



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

Signature 18 February 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026-017043

Case no: J1754/23

In the matter between:

FREDERICK JOHAN BEUKES N.O

First Applicant

GIDEON JACOBUS BEUKES N.O

Second Applicant

DALORIS ANNEY NIEMANN N.O

Third

Applicant

and

THE COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

First Respondent

THE NATIONAL BARGAINING COUNCIL FOR

THE ROAD FREIGHT AND LOGISTICS INDUSTRY

(NBCRFLI)

Second Respondent

NATHA LOGISTICS (PTY) LTD

Third Respondent

Heard: 12 February 2026

Delivered: 18 February 2026

Summary: Application to stay the enforcement of an arbitration award, as well as interdicting and restraining a bargaining council from seeking to enforce its collective agreements, appointing agents to enforce compliance with collective agreements, issuing compliance orders, performing any labour dispute resolution functions,

referring disputes to the CCMA for conciliation or arbitration, imposing a fine or charging interest, and enforcing any arbitration awards pending the outcome of a review application challenging a demarcation award the employers' business falls within the scope and industry of the bargaining council

JUDGMENT

GANDIDZE, J

Introduction

- [1] The application, by the Trustees of the Jodeo Trust (the Trust), seeks various orders against the National Bargaining Council for the Road Freight and Logistics Industry (the Bargaining Council). The origin of the dispute is the Trust's failure to submit returns to the Bargaining Council and to pay employee contributions, arguing that its business fell outside the Bargaining Council's scope and therefore did not need to comply with the Bargaining Council's collective agreements. The dispute ultimately led to the referral of a demarcation dispute under section 62 of the Labour Relations Act¹ (LRA), to the Commission for Conciliation, Mediation and Arbitration (CCMA) in November 2021. The award issued on 7 June 2023 found that the Trust's business does fall within the scope and industry of the Bargaining Council.
- [2] This award is currently being reviewed in an application filed with this Court on 17 July 2023. The Bargaining Council opposed the review and filed a counterapplication for an order that the Trust and Natha Logistics (Pty) Ltd (Natha), the fourth respondent, be held jointly and severally liable for complying with the Bargaining Council's collective agreements. By February 2024, all pleadings in both the review and counterapplication had been filed. A hearing date has not yet been set.
- [3] In light of the demarcation award, the Bargaining Council has continued its efforts to compel the Trust to comply with its collective agreements and has

¹ Act No 66 of 1995, as amended.

also issued several arbitration awards against the Trust. The Bargaining Council's conduct, as described, prompted the Trust, in December 2023, to file an application in this Court for a stay of all enforcement proceedings pending the outcome of the review application. The application was brought in the ordinary course. All the papers in the enforcement proceedings were also filed by February 2024, and a hearing date is yet to be allocated.

[4] On 22 January 2026, the Sheriff attended the Trust's premises and attached movable goods valued at approximately R50,000 to enforce an arbitration award issued in case number KLDLEV027/19429/22. This prompted the current application to stay all enforcement proceedings. The Trust relies on the enforcement pleadings filed in 2023 and 2024, as well as an Amended Notice of Motion and supplementary affidavits, which outline its reasons why the enforcement application should now be heard as a matter of urgency.

[5] The orders sought in the amended notice of motion are:

- 5.1. That the application is deemed to be an urgent application and that the non-compliance with the provisions pertaining to form and service contained in the rules of this Court is to be condoned.
- 5.2. That the enforcement of the arbitration award issued on 29 January 2025 under case number KLDLEV027/19429/22 be stayed pending the finalisation of the applicant's review application at the Labour Court.
- 5.3. That the second respondent be interdicted and restrained from:
 - 5.3.1. Enforcing its collective agreement on the applicants.
 - 5.3.2. Issuing any compliance orders in respect of the applicants.
 - 5.3.3. Performing any labour dispute resolution functions in respect of the applicants.
- 5.4. Referring any dispute for conciliation or arbitration regarding the applicants to the first respondent.
- 5.5. Conciliating and or arbitrating any dispute concerning the applicants.

