



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

Signature

Date

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT GQEBERHA**

Of interest to other Judges
Case no: PR56/20

In the matter between:

VUSUMZI KATE

Applicant

and

DEPARTMENT OF CORRECTIONAL SERVICES

First Respondent

GPSSBC

Second Respondent

JOHN MASHIKA NO

Third Respondent

PUMEZA NDABAMBI NO

Fourth Respondent

Heard: 20 February 2026

Delivered: 25 February 2026

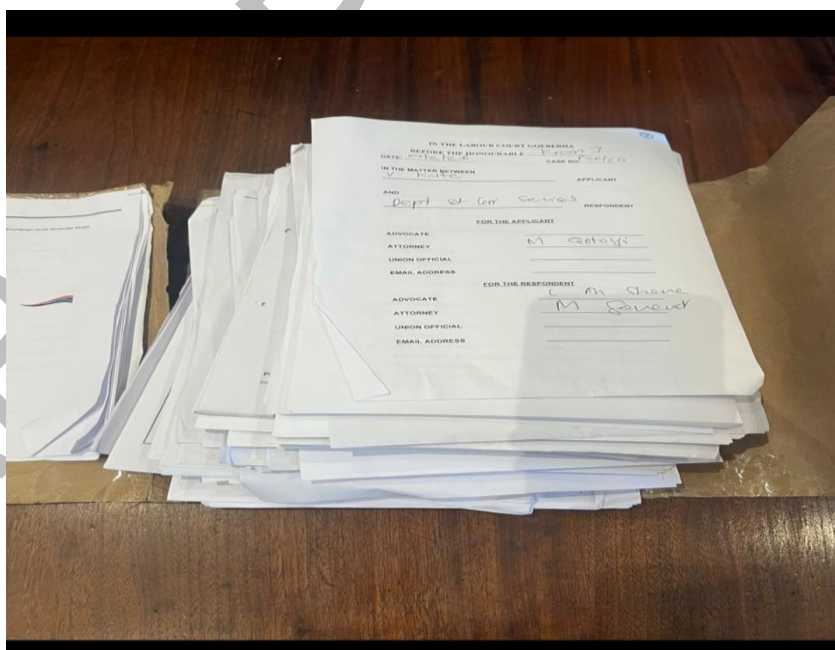
(This judgment was handed down electronically by emailing a copy to the parties. 25 February 2026 is deemed to be the date of delivery of this judgment).

JUDGMENT

KROON AJ

Overview

- [1] This opposed reinstatement application was set down for 19 February 2026. The legal representatives came to my chambers introduce themselves before Court was to start. After exchanging pleasantries, I explained to the Applicant's legal representative that the Court file was in an untidy and disorganised state, with the majority of documents contained therein being loose and in no logical order. Importantly, the file had not been indexed and paginated¹ since leave was granted to file further pleadings on 20 November 2025.



The file after its return on 20 February 2025

¹ For ease of reference, I will, in this judgment, henceforth simply use the term index or indexed, but it should be taken to include paginate or pagination.

- [2] The Applicant's legal representative indicated that he had instructed a correspondent attorney to index the file. He expressed surprise that the file had not been indexed. The First Respondent's Counsel indicated that the State Attorney had not received an updated index. I stated that it was my preliminary view that, given the state of the file, I was not inclined to entertain the matter. The Applicant's legal representative pleaded with me to reconsider, given that the matter had a long history. In response, I indicated that, if both parties were available and on condition that the problems with the file were remedied, I would grant the Applicant an indulgence and hear the matter the following day, 20 February 2026, by way of a virtual hearing.² The matter was accordingly called first and then adjourned to the following day.

What happened after the adjournment?

- [3] The Applicant's legal representative was furnished with the Court file so that he could attend to it. The indexing of a Court file by attorneys is ordinarily done in a boardroom in the Court building. There is a system in place with a procedure that must be followed if part of a file is to be uplifted. It ensures, *inter alia*, that a practitioner, who wishes to uplift part of a file, fills out the necessary paperwork, thereby formally accepting responsibility for the file and there is a time or date and time, within which the uplifted part of the file is required to be returned. The "*brown cover*"³, which contains the Court file, is never allowed out of the building.
- [4] Notwithstanding the measures in place to safeguard the Court files, the Applicant's legal representative left the Court building on 19 February 2026 with the entire file, including the brown cover, without the Registrar's permission or knowledge. This conduct, understandably so, caused a degree of consternation and anxiety amongst the Court staff. Ms Majola from the general office contacted the Applicant's legal representative by phone to ask him where the file was. This was after Court had adjourned for the day and before lunch. The Applicant's legal representative said that the file was with

² This discussion was placed on record the following day.

