



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Reportable

Case no: **2025-238394**

In the matter between:

UMSHWATHI LOCAL MUNICIPALITY

Applicant

and

SIBUSISO LUNGA

First Respondent

LUNGILE BRENDA MSOMI

Second Respondent

SHERIFF OF THE HIGH COURT, NEW HANOVER

Third Respondent

Case No: D467/24

In re:

UMSHWATHI LOCAL MUNICIPALITY

Applicant

and

SIBUSISO LUNGA

First Respondent

LUNGILE BRENDA MSOMI

Second Respondent

VEESLA SONI N.O.

Third Respondent

SOUTH AFRICAN LOCAL GOVERNMENT

Fourth Respondent

BARGAINING COUNCIL

Heard: **12 December 2025**

Supplementary submissions received on 19 December 2025.

Delivered: 19 March 2026 (This judgment was handed down electronically by emailing a copy to the parties. 19 March 2026 is deemed to be the date of delivery of this judgment).

JUDGMENT

KROON AJ

Introduction

- [1] This application was initially brought on an urgent basis by the Applicant (the Municipality). It sought an order staying the enforcement of an arbitration award pending the outcome of a review application lodged by the Municipality. The application was opposed by the First and Second Respondents (the Employees). The urgency of the matter dissipated when it was recorded, constructively so, in the answering affidavit, that the Employees would not seek the enforcement of the arbitration award pending the outcome of this judgment. The Court decided, nonetheless, to entertain the merits of the application.
- [2] The opposition to the application is based on the contention that the review application has lapsed and, accordingly, execution should not be stayed because there is no pending review application. In support of this proposition, regard may be had to *Cheou v Department of Justice and Constitutional Development Limpopo and Others*¹, *Sidas Security v Commission for Conciliation, Mediation and Arbitration and Others*² and *Department of Higher Education v Ramoshwana NO and Others*³ in terms of which reference is made, *inter alia*, to *City of Tshwane*

¹ [2025] 4 BLLR 419 (LAC)

² (2022) 43 ILJ 934 (LC)

³ [2026] ZALCJHB 46 (15 February 2026)

*Metropolitan Municipality v South African Local Government Bargaining Council and Others.*⁴

The argument on behalf of the Employees

- [3] Shorn of all elaboration, the argument presented on behalf of the Employees was that after the lapse of a period of 12 months since the lodging of the review application without there having been a request for a hearing date, the review application automatically lapsed. In support of this argument, the Employees relied on Directive 01 of 2025: Implementation of Court Online Electronic Platform in the Labour Court (the Directive).
- [4] It is helpful, at the outset, to set the Employees' case against the proper historical context. In terms of the erstwhile Practice Manual of the Labour Court of South Africa 2 April 2013 (the Practice Manual),⁵ the following provision found application:

"11.2.7 A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive."

- [5] Accordingly, there was an automatic lapsing or archiving of a review application if all the papers had not been filed and a date had not been sought within 12 months. With the advent of the new rules in July 2024, the Practice Manual was repealed. Although some of the provisions in the Practice Manual found their way into the new Rules, clause 11.2.7 was not one of them. Rule 37(25) addresses the situation in which pleadings have closed in a review application. It provides as follows:

⁴ [2025] 11 BLLR 1145 (LAC); (2025) 46 ILJ 2840 (LAC)

⁵ It was submitted on behalf of the Employees that the Practice Manual found application. The submission was obviously wrong because the review application was launched on 16 September 2024 after the Practice Manual had been replaced by the new rules.

“After receipt of any replying affidavit or the expiry of the time limit for filing a replying affidavit (whichever occurs first), the applicant must index and paginate the file in terms of rule 29(3), with separate sections containing the pleadings and affidavits, the relevant notices, and the record of the proceedings under review, and within 10 days of the expiry of the time limit contemplated in this subrule, apply to the registrar for a hearing date. If the applicant fails to apply for a hearing date within the prescribed period, the respondent may apply for a date.”

- [6] As appears from the above quotation, there is no provision for the automatic lapsing of a review application after the expiry of 12 months, or any period for that matter. The lapsing provision has been replaced with a provision that a request for a date must be made within 10 days of the expiry of the period in *“this sub-rule”*.⁶ Should there be non-compliance with this time period and should this be an issue, then, if anything, what would be required would be an application for condonation for non-compliance with the Rule. This outworking is distinguishable from the situation where a review application lapses, and, consequently, what is required is a substantive application for reinstatement or revival to place the matter before the Court.
- [7] The drafters thus took a deliberate decision to remove the 12-month period and the lapsing provision, evidently being of the view that it was not appropriate to incorporate it into the new Rules. This is to be contrasted with another lapsing provision, namely clause 11.2.3 of the Practice Manual, which was in fact incorporated in the Rules, albeit with one qualification.⁷

⁶Although the Rule is unclear, it appears to contemplate that there are 10 court days to index and paginate the file, Rule 29(1) and thereafter there is a further 10 days within which an applicant may apply to the Registrar for a hearing date.

