



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

Signature

Date

THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JA 30/2025

In the matter between:

LEKABANE GILFORD MATSEKOLENG

First Appellant

DENGA INCORPORATED

Second Appellant

and

SYNERGY WORLD LOGISTICS (PTY) LTD

Respondent

Heard: 20 November 2025

Delivered: 20 February 2026

Coram: Van Niekerk JA et Chetty AJA, Kganyago AJJA

JUDGMENT

CHETTY, AJA

Introduction

- [1] This appeal lies against the decision of the Labour Court (Makhura J), with the leave of that Court against part of the judgment and part of the order delivered on 12 February 2025. The first appellant was dismissed on 29 May 2020 due to economic circumstances. Having launched proceedings in the Labour Court challenging his unfair dismissal, the first appellant's matter fell to be archived in terms of the Practice Directives of the Labour Court. After successfully obtaining an order to retrieve his file and reinstate his application, the Labour Court issued an order directing his attorneys, Denga Incorporated (Denga Inc), to file an affidavit showing cause as to why it should not be liable for the costs of the retrieval of the application as well as forfeiting all fees charged to Mr Matsekoleng. Denga Inc duly filed an affidavit setting out the reasons why the court a *quo* ought not to mulct it with the costs of the retrieval application. This did not prevent the court a *quo* from making a punitive order for costs against Denga Inc.
- [2] The facts giving rise to the dismissal of the first appellant, although not directly relevant to the issues forming the basis of the appeal, are relatively undisputed. Neither the first appellant's statement of case nor the respondent's response formed part of the record. The affidavits filed by the first appellant and the respondent do not shine much light on the facts, except that the respondent denies any claim of unfairness by contending that Mr Matsekoleng was afforded the opportunity to make submissions on why he should not have been retrenched.
- [3] The judgment of the court a *quo* records that Mr Matsekoleng was employed as a driver for the respondent until he was dismissed via a text message on 29 May 2020. Prior to being dismissed, he was requested to travel from Limpopo to the respondent's offices. He indicated that he could not do so due to the restrictions imposed by government during the early stages of the COVID-19 pandemic. He was shortly thereafter informed in a text message of his dismissal. This formed

the basis of his claim that his dismissal was procedurally and substantively unfair. The merits of the case are only relevant to the extent that the court *a quo* considered the prospects of success in the context of the application for condonation for the late application to retrieve the file after it had been archived.

- [4] It is common cause that the statement of case was filed in August 2020, with the respondent filing its response on 21 October 2020, *albeit* outside the stipulated time periods. What is not disputed is that thereafter the first appellant's attorneys took no further steps in furtherance of the diligent prosecution of the matter, resulting in the file being archived in terms of clause 16.1 of the Practice Directives which were applicable at the time when the application for the retrieval was lodged.¹ The period of inaction was from October 2020 until March 2022. The second appellant, as the attorneys acting for the first appellant, ought to have acted within six months of 21 October 2020. They failed to do so. That position continued for almost another year until the matter resurfaced on their radar in March 2022. On any explanation, this delay is excessive.
- [5] The court *a quo*, in considering the application for the retrieval of the file from the archives, was satisfied after considering all of the circumstances that the application should be granted and directed the parties to file a pre-trial minute within 30 days of its order, delivered on 22 January 2025. In relation to the issue of the costs, the court *a quo* directed that Denga Inc. file an affidavit explaining why it should not personally bear the costs and why it should not be deprived of any fees paid by Mr Matsekoleng. The explanation by the instructing attorney, Mr Alpeus Denga, stated that the matter was handled by a candidate attorney who was not fully conversant in the area of labour law, and who has since started practice for his own account. Mr Denga recognised that the delay was attributable to some negligence on the part of the firm and, correctly in my view, tendered to pay the reasonable disbursements and expenses incurred by the respondent in opposing the application for retrieval of the file. It was pointed out

¹ The Practice Manual of the Labour Court of South Africa, effective, 1 April 2013. The Practice Manual has been repealed by the new Rules Regulating the Conduct of the Proceedings of the Labour Court that came into effect on 17 July 2024.

by Mr Denga that the respondent was represented by an employer's association, namely, the National Employers Association of South Africa and accordingly no legal fees in the strict sense would have been incurred by the respondent.

