



- (1) Reportable: NO
(2) Of interest to other Judges: No

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2025-097490

In the matter between:

VUKANI DANIEL MNGWEVU

First Applicant

MXOLISI SKHOSANA

Second Applicant

INNOCENT LEBOGANG KUNENE

Third Applicant

SELINA MPHAHLELE

Fourth Applicant

NTOKOZO KHUMALO

Fifth Applicant

and

GNG RISK MANAGEMENT AND SECURITY CC

First Respondent

TRACEY MAPHOSA

Second Respondent

Heard: 18 February 2026

Delivered: 09 March 2026

JUDGMENT

MABASO, AJ

Introduction

- [1] The First to Further Applicants ("the Applicants") launched an *ex parte* application to this Court seeking an order to declare both GNG Risk Management and Security CC ("the First Respondent") and Ms Tracy Maphosa ("Ms Maphosa") in contempt of Court for their alleged failure to enforce part of the terms of a certified arbitration award and the Respondents be sanctioned with a fine that this Court deems appropriate, and that Ms Maphosa be incarcerated for a period the Court deems appropriate. The *rule nisi* was issued on 08 August 2025, returnable on 18 February 2026. Before this date, the Respondents delivered an answering affidavit attempting to demonstrate good cause.

Evidence and analysis

- [2] The Applicants were dismissed by the First Respondent, resulting in them declaring an unfair dismissal claim to the Commission for Conciliation, Mediation and Arbitration ("the CCMA") against the First Respondent. Following a lengthy process, the CCMA appointed an arbitrator to arbitrate the dispute. As the First Respondent was absent on the set down date, the Arbitrator subsequently issued a default arbitration award in favour of the Applicants, *inter alia*, directed that the First Respondent reinstate the Applicants. Upon becoming aware of the arbitration award, the First Respondent attempted, albeit unsuccessfully, to launch a rescission application against it. Subsequently, the Applicants successfully approached the CCMA director to obtain certification in accordance with Section 143 of the Labour Relations Act 66 of 1995.
- [3] The First Respondent initiated a review application against the rescission ruling. The Applicants concerned about what they perceived as the inordinate delay in the prosecution of this review application, and they then successfully launched an application to dismiss the same. Subsequently, the First Respondent launched a rescission application against the order dismissing the review application. The affidavit of the rescission application is incorporated into the answering affidavit before this Court, asserting that the order for dismissal of the review was made erroneously. Accordingly, the

First Respondent argues that they are not refusing to comply with the arbitration award, as they are actively pursuing the rescission application.

- [4] Before this Court, it is acknowledged by all the parties that a certified arbitration award exists, the Respondents are aware of this arbitration award, as it was duly served upon the First Respondent, and there has been a failure to comply with the certified arbitration award by the First Respondent. Consequently, the presumption of mala fide resistance to comply with the certified arbitration award is established, unless the Respondents can lead evidence sufficient to raise a reasonable doubt.
- [5] It is contended by the First Respondent that they cannot be held in contempt due to the existence of a pending application for rescission concerning the Order that dismissed the review application. The Applicants assert that this does not impede enforcing the certified arbitration award and that the Respondents' application for rescission constitutes yet another strategy to delay compliance with the arbitration award.
- [6] In considering these contempt proceedings, this Court adopts the approach hereinafter.
- [7] The First Respondent in this matter is a juristic entity, whereas Ms Maphosa is a natural person. The certified arbitration award was issued specifically against the former, which the Applicants identify as a company duly incorporated under the laws of the Republic of South Africa. Notably, this certified arbitration award was not directed at Ms Maphosa, nor were there any claims alleging that she interfered with its enforcement. However, she is mentioned in the capacity of "co-owner and/or manager of the first respondent." Detectably, there is no request for the joinder of Ms Maphosa herein, considering that this Court cannot find a person against whom there is no order. As a consequence, it would be inappropriate for this Court to hold an individual accountable who was not expressly directed by the CCMA, through the arbitration award, to undertake any action, and to impose imprisonment on her.