³ It is the document which contains, *inter alia*, Judges' annotations and endorsements as well as, stapled to it on the inside cover, copies of directives and notices of set down which have been sequentially arranged.

him outside the building and that he would return it "*just now*". She said that she told him that it was impermissible to take a file out of the building.

- [5] My secretary, Ms Mazaka, informed me that what had happened was that she required access to the file, which contained the attendance register, so that she could draw up the order. She accordingly requested Ms Majola to locate the file and it was then that it was discovered that the Applicant's legal representative could not be found. Ms Mazaka said that she attempted to get hold of the Applicant's legal representative telephonically, but that he was not answering his phone. She then phoned Ms Govender of the Office of the State Attorney, the attorney responsible for opposing the application on behalf of the First Respondent, who happened to be in the presence of the Applicant's legal representative as she had collegially offered to assist him with photocopies. She said that when she enquired about the whereabouts of the Court file, it was conveyed to her by the Applicant's legal representative that he only realised that he was not supposed to take the Court file out of the building when he was informed as much by Ms Govender.
- [6] When the file did come back it was 14h37. It was still not in an acceptable state. Firstly, the newly indexed documentation was not securely bound and a number of the pages forming part of the bundle were loose. The new index was also not part of the application bundle and was loose. The file remained flooded with miscellaneous documentation, apparently relating to the review application.
- [7] Leaving aside the fact that there should be no loose pleadings or evidentiary documents in any court file, when it comes to a review application, which is sought to be reinstated, such review application also needs to be indexed and paginated. In a reinstatement application, the Court self-evidently has to have regard to the review application with a view to considering the prospects of success.⁴ It is extremely difficult to do so if the review application pleadings are a shambles. An Applicant in a reinstatement application should take all

⁴ For the sake of clarity, I record that I did not expressly ask the Applicant's legal representative to paginate the review application but simply pointed out to him that there were a lot of loose documents relating to the review application in the Court file.

necessary steps so is to ensure that the review application can forthwith proceed should the application for reinstatement be granted.⁵ In conclusion, no Court file should contain a mass of unbound miscellaneous documentation, as it were, floating in a vacuum and unmoored and untethered from any bundle. In terms of a Directive dated 20 August 2025, the Applicant's legal representative was informed that even irrelevant documents (such as copies) must be securely bound in a separate bundle.

The proceedings of 20 February 2026

[8] In light of the events which occurred after the adjournment on 19 February 2026, when the matter was called on 20 February 2026, the Applicant's legal representative was asked for an explanation. When it came to the initial failure to index, the Applicant's legal representative stated that, after the interaction in my Chambers on 19 February 2026, he had been informed that his correspondent had attempted to index the Court file but that this attempt was unsuccessful because the correspondent was told that the file was already with the Judge and that indexing was not possible. In this regard, the practice in the Labour Court is the same as the practice in the High Court and it is that if a Court file has already been sent to the Judge and a party wishes to index a part of the file, then a request can be made to the Judge who has the file and it would then be within the discretion of the Judge to decide whether access to the file should be allowed.⁶ There is no record of any such request having been made.

[9] If the Court understands it correctly, what thereafter happened, so the Applicant's legal representative explained, was that the correspondent informed someone in his office that it had not been possible to index the Court file. The Applicant's legal representative was then informed that there was a

⁵ See the remarks of Lagrange J in *Overberg District Municipality (ODM) v IMATU obo Spangenberg and Others* (C 157/18) [2020] ZALCCT 38 (10 June 2020) at para [38]. *Overberg* was subsequently overturned on appeal in *IMATU obo Spangenberg and Others v Overberg District Municipality and Others* 46 ILJ 321 (LAC) on a different basis and accordingly the reasoning of the Court on this issue remains persuasive (Cf *Skulpad and Another v Department of Health Eastern Cape and Others* 46 ILJ 193 (LC) at para [13]).

⁶ It is naturally open to the Presiding Judge to be proactive and, if there is sufficient time, to issue a directive requiring urgent indexing and pagination.

problem with the indexing in one of the matters, but did not, as the Court understands it, appreciate that the problem of indexing related to this matter. This notwithstanding the fact that the Applicant's legal representative said that he had given an instruction on either Thursday 12 February or Friday 13 February 2026 to the correspondent to index this particular matter.

