



Not reportable

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT CAPE TOWN**

Case no: 2026-024379

In the matter between:

MOSES GE MTHETHWA

Applicant

and

**DEPARTMENT OF CULTURAL
AFFAIRS AND SPORT**

1st Respondent

**THE HEAD OF DEPARTMENT,
CULTURAL AFFAIRS AND SPORT:
GUY REDMAN**

2nd Respondent

Date of Hearing: 24 February 2026

Date of Judgment: 4 March 2026

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 5 March 2026.

JUDGMENT

V BARTHUS AJ

Introduction

[1] The Applicant launched an urgent application seeking the following relief:

"1. Declaring that the First and Second Respondents' ongoing failure to allocate the Applicant meaningful duties commensurate with his post, level, and skills constitutes an ongoing unfair labour practice and a breach of the Applicant's right to fair labour practices.

2. Directing the First and Second Respondents, pending the finalisation of proceedings before the GPSSBC and/or any related review proceedings, to:

2.1. Assign the Applicant substantive and meaningful duties consistent with his designation, job title, and level of appointment; and

2.2. Ensure that such duties are recorded in writing and communicated to the Applicant within five (5) court days of this order.

3. Alternatively, directing the First and Second Respondents to place the Applicant in a temporary position or assignment that:

3.1. Is consistent with his experience, qualifications, and managerial status; and does not prejudice his career progression, performance assessment, or professional development.

3.2. Interdicting and restraining the Respondents from subjecting the Applicant to any form of disciplinary action, intimidation, or adverse treatment arising from his refusal to perform no work or to acquiesce in being underutilised pending the finalisation of the dispute."

- [2] The Applicant served the application on the Department directly instead of The State Attorney. The State Attorney only accessed the application on Caselines on 10 February 2026, hence the late filing of its answering papers.
- [3] Since the application was launched on truncated timelines and service was delayed, the Respondent's late filing is condoned.

Background Facts

- [4] There is a litigious history between the parties that spans over the period of a year. The Applicant was suspended in February 2025 after the Board of the CP Nel Museum became aware of significant financial loss suffered while the Applicant was at the helm as manager.
- [5] The Applicant challenged his suspension at the Bargaining Council. The Arbitrator found the suspension without pay to be fair. The Applicant launched a review application to set aside the award.
- [6] On 4 August 2025, the Applicant launched an urgent application to stay the award and for reinstatement pending the outcome of the review application. On 1 October 2025, Judge Le Grange struck the application for a lack of urgency with costs.
- [7] The Applicant has since withdrawn the review application against the award.
- [8] The Applicant wrote to the Respondents seeking clarity regarding his duties and responsibilities. He was notified that the terms and conditions of his employment and his reporting lines remained the same as was communicated on 18 September 2025.
- [9] The Applicant requested an "assignment letter", which was provided on 24 February 2025, after the present application was launched. The letter purports to be a record of what was communicated to the Applicant on 1 October 2025.
- [10] The Applicant asserts that he has not been assigned any meaningful work and that this is impacting his mental health. The Applicant contends that he is suffering psychological distress, humiliation, erosion of professional

standing, stagnation of skills and reputational harm. He has lodged a grievance and has referred an unfair labour practice dispute to the GPSSBC on 3 December 2025, which is pending.

- [11] It is the Respondents' case that this application lacks urgency because the Applicant has been aware of his duties since 1 October 2025 and has been aggrieved since then but has waited until February 2026 to launch an urgent application. The Respondents further contend that the Applicant will obtain redress through the pending arbitration process.

Principles applicable to urgency

- [12] Rule 8 of the Rules for the Conduct of Proceedings in the Labour Court provides for urgent applications. An applicant who approaches the court on an urgent basis essentially seeks an indulgence and to be afforded preference, to prevent the prejudice and harm that may materialise or persist if the conduct complained of continues. Central to a determination of whether a matter is urgent is whether the applicant has, in the founding affidavit, set forth explicitly the circumstances which render the matter urgent, and the reason why substantial relief cannot be attained at a hearing in due course. Thus, it is required of an applicant to set out adequately in the founding affidavit the reasons for urgency and to give cogent reasons why urgent relief is necessary¹.
- [13] In *National Union of Metalworkers of SA and others v Bumatech Calcium Aluminates*², the Court held that:

'Urgency must not be self-created by an applicant, as a consequence of the applicant having not brought the application at the first available opportunity. In other words, the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must

¹ Transport and Allied Workers Union of SA v Algoa Bus Co (Pty) Ltd and others [2015] ZALCJHB

² [2016] ZALCJHB 329; (2016) 37 ILJ 2862 (LC) at para 26

come to court immediately, or risk failing on urgency. In *Collins t/a Waterkloof Farm v Bernickow NO & another*, the court held that:

"if the applicants seek this court to come to its assistance, it must come to the court at the very first opportunity; it cannot stand back and do nothing and some days later seek the court's assistance as a matter of urgency."

- [14] An applicant who is aware of the harm he or she alleges to suffer, who takes no steps over a protracted period, and then launches an urgent application, is likely to have his or her application struck from the urgent roll. Thus, to the extent that an applicant wishes its matter to be accorded urgency, by the same token, it is expected of such an applicant to have acted with the same urgency that the matter deserves, failing which the invariable conclusion to be reached is that any urgency claimed is self-created.
- [15] The Applicant in the present matter did not make out a case for urgency, and the truncated time frames are not justifiable. The urgency is self-imposed.

Conclusion

- [16] While I did not delve into the merits of the application, I have considered the submissions and am of the view that the Applicant has not made out a case to sustain the relief sought. To consider the merits, the Applicant would have to traverse the urgency hurdle, which he has failed to do. The Applicant has not demonstrated that he has acted diligently and with the urgency that the matter he seeks to pursue requires.
- [17] This application, like the previous urgent application, is doomed to fail for a lack of urgency.

In the premises, the following order is made:

Order

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

A handwritten signature in black ink, appearing to be 'V Barthus', is written over a solid black rectangular redaction box. A horizontal line is drawn below the signature.

V Barthus AJ
Acting Judge of the Labour Court of South Africa

Representatives:
For the Applicant: Moses Mthethwa

For the Respondent: Adv Liziwe Dzai
Instructed by: The State Attorney

LABOUR COURT