



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case NO: 2025-240674

NORAH MOKGADI LION

Applicant

and

ADV RAMIN RAM SC NO

First Respondent

DEPARTMENT OF INFRASTRUCTURE

DEVELOPMENT: GAUTENG PROVINCE

Second Respondent

GENERAL PUBLIC SERVICE SECTOR

BARGAINING COUNCIL

Third Respondent

Heard: 11 December 2025

Order issued: 11 December 2025

Reasons requested on 22 January 2026 and transmitted electronically by email on 24 April 2026.

REASONS FOR ORDER

KROON, AJ

Overview

- [1] The urgent Roll in the Labour Court is not to be treated as a casino. A litigant who has been unsuccessful in an application for want of urgency cannot simply move from one ‘*table*’ to another and then play again with the same hand, advancing substantially the same case, in the hope that persistence and fortune rather than merit in the form of a genuine change in facts and circumstances, will yield a favourable outcome.
- [2] These reasons serve to underpin the undermentioned order dismissing an application brought by the Applicant (Ms Lion), in which she sought an interdict against the First and Second Respondents from proceeding with a disciplinary hearing scheduled for 9 to 12 December 2025. The application was opposed by the Second Respondent (the Department).
- [3] On 11 December 2025, the Court issued the following order:
- “Having heard Mr Sagika (sic) for the Applicant and Mr Mofokeng for the Second Respondent, an order is issued on the following terms:*
1. *The Application is dismissed.*
 2. *The Applicant’s attorneys are to pay the costs on an attorney and own client scale de bonis propriis.”*
- [4] The order is self-evidently extraordinary in that not only were costs awarded on an attorney and own client basis, but they were also awarded *de bonis propriis*. A request for reasons for the order was brought to the Court’s

attention on 22 January 2026. As has been recently reaffirmed by the apex Court,¹ the duty to give reasons in the case of a punitive costs order is a heightened one.

- [5] In *Zuma*,² it was eloquently stated that “*the principles of legal certainty and finality of judgment are the oxygen without which the rule of law languishes, suffocates and perishes*”.³ The basis underlying the exceptional costs order is that the legal representatives of Ms Lion were responsible for creating a Groundhog Day⁴-like cycle of litigation by way of bringing three separate urgent applications. When it came to seeking to halt the disciplinary hearing, they brought the same application twice, the second such application having been brought after Ms Lion was unsuccessful the first time around.
- [6] The salient facts may be summarised as follows. There was allegedly a protected disclosure by Ms Lion which took the form of a grievance lodged on 20 November 2023. Ms Lion was charged with gross misconduct about a year later, on 1 November 2024. The institution of the disciplinary proceedings was the alleged occupational detriment on which this application was based. Yet, it was only after nine months on 24 August 2025, that she made a referral in terms of Section 189A(11) of the Labour Relations Act.⁵ This was after the Department’s disciplinary proceedings had been ongoing for more than half a year and the Department had already called six witnesses. The current purportedly urgent application was only brought on 8 December 2025, more than a year after the charges had been preferred against Ms Lion and after the disciplinary hearing had been in full swing for some ten months. The application was, so it was contended, brought because the Chairperson of the disciplinary hearing refused to postpone it pending the outcome of the Section 189A(11) dispute, which had been set down before the Bargaining Council on 6 March 2026.

¹ *Prithilal v Akami Egoli* 2026 (2) SA 1 (CC) para [8]

² *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* 2021 (9) BCLR 992 (CC); 2021 (5) SA 327 (CC)

³ para [1]

⁴ *Groundhog Day* is an American fantasy comedy motion picture about a weatherman who finds himself trapped in a time loop where he repeats the same day over and over again.

