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

Signature Date

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

Reportable

CASE NUMBER: 2026-049344

IN THE MATTER BETWEEN:

POPCRU OBO WARRANT OFFICER PA ZONDI **Applicant**

AND

THE MINISTER OF POLICE **Respondent**

Heard: **24 March 2026**

Delivered: **08 April 2026**

Summary: Urgency – Economic hardship as a ground of urgency – exceptional circumstances is required to depart from the general principle that economic hardship is not a basis for arguing urgency – unreasonable delay of 6 months in launching in bringing application and no exceptional circumstances present.

Practice and Procedure – Rule 3(1) of the Labour Court Rules – Entire dispute arose in KwaZulu-Natal, despite prescripts of Rule 3(1) application launched in Johannesburg – Initiating proceedings in the incorrect seat of the is a consideration in respect of costs.

JUDGMENT

STEENKAMP, AJ

Introduction

[1] This matter came before this Court as an opposed urgent application, wherein the Applicant sought, in addition to the customary relief pertinent to the abridged timelines for enrollment, service, and other procedural elements inherent to urgent proceedings, an order: (i) declaring the Respondent's alleged withholding of the Applicant's salary to be unlawful and in violation of Sections 32(3)(a)-(b) and 34(1) of the Basic Conditions of Employment Act[1] ('*BCEA*') ; (ii) directing the Respondent to restore the Applicant's salary; (iii) directing the Respondent to remit all salaries purportedly unlawfully withheld from the Applicant since September 2025, together with an order regarding costs.

[2] The Respondent took issue with the exigency with which this application has been brought before the court, in circumstances where the alleged wrong occurred on 09 September 2025. For the purposes of this judgment, Popcru will be referred to as 'the trade union' and the employee will be referred to as the 'Applicant'.

Background facts

[3] The Applicant is employed by the Presidential Protection Services ('PPS') of the South African Police Service ('SAPS') and she is stationed in Durban, KwaZulu-Natal in the Physical Protection Team ('PTT'). The team based in KwaZulu-Natal has two commanders at the rank of Lieutenant Colonel, of which Lieutenant Colonel Ngcobo is the second in command.

[4] There is a well-documented history of tension between the Applicant and Lieutenant Colonel Ngcobo. The exact details of the skirmishes between the Applicant and Lieutenant Colonel Ngcobo are not relevant for present purposes. Pursuant to the reciprocal complaints and even criminal cases opened by both Colonel Ngcobo and the Applicant, an internal investigation took place, and Colonel Moodley was appointed to investigate the matter. Colonel Moodley rendered a report on 15 November 2024 wherein he recommended that the Applicant be re-deployed as an interim measure while the issue of her firearm was being resolved. At this juncture, the Applicant already had her firearm removed on two occasions. Once because she allegedly threatened Colonel Ngcobo, and a second time when she threatened self-harm. In his report,

[1] Act 75 of 1997, as amended

Colonel Moodley recorded that in respect of the latter incident, too many instances of members harming themselves or others are occurring, and the employer must "*err on the side of caution*" in this regard.

[5] On 21 January 2025, the Applicant was permanently re-deployed with immediate effect to the Information Management Centre ('IMC'): Presidential Protection Services. The Applicant acknowledged receipt of the re-deployment letter on 29 January 2025. The Respondent alleges that 21 January 2025 was the last occasion upon which the Applicant reported for duty. In this regard, the Respondent appended a copy of the Occurrence Book dated 03 February 2025 as proof that the Applicant did not report for duty at IMC as instructed. In reply, the Applicant provided copies of her own pocketbook and extracts from an overtime register wherein she recorded her intermittent attendance, presumably at PTT, and importantly, alleged attendance on 04 August 2025 – 09 September 2025 and on 18 December 2025.

[6] The Applicant alleges that her re-deployment was effected in contravention of SSSBC Agreement 5 of 1995, specifically insofar as it was allegedly effected in contravention of the prescribed process and considerations in the collective agreement.

[7] Allegedly confused about what she describes as "contradictory" information between the recommendation in the investigation report and the re-deployment letter, the Applicant notified the trade union on an undisclosed date to raise her concerns. Consequently, on 30 January 2025, the trade union directed correspondence to the Head of PPS in the office of the National Commissioner, raising concern with the Applicant's re-deployment and further requesting a meeting to discuss the issue.

