reports that needed to be submitted to the JSE and could therefore not avail themselves for arbitration".*

[3] The arbitrator found *inter alia*

> 'The applicant's representative alleges that they were absent because they had an urgent submission to make at the JSE.
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> I have perused the emails between the applicant and JSE which were annexed to the application. Firstly, it is clear from the emails that the queries from the JSE started in June 2022. Secondly, on 5 August 2022 the JSE sent an email to the applicant that the report was viewed and requesting that the applicant responds by 11 August 2022, the date of the hearing.
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> Based on the above the applicant had ample time to arrange and ensure that there is a representative in attendance for the arbitration or at least apply for a postponement timeously.
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> Mr Kelatwang sent an email to the commission on 11 August 2022 requesting a postponement and misleading the commission to say the request is due to an unforeseen urgent matter, when the matter was foreseen.
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> The applicant has a duty to show that they have good prospects of succeeding in the main claim of dismissal, however, they only state that the employee resigned and is the one who caused their issues with the JSE. There is no prima facie case or defense shown in as far as the alleged constructive dismissal is concerned.'

[4] On 10 November 2022 the Applicant filed an application to review and set aside the rescission ruling and for the ruling to be substituted with an order that *“the Applicant’s rescission application is hereby rescinded”*.

[5] The record was served and filed in June 2023, with a supplementary affidavit. On 31 August 2023, the Applicant filed an application for condonation of the late filing of the supplementary affidavit.

[6] In May 2023, the Respondent filed an application in terms of section 158(1)(c) of the Labour Relations Act[1] (LRA) to make the default arbitration award an order of the Court. The Respondent informed the Applicant that its review application had lapsed, which was disputed by the Applicant’s attorneys. The Applicant’s attorneys indicated that they would oppose the section 158(1)(c) application. On 4 August 2023, the Registrar issued a notice of set down, enrolling the section 158(1)(c) application for hearing on 22 November 2023. The notice was addressed to both parties’ attorneys.

[7] On 22 November 2023, this Court (per Tlhotlhalemaje) made the default arbitration award of 24 August 2022 an order of the Court. The said order was served on the Applicant’s attorneys in January 2024.

[8] A writ of execution was subsequently issued and when the Respondent commenced with the enforcement process, the Applicant filed an urgent application to stay enforcement pending the determination of the review application under case number JR 2511/22.

[9] The urgent application under case number 2025-172308 was heard on 2 October 2025 and judgment was delivered on 7 October 2025[2]. The Court (per Makhura J) dismissed the urgent application with punitive costs.

[10] The said judgment dealt with the background facts and the relief sought in the urgent application comprehensively. Relevant for purposes of this judgment is that in dismissing the urgent application, the Court, referring to applicable authorities, found that:

[1] Act 66 of 1995, as amended.
[2] (2025/172308) [2025] ZALCJHB 456 (7 October 2025).

> ‘[16] From the above, it is clear that the award that the applicant seeks to review is no longer in existence. The award ceased to exist on 22 November 2023 when Tlhohlalemaje J made it an order of the Court. This is different to a certification of the award in terms of section 143(3) of the LRA, which does not make the award an order of court. Therefore, the review application has been overtaken and rendered moot by the granting of the application in terms of the section 158(1)(c) application. Accordingly, the review door was shut by the 22 November 2023 order, and this Court has effectively become *functus officio* in that, having made the award an order of court, the Court cannot later consider a review of the same award. The applicant’s remedy is to challenge the order of 22 November 2023. Accordingly, the application to stay the enforcement of the award pending the determination of the review application is incompetent and falls to be dismissed.’

[11] The Court found in no uncertain terms that the review door was shut by the Court of 22 November 2023, that the Court effectively became *functus officio* and cannot consider a review of the same award that was made an order of court and that the Applicant’s remedy was to challenge the order of 22 November 2023.

[12] Notwithstanding the clear finding of the Court, as set out in the judgment of 7 October 2025, Mr Nyangiwe, for the Applicant, persisted with an application for review before this Court on 4 February 2026.

[13] The fact that the Applicant persisted with the review application in view of the recent judgment, the applicable authorities and the existing legal position, is of grave concern to this Court. I canvassed the reason as to why the review application remained enrolled with Mr Nyangiwe, who confirmed that he had represented the Applicant in the urgent application of October 2025 and that he was well aware of the judgment by Makhura J. Mr Nyangiwe, who was prepared to argue the merits of the review application, indicated that the Applicant persisted with the review application because it was so enrolled by the Registrar. The position adopted by the Applicant and its attorneys is concerning, problematic and untenable, for reasons I will deal with *infra.*

The law

[14] In the *Department of Home Affairs v Public Service Co-ordinating Bargaining Council and others*[3] *(Home Affairs),* the Court considered the legal principles regarding the effect of an arbitration award been made an order of the Court pending a review application and held as follows:

