



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: 2026-035062

In the matter between:

MOTHUPI MAGASHULE

Applicant

and

CITY OF JOHANNESBURG METROPOLITAN

MUNICIPALITY

Respondent

Heard: 20 February 2026

Reasons delivered: 21 February 2026

REASONS FOR AND VARIATION OF ORDER

PHEHANE, J

Introduction

[1] The applicant, who is self-representing, brought an urgent application to interdict the continuation of his disciplinary hearing pending the finalization of a review application instituted in this Court.

[2] The application was opposed by the respondent essentially on the following bases: the application is *res judicata*, urgency is self-created and the applicant

failed to demonstrate exceptional circumstances warranting this Court's intervention in an incomplete disciplinary hearing.

- [3] After hearing the parties' submissions, this Court issued an order dismissing the preliminary point on *res judicata* and struck the application off the roll for lack of jurisdiction with no order as to costs.

Variation of order

- [4] The second order striking the application off the roll for lack of jurisdiction was an inadvertent error. Therefore, in terms of Rule 46(1)(a)(ii) of the Rules Regulating the Conduct of the Proceedings of the Labour Court¹ (the Rules) order number 2 of this Court's order issued on 20 February 2026 is varied by replacing the word "*jurisdiction*" with the word "*urgency*".
- [5] The reasons for the order follow below. From the reasons provided, the error referred to is apparent.

Relevant background

- [6] On 18 July 2025, the applicant was served with charges of grave misconduct relating to falsifying and abusing sick leave. The disciplinary hearing was scheduled to commence on 31 July 2025.
- [7] The applicant alleged that the disciplinary hearing was instituted out of time and contrary to the provisions of the disciplinary procedures as contained in a collective agreement concluded in the South African Local Government Bargaining Council that is binding on the respondent, termed the Disciplinary Procedure Collective Agreement Circular No. 01/2018. The applicant ultimately launched proceedings in the bargaining council relating to the interpretation and application of this collective agreement. Following arbitration proceedings, the Commissioner issued an arbitration award dated 8 December 2025 in which award she found that the disciplinary hearing was launched timely and in compliance with the collective agreement.

¹ Rules Regulating the Conduct of the Proceedings of the Labour Court published in GN 477a in GG 50608 of 3 May 2024.

- [8] Dissatisfied with this decision, the applicant launched proceedings in this Court under case number 2026-016991 in terms of the provisions of section 145 of the Labour Relations Act² (LRA) to review and set aside the arbitration award. The notice of motion in this review application is dated 20 January 2026. The applicant subsequently launched an urgent application under case number 2026-026252 to stay his disciplinary hearing which was scheduled for 12 February 2026 pending the outcome of the review application. The notice of motion in the urgent application is dated 5 February 2026.
- [9] The urgent application was heard on 10 February 2026, on which date, this Court issued the following order:
- ‘1. The application filed by Mr Ayanda Time, who is not eligible to represent a party in this Court as contemplated in section 161 (1) of the Labour Relations Act No 66 of 1995 (as amended), is dismissed.
 2. There is no order as to costs’.
- [10] Mr Ayanda Time signed the notice of motion in both the aforesaid urgent and review applications. However, the deponent to the affidavits in both applications is the applicant in these present proceedings.
- [11] Following the order of this Court as aforesaid, the applicant presented himself at his disciplinary hearing on 12 February 2026, at which hearing, he requested and was granted a postponement due to the reported illness of his representative. The hearing was postponed to 24 February 2026.
- [12] On 16 February 2026, the applicant, then self-representing, filed this present application to stay the hearing scheduled for 24 February 2026. The notice of motion required the respondent to file its answering affidavit by 17h00 on 17 February 2026. However, the application was only emailed to the respondent by the applicant on 17 February 2026 at 12h20. In his email, the applicant informs the respondent that he attended at the respondent’s offices at 10h28 on 17 February 2026 to serve the application. There is no indication of any attempted service on the respondents before 17 February 2026. The

² Act 66 of 1995, as amended.

respondent confirmed receipt of the application in email correspondence dated 17 February 2026 at 17h11.

[13] An unsigned answering affidavit was delivered on 18 February 2026 and a signed version was delivered on 19 February 2026.

[14] No replying affidavit was delivered.

Preliminary points

Applicant's preliminary points: late filing of pleadings and heads of argument

[15] At the commencement of the hearing, the applicant raised a preliminary point from the Bar, challenging the late filing of the answering affidavit and heads of argument filed by the respondent.

[16] This preliminary point lacked merit, as the applicant is the cause of the answering affidavit being delivered out of time, as the respondent was given severely truncated time frames within which to deliver an answering affidavit. The applicant did not proceed with this preliminary point.

[17] He proceeded to request this Court to adjourn the proceedings, as he wanted to file a replying affidavit. The applicant was hard pressed to explain why he did not file a replying affidavit after he had sight of the unsigned answering affidavit and later, the signed answering affidavit. He could not explain why he delivered the application on 17 February 2026 which caused the delay in delivering the opposing papers. Faced with this predicament, the applicant elected to proceed with the application as he ran the risk of the application being struck off the roll for lack of urgency due to his dilatory conduct.

[18] Parties are entitled to object to the late filing of affidavits. Such objections and any applications for condonation for the late filing of affidavits would be considered taking the nature of urgent applications into consideration. Generally, technical points ought to be avoided in urgent applications.