- 5.6. Appointing any agent to promote, monitor and or enforce compliance with its main collective agreement in respect of the applicants.
- 5.7. Charging the applicants any fine or interest in enforcing the terms of its main collective agreement.
- 5.8. Enforcing any arbitration award in terms of section 143 of the Labour Relations Act 66 of 1995 against the applicants.
6. The relief prayed for in terms of prayers 1 and 2, *supra*, be granted on an interim basis pending the finalisation of the applicant's review application referred under case number JR1329/ 2023.
- [6] The Bargaining Council opposed the application, and the CCMA and Natha did not.
- [7] There was a preliminary issue that the answering affidavit was filed 50 hours late. The Trust filed a replying affidavit thereto, and when the matter was heard, all the pleadings had been filed, with no request for additional time to file further affidavits. The late filing of the answering affidavit is condoned, allowing the matter to be decided on its merits based on the parties' submissions.

Urgency

- [8] I addressed this issue, which was fiercely debated.
- [9] In explaining the urgency, the Trust submitted that it launched the application to stay enforcement as soon as the Bargaining Council did not respond positively to the request for an undertaking not to institute enforcement proceedings made on 5 December 2023. That application was launched on 14 December 2023, and, in the ordinary course. According to the Trust, there were no grounds for urgency at the time.
- [10] It further submitted that the Sheriff's visit on 22 January 2026 to enforce compliance with the arbitration award referred to in prayer 2 has created the urgency. It was also pointed out that the award in question was obtained in

July 2024, was certified in January 2025, and that the Bargaining Council instructed the Sheriff to enforce it only in January 2026. The relevant supplementary papers in the application to stay enforcement were uploaded to Caselines on 28 January 2026, and a hearing date of 12 February 2026 was scheduled.

- [11] The Bargaining Council disputed that the matter was urgent and argued that any urgency was self-created. It submitted that its enforcement efforts have been ongoing since November 2021, and in the answering affidavit in the review application filed in February 2024, it confirmed that it would proceed with the enforcement process. Yet, no steps were taken to set the stay application down for a hearing.
- [12] The Bargaining Council also pointed out that the arbitration award, issued in the Trust's absence in July 2024 and served on the Trust that same month, was not challenged by the Trust. It further submitted that the application to certify the award was served on the Trust on 29 January 2025, and the Trust still did not take steps to challenge the award. Additionally, the Bargaining Council pertinently raised the issue of the Trust's failure to ensure that the enforcement application, launched two years ago and now ripe for hearing, was allocated a hearing date. In this context, it argues that the Sheriff's visit to the Trust's premises on 22 January 2026 cannot be relied upon to establish urgency.
- [13] In *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*,² the Court established these principles concerning urgency:

[8] In my view the delay in instituting proceedings is not, on its own a ground, for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. A delay might be an indication that the matter is not as urgent as the applicant would want the Court to believe. On the other hand a delay

² 2011 JDR 1832 (GSJ); [2011] ZAGPJHC 196.

may have been caused by the fact that the Applicant was attempting to settle the matter or collect more facts with regard thereto.

[9] It means that if there is some delay in instituting the proceedings an Applicant has to explain the reasons for the delay and why despite the delay he claims that he cannot be afforded substantial redress at a hearing in due course. I must also mention that the fact the Applicant wants to have the matter resolved urgently does not render the matter urgent. The correct and the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an Applicant will be afforded substantial redress. If he cannot be afforded substantial redress at a hearing in due course then the matter qualifies to be enrolled and heard as an urgent application. If however despite the anxiety of an Applicant he can be afforded a substantial redress in an application in due course the application does not qualify to be enrolled and heard as an urgent application.'

[14] It is undisputed that the Bargaining Council's enforcement efforts have been ongoing since 2021. However, this application concerns enforcement proceedings after the demarcation award was issued in July 2023. From that point, the Trust understood that, armed with the demarcation award, the Bargaining Council would intensify its enforcement efforts. The version that the Trust requested the Bargaining Council to provide an undertaking not to continue with enforcement, and that the enforcement application was launched only after the Bargaining Council refused to give the undertaking, was not disputed.

[15] Therefore, the period from June 2023, when the demarcation was issued, to December 2023, when the application to stay the enforcement proceedings was launched, has been adequately explained. It is the period between December 2024 and January 2026, when the Trust enrolled the matter on the urgent roll that needs to be scrutinised.

