



IN THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Not Reportable

CASE NO: 2026-011825

In the matter between:

MAFUTHA DANIEL SKHOSANA

Applicant

and

MEC FOR THE DEPARTMENT OF HUMAN

SETTLEMENTS GAUTENG PROVINCE

First Respondent

THE HEAD OF DEPARTMENT: GAUTENG

PROVINCIAL DEPARTMENT OF HUMAN

SETTLEMENT

Second Respondent

Heard: 03 and 16 February 2026

Delivered: This judgment was handed down electronically by circulation to the Applicant's and the Respondents' Legal Representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing - down is deemed to be 12H00 on 20 February 2026.

JUDGMENT

LALLIE J

- [1] Courts of law play a significant role in the administration of justice. In exercise of the authority vested in them by the Constitution of the Republic of South Africa¹, amongst the rights courts enforce is equality before the law. The principle of equality ensures, *inter alia*, that no litigant receives preferential treatment. The law, however, acknowledges the need for urgent relief and catered for it. Rule 38(2) of the Rules Regulating the Conduct of the Proceedings of the Labour Court (the Rules) enjoins a party applying for urgent relief to give reasons for urgency and why urgent relief is necessary. The purpose of the rule is to ensure that only those cases in which urgent relief is necessary may be adjudicated in the urgent court and to prevent litigants from jumping the queue.
- [2] The applicant was employed by the Gauteng Provincial Department of Human Settlements as the Chief Construction Project Manager; West Rand Region. He was dismissed on 10 November 2022 by operation of the law as contemplated in section 17(3)(a)(i) of the Public Service Act. He challenged, on review, the decision taken by the respondents to dismiss. In a court order granted by this court in the absence of the respondents on 10 June 2025 and issued on 3 September 2025, the decision to dismiss the applicant was reviewed and set aside. The respondents were ordered to re-instate the applicant to his former position with effect from 15 November 2022. They were further ordered to pay his lost salaries and all the benefits he was entitled to had they not been stopped on 15 November 2022 with interest *a tempore*

¹ Constitution of the Republic of South Africa, 1996

morae from 15 November 2022. The respondents failed to comply with the court order. The applicant's efforts to persuade them to comply came to naught.

[3] In an effort to compel the respondents to comply with the court order the applicant filed this urgent application on 22 January 2026 seeking mainly the following relief:

"2. Declaring that the Order of this Court granted by the Honourable Acting Justice Djaje on 03 September 2025, reviewing and setting aside the Applicant's dismissal and reinstating him with retrospective effect, is immediately operational and executable due to the absence of an application for stay of execution of the order, notwithstanding the pending rescission application or any other interlocutory applications filed by the Respondents.

3. That the Respondents compliance with the Order granted by the Honourable Acting Madam Justice Djaje on 03 September 2025, be regulated pending the final determination of the Rescission Application, and that the following interim relief be granted:

3.1 IMMEDIATE ARREAR PAYMENT: That the First and Second Respondents (the Applicants in Rescission) be and are hereby ordered and compelled to immediately comply with paragraph 3 of the Order dated 03 September 2025, by paying the Applicant the accrued total amount of R4, 142, 310. 64 (Four Million, One Hundred and Forty-Two Thousand, Three Hundred and Ten Rands and Sixty-Four Cents), representing lost salaries, benefits, 13th cheque, and a *temporae morae* interest up to 03 September 2025, into the Applicant's nominated trust account, within twenty-one (21) days of the granting of this Order.

3.2 INTERIM MONTHLY EXECUTION: That the First and Second Respondents be and are hereby ordered and compelled to pay the Applicant his full monthly remuneration package, calculated to be no less than R110, 629. 02 (One Hundred and Ten Thousand, Six Hundred and Twenty-Nine Rands and two Cents) per month, comprising his basic salary, housing allowance, pro-rata 13th cheque accrual, and the employer's portion of GEPT contribution.

4. Ordering the First and Second Respondents to take all necessary administrative steps to reinstate the Applicant onto the PERSAL system within 3 (three) days of the granting of this order.

5. COMMENCEMENT AND DURATION OF INTERIM PAYMENT: The monthly payment referred to in paragraph 3.2 above to commence immediately, covering the period from 04 September 2025, and shall continue to be paid monthly on the 15th day of every calendar month until the date upon which the First and Second Respondents' Application for Rescission is finally adjudicated and disposed of by this Honourable Court."

[4] The application is opposed by the respondent who also challenged the urgency of the application. Based on the challenge the question of urgency must be determined first.

[5] The respondents submitted that the urgency the applicant seeks to rely on is self-created. They added that the applicant failed to set out circumstances that render his application urgent and reasons for his application to be heard urgently. The urgent application was filed 5 months after the order was issued. They further submitted that the applicant can obtain substantial relief in due course.

[6] The reasons proffered by the applicant in support of his contention that he will not obtain substantial redress in due course are that the respondents have launched an application to have the order of the review court rescinded. The rescission application has stalled owing to the respondents' failure to file an application for condonation of the late filing of the replying affidavit. The replying affidavit was filed on 3 November 2025, 17 days late. The applicant submitted that it is likely that the rescission application will be heard 18 to 36 months from January 2026 owing to the severe backlog of cases at the Labour Court.

[7] The respondents' denied that the delay in the prosecution of the rescission application constitutes grounds for absence of substantial redress in due course. They submitted that a final decision in the applicant's favour in due course will constitute substantial redress. They denied that the delay in filing their replying affidavit signaled a long delay in the finalization of the rescission application. In support of their argument that the rescission application will be heard earlier they relied on the directive issued by the Registrar of the Labour Court. In the directive the intention to set the matter down for hearing is expressed and the parties are directed to file heads of argument.

[8] I must accept the respondents' version that the applicant can obtain substantial relief in due course. In his founding affidavit the applicant submitted, correctly so, that the mere filing of the rescission application by the respondents does not suspend the operation and execution of the court order issued on 3 September 2025. The applicant further correctly submitted that in

the absence of a court order staying the execution of the order issued on 3 September 2025 the order remains operative and executable. He added that he is entitled to proceed with the execution of the order without any hinderance of the respondents' filing of the rescission application. The applicant's right to enforce the order issued on 3 September 2025 is clear. It constitutes substantial redress which became available to him immediately the respondents express their intention not to comply with the order. He gave no cogent reason for not exercising it. The requirement for the absence of substantial redress in due course is expressed as follows in *Maqubela v SA Graduates Development Association and Others* (2014) 35 ILJ 2479 (LC) at para 32:

'Whether a matter is urgent involves two considerations. The first is whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. In all instances where urgency is alleged, the applicant must satisfy the Court that indeed the application is urgent. Thus, it is required of the applicant adequately to set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary.....'

[9] The respondents sought a costs order against the applicant based on their success in this application. Success on its own does not entitle a party to costs. Section 162 of the Labour Relations Act² (The LRA) sets out the requirements for a costs order. In the absence of reasons based on the provisions of section 162 of the LRA the costs order may not be granted.

² Act 66 of 1995, as amended

[10] In the premises the following order is made:

Order:

1. The application is struck from the roll for lack of urgency.
2. There is no order as to costs.

MZN Lallie

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Adv. SI Ngwetjana

Instructed by Makgoba Attorneys

For the Respondent: Adv. MC Setlhako

Instructed by: The State Attorney