[8] Despite being notified of her immediate and permanent re-deployment on 21 January 2025, the Applicant alleges that she continued to attend and perform her duties at PPT in Cato Manor. Conversely, the Respondent alleges that the Applicant ceased reporting for duty from 21 January 2025. On this score, it is common cause that the Applicant continued to be remunerated between the time she was re-deployed, and the time that her salary was stopped in August 2025.

[9] On 11 March 2025, Major General Rhoode advised the trade union that it was important for the Applicant to comply with her re-deployment, and that the Applicant could follow "due process" in the case of any dissatisfaction.

[10] On 28 May 2025, the Respondent charged the Applicant with misconduct in that she allegedly failed to comply with a reasonable instruction to report at IMC (per her re-deployment) without proper cause.

[11] The trade union ostensibly referred a dispute as contemplated in Section 24 of the LRA to the bargaining council on behalf of the Applicant, and arbitration was set down for 07 July 2025. Save for a notice of set down and a vague allegation that the matter was postponed for hearing to an undisclosed date during March 2026 as a result of the Respondent's alleged "unpreparedness", the full detail of the referral and process was not disclosed by the trade union.

[12] On or about 19 August 2025, Colonel Dlamini, Acting Regional Head of PPS – KZN directed correspondence to the Section Head – Operational Support, requesting that the Applicant's salary be suspended as she failed to report for duty after finalization of the disciplinary investigation on 01 August 2025.

[13] The Applicant's salary was stopped on 30 August 2025. She became aware of the stoppage on or about 09 September 2025 when a medical service provider informed her that her medical aid was discontinued.

[14] On the Applicant's own version, she ceased reporting for duty on 10 September 2025, as she allegedly lacked the financial resources to attend work.

[15] On 03 October 2025, the Applicant's erstwhile attorneys of record issued a letter of demand to the Respondent and advised that should her salary not be reinstated and the unpaid remuneration be settled by 30 October 2025, legal action would ensue.

[16] On 16 October 2025, the Respondent replied to the letter of demand and conveyed that the Applicant's complaints have been thoroughly addressed through internal processes, and the re-deployment was occasioned in the interest of the Applicant as well as the Respondent in its capacity as her employer. Despite the Applicant's acknowledgement of receipt of the re-deployment instruction, she has failed to report for duty (at IMC) and disciplinary charges have been levelled against her. It was stressed that the Respondent

cannot remunerate the Applicant in circumstances where she is not reporting for duty and not rendering any services to the Respondent.

[17] Only on 11 February 2026, a fresh letter of demand was authored by the Applicant's current attorneys of record, which letter of demand was served on 13 February 2026. The Respondent was placed on terms to settle the employee's unpaid remuneration by no later than 20 February 2026, failing which, this court would be approached on an urgent basis.

[18] On 18 February 2026, the Applicant filed a statement of claim for payment of arears remuneration in the Durban seat of this Court. Full and further detail of this referral were not disclosed.

[19] On 23 February 2026, the state attorney advised the Applicant's attorneys of record that the issue of unpaid remuneration is *lis pendens*.

[20] On 02 March 2026, the Applicant's attorneys of record confirmed their instruction to launch this urgent application, and that the statement of claim was withdrawn.

[21] This application was served on the Respondent's attorneys of record on 05 March 2026.

Preliminary Issues

[22] As a point of departure, Rule 3(1) of the Labour Court Rules[2] ('*the Rules*') stipulates the following in respect of the seat where proceedings must be initiated:

> 'Unless the Judge President directs otherwise, proceedings must be initiated at the seat of the court nearest the place where the dispute which is the subject matter of the proceedings arose.'

[23] It is common cause between the parties that the dispute arose in KwaZulu-Natal. Despite this fact, the Applicant disregarded the rule and initiated proceedings in the Johannesburg seat of the Labour Court, and from the bar it was advanced that the matter was initiated at the Johannesburg seat of this Court because that is where the Respondent is situated. Ms Ngada for the Applicant candidly and correctly conceded that the matter ought to have been instituted in Durban. This

---

[2] Rules Regulating the Conduct of Proceedings of the Labour Court, GN 4475a in GG 50608 of 3 May 2024

error resulted in a logistical challenge in the office of the State Attorney representing the Respondent, as different offices of the state attorney had to be engaged in opposing this application.