[16] It is common cause that during the later period, arbitration awards were issued against the Trust. It is also common cause that the Trust did not contest those awards. Mr De Villiers for the Trust submitted that this was

because of the belief that the outcome of the review application challenging the demarcation award would ultimately determine whether the Trust is required to register with the Bargaining Council and comply with its collective agreements.

- [17] Above, I noted that all the pleadings in the enforcement application were filed by February 2024. Although the Bargaining Council contested this, the Court was persuaded that Trust requested a hearing date for the enforcement application in March 2024, but to date, no hearing has been scheduled.
- [18] The Trust could have taken further steps to secure a hearing date from the Registrar, similar to how the hearing date of 12 February 2026 was obtained. This matter is discussed in more detail later.
- [19] There is no doubt that the Sheriff's visit to the Trust's premises on 22 January 2026 prompted its lawyers to act swiftly, and on 28 January 2026, they secured the hearing date of 12 February 2026.
- [20] I accept that, after requesting the set-down date in March 2024, the Trust could not have succeeded in securing a hearing date on the urgent roll unless the Sheriff had taken action. This is not to say it did not have to press the Registrar for a hearing date in the meantime. Notwithstanding this, the crucial test for urgency is whether the Trust will obtain substantial redress in due course, and it is in respect of this test that I am of the view that the matter must be heard as one of urgency, for the reasons set out below, when the requirements for urgent interim relief are discussed.
- [21] But before that, I address some points *in limine* raised by the Bargaining Council in its opposition to the application.

That both the review and enforcement applications were archived

- [22] The Bargaining Council argued that there is no purpose in granting the relief sought, since both the review and enforcement applications have been archived, in accordance with clause 16.1 of the Practice Manual, which states as follows:

‘16. ARCHIVING FILES

16.1 In spite of any other provision in this manual, the Registrar will archive a file in the following circumstances:

- in the case of an application in terms of Rule 7 or Rule 7A, when a period of six months has elapsed without any steps taken by the applicant from the date of filing the application, or the date of the last process filed;

16.2 A party to a dispute in which the file has been archived may submit an application, on affidavit, for the retrieval of the file, on notice to all other parties to the dispute. The provisions of Rule 7 will apply to an application brought in terms of this provision.

16.3 Where a file has been placed in archives, it shall have the same consequences as to further conduct by any respondent party as to the matter having been dismissed.’

[23] The question is whether a period of six months has elapsed without any steps taken by the applicant from the date of filing the application, or the date of the last process filed.

[24] The last process in the review application was completed by February 2024. Despite the Bargaining Council’s denials, the request for a hearing date, as well as the indexing and pagination of the court file, were carried out in March 2024, as indicated by the court stamps on the documents. No further processes were required, other than the allocation of a hearing date by the Registrar.

[25] Similarly, the last process in the enforcement application was submitted in either February or March 2024, and the Registrar was asked to set a hearing date for the matter in March 2024. The court file was also indexed and paginated during the same month, as shown by the court stamps on the documents.

[26] Therefore, factually, the review and enforcement applications were not archived under clause 16.1. The Bargaining Council’s notice in December

2024 stating that the applications had been archived, and the Trust's response denying this and explaining why they denied it, are therefore irrelevant. The Bargaining Council's heads of argument did not persist with the claim that the applications had been archived, perhaps recognising that, in fact, the applications were not archived.

- [27] The fact remains that requests for hearing dates were made, even if they were not served on the Bargaining Council's attorneys of record, which is the usual practice. Regarding what happened to those requests for hearing dates, there is merit in Mr Beckenstrater's submission that they were likely misfiled.
- [28] Regarding the claim that heads of argument were not filed, the practice in this Court is for the set-down notice to instruct the parties to submit their heads of argument in line with a timetable outlined in the notice. In this case, it is undisputed that no set-down notices were issued for either the review or the enforcement applications.
- [29] The submission by the Bargaining Council that the Trust has been dilatory in dealing with the matter since February or March 2024 has merit. The facts are that since the requests for hearing dates made in March 2024, the Trust's attorneys of record did not follow up with the Registrar for hearing dates until the Sheriff knocked on its doors on 22 January 2026. That this is what happened is confirmed in the replying affidavit, which records that *"there were no further processes to follow upon waiting for the registrar to allocate a hearing date"*. Mr de Villiers' submission from the bar that an unnamed candidate attorney had regularly attended at the set-down office to follow up on the set-down date contradicts the averment that there were no further processes to follow after the requests for hearing dates were made. Given these facts, the submission that *"the applicant did everything in its power to enrol the matter"* cannot be taken seriously. The reality is that since March 2024, the Trust has been content to let sleeping dogs lie and no steps to ensure that both applications were allocated hearing dates.
- [30] That said, the twist in this case is that the Bargaining Council filed a counterapplication in the review process. It also should have taken steps to