- [10] As to the fact that, when the file was returned, it was still not in good order, if the Court understands the explanation correctly, it was that the Applicant's legal representative was pressed for time having received the follow-up telephone calls from officials from the Office of the Registrar.
- [11] Most importantly, the Applicant's legal representative acknowledged that he was not allowed to take a Court file out of the Court building without the authorisation of the Registrar. He said that he was aware that the rules prohibited Court files from being removed from the Court without the permission of the Registrar. He further stated that, in addition to the communication he received from Ms Majola, the State Attorney also informed him that it was not permissible to remove the Court file from the building. He apologised and admitted that his conduct was wrong. The explanation the Applicant's legal representative gave was that he had become "*confused*" and had gotten "*carried away*" when the State Attorney offered him assistance when it came to making copies and, for that reason, had taken the Court file out of the building without permission.

What do the Rules say?

Indexing and the setting down of matters

- [12] At Common law, there is an overarching duty on an applicant, as *dominus litus*, to take all necessary steps and to ensure that the file is in order. The Rules, although not exhaustive, do, to a large extent, codify this obligation particularly when it comes to the obligation to index the Court file. In terms of the Rules, indexing must, when it comes to actions, be finalised within 10 days of the close of pleadings.⁷ Unlike Rule 37(25) which expressly makes

⁷ Rule 29(1)

reference to Rule 29 and provides that, when it comes to review applications, there is a 10-day period within which the file must be indexed and an application made for a Court date, when it comes to applications generally i.e. those governed by Rule 35, there is no equivalent provision and no requirement that indexing occur before there can be a request for a Court date.⁸ The Registrar thus has a discretion when it comes to the setting down of general applications, although she would not err if she followed an approach akin to that contained in Rule 37(25),⁹ *mutatis mutandis*,¹⁰ as this would be consistent with the scheme of the Labour Relations Act¹¹ which requires practitioners who prosecute claims in the Labour Court to do so vigilantly and diligently.

- [13] As part of her administrative function of controlling the Roll, it is within the prerogative of the Registrar to decide when and on what conditions an application, other than a review application, may be set down, providing of course that she does not act contrary to the Rules. If the Registrar decides, in her discretion, to set down an unindexed application (and simultaneously directs that the Court file be indexed and paginated), she is trusting the relevant legal representative to comply with his or her duty to ensure that the Court file is in order. If the trust which the Registrar places in practitioners is systematically betrayed (as appears to have happened in the Gqeberha Labour Court), practitioners should not be surprised if she takes a stricter, even an uncompromising, approach to ensure that Court files are in order by the time they reach the Presiding Judge. I would add that, it was apparent from the files which were placed before the Court over the last two weeks that there are several instances where the Registrar has had to send repeated reminders to practitioners to sort out files, particularly when it comes to

⁸ Contrast Rule 37(25) which provides that an application for a date may be made after the Court file has been indexed and paginated.

⁹ Rule 37(25) expressly provides that Rule 29(3) applies when it comes to indexing and pagination stating that there must be separate sections in the Court file containing the pleadings and affidavits, the relevant notices, and the record of the proceedings under review. The reason why the drafters of the Rules distinguished between the two types of application is probably to be found in the circumstance that review applications are different because they are inherently urgent. This would also explain why Rule 35 does not have a lapsing provision.

¹⁰ The 10-day time period would obviously not apply.

¹¹ No. 66 of 1995

indexing. This is not acceptable. There is no obligation on the Registrar to effectively supervise legal practitioners to ensure compliance with the Rules. Those practitioners who practice in the Labour Court are required to familiarise¹² themselves with the Rules. It is the practitioners and not the Registrar who are accountable to their clients and it is a serious matter where requests and directives of the Registrar are ignored with apparent impunity.

[14] In short, the way for practitioners to ensure that their applications (other than review applications which have their own constraints) are set down without unnecessary delay, is for them to index and paginate such applications as soon as is practically possible after the close of pleadings. On the other hand, if the Registrar is concerned that applications are languishing indefinitely in her office and that this is adversely affecting the administration of justice, there is a remedy available to her. She may, *mero motu*, or it would seem, at the instance of a respondent, archive the file, providing that the requisite notice has been given.¹³

[15] If a party has been given notice of archiving and an application has consequently been duly archived, a respondent has certainty and may assume that the application will not be proceeding. In *South African Police Services v Coericius and Others*,¹⁴ the Labour Appeal Court explained that if a review application is deemed to have lapsed, this is an indication that it has been “*abandoned*” and that the Applicant no longer wishes to persist with the application.¹⁵ If a practitioner, through his negligence, allows an application to lapse to a degree that it cannot be salvaged with the result that the application for reinstatement fails, the ethical thing to do would be for the legal practitioner to refer his client to another attorney to advise him or her on the prospects of succeeding in a claim against him arising from his failure to fulfil his mandate.¹⁶

¹² Cf *Wheatley v Commission for Conciliation, Mediation and Arbitration and Others* [2026] ZALCD 1 as handed down on 13 January 2026 at para [40].