[24] It is furthermore curious that the statement of case was correctly initiated in the Durban seat of this Court, but the Applicant elected to initiate the urgent application in the Johannesburg seat.

[25] Be that as it may, the issue is not dispositive of the matter as this seat of the court has national jurisdiction. That being said, this is a consideration as to the issue of costs, which will be dealt with below.

[26] Ms Ngada further conceded that in accordance with the notice of motion, reliance on Sections 32(3)(b) and 34(1) of the BCEA is misplaced as the Respondent's failure to pay remuneration did not fall within the ambit of a deduction, and the Applicant is still employed by the Respondent.

[27] Accordingly, save for a determination on whether the matter is urgent, the issue to be determined is whether the conduct of the Respondent offends against the prescripts of Section 32(3)(a) of the BCEA, entitling her to a declaratory order and reinstatement of her remuneration.

<u>Urgency</u>

[28] In the oft quoted authority of *Jiba v Minister of Justice and Constitutional Development and Others*[3] ('*Jiba*'), this Court held that:

> 'Rule 8 of the rules of this Court require a party seeking urgent relief to set out the reasons for urgency and why urgent relief is necessary. It is trite law that there are degrees of urgency. And the degree to which the ordinary applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self-created when seeking a deviation from the rules.'

[29] It is trite that urgency may not be self-created by an applicant through a failure to institute proceedings at the earliest reasonable opportunity. The diligence and expedition with which a litigant acts upon the occurrence of the cause of action are material considerations in determining whether a matter is indeed urgent. Any

[3] (2010) 31 ILJ 112 (LC) at para 18

undue delay following the event giving rise to the litigation invariably undermines, if not negates, the assertion of urgency. An applicant is therefore enjoined to approach the court without delay; absent a satisfactory explanation for such delay, the application is liable to be struck from the roll for want of urgency.[4]

[30] In addition to the aforesaid, an applicant who approaches the court on an urgent basis effectively seeks an indulgence, namely to be afforded preference over other litigants, in order to avert prejudice or harm that may ensue or persist should the impugned conduct continue. It is incumbent on an Applicant seeking urgent relief to demonstrate why substantial redress cannot be obtained in the ordinary course at a hearing in due course.

[31] These two considerations are pivotal for the Court to exercise its judicial discretion in determining whether a matter is so urgent that an immediate hearing is justified.

[32] In *Radebe and Others v Aurum Institute*[5] ('*Radebe*'), Prinsloo, J said the following with regard to self-created urgency:

> 'An applicant that is well aware of the harm he or she alleges to suffer, who takes no steps over a protracted period of time, and then launches an urgent application, is likely to have his or her application struck from the urgent roll. Thus, to the extent that an applicant wishes its matter to be accorded urgency, in the same token it is expected of such an applicant to have acted with the same urgency that the matter deserves, failing which the invariable conclusion to be reached is that any urgency claimed is self-created.'

And

> 'It is not sufficient for a party when approaching a court on an urgent basis to adopt the approach that it is of right entitled to preferential treatment failing which it would suffer prejudice in the event that its urgent application is not granted. A party needs to demonstrate that it had also in asserting its rights, acted diligently and with the urgency that the matter it seeks to pursue requires. The Applicants failed dismally in this regard.

---

[4] *Baloyi & Others v Passenger Rail Agency of South Africa [*2021] ZALCJHB 26 (03 March 2021) at para 12. See also *Radebe and Others v Aurum Institute* (2024) 45 ILJ 876 (LC); *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) at para 26.

[5] (2024) 45 ILJ 876 (LC) at paras 35 and 37 - 38

In essence, the Applicants waited too long to bring this application and by the time they had approached this Court for relief, it became a matter of self-created urgency. Even if there is urgency, such urgency is self-created. This Court does not entertain self-created urgency and for this reason alone, the application falls to be struck from the roll.'

