



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026-023985

In the matter between:

DERRICK WELENT BARRY

First Applicant

and

**THE DEPARTMENT OF INTERNATIONAL RELATIONS
AND COOPERATION**

First Respondent

MINISTER OF INTERNATIONAL RELATIONS

AND COOPERATION

Second Respondent

DIRETOR – GENERAL OF INTERNATIONAL RELATIONS

AND COOPERATION

Third Respondent

Heard: 18 February 2026

Reasons delivered: 10 March 2026

JUDGMENT

PHEHANE, J

Introduction

- [1] The applicant held the position of Corporate Services Manager, deployed to the South African Embassy in Antananarivo, Madagascar. He launched an urgent application seeking various orders, essentially, declaratory orders that

his dismissal from the employ of the first respondent and recall to the Republic of South Africa by the second respondent on 26 November 2025 is unlawful and contravenes section 16B(1)(b) and section 17(1) of the Public Service Act¹ (PSA) and section 16(1) of the Foreign Service Act² as the aforesaid sections of the said statutes empower the third respondent to dismiss him from employment and to recall him to the Republic of South Africa and not the second respondent. In the alternative, he seeks an order reviewing and setting aside the second respondent's decision to recall him. The applicant seeks further related relief.

- [2] The application is opposed by the respondents, who seek condonation for the late filing of their answering affidavit. Condonation is unnecessary as the applicant has not objected to the late filing of the answering affidavit. In essence, the grounds of opposition are that urgency is self-created and the application lacks merit.

Relevant chronological sequence of events

- [3] The applicant was suspended from duty as a precautionary measure on 14 January 2025. He was brought before a disciplinary hearing in terms of the provisions of the Public Service Co-ordinating Bargaining Council Resolution,³ the disciplinary procedures for the public service to answer serious allegations of misconduct.
- [4] At the conclusion of the disciplinary hearing, the chairperson meted out a sanction of dismissal on 30 June 2025, which sanction was received by the applicant on 2 July 2025.
- [5] On 8 July 2025, the applicant lodged an appeal to the second respondent.
- [6] In a letter dated 13 July 2025, the third respondent issued a letter in which he informed the applicant that the chairperson of his disciplinary hearing meted out a sanction of dismissal and that in terms of the provisions of section 16B (1)(b) of the PSA, the sanction was given effect to; further, that the applicant

¹ Act 103 of 1994.

² Act 26 of 2019.

³ Resolution No. 1 of 2003.

was provided 30 days to transfer back to the Republic of South Africa, and in this regard, a transport officer would be appointed to assist him with his transfer. In addition, the applicant was afforded 5 working days within which to lodge an appeal. The applicant received this letter on 14 July 2025.

- [7] On 18 July 2025, pursuant to receiving the letter by the third respondent dated 13 July 2025, the applicant avers that, as directed by the third respondent, he lodged an appeal to the second respondent. This appeal was identical to the first, save for an addition that the letter by the third respondent of 13 July 2025 was premature.
- [8] On 12 September 2025, the applicant requested to resume his duties as his appeal had not been determined within 30 days.⁴ No response was forthcoming.
- [9] On 26 November 2025, the second respondent dismissed the applicant's appeal and informed him that the decision by management to dismiss him is upheld. The applicant was further informed that he had 30 days to transfer to the Republic of South Africa and that a transport officer would be appointed to assist him with his transfer. The applicant avers that this decision by the second respondent is unlawful, as only the third respondent is empowered to dismiss and recall him.
- [10] On 2 and 5 December 2025, the transfer appointee sent email correspondence to the applicant regarding his transfer, which went unanswered. The applicant avers that he did not receive this correspondence.
- [11] On 8 December 2025, the applicant referred an unfair dismissal dispute to the bargaining council. The arbitration hearing for this dispute is scheduled for 14 April 2025. The applicant informs this Court that the referral of this dispute was an error and that he was contemplating withdrawing this dispute. When this application was heard, the dispute was not withdrawn.
- [12] On 10 December 2025, Mr Ben Bosch, the applicant's union official who represented the applicant in an unfair labour practice dispute in November

⁴ The correspondence to which the applicant refers is not attached to his founding affidavit.

2025, received e-mail correspondence from the first respondent's Director of Labour Relations, Mr Lungisani Ntombela in which correspondence addressed to the applicant, the applicant was informed that Mr Ntombela had received information that the applicant was not co-operating with the transfer process. The applicant was put to terms and was informed of the consequences that would follow if he did not co-operate. He was informed that after 31 December 2025, he would not receive his salary and benefits.

[13] In correspondence dated 10 December 2025, Mr Bosch informed Mr Ntombela *inter alia*, that the second respondent had no authority to dismiss the applicant, and until such time that the third respondent issued the applicant with a letter of dismissal, he remained an employee of the first respondent. Mr Ntombela responded that, as the outcome of the appeal was received by the applicant on 26 November 2025, the instructions remained unchanged. In further correspondence of the same date, Mr Bosch informed Mr Ntombela that the applicant did not dispute that the appeal outcome was issued on 26 November 2025 and reiterated that this letter did *not* give effect to the sanction of the disciplinary hearing. Mr Ntombela responded that he would not comment any further in view of the applicant's arbitration hearing scheduled to take place in April 2026.

[14] In a letter dated 11 December 2025, the applicant's erstwhile attorney of record informed Mr Ntombela *inter alia*, that the transfer was *ultra vires* and should the first respondent continue with the unlawful transfer, a request was made to "*immediately postpone all transfer arrangements to 31 January 2026*".

Urgency

[15] Rule 38(1) and (2) of the Rules of the Conduct of the Proceedings of the Labour Court⁵ (the Rules) makes provision for urgent applications and reads thus:

⁵ Published under GN 4775a in GG 50608 of 3 May 2024.