⁵ 66 of 1995 (the LRA)

- [7] Whilst the application would, in any event, have failed because it was fatally defective at a procedural level, given the self-created urgency (Ms Lion waited for more than a year to bring it and then invoked an unreasonably stringent timetable), the feature of the application is that the relief sought is all but identical to the relief which was previously sought and refused by this Court. On 9 October 2025, an urgent application was brought before Tlhotlhallemaje J for the same relief (the interdicting of the disciplinary hearing). The only real difference between the two applications is that Ms Lion also challenged her suspension in the application before Tlhotlhallemaje J, but abandoned this relief before this Court. On 16 October 2025, Tlhotlhallemaje J delivered a judgment in which he struck the matter from the Roll with costs for lack of urgency, such costs to be paid on an attorney and client scale.
- [8] For ease of reference, I will refer to the judgment of Tlhotlhallemaje J as the First Judgment. However, as mentioned, it was in fact preceded by an order striking from the Roll the first application brought by Ms Lion to have her suspension uplifted.

Analysis of the First Judgment

- [9] In order to appreciate the full extent of the abuse of Court process which tainted the application which came before me, it is necessary, by way of context, to quote liberally from the First Judgment. I commence with the introduction:

"[1] In Passenger Rail Agency of South Africa and Others v Ngoye and Others(Ngoye), the Labour Appeal Court (LAC) had observed that it had become commonplace, mostly for white-collar employees, to challenge their dismissals or disciplinary action initiated by their employers, on the basis of unlawfulness and/or breach of contract, rather than to dispute the fairness of the employer's action. This matter before the Court on an urgent basis is yet another example.

[2] The Applicant is currently in the employ of the First Respondent (Department) in the position of Chief Financial Officer (CFO). She seeks a variety of orders including interdicting the continuation of a disciplinary

hearing scheduled from the 6 - 10 of October 2025 as well as on 13 - 14 November 2025, pending the finalisation of referral of a dispute under section 188A (11) of the Labour Relations Act (LRA)² before the Fourth Respondent (GPSSBC). The dispute is set down for hearing before the GPSSBC on the 24 October 2025."

[10] In summary, in the First Judgment the basis for the application to interdict the disciplinary hearing was that a referral had been made under Section 188A(11) of the LRA and the Chairperson had refused to postpone the disciplinary hearing pending the outcome of that dispute. The relief sought, as well as the factual matrix which led to the First Judgment, was thus on all fours with that which pertains to the current application.

[11] The First Judgment sets out the history of the matter as follows:

"[7] The background to this application is fairly common cause. To the extent that the Department disputed the urgency of the matter and the failure to meet the requirements of relief sought, the following timeline and events are material;

7.1 On 20 November 2023, the Applicant lodged a formal grievance against the former HOD (Mr Mutlwaneng). The grievance was lodged with the Gauteng Member of the Executive (MEC) and Premier of Gauteng. The grievance, which the Applicant subsequently deemed to be a protected disclosure under the Protected Disclosure Act (The PDA), mainly related to the performance of her responsibilities.

7.2 On 4 March 2024, the Applicant was placed on paid precautionary suspension pending investigations into broad allegations of misconduct against her. The initiation of the investigations was at the behest of Mutlwaneng, against whom the Applicant had lodged a grievance.

...

7.4 On 1 November 2024, the Applicant was furnished with a 'charge sheet' which outlined numerous allegations of misconduct against her. The appointment of the Third Respondent as Chairperson of the

Disciplinary enquiry was confirmed on 11 November 2024. A pre-hearing was held on 12 November 2024, and the hearing had commenced in earnest from 20 January 2025.

...

7.6 *It is common cause that notwithstanding the Applicant's failure to mention (sic) in the founding affidavit, she had indeed on or about 22 August 2024, launched an urgent application before this Court... That application was struck off the roll on 4 September 2025, on account of lack of urgency. The applicant has not re-enrolled that matter on the ordinary roll, nor is that application withdrawn.*

7.7 *On the Sunday of 24 August 2025, the Applicant through her attorneys sent an attached notification of a hearing scheduled before the GPSSBC on 24 October 2025, following her referral and a request for an enquiry by an Arbitrator under section 188A(11) of the LRA.*

7.8 *On 26 August 2025 at the continuation of the disciplinary hearing, the Applicant's then Counsel brought an application before the Chairperson to halt the proceedings pending the determination of the referral before the GPSSBC. The Chairperson had refused to grant a postponement in a ruling issued on 22 September 2025."*