- [6] Mr Denga further stated that Mr Matsekoleng had not paid any legal fees and that any fees due would be recovered if he succeeded in his application for unfair dismissal. Although this arrangement was described by Mr Denga as him acting on a '*pro bono* basis', he is incorrect. The arrangement in place with Mr Matsekoleng was more akin to a contingency fee arrangement.
- [7] In a judgment delivered on 12 February 2025, Makhura J found that Denga Inc's conduct in the handling of the matter on behalf of the first appellant displayed "*serious negligence and a dereliction of duty*" in that it permitted a candidate attorney "*unfettered and unsupervised power to run with the matter*" ultimately to the prejudice of Mr Matsekoleng. Notwithstanding the court a *quo* finding that the explanation tendered by Denga Inc to be "flimsy" and the delay in bringing the proceedings to be "inordinate", after considering the prospects of success in the matter, it granted an order allowing for the retrieval of the archived file.
- [8] In arriving at its decision that Denga Inc personally pay the costs of the retrieval application and forsake any payments already made by its client, the court a *quo* found that the explanation from Mr Denga of the fee arrangement with Mr Matsekoleng to be "*riddled with inconsistencies and not accepted*". Further, the court a *quo* found that Denga Inc failed to ensure that the candidate attorney who was entrusted to deal with the matter was properly supervised and that his supervising attorney failed to provide the necessary training, development and guidance to the candidate attorney concerned. The court a *quo* considered Mr Denga or the supervising attorney's conduct as leading to an "*injustice and a disservice*" to the candidate attorney and to Mr Matsekoleng. It proceeded to make the order for punitive costs, which forms the basis for this appeal.
- [9] The order of Makhura J, delivered on 12 February 2025, which forms the basis of this appeal reads as follows:

- ‘1. Denga incorporated shall pay the respondent’s actual expenses and/or expenditures incurred in opposing this application;
2. Denga Incorporated shall be liable to pay the counsel’s fees to date from its own account;
3. Denga Incorporated shall not be entitled to charge any fees from the inception of the matter to the date of the hearing of the retrieval application (22 January 2025);
4. Denga Incorporated shall repay any money that the applicant has paid into its trust account or in any manner for services rendered from the inception of the matter until the date of hearing of the retrieval application (22 January 2025) within 10 days of this order.’

[10] Leave to appeal was applied for by both Mr Matsekoleng and Denga Inc on 14 March 2025 against part of the judgment and part of the order delivered on 12 February 2025. It is clear from notice of application for leave to appeal and the judgment of the court a *quo* granting leave that the issue sought to be appealed pertained only to the award of costs *de bonis propriis* against Denga Inc. The order also cast a shadow over the professional reputation of Denga Inc.

[11] The respondent seized the opportunity and filed a cross-appeal seeking that the whole of the order granted by the Labour Court be set aside and replaced with an order that the reinstatement application should have been dismissed with costs. The central basis relied upon by the respondent was that Mr Matsekoleng should not be allowed to escape the negligence of his attorney, and the excessive delay in prosecuting the application ought not to have been condoned by the court a *quo*.

[12] It was submitted by Mr Maluleke, on behalf of the appellants, that the court a *quo* erred in concluding that the explanation for the delay in filing the retrieval application by Mr Denga was riddled with inconsistencies or that he failed to ensure that the person assigned to deal with the matter, was properly trained. In

support of the application for retrieval, Mr Denga filed an affidavit in which he said the following:

'I confirm that the aforementioned filing of the Respondent's response to the Applicant's Statement of Case was the last step that was taken which then necessitated this application for the revival of the Statement of Case because the file had since been archived as per the Directive of this Honourable Court that came into effect on 2nd of April 2013.

I however wish to confirm that this matter was handled by Avhashoni Nkhueleni, the then Candidate Attorney who was not fully conversant in labour matters, who had since left the practice of Denga Incorporated for his own account and on or about the 19th of August 2021 he attempted to serve and file the discovery affidavit which was an irregular step in terms of the Rules of this Court as the same is not provided for and such discovery affidavit had to be withdrawn on the 25th of August 2021.'