⁷ In terms of the current Rules, a review application will lapse if the full record as not filed within 60 days of the notification having been received from the Registrar (see Rule 37(13)). Presumably, this refinement (the reference to the full record) was included to address the endless difficulties which litigants have experienced when it comes to obtaining records from either the Commission for Conciliation, Mediation and Arbitration (the CCMA) or the Bargaining Council and to address the effects of *South African Police Services v Coericius and Others [2023] 1 BLLR 28 (LAC)* in terms of which the Labour Appeal Court found that because there is no provision in the Rules for filing part of the record, the delivery of part of the record does not prevent a review application from lapsing in terms of clause 11.2.3 of the Practice Manual.

- [8] To illustrate the point further, not only has there been a decision by the drafters to remove the 12-month lapsing mechanism, but Rule 37(25) itself indicates what is to be done if a respondent in a review application is of the view that the prosecution of the review application is being delayed. It provides that a respondent may apply for a date (at any stage) if the applicant does not apply for a date.⁸ Without wishing to state the obvious, if a review application automatically lapses after the passage of a 12-month period, then the Rule would be non-sensical, as it would not be competent for the respondent to apply for a date in respect of a lapsed review application.

The first difficulty with the argument of the Employees

- [9] The immediate difficulty with the argument advanced on behalf of the Employees, which is based on the interpretation of a directive (not the Rules), is that a directive cannot override a provision in the Rules. The Rules constitute subordinate legislation. Where a directive contradicts a Rule, it would be *ultra vires* such subordinate legislation and should be treated as *pro non scripto*.
- [10] In *National Director of Public Prosecutions (Ex Parte Application)*,⁹ the Supreme Court of Appeal explained as follows:

“[19] Practice directives provide essential guidance for the daily functioning of the courts. Practice directives may not derogate from legislation, the common law or rules of court that have obligatory force. A statute that permits the use of a procedure so as to make its enforcement effective must be adhered to. The competence of the courts to give practice directives is an important means by which the work of the courts may be carried out. However, practice directives must facilitate what a statute requires. Practice directives should not place obstacles in the way of achieving the objects of a statute.” (own emphasis)

⁸ The Court does not express a view on whether a respondent, in such circumstances, may have other remedies.

⁹ [2021] ZASCA 142; 2022 (1) SACR 1 (SCA) (7 October 2021)

[11] Section 159 of the LRA establishes a Rules Board which is tasked, *inter alia*, with making and repealing rules and publishing any Rules which it makes, alters or repeals, in the Government Gazette.

[12] In *Mthembu v Unique Air, Parnis Airport Maintenance Services (Pty) Limited v CCMA and Others*¹⁰, as referred to in *Inxuba Yethemba Municipality v South African Local Government Bargaining Council and Others*,¹¹ Landman J explained the position, with reference to the erstwhile Rules of the Labour Court, as follows:

"[2] ...

The Registrar has followed this direction. The Registrar cannot be criticised by this court for following a direction issued to her by the Judge President of this court. However, when the matter reaches court, the court must decide whether the Judge-President's direction takes precedence over the rules of the Labour Court. The rules of a court of law constitutes subordinate legislation. See Jones & Buckle, The Civil Practice of the Magistrates' Court of South Africa, Vol 1, 33.

I am of the opinion that the Rules of the Labour Court, which are issued by the Rules Board, also constitute subordinate legislation. I find that subordinate legislation cannot be overruled by a directive which is of an administrative nature. In these circumstances I intend to follow the rules until such a time as the rules have been amended." (own emphasis)

[13] In conclusion, because directives cannot prevail over Rules published under legislation and given the fact that it was the intention of the drafters of the Rules to remove, and thus to exclude, the 12-month lapsing provision, it follows that, insofar as any directive may provide otherwise and may, as the Employees suggest, seek to resurrect the 12-month lapsing period, such directive would be unenforceable.