[12] The parallels between the current application and that which served before Tlhotlhemaje J are unmistakable. Charges were preferred against Ms Lion on 1 November 2024. There was a pre-disciplinary hearing on 12 November 2024 and the disciplinary hearing was set to commence on 20 January 2025. A Section 188A(11) referral had been set down before the Bargaining Council, and the Chairperson had refused to postpone the disciplinary hearing. In the current application, the facts mirrored these facts, save that the Section 188A(11) dispute had been set down for 6 March 2026 (as opposed to 24 October 2025) and the decision by the Chairperson, once again, to refuse to postpone the disciplinary hearing was made on 5 December 2025 (not 22 September 2025).

[13] When it comes to the question of urgency, the findings of the First Judgment may be summarised as follows:

[13.1] Firstly, the Court found that there was an excessive degree of self-created urgency in bringing the application. The charge sheet was served on Ms Lion on 1 November 2024. Ms Lion participated fully in the disciplinary hearing; yet, it was only after an inordinate and unexplained delay that she made a Section 189A(11) referral on 25 August 2025. The Court drew an adverse inference from the fact that Ms Lion, who was at all times legally represented, changed her legal representatives no less than eight times and participated in the disciplinary hearing without once mentioning the alleged protected disclosure. In the words of the Court, the self-created urgency was “fatal”.

[13.2] Secondly, Ms Lion and her legal representatives were scolded for bringing a fresh urgent application regarding her suspension. The Court bemoaned the fact that the aftermath was the coexistence of two pending applications concerning the same complaint, the lawfulness of Ms Lion’s suspension. As mentioned elsewhere in this judgment, history was destined to repeat itself; this time, not in respect of the suspension, but in respect of the disciplinary hearing.

[13.3] Thirdly, Ms Lion could, in any event, obtain substantial redress should this be necessary, given the remedy contemplated by Section 187(1)(h). In terms of that section, it is open to Ms Lion, were she to be dismissed for misconduct, to complain that her dismissal was automatically unfair because the reason for her dismissal was that she had made a protected disclosure.⁶ This Court would add that another avenue open to Ms Lion (who contended in front of this

⁶ Cf *Industrial Development Corporation of South Africa v Modika and Others* (Labour Appeal Court of South Africa, Johannesburg) Case No. A2026-037072 delivered on 16 March 2026 at paragraph 55 wherein the Court, albeit in the context of a pronouncement on the merits of the prayer for an interdict, held that, in the circumstances before it, it was not appropriate for the Labour Court to have come to the assistance of an employee who was being subjected to a disciplinary hearing even though the CCMA had “accepted” the Section 188A(11) referral. The reason was that the employee could always challenge her dismissal at a later stage should such occur.

Court that the Chairperson had no jurisdiction to continue with the disciplinary hearing) to obtain substantial redress would be to bring a review application in the ordinary course and to have the disciplinary hearing set aside in terms of Section 158(1)(h), it being within her prerogative to choose the remedy which she may wish to follow.⁷

[13.4] Fourthly, the Court found that, all things considered, the protected disclosure and the referral of the dispute in terms of Section 189A(11) were a “*ruse*” and an “*afterthought*”.⁸ The issue of a protected disclosure and consequently an occupational detriment only arose deep into the disciplinary hearing, after Ms Lion had fully participated in that hearing, never mentioning any alleged protected disclosure. The hearing, which was a stop-start affair, had, by the time the application was brought, endured for more than half a year. The Court found that the conduct of Ms Lion in bringing the application was “*contrived*” and “*self-serving*”. In short, the Court found that the referral was, on the evidence before it, a sham and that the application was not brought in good faith, but was rather brought for an ulterior purpose i.e. to frustrate the finalisation of the disciplinary hearing impermissibly. The Court concluded that it was only when the proverbial shoe began to pinch, and there was the spectre of Ms Lion having to give evidence in defence of the serious allegations of misconduct that she, as it were, woke up and decided that it may be a good idea to make a Section 189A(11) referral.