ensure that the case, including its counterapplication, was allocated a hearing date. The Bargaining Council did not provide any evidence that it had requested a set-down date for its counterapplication. Both parties should have secured a hearing date from the Registrar or, at a minimum, shown that they regularly followed up with the Registrar to obtain a hearing date. This did not occur. As a result, both parties were slow in prosecuting the review application and the counterapplication and are responsible for the fact that the two applications have remained dormant since March 2024.

No security filed

[31] The Bargaining Council further submitted that the stay could not be granted because the Trust could have filed security as contemplated in section 145(7) and (8) of the LRA, but did not do so. The provisions state the following:

- '(7) The institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8).
- (8) Unless the Labour Court directs otherwise, the security furnished as contemplated in subsection (7) must-
 - (a) in the case of an order of reinstatement or re-employment, be equivalent to 24 months' remuneration; or
 - (b) in the case of an order of compensation, be equivalent to the amount of compensation awarded.

[32] A demarcation award, determining that the Trust's business falls within the scope of a Bargaining Council, is the subject of the review application. The award does not address reinstatement or compensation for a dismissed employee as contemplated in the above-quoted provisions. Therefore, no security is required to be filed in this review application.

[33] Regarding the arbitration award mentioned in prayer 2 of the amended notice of motion, it is agreed that no review application has been lodged concerning that award. Consequently, even if the award is sounding in money, security is

only required when there is an order for reinstatement or for the payment of compensation, neither of which is applicable in this case.

No review application in respect of the arbitration award

[34] It was common cause that neither a review application nor a rescission application had been filed regarding the award whose enforcement is sought to be stayed. Initially, this issue greatly concerned the Court, as it grappled with whether it could grant an order staying the enforcement of that arbitration award without a review application challenging that specific award. However, after further consideration, the Court concluded that Mr de Villiers's submission that the outcome of the review application would determine whether all the arbitration awards would stand or fall had merit. It is common cause that at least four other arbitration awards have been issued against the Trust, following the demarcation award. Therefore, the absence of a review application challenging the specific award in these proceedings does not prevent the Court from exercising its discretion to grant the relief sought.

Non-citation of the Sheriff

[35] This point was raised as Mr Beckenstrater looked to conclude his oral argument. As far as I could establish, the point, which Mr Beckenstrater conceded was technical, was not raised in the pleadings, which would be a reason not to entertain it.

[36] But importantly, while it is correct that the Sheriff is often cited in applications to stay execution, the non-citation of the Sheriff in this case does not prejudice him in any way, given that his only interest is in carrying out the instructions issued to him to attach the Trust's property and sell it at an auction. A court order staying the execution will be binding on the Sheriff, even if he was not cited in these proceedings. The non-citation of the Sheriff does not make the application defective.

[37] With the preliminary points addressed, I now consider the merits of the stay application.

Requirements for the interim relief sought

[38] Interim relief is sought pending the outcome of the review application challenging the demarcation award. Therefore, the Trust is required to demonstrate (i) a *prima facie* right, even if open to some doubt, (ii) harm reasonably apprehended, (iii) that the balance of convenience favours the granting of interim relief and (iv) the absence of an alternative remedy.³ The Bargaining Council pleaded that such requirements are inapplicable, but did not cite the case authority relied upon for the submission.