[33] With regard to the issue of non-payment of remuneration leading to financial hardship as a ground for urgency, in *Democratic Nursing Organization of South Africa and Another v Director General Department of Health and Others*[6] ('*Denosa*') Molahleni, J (as he then was) said the following:

> 'The application further stands to fail on the ground that the applicant has failed [to] demonstrate the existence of urgency. In *Hultzer v Standard Bank of South Africa* (Pty) Ltd [1999] 8 BLLR 809 (LC), at para [13], the Court held that financial hardship or loss of income is not regarded as a ground for urgency. The Court arrived at this conclusion following the earlier decision in University of the *Western Cape Academic Staff & others v University of the Western Cape* (1999) 20 ILJ 1300 (LC) at para [17] where the Court in that case held that:
>
> > "17 With regard to the notion of irreparable harm it needs to be mentioned that loss of income as a result of dismissal is the inevitable consequence and as such provides no good ground for the granting of urgent interim relief. Special circumstances must be advanced to persuade a court to oblige … In considering the issue of irreparable harm the court will also consider the adequacy or not of any alternative remedy that may be available."
>
> The Court in *Malatji v University of the North* [2003] ZALC 32 (LC) and following the decision in *National Sorghjum Bierbrouery (Edms) Bpk (Rantoria Divisie) v John NO & Ander* (1990) 11 ILJ 971 (T), held that in general, financial hardship and loss of income are not considered to be grounds for urgent relief. In order to succeed when reliance is based on financial hardship, exceptional circumstances must be shown before urgent interim relief can be granted.'

[34] Financial hardship is not a *passe partout* to redress in the urgent court. More is required, and the Applicant seeking redress on an urgent basis due to financial hardship is required to demonstrate exceptional circumstances. In this regard,

---

[6] (J2386/08) [2009] ZALCJHB 84 (5 January 2009); (2009) 30 *ILJ* 1845 (LC) at paras 15 - 16

Lagrange, J said the following in *Matshidiso v Chief Executive Officer - South African Social Security Agency and Another*[7] ('*Matshidiso*')

> 'I agree with the proposition in *Ledimo & others v Minister of Safety & Security & others* that there is no immutable rule that financial exigencies cannot be invoked to lay a basis for urgency. This is so in that courts in any event enjoy a discretion in the overall determination of whether a matter should be accorded urgency or not. Inasmuch as factors surrounding financial hardship on their own are not a basis for according a matter urgency, these have to be determined together with other facts and circumstances pleaded in the founding papers, which point to a conclusion that those facts and circumstances are exceptional, thus necessitating that the matter should be treated as urgent.'

[35] On score of urgency, this Court is accordingly enjoined to consider whether the urgency *in casu* was self-created, and whether the Applicant has demonstrated exceptional circumstances in respect of financial hardship militating in favour of treating this matter as urgent.

<u>Analysis</u>

[36] On the score of urgency, the Applicant asserted in her founding affidavit that the matter is urgent as she would not obtain substantial redress in the normal course because the stoppage of her salary is likely to persist for a considerable time, and she is suffering financial prejudice as a result. She further claims a "lack of certainty" about the intentions of the Respondent, i.e. whether her salary will be reinstated or not and the prejudice is thus of a continuing nature.

[37] These allegations are in an of itself, wholly insufficient to establish urgency. In order to sustain the argument of urgency, the Applicant needed to demonstrate that the Court was approached at the earliest reasonable opportunity, and that she was not dilatory in launching the application. She further needed to establish that her circumstances are of such an exceptional nature, that urgent relief should be granted to her.

[38] The Applicant's salary was stopped on 30 August 2025, and she became aware of this fact on or about 09 September 2025. This urgent application was only launched on 05 March 2026, just shy of 6 months after the alleged wrong occurred. In an attempt to ameliorate the delay in launching this application, the

[7] (J 1175/2022) [2022] ZALCJHB 365 (29 September 2022)

Applicant and the trade union essentially blames their former attorneys of record for not executing instructions in a timely manner, which instructions the trade union, on the Applicant's behalf, alleges to have given on or about 23 September 2025. The first letter of demand, presumably issued in accordance with this instruction, imposed a deadline for response and restoration of the *status quo ante* on the Respondent of 30 October 2025.