[14] Thus, the First Judgment dealt comprehensively and decisively with the question of urgency. It held that the misuse of the rules applicable to urgency rose to the level of an abuse of Court process. The central plank of that judgment was that the mere fact that the Section 188A(11) referral had been set down for hearing before the Bargaining Council, and the mere fact that the

⁷ *Booyesen v Beaufort West Municipality and another* Labour Appeal Court of South Africa, Gqeberha Case No. PA15/24 delivered on 19 August 2025 para [40]

⁸ These findings were made as part of the *ratio* which underpinned the finding that the application was an abuse of the process. They must be seen in that context. They however bear, albeit indirectly, on whether there existed a *prima facie* case. But on that point, they are clearly *obiter* because the application was disposed of on the basis of urgency, and not on the merits.

Chairperson had refused a postponement of the disciplinary hearing could not rescue Ms Lion from the urgency-related obstacles which accompanied her tardy and belated approach to the Labour Court. It also found that she could, in any event, have obtained substantial redress in due course.

- [15] In the First Judgment, the Court took a dim view of the manner in which the application had been prosecuted to the extent that it found that a punitive costs order was warranted. I quote:

“Costs:

[40] The Department had asked that the application be dismissed with costs either de bonis propriis or on attorney and client scale. It can only be repeated that this Court has consistently rebuked litigants, especially those who occupy senior positions and with deep pockets, to refrain for bringing urgent applications which ought not have burdened the Court's urgent roll in the first place. In most instances that such matters are on the urgent roll, the familiar pattern is to raise spurious grounds and allegations of unlawfulness, with the primary purpose of either stalling or completely putting an end to internal disciplinary hearings. Sadly, notwithstanding punitive cost orders being made against such litigants, these types of cases continue to over-burden the urgent roll.

[41] What makes this case even more worrisome and almost daring, is that a similar application, in which the suspension of the Applicant was challenged, was before this Court a month preceding the one in casu. That application was struck off the roll with no order as to costs. One would have expected the applicant and her legal team to have taken a cue from the previous application that the second one would meet the same fate. Clearly this was not the case.

[42] It is trite that this Courts (sic) has a discretion upon the consideration of law and fairness, to make cost orders, taking into account the unequal power relationship between employees and employers. In *Member of the Executive Council for Finance, Kwa Zulu Natal v Dorkin* NO⁹, the

⁹ 2008 (29) ILJ 1707 (CC)

Constitutional Court said that in making decisions on costs orders, a fair balance should be struck between not to unduly discourage workers, employers, unions and employers organizations from approaching the Labour Court to have their disputes dealt with, and being burdened with frivolous cases that should not have been brought in the first place. This application falls into the latter category.

[43] Inasmuch as it is appreciated that litigants are entitled to access to justice and the Court, this application however represents an abuse of Court process and upon a consideration of law and fairness, it is deserving of a punitive costs order.

[44] In Vermaak v MEC for Local Government & Traditional Affairs, Northwest Province & Others(Vermaak)¹⁰, it was held that;

‘...The scale of attorney and client is the highest scale possible that a litigant can be ordered to pay. It is an extraordinary one which should be reserved for cases where there is clearly and indubitably vexatious and reprehensible conduct on the part of a litigant The nature and reach of such an order has been described as “exceptional, very punitive and as indicative of extreme opprobrium.” The learned authors of Erasmus Superior Court Practice list various circumstances in which the courts have, over the years, awarded costs on an attorney and own client scale. One of the instances is where a party’s conduct has been found to be “unconscionable, appalling and disgraceful”. See also Sentrachem v Prinsloo where it was reiterated that an award of attorney and own client costs had to be seen as an attempt by the Court to go one step further than an ordinary order of costs between attorney and client so as to ensure that the successful party was indemnified with regard to all reasonable costs of litigation, and that it was an extraordinary order which could not be made without good reason.’¹¹(Internal citations omitted)

...