¹³ Rule 69 read with Rule 7. See *Gololo v Limpopo Department Economic Development Environment and Tourism and Others* 46 ILJ 1895 (LAC); [2025] 9 BLLR 925 (LAC) at paras [9] to [11]

¹⁴ [2023] 1 BLLR 28 (LAC)

¹⁵ At para [9]

¹⁶ *MEC for Health Eastern Cape v A.S obo S.S* (842/2023) [2025] ZASCA 2 (15 January 2025)

Removal of Court records from the Court building

[16] When it comes to Court records, the Rules provide that:

“7. Issue of documents and registrar's duties

...

(7) The registrar must keep the court's records and must not allow them to leave the court building without the registrar's prior written authorisation.”

[17] The Rule is self-evidently there for a reason. A Court file contains the original pleadings and belongs to the State. Its unauthorised removal has the potential to undermine the integrity of the judicial process. If the file is removed from the building, it denies the Court staff access to their own records. Furthermore, the Registrar has no record of when the file left and when it was due to return. One should be careful not to trivialise an incident like this. Strictly speaking, the unauthorised use or borrowing of the property of another (in this case the State) may constitute an offence.¹⁷ In this particular matter, as mentioned, the conduct of the Applicant's legal representative resulted in a level of concern and distress amongst the Court staff. It hampered Ms Mazaka in performing her duties, albeit to a minor degree. Practitioners are not only required to respect the processes of the Labour Court, but they are also required to show due respect to the staff of the office of the Registrar. The Registrar is the executive arm of the judiciary in that she is responsible for carrying out the administrative and operational work that allows Courts to function effectively.

Discussion and costs

at para [44]

¹⁷ In terms of the General Law Amendment Act 50 of 1956, the Legislature has provided as follows:

“1. (1) Any person who, without a bona fide claim of right and without the consent of the owner or the person having the control thereof, removes any property from the control of the owner or such person with intent to use it for his own purposes without the consent of the owner or any other person competent to give such consent, whether or not he intends throughout to return the property to the owner or person from whose control he removes it, shall, unless it is proved that such person, at the time of the removal, had reasonable grounds for believing that the owner or such other person would have consented to such use if he had known about it, be guilty of an offence and the court convicting him may impose upon him any penalty which may lawfully be imposed for theft.”

[18] In the light of what had transpired subsequent to the initial discussion in my Chambers on 19 February 2026, the Court took the view that the indulgence, which had been granted the day before, had been forfeited. The parties were invited to make submissions as to the way forward. The Court asked why the matter should not be struck from the roll. The Applicant's legal representative submitted that the matter should not be struck from the Roll. Although there is little justification for taking such an approach, the Court has ultimately decided that, so as not to penalise the Applicant, who will already be prejudiced by an unnecessary delay caused by his legal representative, the application should be removed from the Roll. The First Respondent's Counsel expressed concern about the wasted costs.

[19] Ordinarily, it is the Applicant's responsibility to ensure that the Court file is in order and if it is not in order and this causes a postponement, the Applicant would be liable for the costs of such a postponement. In *Minister of Safety and Security v Jongwa*¹⁸ as Pickering J, with Lowe J concurring, explained as follows:

"[52] ... On that day when the matter was called before Sangoni JP and Majeke AJ, it transpired that the papers were not in order. The matter was accordingly postponed, and the issue of the wasted costs occasioned thereby was reserved.

[53] ... Be that as it may, it is clear that the duty to ensure that the papers were in order for the hearing on 17 May 2021¹² rested on the applicant as dominus litis. That being the case applicant must bear the costs occasioned by the postponement."

[20] Whilst the Labour Court, exercising an equity jurisdiction, views the question of costs through a different lens to that which applies in civil courts, the above principle is not inconsistent with labour law jurisprudence in that, as a matter of both law and fairness, where one party is guilty of a procedural misstep which causes prejudice to the other, that party will ordinarily¹⁹ be liable for the

¹⁸ 2013 (3) SA 455

¹⁹ There is of course no immutable rule in this regard.

wasted costs occasioned thereby. In *The South African Police Services v Gerhard Coericius and three others*²⁰ Sutherland JA, dealing with a situation where there had non-compliance with the practice manual, explained that where the other side is prejudiced by a procedural misstep, as in this case, a cost order will be justified. The learned judge put it like this:

“[13] The penalty for procedural blunders that have no substantive implications lie in costs orders...