[39] On 16 October 2026, a response was provided by the Respondent. The content of the response was clear and unambiguous. Simply put, if the Applicant does not report for duty as re-deployed, she is not entitled to remuneration[8].

[40] It is apposite to state that the Applicant never reported to ICM as instructed but continued to report at PPS, and on her own version, she stopped reporting for duty *in toto* on 10 September 2025. It is necessary to repeat that until August 2025, despite not reporting as instructed, the Applicant received remuneration, and she even appears to have claimed overtime as recorded in the "overtime register" attached to the replying affidavit. The stoppage of her salary due to not reporting as instructed occurred in August 2025. No financial prejudice to the Applicant occurred prior to August 2025, and the period that followed after her salary was stopped is the period relevant to the urgency of the current application.

[41] On this score, the Applicant alleges that she did not have the financial means, post stoppage of her remuneration, to attend work. This allegation is belied by the fact that on the documents she annexed to her replying affidavit, she apparently attended work 18 December 2025. Furthermore, it was disclosed in the replying affidavit that the Applicant was dependent on loans to make ends meet after her salary was stopped.

[42] This explanation is oblivious to the obvious solution that the Applicant could similarly have obtained the necessary funds to report for work as instructed and

---

[8]See: *Mpanza and Another v Minister of Justice and Constitutional Development and Correctional Services and Others* (JS708/14) [2017] ZALCJHB 48; (2017) 38 ILJ 1675 (LC) at para 32 wherein the following was said:

> 'As a contract of employment is a contract with reciprocal rights and obligations, the applicants were under an obligation to work in which case the Department was under an obligation to pay for their services. Therefore the Department was entitled to refuse to pay the applicants as they refuses (sic) to work. In other words, the applicants were legally not entitled to refuse to carry out their side of the employment contract. In fact, it was them who were in breach of their employment contract by unlawfully failing to perform their obligations. As the applicants failed to render their services to the Department, the Department became entitled, in law, to implement the no-work, no-pay and no-benefit rule.'

still earn her salary. The issue for the Applicant is that she did not want to comply with the re-deployment instruction. Had she complied with the instruction under protest, pending the outcome of the dispute referred to the SSSBC, the entire situation could have been avoided. Incidentally, this goes to the heart of the allegation that she does not have a suitable alternative remedy. There is a dispute about her re-deployment pending before the SSSBC where it will ultimately be determined whether her re-deployment was lawful or not. There is an unsatisfactory explanation as to why she did not, pending the outcome of the dispute before the SSSBC at least report and perform her duties as re-deployed under protest.

[43] Be that as it may, on the facts before court, the Applicant has not reported for work since at least 10 September 2025 to date of hearing of this application. Remuneration is a *quid pro quo* for services rendered by an employee, and the Applicant rendered no services to the Respondent, on her own version, since 10 September 2025. Even if the Respondent's argument that the Applicant failed to report for duty since 21 January 2025 is rejected, the Respondent certainly became entitled to refuse payment of remuneration of the Applicant as of 10 September 2025 to date.

[44] The Respondent's reply to the letter of demand ought to have been clear to the Applicant and the union. The effect of the reply is that by 16 October 2025, there was an impasse between the parties, and this application ought to have been launched without delay.

[45] The gist of the explanation for the delay is that the erstwhile attorneys of record did not act with diligence. This explanation does not pass muster. Neither the Applicant, nor the trade union took reasonable steps which would in the final analysis be sufficient to excuse the substantial delay in instituting the current proceedings.

[46] The Applicant made wholly insufficient allegations with regard to urgency in the founding affidavit. Instead, details of the timeline between the cessation of her remuneration and the launching of this application were only advanced in reply. It was incumbent upon the Applicant to set out her case fully in the founding affidavit, and she cannot make out her case on urgency only in the replying affidavit. In any event, even the timeline set out in the replying affidavit does not demonstrate any degree of urgency as there are insufficient allegations to

reasonably explain and excuse the effluxion of time between 10 September 2025 and 05 March 2026.