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

[16] It is trite that urgency is not there for the taking and an applicant seeking urgent relief must set out adequate and detailed reasons in his/her founding affidavit why the matter should be treated with urgency.⁶

[17] In *Mojaki v Ngaka Modiri Molema District Municipality and others*⁷ this Court held as follows:

'An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.'

[18] In *Soobedar and another v Minister of International Relations and Cooperation and another*,⁸ this Court stated as follows regarding urgency and self-created 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

⁶ *Eazi Access Rental (Pty) Ltd v Suleman and Another* (2025/009793) [2025] ZALCJHB 192 (12 May 2025) at para [39].

⁷ (2015) 36 ILJ 1331 (LC); [2014] ZALCJHB 433 at para [17].

⁸ (2021) 42 ILJ 1761 (LC) at paras [19] – [20].

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.

- [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).

Evaluation

- [19] The applicant did not approach this Court soon after 26 November 2025, when he received the letter from the second respondent, which he contends is unlawful.
- [20] What reason does he provide for not approaching the Court soon after 26 November 2025? The applicant states that firstly, he was under the impression that the offices of the first respondent closed over the festive season and staff worked on a skeletal basis during the "*whole of December*" and the first week of January 2026 and therefore, he anticipated that Mr Ntombela would formally respond to the letter dated 11 December 2025 by his erstwhile attorney during the second week of January 2026.
- [21] There is no basis for such anticipation, and it is unreasonable, as Mr Ntombela stated in no uncertain terms, that he would not be engaging further in light of the arbitration hearing scheduled for April 2026. Further, the applicant was pleaded with to co-operate with the transferring appointee during the month of December 2025. The applicant does not explain why he did not approach this Court in November 2025 for the urgent relief sought, soon after he received the letter from the second respondent.

- [22] The second reason the applicant provides for not approaching this Court immediately is that the offices of his erstwhile attorney closed from 12 December 2025 to 6 January 2026. He explains that he was experiencing anxiety and family-related difficulties over the festive season arising from uncertainty surrounding this family's transfer and only contacted his erstwhile attorney again on 15 January 2026.
- [23] This explanation is unconvincing. There was no uncertainty surrounding the applicant's transfer. He was informed in no uncertain terms that he must co-operate with the transfer process and would not receive a salary and benefits after 31 December 2025. He was also aware from the e-mail correspondence he refers to of 1 December 2025, that his landlord in Madagascar was appraised that his residential lease would terminate early. It is odd that the applicant was aware of this email sent to his work address, yet he alleges that he was not aware of the emails by the transfer appointee of 2 and 5 December 2025 sent to his work email address and private email address. His version therefore, that he did not receive the emails by the transfer appointee due to his work email being blocked, is improbable. What is clear is that the applicant was aware that during December 2025, steps were taken to transfer him back to the Republic of South Africa, which transfer he averred is unlawful, yet he took no steps to approach this Court for the urgent relief.
- [24] It is only when he did not receive his salary on 15 January 2026 that he contacted his erstwhile attorney, after which, it took him close to three weeks to approach this Court. The reason that his current attorney of record's selected counsel lacked the requisite expertise to deal with a labour law dispute is not a convincing reason for failure to approach this Court on an urgent basis, as the legal principles relating to urgency apply to all Courts. Further, as the applicant's case is premised on a contractual claim in terms of section 77(3) of the Basic Conditions of Employment Act⁹ this reason to explain the delay in approaching this Court is shocking.
- [25] The applicant's delay in approaching this Court soon after 26 November 2025 has diminished urgency. On his own version, he sat back and waited for

⁹ Act 75 of 1997.

responses he was told on 10 December 2025, would not come yet, he did not approach the Court soon after 10 December 2025. He waited a month and a half without sound reasons for doing so and approached this Court on severely truncated time frames.

- [26] In *National Union of Metalworkers of SA and others v Bumatech Calcium Aluminates*¹⁰ this Court held as follows:

‘Urgency must not be self-created by an applicant, as a consequence of the applicant not having 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 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 applicant seeks 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”.’ (Own emphasis).

- [27] The reason provided by the applicant as to why he will not obtain substantial relief if his application is heard in the ordinary course, is the precarious situation him and his family are in. In my view, while the situation of the family is not taken lightly this does not justify the applicant jumping the proverbial queue. The applicant states that he has no objection to returning the Republic of South Africa following the sanction of dismissal which he intends to challenge at the relevant bargaining council, however, he is waiting for the third respondent to give effect to this decision and to recall him.¹¹ With this remedy at his disposal, he sat back and waited. He now seeks to challenge the dismissal on the grounds of unlawfulness, yet he failed to approach this Court immediately and created the anxiety he now wants this Court to assist him to lift.

¹⁰ (2016) 37 ILJ 2862 (LC); [2016] ZALCJHB 329 at para [26].

¹¹ Founding affidavit at para 26 on p 002-9.

[28] In *Sihlali and others v City of Tshwane Metropolitan Municipality and another*¹² this Court held as follows:

‘It is good practice for practitioners practicing in this court to keep themselves abreast with the judgments of this court particularly those arising from the urgent court. There is a developing trend that points to the fact that the urgent court is being abused. Might I state, an urgent court is meant for urgent matters. This court should not be detained to use its scarce, valuable time entertaining self-created urgent matters. Practitioners should exercise greater care when considering approaching this court on urgency in matters where substantial redress is obtainable in due course.’

[29] 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.

M T M Phehane

Judge of the Labour Court of South Africa

¹² (2017) 38 ILJ 1692 (LC) at para [29].

Appearances:

For the applicant: Adv S Swartz

Instructed by: GP Bouwer Attorneys

For the respondent: Adv F Thema

Instructed by: State Attorney

LABOUR COURT