Prima facie right

[39] The Trust submitted that it has a *prima facie* right to the relief sought because it has filed a review application challenging the demarcation award. Reliance on a right to review a decision to demonstrate a *prima facie* right was criticised in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others (Road Freight Association as applicant for leave to intervene)*⁴ (OUTA), where the Court stated the following:

'[49] Second, there is a conceptual difficulty with the High Court's holding that the applicants have shown "a *prima facie*... right to have the decision reviewed and set aside as formulated in prayers 1 and 2". The right to approach a court to review and set aside a decision, in the past, and even more so now, resides in everyone. The Constitution makes it plain that "[e]veryone has the right to administrative action that is lawful, reasonable and procedurally fair" and in turn PAJA regulates the review of administrative action.

[50] Under the *Setlogelo* test, the *prima facie* right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a *prima facie* right that is

³ *Setlogelo v Setlogelo* 1914 AD 221.

⁴ 2012 (11) BCLR 1148 (CC).

threatened by an impending or imminent irreparable harm. The right to review the impugned decisions did not require any preservation *pendente lite*. (Own emphasis)

[40] Therefore, the Trust is required to demonstrate a right that requires protection by interdict, failing which harm will follow. What that right might be cannot be deciphered from the *OUTA* decision, where the Court accepted, without deciding, that a litigant had demonstrated a *prima facie* right, in the same way that it had been reluctant to deal with the review grounds.

[41] The Trust submitted that section 33A(12) of the Labour Relations Act⁵ provides for suspending arbitration awards issued to enforce compliance with the collective agreement if an employer applies to have the award set aside on review. Section 33A (12) deals with fines, and states as follows:

‘(12) If an employer upon whom a fine has been imposed in terms of this section files an application to review and set aside an award made in terms of subsection (8), any obligation to pay a fine is suspended pending the outcome of the application.’

[42] It is unclear but unlikely that the arbitration award sought to be enforced, or the other arbitration awards the Bargaining Council has obtained against the Trust, relate to a fine, in which case section 33(12) applies. It is more likely that these awards relate to employer contributions to the Bargaining Council, in which case section 33(12) finds no application.

[43] Section 145(3) of the LRA provides as follows:

‘(3) The Labour Court may stay the enforcement of the award pending its decision.’

[44] In *Chillibush Communications (Pty) Ltd v Gericke and Others*⁶, the court stated the following section 145(3):

‘[18]... In terms of section 145(3) of the LRA, the Court has the discretion to stay the enforcement of the arbitration award pending the outcome of

⁵ Act No 66 of 1995.

⁶ [2009] ZALC 124; (2010) 31 ILJ 1350 (LC).

the review application. This discretion which is very wide has to be exercised judicially taking account certain factors. The most important consideration in the exercise of the discretion is whether there is a pending underlying cause of action arising from the arbitration award or in certain instances arising from the Court order. There is a wide range of factors which the Court will take into account in considering whether or not to order a stay of the execution of an arbitration award, the most important of which is whether the interest of justice supports the stay of execution pending the finalization of the review or rescission application. See *Robor (Pty) Ltd (Tube Division) v Joubert & others (Robor)*.⁷

[45] Further relevant case authority is the decision in *Van Rensburg and Another NNO v Naidoo and Others NNO; Naidoo and Others NNO v Van Rensburg NO and Others*⁸, where the court stated the following:

[51] ... a court has inherent jurisdiction, in appropriate circumstances, to order a stay of execution or to suspend an order. It might, for example, stay a sale in execution or suspend an ejectment order. Such discretion must be exercised judicially. As a general rule, a court will only do so where injustice will otherwise ensue.

[52] A court will grant a stay of execution in terms of Uniform Rule 45A where the underlying *causa* of a judgment debt is being disputed, or no longer exists, or when an attempt is made to use the levying of execution for ulterior purposes. As a general rule, courts acting in terms of this rule will suspend the execution of an order where real and substantial justice compels such action.'

[46] In the present matter, the underlying *causa* is the review application seeking to challenge the demarcation award.

[47] The next question is whether it is in the interest of justice to stay the enforcement proceedings pending the outcome of the review application.

⁷ [2009] JOL 23568(LC).

⁸ 2011 (4) SA 149 (SCA); [2010] ZASCA 68.