[47] Even if the Applicant is given the benefit of the doubt in that the Respondent's final resolve to persist with the non-payment of her salary for the reasons already detailed in this judgment only became known to her after the Respondent's reply to the letter of demand on 16 October 2025, in the context of an urgent application, it is still a considerable period of time, and in those circumstances, approximately 5 months lapsed before this application was launched.

[48] The communication between the trade union and the Applicant's erstwhile attorney of record was sporadic, and no sense of urgency permeated these interactions. The explanation proffered by the trade union, that they gave instructions to launch this urgent application to the erstwhile attorney of record on or about 23 September 2025, and they only realized that this instruction was not executed on 30 January 2026 when the attorney rendered a statement of account which demonstrated that the matter was not finalized, leaves much to be desired. The trade union allegedly received a legal opinion instead of a draft application on 30 September 2025. It is averred that the union official then contacted the attorney telephonically and it was agreed that an urgent application would be issued. Thereafter, a legal opinion was sought from counsel by the former attorneys on or about 17 November 2025, despite the alleged agreement between the attorney and the trade union to initiate urgent proceedings. The trade union did not take appropriate action in response to the attorney's failure to execute their agreement and they were only spurred into action when the statement of account was received from the former attorney of record at the end of January 2026. The WhatsApp message annexed to the replying affidavit, wherein the union official expressed that he was not pleased with the attorney is simply not enough to excuse their own lack of diligence. Insofar as the Applicant is concerned, no facts of any steps she took to advance the matter were disclosed in either the founding or the replying affidavit. In fact, both affidavits were deposed to by a union official, and the Applicant did not even depose to any confirmatory affidavit. This being the case, there is no evidence of any enquiries about the status of her matter being made at any time by the Applicant.

[49] In *Saloojee and Another NNO v Minister of Community Development*[9] ('*Saloojee*') the former Appellate Division said the following:

> 'If, as here, the stage is reached where it must become obvious also to layman that there is a protracted delay, he cannot sit passively by, without so much as directing any reminder or enquiry to his attorney and expect to be exonerated of all blame; and if, as here, the explanation offered to this court is patently insufficient, he cannot be heard to claim that insufficiency should be overlooked merely because he has left the matter entirely in the hands of his attorney. If he realises upon the aptitude or remissness of his own attorney, he should at least explain that none of it is to be imputed to himself. That has not been done in this case.'

[50] As held in *Saloojee*, in the absence of any diligence demonstrated by either the Applicant or the trade union, their inaction cannot be excused in these proceedings by blaming the erstwhile attorney as the sole cause of the delay.

[51] The Applicant would have had to advance excellent reasons why her matter remains urgent, some 6 months after the alleged wrong having occurred, whilst on the version of the trade union, they always had the intention to launch this application.

[52] Put differently, if the Applicant genuinely intended to launch this application since the alleged stoppage of her salary, why did it take 6 months to initiate the matter? No reasonable explanation, let alone an acceptable one has been advanced *in casu.* This Court is of the view that the facts of this case are the epitome of self-created urgency.

[53] Having considered the evidence and the submissions before the Court, the only reasonable conclusion is that the urgency *in casu* was entirely self-created. In those circumstances, the application stands to be struck off the roll.

<u>Conclusion and Costs</u>

[54] Having found that urgency was self-created and that the matter stands to be struck from the roll, the merits of the interdict sought by the Applicant will be determined in the ordinary course.

[55] This leaves the question of costs. From the very inception of this dispute, the employee was represented by the trade union. The trade union is well-

[9] 1965 (2) SA 135 (A)

established and is no stranger to proceedings in this Court. The trade union ought to have taken sufficient measures to ensure that the matter was prosecuted with the necessary expedience on behalf of its member, and to simply blame the ertswhile attorney is not an acceptable excuse for their own, as well as the Applicant's failure to expedite the matter. At the end of the day, the trade union was the conduit between the employee and the attorney, and ultimately, the buck stops with them. They ought to have realized that this case was hopeless on the score of urgency, yet they persisted with the application albeit with new legal representation.

[56] In *Dladla v Council of Mbombela Local Municipality and Another*[10] this Court considered the issue of costs and said the following:

> 'The award of costs is a matter which falls wholly within the discretion of the court. In coming to a conclusion, the circumstances of the particular case should be taken into consideration including but not limited to the conduct of the parties which may have a bearing on the question of costs.'