[13] It was submitted on behalf of the appellants that the court *a quo*'s attention ought to have focused on the explanation for the delay by Mr Denga for the period from 22 April 2021 to 22 March 2022, when the application for the retrieval of the file was made. This is the relevant period during which the Labour Court concluded that Denga Inc had failed to act in a diligent manner, leaving the file in the hands of an untrained candidate attorney. Counsel for the appellant's contended that this conclusion was erroneous in that Avhashoni Nkhueleni (the candidate attorney referred to earlier) had in fact been admitted as a practicing attorney on 11 February 2021 in the Gauteng Provincial Division. A copy of the relevant order forms part of the appeal record. There is nothing on record to gainsay this evidence.

[14] While the court *a quo* may have been correct to conclude that the matter was not dealt with by the attorneys as diligently as it ought to, it is not correct that the person dealing with the matter (the said Avhashoni Nkhueleni) was untrained and unsupervised during the relevant period. He was admitted to practice as an attorney, and effective 11 February 2021 no longer required supervision of a

senior attorney. The conclusion reached by the court a *quo* was factually incorrect. Courts should always exercise restraint when making comments that could cast aspersions on the professional integrity of a legal representative, except in the clearest of cases where the necessary evidence supports such a conclusion.²

- [15] I agree with the appellant's counsel that the criticism directed at Mr Denga and/or Denga Inc for not supervising the legal practitioner assigned to deal with the matter during the period when a retrieval application became necessary, was based on an erroneous premise and not justified on the evidence before it. I also accept that in this context, such comments by a court can adversely impact the professional reputation of the practitioner concerned. This was one of the grounds of which leave to appeal was sought.
- [16] In relation to the order directing Denga Inc to repay monies to Mr Matsekoleng, this order is contrary to the evidence of Mr Denga that no monies have been paid to him by Mr Matsekoleng and as such, there is nothing to be refunded. The order by the Labour Court at paragraph four cannot stand as there is no evidence to sustain it. On this basis counsel submitted that paragraphs two, three and four of the Order of the court a *quo* cannot stand. I see no reason to conclude otherwise for the reasons set out above.
- [17] It was further conceded by Mr Denga in his affidavit before the court a *quo* that in the event of his firm being found to be negligent in the handling of the matter, he tendered to pay the "*reasonable actual disbursements and expenditure incurred by the respondent in opposing the application*". That tender still stands and I can find no basis to interfere with paragraph one of the Order.
- [18] What remains is the cross-appeal by the respondent that the court a *quo* erred in condoning Mr Matsekoleng's delay in bringing the application for retrieval of the file from the archives and for the reinstatement of his claim of an unfair dismissal.

² See: *Choeu v Department of Justice and Constitutional Development, Limpopo Province and others* [2025] 4 BLLR 419 (LAC).

It must be borne in mind that leave to appeal was granted to Denga Inc in respect of the judgment delivered on 12 February 2025. That Order only deals with the issue of Denga Inc having to personally pay the costs of the application incurred by the respondent. The order does not involve the merits of the application for the reinstatement of the matter. No leave to appeal was sought by either party against that specific order, and especially not against that part of the order permitting the retrieval of the file from the archives and permitting Mr Matsekoleng to proceed with his referral.

[19] On a strict interpretation, the order of Makhura J dated 22 January 2025 is not the subject matter of the appeal before this Court and consequently the respondent's cross- appeal falls to be dismissed on this ground alone. This is apparent from the judgment on 12 February 2025 which reads as follows:

'The retrieval application in this matter was set down on the opposed motion roll on 22 January 2025. *On that day, the Court, after hearing arguments from both parties, issued an order in the following terms:*

1. The application is granted, and the file is retrieved from the archives.
2. The applicant is permitted to proceed with his referral.
3. The parties are ordered, within 30 calendar days from today, to convene a pre-trial conference, conclude and sign a pre-trial minute.
4.'