- [48] Refusing to stay the enforcement process will lead to the enforcement of several awards issued against the Trust. If the review application is refused, the awards can still be enforced. The specific award mentioned in the enforcement application involves a monetary sum, and it is assumed that this applies to all arbitration awards issued against the Trust. As a result, the affected employees will receive the amounts owed to them with interest. Therefore, delaying the enforcement of these arbitration awards in favour of the employees will not cause them financial prejudice.
- [49] I also accept that until the review application is decided, the Trust has a right to the relief sought in prayer 3 of the amended notice of motion. If a stay is denied and it is ultimately determined that the Trust's business does not fall within the scope and industry of the Bargaining Council, resources and time would have been wasted unnecessarily. I also accept that the Trust would have been subjected to irreversible actions.
- [50] According to *Robor*,⁹ prospects of success are also a factor. I agree that, in cases where it is obvious to the Court that a review application has been filed to frustrate the holder of the arbitration award, and where it is clear that such an application has no prospects of success, then the Court should refuse to stay the enforcement of an award. However, the inquiry into the prospects of success cannot be a final pronouncement on the matter, as that is for the review court to determine in due course. Rather, the court considers whether the underlying *causa* is bona fide and that the stay application is not being used to frustrate the party in favour of whom an award was issued.
- [51] The Bargaining Council submitted that the Trust voluntarily registered in 2018 but did not comply with its collective agreements, and that enforcement proceedings were initiated in 2021. It was also submitted that the switch from voluntary registration to non-compliance had never been explained. Reliance was also placed on the trading name of the Trust, named *FJ Beukes en Seun Vervoer* Transport Company, which indicates that its business falls within the scope of the Bargaining Council.

⁹ Ibid at para 16.

- [52] The Trust, which submitted that it complied with the Bargaining Council collective agreements until 2021, when its business changed to hiring out vehicles to clients, together with a driver who takes instructions from the client on what to do.
- [53] If the Trust's version of what changed between 2018 and 2023 is correct, then, in my view, it cannot be said that the review application has slender prospects of success as submitted by the Bargaining Council. Having said that, I am mindful that it is the Court hearing the review application that will finally pronounce on the issue, having considered the cases made by the parties in the review application, which papers this Court has not studied in detail before drafting this judgment. The Court is merely expressing a prima facie view on the prospects of success consideration.
- [54] For all the reasons stated above, I am satisfied that the Trust has established a prima facie right to the relief it seeks, even if open to some doubt.

Irreparable harm

- [55] The Trust submitted that once it complies with the arbitration award, this is irreversible, even if the review application succeeds. It was also submitted that, unless a stay is granted, the Bargaining Council will continue to seek to enforce the other arbitration awards.
- [56] The Bargaining Council submitted that all that is required of the Trust is to register with it, file returns, and pay the approximately R51 000 due under the arbitration award specified in prayer 2 of the notice of motion. The further submission was that if the award is later set aside, the Bargaining Council, a large corporate body, will be able to repay the money, and if it is ultimately determined that the enforcement proceedings were frivolous, costs can be awarded in favour of the Trust.
- [57] In my view, the Bargaining Council is oversimplifying the nature of the dispute. After registering with the Bargaining Council, the Trust must also submit returns. Unless a stay is granted, it will be subjected to all that is mentioned in prayer 3 of the amended notice of motion, even though only employers whose

businesses fall within the scope of a Bargaining Council should be subjected to that. Unless the enforcement proceedings are stayed, the Sheriff will proceed with execution to recover the R51,000. Afterwards, the Bargaining Council will follow the same process for all awards issued against the Trust to date. Unless an order to stay all enforcement proceedings is issued, the already overburdened Court roll will be further congested with additional applications to delay enforcement of each arbitration award issued against the Trust following the June 2023 demarcation award. There is also the risk that different judges hearing these applications may issue conflicting orders. This situation is undesirable and must be avoided at all costs.

- [58] I have already found that the Trust was not obliged to file any security, whether with this Court or the Bargaining Council. In any case, it remains unclear what security would suffice, considering the Bargaining Council's own stance that it lacks information on the Trust's employees or their earnings.
- [59] A costs order in favour of the Trust in due course will not prevent the harm that will result if the orders sought are not granted.
- [60] Subject to any appeal that may be filed, the pending review application will ultimately determine whether the Trust's business falls within the scope of the Bargaining Council, and whether it must submit returns, make employer contributions, and comply with the Bargaining Council collective agreement, among other obligations.
- [61] I am persuaded that the Trust cannot obtain substantial redress in due course. A stay to allow the outcome of the review application to be issued, which will resolve the dispute between the parties, is in the interests of justice.