> '[7] The relevant principles are well-established. This court has long held that the fact of a pending review is not a bar to the court making any arbitration award that is sought to be reviewed and set aside an order of court (see *Ntshangane v Speciality Metals CC* (1998) 19 *ILJ* 584 (LC); [1998] 3 BLLR 305 (LC)). It is equally well-established though that where an arbitration award is made an order of court, that order is fatal to any pending application to review the award, if only because the arbitration award ceases to exist. In *Blue Marine (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others* (2003) 24 *ILJ* 1528 (LC); [2003] 9 BLLR 853 (LC) Ndlovu AJ (as he then was) said the following at para 15:
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> > 'It is important to realize that once the award is made an order of the court the award, from which such order was made, falls away. In other words, the two instruments cannot co-exist alongside each other. Therefore, upon the award being made an order of the court, there can be no question again of an application for review, aimed at reviewing and setting aside the same award. By then, the award no longer exists. Any party who feels aggrieved by the award, can then only look for remedy to challenge the court order (derived from the award) and not the award.'
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> [8] More recently, in *Gauteng Department of Education v Saunders: In re Saunders v Gauteng Department of Education and others* [2015] 12 BLLR 1187 (LAC), the Labour Appeal Court observed at para 32:
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> "It is trite that once an arbitration award has been made an order of court, it is no longer reviewable. The order is of final effect and is, therefore, appealable."'

[3] (2018) 39 ILJ 823 (LC); [2017] ZALCPE 24.

[15] As far back as 2015, the Labour Appeal Court (LAC) confirmed the position that once an arbitration award is made an order of the Court, it is no longer reviewable. In *Home Affairs,* the Court reiterated in 2018 that:

> 'I fail to appreciate how under these circumstances it can be said that it remains open to the applicant to contest the award by way of review. The fact remains that there are two orders by this court which, on the authorities referred to above, have had the effect that the award no longer exists and is therefore incapable of review. Put another way, the application for review is moot, at least in the sense expressed in *National Coalition of Gay and Lesbian and others v Minister of Home Affairs and others* 2000 (2) SA 1 (CC) where the court said that a case is moot and therefore not justiciable if it no longer presents an existing or live controversy (at para 21 footnote 8), or where, in the words of *Rand Water Board v Rotek Industries (Pty) Ltd* 2003 (4) SA 58 (SCA), making a determination will have no practical effect. (See *Tecmed Africa (Pty) Ltd v Minister of Health and another* [2012] 4 All SA 149 (SCA.)'[4]

[16] The legal position is clear. Even if the Applicant or its attorney was unaware of the legal position, the possibility of ignorance could not prevail after 7 October 2025, when they received the judgment of Makhura J. The judgment not only referred to the applicable authorities, but explicitly found that the award that the applicant seeks to review is no longer in existence, that the review application has been overtaken and rendered moot by the granting of the section 158(1)(c) application and that the review door was shut by order of 22 November 2023.

[17] The status of the Applicant's review application could not be clearer.

[18] The conduct of the Applicant is disturbing in that it ignored the authorities it was made aware of by Makhura J, and in complete disregard for the legal position, instructed its attorney to argue the merits of the review application on 4 February 2026.

[4] *Home Affairs* at para 10.

[19] In law and effect, the default arbitration award no longer exists and is incapable of review. The Applicant should have removed the review application from the roll, but instead instructed an attorney to argue the merits.

[20] The conduct of the Applicant's attorney, as an officer of this Court, is even more disturbing. In *Ex parte Minister of Home Affairs and Others; In re Lawyers for Human Rights v Minister of Home Affairs and Others*[5] the Constitutional Court noted that legal practitioners are an integral part of the justice system, and that they must uphold the rule of law, and act diligently and professionally. They have a high ethical and moral duty to their clients, the public and the courts.

[21] This principle has significant implications. It requires *inter alia* that representatives conduct themselves in a manner that ensures that the legitimacy, dignity and decorum of the court are maintained. There is an ethical obligation on legal practitioners to ensure that clients are properly advised and that the legal position is considered before a matter is argued in Court.

[22] In *Naidoo v Gayregina Investments CC and Another*[6] the High Court recently lamented the fact that litigation was handled in a manner that *"has been to the financial detriment of the parties and to the detriment of the court, whose diminishing resources, already under severe strain, have been needlessly consumed"*. The Court said that:

> '[21] It is a notorious fact that litigation in the High Court is expensive. In the light of that the least that the clients of legal representatives can expect is that the attorney that they have instructed properly and soberly considers the facts of the case in respect of which the instruction has been given, performs the necessary research where knowledge is lacking, knows and understands the law relating to that matter and is familiar with the requirements of the Uniform Rules of Court…'

[5] [2023] ZACC 34; 2024 (2) SA 58 (CC) at para 103. See also *Kekana v Society of Advocates of South Africa* 1998 (4) SA 649 (SCA); [1998] ZASCA 54.
[6] (D4690/2023) [2026] ZAKZDHC 6 (4 February 2026).