[20] On a more benevolent interpretation, it could be contended that the orders of 22 January 2025 and 12 February 2025 are inter-twined and must be read together. The appellants adopt the position that the order of 12 February 2025 had nothing at all to do with the retrieval application and only concerned the adverse costs order against Denga Inc. Considering those facts, the appellants contend that no leave has been granted to appeal the order of 22 January 2025 and on that basis, the cross-appeal should be struck out.

- [21] Mr Dames who appeared on behalf of the respondent submitted, and correctly so, that the court a *quo* did not issue any reasons for the Order on 22 January 2025, when it granted the application for the retrieval of the files from the archives. It is also correct that in its judgment of 12 February 2025 when the court made a punitive order of costs against Denga Inc, the court a *quo* referred to its *earlier order* and considered the aspects of condonation, excessive delay and prospects of success. Notwithstanding, it is trite that an appeal lies against an order and not the reasons. The respondent remains hamstrung in that it noted a cross-appeal against a judgment where no leave to appeal was sought from the court a *quo*. I agree with Mr Maluleke that the appeal should be dismissed on this ground alone.
- [22] However, given the peculiar nature of the two orders issued by the court a *quo* and the extent that they overlap, this Court was urged to have regard to the argument advanced on behalf of the respondent that condonation should not have been granted because of the excessive delay, which is attributed to negligence on the part of Denga Inc. It was further contended that Mr Matsekoleng's prospects of success were weak and not sufficiently strong to displace the unexplained, lengthy delay in bringing the application for condonation.
- [23] Mr Dames conceded that for this Court to revisit or set aside with the decision of the court a *quo* to condone the delay in bringing the application for retrieval, this would require this Court to interfere with the exercise of a true discretion vested in the court a *quo*. It is trite that courts of appeal are loathe to interfere in such cases, except in the case of a clear misdirection. On the facts before us, it is evident that the court a *quo* considered the extent of the delay, the reasons advanced for the delay and Mr Matsekoleng's prospects of success. Regarding the last-mentioned factor, the court a *quo* had the benefit of being in possession of the statement of case and response thereto, which it considered in arriving at its decision. Those documents do not form part of the appeal record. Against this backdrop, we are unable to interrogate the decision of the court a *quo* in

ascertaining whether any irregularity was committed. Accordingly, the respondent is unable to assail the threshold on the facts that would allow an appeal court to interfere with a decision following the exercise of the Labour Court's discretion. The cross-appeal must accordingly fail.

[24] Counsel for the respondent accepted that if the Labour Court erred in its conclusion in mulcting Denga Inc with a punitive order as to costs, that paragraphs two, three and four of the order dated 12 February 2025 could not stand. The respondent accepted that in the event that the cross-appeal does not succeed, the tender of Denga Inc to pay the costs incurred by the respondent in opposing the retrieval application in the court *a quo*, should stand. Mr Maluleke for the appellants did not oppose the proposed order.

[25] Finally, in relation to costs of these proceedings, the rule applicable in this Court is that costs do not necessarily follow the result and that any liability for costs falls to be determined having regard to the requirements of the law and considerations of fairness. The appellants have been largely successful in having the adverse costs award against Denga Inc reversed. More importantly for the second respondent, any imputation against the professional reputation has been corrected. Although the cross-appeal was unsuccessful, I am of the view that the equitable outcome is that each party bear their own costs in respect of the proceedings in this Court.

[26] In the result, the following order is made:

Order

1. The appeal is upheld, with no order as to costs.
2. The order in paragraphs (2), (3) and (4) granted by the Labour Court dated 12 February 2025 are set aside and substituted with the following:

"1. Denga Incorporated shall pay the respondent's reasonable costs and disbursements incurred in opposing this application."

M R CHETTY

Acting Judge of the Labour Appeal Court of South Africa

Van Niekerk JA *et* Kganyago AJJA concur.

APPEARANCES:

FOR THE APPELLANT: Mr MD Maluleke

Instructed by: Denga Inc

FOR THE RESPONDENT: Mr CR Dames

Instructed by: JKL Attorneys