Respondent's preliminary point: res judicata

[19] The respondent raised the special plea of *res judicata*, as according to the respondent, this Court's order of 10 February 2026 dismissed the applicant's application. Therefore, the respondent submits, the doctrine of *res judicata* precludes the applicant from launching the same application between the same parties, seeking the same relief that has been determined by this Court.

[20] In my view, the order of 10 February 2026 did not deal finally with the merits of the urgent application. As things stand, the respondent could not refer this Court to a judgment by this Court which finally determined the merits of the same application that is before this Court to sustain a special plea of *res judicata*. The order itself states that the application was dismissed because it was filed by an individual who did not have the right of representation or appearance as contemplated in section 161 of the LRA. Therefore, I am not persuaded that the merits of the application were finally determined by this Court on 10 February 2026. It is for this reason that the preliminary point on *res judicata* was dismissed.³

Urgency

[21] Rule 38 provides that an affidavit in support of an urgent application must contain averments setting out the reasons for urgency and why urgent relief is necessary.

[22] Rule 38(1) and (2) of the Rules read thus:

- (1) A party that applies for urgent relief must file an application that complies with the requirements of the rules relating to applications generally.

³ In *Truter v Travelstart Online Travel Operations (Pty) Ltd* [2020] JOL 48470 (LC) [12], this Court restated the doctrine of *res judicata* and held thus:

'[12] It is trite law that for a matter to be treated as *res judicata* or, in other words, a matter that has already been determined by a court cannot be revisited in fresh proceedings, barring an appeal against the judgment, the following criteria must be met: there is already a judgment on the matter, the litigation is between the same parties and, the previous judgment concerns the same subject matter and same cause of action and relief (see for example *SA National Defence Union and another v Minister of Defence and others*; *SA National Defence Union v Minister of Defence and others*).'

- (2) The affidavit in support of the application must also contain:
- (a) the reasons for urgency and why urgent relief is necessary;
 - (b) the reasons why the requirements of the rules were not complied with, if that is the case; and
 - (c) ...'

[23] In *Eazi Access Rental (Pty) Ltd v Suleman and Another*⁴ this Court held:

“... urgency is not there for taking and an applicant seeking an urgent relief must adequately and in detail set out in the founding affidavit the reasons why the matter before the Court should be treated with urgency.’

[24] In *East Rock Trading 7 (Pty) Ltd and Another v Valley Granite (Pty) Ltd and Others*⁵, the Court stated that an applicant in urgent proceedings must set out explicitly in his or her affidavit the circumstances she or he avers render the matter urgent. Failure to approach the Court without delay does not constitute an automatic ground to refuse to hear the application on an urgent basis. An applicant must persuade the Court that he or she will not be afforded substantial redress at the hearing in due course.

[25] In *Soobedar and another v Minister of International Relations and Cooperation and another*,⁶ this Court stated as follows regarding urgency:

[19] The principles applicable to urgency are trite as can be gleaned from various decisions of this and other courts. An applicant that approaches the court on an urgent basis essentially seeks an indulgence, and to be afforded preference in order to prevent 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

⁴ (2025/009793) [2025] ZALCJHB 192 (12 May 2025) at para [39].

⁵ 2011 JDR 1832 (GSJ) at para [9].

⁶ (2021) 42 ILJ 1761 (LC) at paras [19] – [20].

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.

- [20] It is trite that urgent relief will not be granted in circumstances where it is apparent that the urgency claimed is self-created. Self-created urgency is apparent in circumstances where an applicant failed to bring the application at the first available opportunity. Thus, it is expected of litigants to react immediately to remedy or prevent harm and/or prejudice, rather than standing back and doing nothing until it is too late.'

(Own emphasis).

- [26] In the present application, the applicant does not set out explicitly in his founding affidavit, the reasons for urgency. He does not explain why he did not bring this application at the earliest opportunity after this Court dismissed his application due to his representative not having the right of appearance in terms of section 161 of the LRA. He took 7 days to serve the application on the respondent with severely truncated time frames. He does not explain this delay. He also does not explain why substantial redress would not be obtained in due course which necessitates this Court coming to his assistance urgently to prevent harm he complains of. It is telling that he does not explain what took place on 12 February 2026. The respondent provides the explanation that the applicant appeared at the hearing on 12 February 2026 and sought a postponement, which was granted.

- [27] The applicant could not explain why he presented himself at the very hearing that he challenged on the basis that it is unlawful, yet he participated in the hearing by requesting the chairperson to grant him a postponement, which was granted at his request. The applicant now seeks to interdict a hearing in respect of which he sought an indulgence, which was granted to him. It is untenable for the applicant to participate in the very hearing he challenges on the basis of unlawfulness, engineer a postponement, wait 5 days before serving this application on the respondent and expect the respondent to reply

on the same day. This is a classic case of urgency that is self-created. The applicant cannot cook up urgency and ask this Court to come to his assistance. In his own words, he exhausted processes to challenge the hearing which commenced as far back as July 2025. Yet, he did not approach this Court for urgent relief and all the while, he participated in the hearing he seeks to avoid.

Costs

[28] As a general rule, in this Court, costs do not follow the result. Both parties saddled this Court with unnecessary, voluminous documents that are not properly indexed. This is to be discouraged, particularly in the urgent Court, where pleadings are to be presented in a succinct manner given the nature of the urgent Court. However, I exercised my discretion not to make an order as to the payment of costs.

Varied Order:

1. The preliminary point on *res judicata* is dismissed.
2. The application is struck off the roll for lack of urgency.
3. There is no order as to costs.

M. T. M. Phehane

Judge of the Labour Court of South Africa