...

[22] ... it would have been appropriate to order the appellant to bear the respondent's legal costs, owing to its procedural unorthodoxy being the source of the controversy”

- [21] A question which arose was whether, if the Court was going to make a costs order, it would be fair to penalise the Applicant with costs where, on the face of it, the postponement had been occasioned solely by the Applicant's legal representative.
- [22] Although not directly applicable to a general application, it is noted that Rule 29(6) expressly provides that the failure to ensure that the file is in order may result in a costs order *de bonis propriis*. All things considered, there is scope for the Court to find that the Applicant's legal representatives should be liable for the costs. A legal practitioner has a duty to manage the case which he is prosecuting properly.²¹ On the face of it, this has not occurred.

²⁰ [2023] 1 BLLR 28 (LAC)

²¹ In *Dlwati v King Sabata Dalindyebo FET College* (2021) 42 ILJ 2427 (LC), the Court explained as follows:

“[48] In Mzayi v Road Accident Fund²¹ the following observation by Chief Justice Mason of the High Court of Australia was quoted with approval:

‘12 ... it is that a barrister's duty to the court epitomizes the fact that the course of litigation depends on the exercise by counsel of an independent discretion or judgment in the conduct and management of a case in which he has an eye, not only to his client's success, but also to the speedy and efficient administration of justice. [In so doing] ... counsel exercises an independent judgment so that the time of the court is not taken up unnecessarily...’ (own emphasis)

[49] The sentiments expressed above apply with equal, if not more, force to legal practitioners who ply their trade in a forum such as the Labour Court. It would follow that, generally, where legal practitioners are themselves culpable for eleventh hour postponements²¹ they would be acting inconsistently with their duty to properly manage the case they are prosecuting and, in the words

Furthermore, at first glance, the conduct of the Applicant's legal representative is exacerbated by his conduct in terms of which he admitted to removing the Court file from the Court building without authorisation.

[23] Although the Applicant's legal representative was allowed to make representations during the hearing on 20 February 2026 under this heading, and although he would or at least should have been aware of the possibility of being saddled with a costs order *de bonis propriis*, given the provisions of Rule 29(6), it was decided, at his request, to afford him a further opportunity to make representations in this regard. I stress that this would not ordinarily be necessary because the Rules and indeed plain logic should forewarn a practitioner that if the Court file is not in order, and the matter has to be postponed, this may result in a *de bonis propriis* costs order. In this matter, the Court decided to exercise its discretion to afford the Applicant's legal representative a further opportunity to make representations given the peculiar facts of the matter, which included the removal of the Court file from the building without authorisation.

Order:

1. The application is removed from the roll.
2. The application is not to be re-enrolled until the Court file is in order.
3. The Applicant is given 30 calendar days within which to ensure that the Court file is to the satisfaction of the Registrar. In so doing, the Applicant is required to address the issues identified in this judgment.
4. The costs of the proceedings are reserved.

5. The Applicant's legal representative is afforded 21 calendar days within which to provide a full explanation on oath for his conduct as described above and to make submissions as to why a *de bonis propriis* costs order should not be granted. In that affidavit (supported by confirmatory affidavit(s) where necessary), he is required to:

5.1. Record any issues which he may have with the recitation of the facts contained in the judgment.

5.2. Explain why an attempt was only made on 12 or 13 February 2026 to index the Court file when it would have been apparent that indexing and pagination were required after the order granted on 20 November 2025.

5.3. Explain as to how it came to be that the Applicant's legal representative was unaware that the Court file had not been paginated. The explanation should include:

5.3.1. Details of the attempt(s) made to index the Court file, including when they were made, how they were made and who from the office of the Registrar was involved.

5.3.2. All communications relevant to how the Applicant's legal representative was informed that the Court file could not be paginated because it was "*with the judge*".

5.4. Set out a detailed timeline of the events which occurred on 19 February 2026 subsequent to the adjournment of the matter and, in particular, to disclose the times and details of each communication which he had with an official from the Court about the file, as well as Ms Govender of the State Attorney about the file.

- 5.5. Explain why, when informed by Ms Majola and/or the State Attorney that he was not supposed to take the Court file out of the building, the Applicant's legal representative did not forthwith return it.

P N KROON

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr Qotoyi of Mbulelo Qotoyi Attorneys

For the Respondent: Ms. L Ah Shene

Instructed by: Gqeberha State Attorney