[57] It is appropriate to refer to the dictum in *Mokoena v Merafong Municipality and Others*[11] wherein the following was said:

> 'In casu, the applicant brought a meritless application to this court and fairness dictates that the respondents cannot be expected to endure enormous costs defending litigation where more thought and consideration had to be put in before approaching this court on an urgent basis. This is more so where the costs incurred by the respondents are paid from taxpayers' money and I can see no reason why the taxpayers should be burdened with the costs in this application ... '

[58] The trade union bound itself as a party to this litigation, and they are thus not immune to a cost order in these proceedings[12]. Given the fact that the Respondent is an organ of state, the legal costs incurred in opposition of this application should not fall to the public purse in circumstances where the application was brought on an urgent basis by the Applicant and the trade union, knowing full well that the expeditious resolution of labour disputes is part and parcel of the purpose of the LRA and their case on urgency was hopeless.

---

[10] [2008] (29) ILJ 1893 (LC)
[11] (2020) 41 ILJ 234 (LC) at para 36
[12] South African Airways Technical (SOC) Ltd v South African Transport And Allied Workers Union and Another (2014) 35 ILJ 1638 (LC) at [32] – [37]

[59] The Court returns to the issue of instituting proceedings in the Johannesburg seat of this Court, as opposed to the Durban seat. The Respondent lamented the fact that the litigation was initiated in Johannesburg. Not only did the dispute arise in Durban, but several processes are either currently running or have been instituted in the area. The Respondent is an organ of state, and the Office of the State Attorney ('the state attorney') usually acts as legal representative to organs of state involved in litigation. Different offices of the state attorney serve different areas.

[60] The Respondent alleged that the urgent application was served on the respondent's offices as well as on the State Attorney, Pretoria on 5 March 2026. The answering affidavit was required by 12 March 2026. However, the letter of demand was emailed to the Section Head: Labour Litigation, Legal Services, National Head Office who advised that the applicant had served a statement of claim on the same facts, which matter was being dealt with by the Office of the State Attorney, Kwazulu-Natal on 18 February 2026. The prejudice to the Respondent is clear on this score. Various internal processes are applicable in the office of the state attorney, and the failure to institute these proceedings in the appropriate seat of this Court made a response under severe time constraints far more difficult than it needed to be. The Respondents complaints are not without merit.

[61] Parties cannot ignore the rules of this Court as if they do not exist. The current rules have been effective since July 2024, but despite this fact, parties continue to litigate as they did under the regime of the old rules, which have been repealed.

[62] While the previous rules did not dictate where proceedings should be initiated, the current rules do. It is in fact such a serious condition, that it is only with leave of the Judge President of this Court that proceedings may be instituted in a seat other than the one closest to where the dispute arose. The rule is further peremptory.

[63] This matter was brought before the Court when urgency had lapsed, long prior to the institution of the current application. In this regard, it is necessary to repeat

what was said in *Maphalle v National Heritage Council and Others*[13] by van Niekerk, J (as he then was):

> 'In casu, the Applicant brought an urgent application at a time when urgency has passed. There was no consideration of the applicable authorities on the issue of this Court interfering in incomplete disciplinary hearings and the warnings contained in those judgments. This application amounts to an abuse of process. To make matters worse for the Applicant, she was legally represented and did not approach this Court as an unrepresented layperson who did not know better.'

[64] Given the prejudice as alleged by the Respondent as well as the seriousness of the non-compliance with the rules of this court, and the total lack of urgency, the interest of justice and fairness in the prevailing circumstances militates in favour of ordering the trade union to pay the Respondent's costs.

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

<u>Order</u>

1. The application is struck from the roll due to lack of urgency;
2. POPCRU is ordered to pay the Respondent's party and party costs, including the cost of Counsel where so employed, on Scale B.

L. Steenkamp

Acting Judge of the Labour Court of South Africa

<u>Appearances:</u>

For the Applicant: Ms N Ngada

Instructed by: Ngada Attorneys

[13] (J1502/2021) [2021] ZALCJHB 452 (13 December 2021) at para 101

For the First Respondents: Adv. M Rambachan-Naidoo

Instructed by: The State Attorney