¹⁰ [2001] 11 BLLR 1246 (LC)

¹¹ (PR41/2020) [2022] ZALCPE 1 (31 January 2022) at para [51]

Analysis of the argument presented on behalf of the Employees

Introduction

[14] Insofar as it may be necessary to do so, I, in any event, now turn to the case of the Employees, which is based on the Directive. The case made out on behalf of the Employees is based on items 11 to 13 of a compliance checklist relating to review applications (the Checklist), which is appended to the Directive.

The Checklist

[15] It seems to me that the Checklist, as with the other checklists appended to the Directive, is a compliance tool, a type of administrative aid created for the benefit of the Registrar¹² and her staff. It is primarily a verification mechanism to ensure that the correct procedures are followed and that, when a file reaches the desk of the Presiding Judge, it is ripe for hearing. Like all checklists, it may oversimplify the procedures contained in the Rules.

[16] Although the various checklists are referenced in the Directive's index, they are unnumbered and not referred to in the body of the Directive. Looking at the document holistically, it seems to me that they fall outside of the Directive in the sense that it was not intended that they form part of the Directive itself. They were seemingly included in the document for the sake of expediency but are, so to speak, for '*office use*'. They are there to assist the Registrar in managing the Court files and in ensuring compliance with both the Rules and the Directive. That being so, I do not see how they can have any legal significance. This is so because in answering the question of whether a case has been validly and properly prosecuted, the test is whether there has been compliance with the Rules

¹² I would comment that the manner in which the Checklist is formulated is, in one respect, problematic. It contains placeholders for the "*firm's name*" and a "*name and surname*" as well as for a "*signature*". On the face of it, this suggests that there is an obligation, presumably on the legal representatives of an applicant, to participate in the vetting process; yet, as a matter of common sense, the Directive should be for the use of the Registrar, who must, *inter alia*, check whether a matter is ready to be enrolled. The Directive provides as much as paras 8.1 and 8.2.

and the Directive and it is self-evidently not whether there has been compliance with the checklists themselves.

Summary of the Employee's argument

[17] As a reference point, it is convenient to reproduce the Checklist below.

"Compliance Checklist for Reviews

CASE NO: _____

DATE CHECKED: _____

BEFORE THE MATTER IS ENROLLED FOR HEARING, CHECK IF:

<i>PLEADINGS/NOTICES TO BE FILED</i>	<i>DATE FILED</i>	<i>YES / NO</i>	<i>COMMENTS</i>
<i>1. Is there a Labour Court case number allocated and does the case number appear on the document</i>			
<i>2. Is there proof of service of the application on the respondent(s) and a service affidavit (Proof of service in terms of Rule 9(2)) If one of the respondents is a State department, ensure that service was effected on the State Attorney</i>			
<i>3. Notice of Motion with a founding affidavit filed</i>			<i>CHECK COMPLIANCE OF RULE 37(2)</i>
<i>4. Is the arbitrator cited as a party</i>			

5. Is the CCMA or bargaining council cited as a party 6. Is a copy of the award/ ruling attached to the application			
6. Is a copy of the award/ ruling attached to the application			
7. Is the copy of the award / ruling complete and signed			
4. Notice of intention to oppose, if any			Within 10 days from the day on which the application is served Rule 37 (2)
5. Rule Notice 37(14) (Transcribed record)			CHECK WHEN RULE 37(9) and (11) NOTICE WAS SENT TO PARTIES (RECORD TO BE FILED WITHIN 60 DAYS THEREAFTER)
6. Rule 37(20) Notice			within 5 days after the transcribed record has been filed
7. Supplementary affidavit (This is not compulsory)			
8. Answering affidavit (In the event that the application is opposed) Rule 37(22)			WITHIN 10 DAYS AFTER RECEIPT OF THE RECORD

			AND NOTICE OF AMENDMENT OR NOTICE THAT THE APPLICANT STANDS BY ITS NOTICE OF MOTION
9. Replying Affidavit (This is not compulsory) Rule 37(24)			WITHIN 5 DAYS FROM THE DAY ON WHICH ANY NOTICE OF OPPOSITION AND ANSWERING AFFIDAVIT ARE DELIVERED.
10. Is the file paginated in compliance with Rule 23 (3) Rule 37(2)			
11. Request for Set down. If such a request is filed, the file must be processed for set down Rule 37(25)			TO BE FILED WITHIN 12 MONTHS OF THE FILING OF THE APPLICATION
12. If a request to archive a file is filed, it must be dealt with immediately and such request should not be merely placed in the file with no further action			
13. Where there is no formal request for the archiving of a file, the provisions of Rule 69(2) apply and files are to be dealt			