[23] The limited resources of this Court and the backlog in dealing with matters, especially opposed motions, are notorious and a well-known fact, more so to legal practitioners who regularly litigate in this Court. It is known that parties must wait in the queue for their day in Court for a period between 12 and 24 months. The detrimental effect thereof is no secret.

[24] In *Mphahlele v Ephraim Mogale Municipality*[7], albeit in a different context, the Court warned practitioners that:

> 'This court has a substantial backlog, both in relation to matters referred for trial and opposed motions. In both instances, parties are being expected to wait for up to 12 months for the allocation of hearing dates. Matters such as the present, which are so manifestly misguided and devoid of merit, require the same time, attention and allocation of scarce resources as those matters that disclose genuine disputes justiciable by this court. The parties in those matters are prejudiced by the referral of disputes such as the present. The court ought to mark its disapproval of those practitioners who persist with claims of the sort described above and who undermine the statutory purpose of expeditious and efficient dispute resolution. If a costs order *de bonis propiis* is an appropriate means of achieving that end, then so be it.'[8]

[25] Mr Nyangiwe or the responsible attorney at Rams Attorneys, should have realised the legal position and should have advised the Applicant accordingly. Showing up in Court to argue the merits of a review application, where the arbitration award, which is the subject of the review application, has been made an order of Court in November 2023, was an abuse of scarce judicial resources and is indicative of a lack of understanding of the law and the consequences it has on the continuation of the review application. Rams Attorneys should have removed the matter from the roll and should have advised the Applicant on what the law is.

[26] Mr Nyangiwe submitted that the matter was persisted with because it was enrolled by the Registrar. Such an argument is untenable.

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[7] (2018) 39 ILJ 879 (LC); [2023] ZALCJHB 179.
[8] Ibid at para 15.

[27] In *E Tradex (Pty) Ltd t/a Global Trade Solution v Finch and others*[9], the LAC considered the consequences of archiving and made a clear distinction between 'status' and an 'administrative act'. The LAC confirmed that:

> '[11] It must therefore follow that the archived case acquires a peculiar status which requires the delinquent party to justify why it should be reinstated and thereafter be entertained by a court in the wake of a lack of expeditious prosecution. The Labour Court *a quo*, treated the 'archiving' as an administrative act, not as a matter of status. The significance of this distinction between status and an administrative act is that the acquisition of a peculiar status means that upon a given event, the status automatically adheres to the case. That status has legal consequences which a mere administrative act by the registrar cannot undo.'

[28] The status of the default judgment changed on 22 November 2023, so too did the remedies available to the Applicant after the award was made an order of Court and obviously, the review of the award was no longer an option. The fact that the matter was enrolled by the Registrar cannot and did not change the status of the award and cannot and does not open the doors of the review Court when those doors were shut by the operation of law. The notice of set down was no more than an administrative act and it did not undo the legal consequences of the Court order of 22 November 2023. To persist with a review application in these circumstances on the strength of a set down from the Registrar is opportunistic and nothing but an attempt to snatch at a bargain.

<u>Costs</u>

[29] In so far as costs are concerned, this Court has a broad discretion in terms of the provisions of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness.

[30] In *Zungu v Premier of KwaZulu-Natal and Others*[10] the Constitutional Court confirmed that the rule that costs follow the result does not apply in labour

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[9] (2022) 43 ILJ 2727 (LAC); [2022] ZALAC 106 at paras 9 – 12.

matters. The Court should rather seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand allowing those parties to bring to this Court cases that ought not have been brought to Court in the first place.

[31] This is a case where the Court must strike a balance, considering the requirements of law and fairness.

[32] Mr Nyangiwe submitted that each party should be ordered to pay their own costs, as it would be unfair to saddle the Applicant with a cost order. On the other hand, Mr Botha for the Respondent, argued that cost should follow the result and considering the conduct of the Applicant, a punitive cost order should be granted.

[33] In my view this is a case where it is appropriate to make a cost order. A cost order is a method of ensuring that decisions on how to conduct litigation in this Court are taken with due consideration of the law and the prospects of success.

[34] The conduct of the Applicant warrants a punitive cost order, as it persisted with a review application, notwithstanding a judgment which made the position clear and indicated in no uncertain terms that the doors of the review court were shut. The content of Makhura J's judgment was ignored and the applicable legal position was disregarded. To make matters worse, the Applicant was legally represented and did not approach this court as an unrepresented layperson. It would be unfair to saddle the Respondent with costs to oppose an application that should not have been persisted with.

[35] In the premises, I make the following order:

<u>Order</u>

1. The review application is struck off the roll;

2. The Applicant is to pay the First Respondent's costs on a scale as between attorney and own client.

[10] (2018) 39 ILJ 523 (CC); [2018] ZACC 1 at para 24.

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Connie Prinsloo

Judge of the Labour Court of South Africa

<u>Appearances:</u>

On behalf of the Applicant: Mr L Nyangiwe from Rams Attorneys

On behalf of the First Respondent: Mr G Botha from Gerhard Botha Attorneys