



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2026-062742

In the matter between:

DEPARTMENT OF EDUCATION LIMPOPO

Applicant

and

**SHERIFF OF THE POLOKWANE
HIGH COURT AND LOWER COURTS
MORAKA ABEL MAKGAA, N.O**

**First Respondent
Second Respondent**

NTWAMPE TEBOGO TOBEJANE

Third Respondent

MR SIPHIWE DIMANE

Fourth Respondent

**EDUCATION LABOUR RELATIONS
COUNCIL**

Fifth Respondent

Heard: 24/03/2026

Delivered: 08/04/2026

JUDGMENT

STEENKAMP, AJ

Introduction

- [1] This is an application in terms of which the applicant seeks interim relief, staying a writ of execution, pending the outcome of a review application.
- [2] The application was opposed by Third Respondents.

Salient Facts

- [3] On 04 June 2025, an arbitration award under case number: ELRCS2-24/25LP was rendered by the Second Respondent in accordance with which, the dismissal of the Third Respondent was found to be both procedurally and substantively unfair. The Applicant was ordered to reinstate the Third Respondent by no later than 24 June 2025, with backpay from 1 April 2020 to May 2025 plus the *pro-rata* salary for June 2025 until date of reinstatement. The quantum amounts to R 1 559 940-30.
- [4] On 13 June 2025, the Applicant instructed the Office of the State Attorney, Polokwane to institute review proceedings in respect of the arbitration award.
- [5] On 26 June 2025, the Applicant issued further correspondence to the office of the state attorney and confirmed their previous instruction and requested that an application to stay enforcement of the award be instituted.
- [6] The Applicant corresponded the office of the State Attorney, and they were instructed to institute a review application in order to challenge the arbitration award. It is apposite to state that at all material times, the Applicant alleges that they had the intention of applying for stay the execution and enforcement of the arbitration award from such a time that the applicant became aware of the arbitration award.
- [7] The Applicant alleges that due to an “oversight”, the application for stay of execution was not pursued.
- [8] The review application was only instituted on or about 30 January 2026.
- [9] On or about 18 February 2026, the First Respondent served a notice of attachment on the offices of the Applicant. Pursuant to the aforesaid, on or

about 20 February 2026, the Applicant instructed the office of the state attorney to institute the current application. The Application was only initiated on 18 March 2026.

- [10] The Second Respondent raised the issue of urgency, and advanced that the urgency *in casu* was self-created, and accordingly, the application should be struck from the roll.

Urgency

- [11] In determining whether an application satisfies the requirements of urgency, the Court must consider the steps taken by the applicant and the period that elapsed between the alleged harmful conduct and the institution of the proceedings.
- [12] Urgency is not established where it is self-created through an applicant's failure to act with the necessary expedition. This court has consistently held that the diligence with which a litigant acts once the cause of action arises is a material consideration in determining urgency. Unexplained or undue delay is inimical to a claim of urgency and may be fatal to it. An applicant is therefore required to approach the Court promptly and failing a satisfactory explanation for any delay, the matter stands to be struck from the roll for lack of urgency.¹
- [13] Furthermore, an applicant seeking urgent relief bears the onus of demonstrating that substantial redress cannot be obtained in the ordinary course. As affirmed in *Radebe and Others v Aurum Institute*², unreasonable delay despite awareness of the alleged harm renders any urgency self-created, which this Court will not entertain.

Analysis

¹ *National Union of Metalworkers of SA v Bumatech Calcium Aluminates* (2016) 37 ILJ 2862 (LC); *National Police Services Union and others v National Negotiating Forum and others* (1999) 20 ILJ 1081 (LC); *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another* (2016) 37 ILJ 2840 (LC).

² (2024) 45 ILJ 876 (LC) at paras 35 and 37 – 38.

- [14] As already indicated, this application was initiated on 18 March 2026 and was enrolled to be heard on 24 March 2026. This was only four clear days between the filing of the application and the hearing thereof. The matter thus came before the court on an extremely urgent basis.
- [15] The only rationale advanced by the Applicant on this score is internal administrative oversight. This explanation is flimsy and unsatisfactory. The Applicant issued an instruction state attorney in June 2025. Thereafter however, the Applicant did nothing to ascertain whether its instructions were acted upon. It was only once the Sheriff attended the premises of the Applicant during February 2026 when they realised, some 8 months later, that this application was not instituted. The affidavits filed by the Applicant do not demonstrate that there were any enquiries made with the office of the state attorney at all post the correspondence of 26 June 2025.
- [16] There is a point beyond which a litigant cannot escape the negligence of the representatives, particularly in circumstances where there is no record of any reasonable steps taken by the litigant to ensure that their instructions are executed³.
- [17] This court is of the view that given the quantum of the award and the fact that the Applicant is an organ of state, there was an even greater onus on the Applicant to ensure that this matter was diligently prosecuted. Any measure of diligence is woefully absent *in casu*. Accordingly, the matter stands to be struck from the roll for lack of urgency.
- [18] That being the case, the merits of the application stands over to be determined in the ordinary course.

Conclusion and costs

³ *Saloojee and Another NNO v Minister of Community Development* 1965 (2) SA 135 (A); *Tshivhase Royal Council and another v Tshivhase and another*; *Tshivhase and another v Tshivhase and another* [1992] ZASCA 185; 1992 (4) SA 852 (AD) at 859E-F.

[19] The extreme degree of urgency with which this matter was brought before the court is self-created, and consequently, the application stands to be struck from the roll.

[20] This Court is of the view that costs ought to be determined in the ordinary course, and accordingly, the issue of costs will be reserved.

[21] In the premises, the following order is made:

Order

1. The application is struck from the roll for lack of urgency;
2. Costs are reserved.

L Steenkamp

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv. N. Sikhwivhilu

Instructed by: The State Attorney

For the Respondent: Adv. T Moyo

Instructed by: Mphela Motimele Attorneys