with accordingly when the record was filed late, or a period of 6 months has elapsed without any steps taken by the applicant from the date of filing the application or the date of last process filed			
Applicant's heads of argument Rule 40 (2)			WITHIN A PERIOD OF 15 DAYS AFTER THE DATE ON WHICH PLEADINGS CLOSE. REQUIRED IN UNOPPOSED <u>REVIEW</u> APPLICATIONS ONLY
Respondent's heads of arguments Rule 40(4)			MUST DELIVER HEADS OF ARGUMENT NO LATER THAN 15 DAYS PRIOR TO THE HEARING OF AN OPPOSED APPLICATION.
IF MATTER IS DEEMED WITHDRAWN OR ARCHIVED MATTER WILL NOT BE SET DOWN UNLESS A REINSTATEMENT APPLICATION HAS BEEN RECEIVED. Rule 69(3)			
Recommendation:			

NAME & SURNAME :

FIRM'S NAME :

SIGNATURE :

DATE:

- [18] If the Court correctly understands the argument presented on behalf of the Employees, they are relying on items 11 to 13 of the Checklist. They place particular store in a sentence, which is in the column headed “*COMMENTS*”, adjacent to the item dealing with the request for a set down (item 11). Under this heading, it is stated as follows:

“TO BE FILED WITHIN 12 MONTHS OF THE FILING OF THE APPLICATION”

- [19] In short, the Checklist appears to indicate that a request for the allocation of a date should be made within 12 months of lodging the review application, albeit that the indication is under the heading “*COMMENTS*” which, for want of a better expression, is curious. There is, confusingly so, no indication of where the 12-month period comes from.¹³ The Checklist is intended to be a tool to assist the Registrar and her staff in cross-referencing the Rules and the Directive; but neither of these documents contain a reference to 12 months. The Court is driven to the conclusion that the reference to the 12-month period is an error, if for no other reason than because, as mentioned, there is no reference to a 12 month period in either the Directive or the Rules and Rule 37(25) provides the applicable time period (10 days) within which an application for a date must be made. For the sake of completeness, I note that the LRA references a six month period.¹⁴

¹³ One possible explanation is that the insertion of a 12-month period is detritus in the form of a stray remnant from clause 11.2.7 of the Practice Manual which was erroneously carried over into the Checklist.

¹⁴ Section 145(5) of the LRA obliges a party to apply for a date six months after the lodging of a review application. But this obligation is subject to the Rules which has been interpreted to mean that an application should not be made in terms of this section if a matter is not ripe for hearing. *Cf Department of Higher Education v Ramoshwana NO and Others* (2025/239196) [2026] ZALCJHB 46 (15 February 2026) at para [46]

[20] The argument advanced on behalf of the Employees was not always easy to follow. The grounds relied on in the opposition shifted to a degree until they crystallised in the supplementary submissions. These submissions were made against the backdrop of a torturous analysis of the Directive and the Checklist. In short, the argument advanced on behalf of the Employees appears to be that the inclusion, in the Checklist, of the sentence stipulating that applications for dates must be filed within 12 months of the filing of the application, in and of itself, means, or has the result that, if there is no request for a set down within 12 months of the filing of the application, the review application lapses.

[21] In developing this argument, the Employees, *inter alia*, referred to clauses 8.1 and 8.2 of the Directive which provide as follows:

“8.1 Once there is compliance with the Rules of the Labour Court and the provisions of this Practice Directive, the Applicant’s legal representative must no later than the prescribed time periods, upload the notice of request for enrolment, which must correspond with the Registrar’s Provisional Roll, in the correct section titled “Final notice of set down” on the case file and invite the set-down office to the case.

8.2 The Registrar will review the notice of request for enrolment for compliance with the relevant timeframes in the Rules of the Labour Court and applicable Directives; and confirm the final enrolment and hearing date by noting the description of the roll whereon the matter is enrolled.”

[22] The Employees further referred to clause 5.14 of the Directive, which provides as follows:

“5.14 The Office of the Registrar is specifically directed and mandated:

- (a) to disregard/reject matters that are non-compliant with this Directive.*
- (b) not to allocate dates for matters that are noncompliant with this Directive.”*