Balance of convenience

- [62] The Bargaining Council argued that the balance of convenience favours providing minimum benefits to employees who have been deprived of them.
- [63] The enforcement proceedings should be stayed until this Court determines whether the Trust's business falls within the scope of the Bargaining Council.

If this Court dismisses the review application, the amounts owed to the affected employees will be calculated. No allegation has been made that once calculated, the Trust will be unable to pay those amounts to the Bargaining Council.

[64] If the enforcement proceedings are not stayed, the Bargaining Council will proceed with the enforcement of all arbitration awards against the Trust. The arbitration award, for which the Sheriff was instructed to execute, was most likely initiated as a test case and possibly also to prompt the Trust to secure a date for the hearing of the review application.

[65] The balance of convenience favours granting the stay.

Alternative remedy

[66] The submission by the Bargaining Council that the Trust can provide security to the Bargaining Council, as an alternative remedy, has already been addressed above. To reiterate, there is no legal obligation for the Trust to furnish any security to the Bargaining Council, for the reasons previously outlined. Furthermore, any form of security lodged with the Bargaining Council does not address the relief sought in prayer 3 of the Notice of Motion.

[67] The same applies to the submission for the Trust to pay the amounts under protest. The review application must be heard promptly to ensure that the main dispute between the parties is finally resolved.

[68] The Bargaining Council's proposal for the Trust to submit returns in the meantime to prevent loss of information is reasonable, but the Trust maintains that it is not obligated to submit such returns until the review application has been decided. It is entitled to take that approach.

[69] An application to stay the enforcement proceedings until the review application is determined is the only suitable remedy for the Trust.

Costs

[70] The Trust sought costs if there was opposition. The opposition was not unreasonable. In oral argument, Mr de Villiers changed tack and argued that each party should bear its own costs.

[71] The Bargaining Council described the application as an abuse of process and sought a costs order against the Trust.

[72] I have already established that both parties share responsibility for the fact that the review application and the counterapplication have not been allocated a hearing date, even two years after their initiation. There are several reasons why the review application must now be heard without further delay. These reasons include the risk that, without returns, information could be lost, and employees might lose entitlement to benefits such as limited medical services, funeral benefits, sick leave pay, annual leave pay, bonuses, and the provident fund. There is also the risk that, over time, the affected employees might change employers.

[73] To avoid further delays in finalising the matter, the parties will be directed to jointly approach the Judge President to request a priority hearing date for the review application, the counterapplication, and all ancillary applications, if any, in a single sitting.

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

Order

1. That the application is deemed to be an urgent application and that the non-compliance with the provisions pertaining to form and service contained in the rules of this Court is to be condoned.

2. Pending the review application and the counter review application in case number JR1329-23:

2.1 The enforcement of the arbitration award issued on 29 January 2025 under case number KLDLEV027/19429/22 is stayed.

2.2 The second respondent is interdicted and restrained from:

- 2.2.1 Enforcing its collective agreement on the applicants.
 - 2.2.2 Issuing any compliance orders in respect of the applicants.
 - 2.2.3 Performing any labour dispute resolution functions in respect of the applicants.
 - 2.2.4 Referring any dispute for conciliation or arbitration regarding the applicants to the first respondent.
 - 2.2.5 Conciliating and or arbitrating any dispute concerning the applicants.
 - 2.2.6 Appointing any agent to promote, monitor and or enforce compliance with its main collective agreement in respect of the applicants.
 - 2.2.7 Charging the applicants any fine or interest in enforcing the terms of its main collective agreement.
 - 2.2.8 Enforcing any arbitration award in terms of section 143 of the Labour Relations Act 66 of 1995 against the applicants.
3. The parties are directed to jointly approach the Judge President for a priority hearing date in respect of the review application.
 4. Each party pays its own costs.

T Gandidze
Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr de Villiers of De Villiers & Du Plessis Attorneys

For the Respondent: Mr Beckenstrater of Moodie & Robertson Attorneys

LABOUR COURT