- [8] The Constitutional Court in *Matjhabeng Local Municipality*¹ said the following regarding contempt of Court proceedings where an order is specifically against a juristic person, not about a person in charge of the same:

*“Bearing in mind, that the persons targeted were the officials concerned – the Municipal Manager and Commissioner in their official capacities – the non-joinder in the circumstances of these cases, is thus fatal. Both Messrs Lepheana and Mkhonto should thus have been cited in their personal capacities – by name – and not in their nominal capacities. They were not informed, in their personal capacities, of the cases they were to face, especially when their committal to prison was in the offing. It is thus inconceivable how and to what extent Messrs Lepheana and Mkhonto could, in the circumstances, be said to have been in contempt and be committed to prison.”*²

- [9] Furthermore, this Court takes into account that Rule 58 of the Rules of this Court stipulates that when a contempt application is initiated, a director of the relevant entity must be cited. However, this Rule does not imply that such an individual must not be joined in the proceedings, especially if there are no specific allegations, indicating that a person intentionally interfered with the enforcement of the arbitration award, are made against them. Therefore, this Court concludes that Ms Maphosa is not guilty of contempt.
- [10] This Court has evaluated the explanation provided by the First Respondent regarding their non-compliance at this stage, as contained in their answering affidavit, which incorporates the affidavit in the pending rescission application. Without rendering a decision on the rescission matter, this Court, upon perusal of the rescission affidavit,³ concludes that the First Respondent has demonstrated that there is no evidence of mala fides on its part for failure to comply with the certified default arbitration at this stage.
- [11] While this Court acknowledges the numerous disturbing rescission applications that have been brought by the First Respondent against

¹ *Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited* 2017 (11) BCLR 1408 (CC).

² *Ibid*, at 103.

³ No answering affidavit in the rescission application that was before this Court.

arbitration awards issued in favour of the Applicants since the dismissal dispute, it is regrettable that no coercive order at this stage can be made, as the provisions of the LRA allow the First Respondent to pursue those rescission applications at the CCMA and both the review and its subsequent rescission pending in this Court.

[12] Furthermore, this Court notes that at the time of the dismissal of the review application, a document had been submitted as a “security bond” and was briefly debated by the parties before this Court; the Respondent's counsel has indicated willingness of the Applicant to provide a further security bond pending the determination of the rescission application. This is because no review application is pending; generally, the arbitration award is enforceable.⁴

[13] This Court, being a Court of law and equity, is inclined to accept this on the following grounds: the First Respondent's Counsel has advised this Court that the First Respondent is presently experiencing financial difficulties, as it has recently been losing some business it had with the government. Consequently, this Court deems it necessary to require that, pending the rescission application against the Order dismissing the review application, the First Respondent furnish a security in the amount of R150,000 within ten days of this Order, considering that the arbitration award *inter alia* directed the First Respondent to reinstate the Applicant.

[14] Wherefore, the following Order is made:

Order

1. The Second Respondent is found not in contempt of Court.
2. The First Respondent is found not in contempt of Court.
3. The First Respondent shall furnish security in the amount of R150 000.00 with the Applicant's attorneys of record within 10 days of this Order, pending the finalisation of the rescission application.

⁴ This Court is aware of what *Moshoana J* said in *Denel SOC Ltd v NUMSA obo Peterson and Another* [2022] 10 BLLR 945 (LC) (24 May 2022) about whether a default arbitration award is enforceable or not, but opines that this is not a matter that this Court will have to deal with such an issue at this stage.

4. There is no order as to costs.

Sandile Mabaso

Acting Judge of the Labour Court of South Africa

LABOUR COURT

APPEARANCES:

For the Applicants: Mr Seepamore

Instructed by: Seepamore Inc.

For the Respondents: Adv Sediki

LABOUR COURT