- [23] Thus, stripped of all embroidery, if the Court understood the argument correctly, it was that because there has not been a request for a date within 12 months, there has been non-compliance with the Directive, such non-compliance cannot be remedied and therefore the Registrar is not permitted to set the review application down and for that reason it should be regarded as having lapsed.
- [24] Leaving aside the circumstance that the 12-month period contained in the Checklist is inconsistent with Rule 37(25), which provides for 10 days, and is, for that reason, unenforceable *simpliciter*, in my view the argument advanced on behalf of Employees is, in any event, flawed and would fail even if there was no conflict with the Rules. I say this for two self-standing reasons.
- [25] Firstly, as mentioned, what is stated under the heading “COMMENTS” is not part of the Directive (it is part of the Checklist). Accordingly, it would not be affected by clauses 8.1 and 8.2 as well as 5.14 of the Directive. Those clauses are concerned with compliance *with the Directive* and do not apply to the Checklist. The purpose of the respective checklists is surely not to create new rights or obligations; rather, the checklists are, as mentioned, screening mechanisms aimed at ensuring compliance with the Rules and the Directive.
- [26] To further illustrate the fallacy of the argument presented on behalf of the Employees, taken to its logical conclusion it would mean that applications brought in the normal course (which are not considered to be urgent), would also automatically lapse after the 12-month period, because there exists the same provision in the checklist for ordinary applications.¹⁵ In my view, it could not conceivably have been the intention of the drafters that a new 12 month lapsing provision be introduced through the Directive for all ordinary applications.
- [27] Secondly, to argue that, because compliance with a time period is peremptory, this means that if there is non-compliance, an application

¹⁵ Compliance Checklist for Applications item 8

must be deemed to have lapsed is a *non sequitur*. Non-compliance with a time period does not automatically result in the lapsing of proceedings. The Labour Court has inherent jurisdiction to regulate its proceedings when it comes to matters within its jurisdiction, and to condone any non-compliance.

[28] More importantly, and decisively so, the Checklist itself expressly provides, at item 13, that Rule 69(2) applies. As has been held by the Labour Appeal Court,¹⁶ Rule 69(2) does not envisage automatic lapsing. Before there can be any question of lapsing, there must be a notification from the Registrar. It is common cause that this did not happen in this matter.

[29] In conclusion, the Employees have, through an ouroboros of deduction, a vortex of circular reasoning, sought to persuade the Court to arrive at the fundamentally unsound conclusion that the very instrument utilised to verify whether there has been compliance with the Directive or the Rules can, itself, somehow be the source of a right or an obligation. To exacerbate matters, the conclusion so urged upon the Court is in conflict with the Rules and the analysis of the Directive and the Checklist is, in any event, flawed for the reasons set out above.

Challenge to the validity of the Security Bond

[30] The Employees also sought, indirectly, to raise a challenge to the validity of the Security Bond. In this regard they, so to speak, sought to smuggle this challenge into the answering affidavit. The Court is not prepared to entertain the challenge for three reasons. Firstly, no relief was sought in respect of the Security Bond in the answering affidavit. It would seem that the Employees wanted the Court, contrary to the *omnia praesumuntur principle*, to simply disregard the Security Bond which, on the face of it, was valid. Secondly, all things considered, in my view the proper course to have followed would have been for the Employees to have brought an interlocutory application contemplated by the Rules particularly in circumstances where the challenge would necessarily involve the

¹⁶ *Gololo v Limpopo Department Economic Development Environment and Tourism and Others* (2025) 46 ILJ 1985 (LAC); [2025] 9 BLLR 925 (LAC) at paras [10] to [11]

production of evidence and thus does not fall within the province of a legal point. Thirdly, the Employees have known about the Security Bond since the review application was lodged on 16 September 2024. At no stage did they contend that it was defective and in fact sought to execute on the award without challenging it. It was not for the Employees to wait for three months and then to ask the Court to decide this issue on an urgent basis, as it were, through the back door.

Costs

[31] Notwithstanding the circumstance that the opposition lacked merit, in my view, as is the usual order when it comes to interdicts granted *pendente lite*, the costs should be determined by the review court.¹⁷

Order

1. Insofar as it may be necessary to do so, it is declared that the matter is urgent and that any non-compliance with the Rules is condoned.
2. The enforcement of the award issued by Commissioner Veasal Soni under case number KPD022105 dated 2 August 2024 is stayed pending the finalization of the review application launched under case number 2025-238394.
3. The attachment made by the Third Respondent (the Sheriff New Hanover) of goods contained in the inventory attached as annexure "X" to the notice of motion is set aside.
4. No order is made regarding the challenge to the bond of security.

¹⁷ Cf *Young v Coega Development Corporation (Pty) Ltd* 2009 (6) SA 118 (ECP); (2009) 30 ILJ 1776 (ECP) at para [39]

5. Costs of the application will be determined by the Court hearing the review application.

P N KROON

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: NSV Mfeka

Instructed by: Mdledle Incorporated Attorneys

For the Respondent: Mr MA Mirza of Mirza and Associates Incorporated