¹⁰ (JA15/2014) [2017] ZALAC 2 (10 January 2017)

¹¹ para [13]

[48] The Court has already concluded on the self-created nature of this application and its frivolous nature. The conduct of the applicant and her legal team when bringing this application before the Court and the prejudice it had caused the Department cannot be discounted. Clearly the Department was placed under undue pressure to meet the unreasonable time periods set by the Applicant, and thus compelled to oppose this application. This application was equally ill-considered in view of the Applicant's previous and similar application having been struck off the roll. Worst still, the issues surrounding unlawfulness of the suspension ought not to have burdened this Court as they were pending in the application that was initially struck off the roll. That application was neither enrolled on the ordinary roll nor withdrawn. The Applicant however appears to have sought to downplay its significance, as this application was brought as if the first did not exist.

[49] Against the above observations and conclusions, it follows that a consideration of law and fairness, dictates that the Applicant be mulcted with costs on attorney and client scale, as the conduct in bringing it, falls squarely within the type that was described in Vermaak. Any employment relationship between the parties as it exist, cannot absolve the Applicant from the consequences of equally abusing that relationship." (own emphasis)

[16] In summary, the Court found that an exceptional costs order was warranted firstly because of the patently self-created urgency. Secondly, the First Judgment found it baffling that Ms Lion contrived to bring a second urgent application (when it came to her suspension) as if the initial application, which had been struck from the Roll, "*did not exist*". The First Judgment concluded that the application constituted an "*abuse of Court process*".

Discussion

[17] It is worth repeating the following paragraph contained in the First Judgment:

"[38] All that can be said is that there is no basis upon which it can be said that the applicant had set out forth in his founding papers, the facts and circumstances that make the matter urgent, nor has she demonstrated

that she will not obtain substantial redress in due course. Equally so, the applicant has not acted with the necessary expedition in approaching the court, in order to prevent any alleged harm."

- [18] Given the contents of paragraph 38 of the First Judgment, it would, or at least should, have been abundantly clear to the legal representatives of Ms Lion that any litigation subsequently instituted, which recycled arguments already rejected in the First Judgment, and which was brought as if the First Judgment did not exist, would be improper and would amount to an abuse of Court process. To put it bluntly, if one Judge has found that a litigant has forfeited his or her right to obtain an urgent interdict restraining the continuation of a disciplinary hearing because that litigant has been guilty of dilatory conduct, and may, in any event, obtain substantial redress in due course, it cannot then lie in the mouth of that same litigant to ask a different Judge to make contrary findings on these two issues which constituted the two pillars on which the First Judgment was based.
- [19] It is true that, when a Court has made a procedural ruling that a matter is not urgent, that finding is not *res judicata* in the true sense. This is because an order of this nature is interlocutory, and if there are new facts which surface, which cause the matter to become urgent or escalate the urgency, then an application may be made to set the same application down again, duly supplemented, and whereby the Court is then apprised of the changed circumstances. That was not, however, what transpired in this matter. What happened in this matter was that the same facts reoccurred. The refusal by the Chairperson to grant a postponement and the fact that the Bargaining Council set down the matter, were not new facts. Rather, they were precisely the same facts which were relied upon by Ms Lion and her legal team to endeavour to establish urgency in front of Tlhotlhemaje J. It is accordingly a case of *déjà vu* in terms of which, as mentioned at the outset of this judgment, the Court finds itself confronted by a Groundhog Day-esque continuum of litigation. Reoccurring events do not convert a non-urgent matter into an urgent one. On the contrary, the fact that the same circumstances have reoccurred over a period of time undermines, rather than supports, any claim

of urgency. It suggests that an applicant has had ample opportunity to seek relief in the normal course and that any urgency is self-created. Ms Lion was, *vis-à-vis* this urgent application, in fact in a worse or weaker position when it came to the question of urgency than that which she had been in when she pursued her application in front of Tlhotlhemaje J.

[20] The approach urged upon the Court by Ms Lion, taken to its logical conclusion, would mean that litigants would be entitled to relitigate the question of urgency *ad nauseum* until a favourable decision was obtained. Similarly, an employee in a disciplinary hearing is not permitted to keep bringing postponement applications, and each time such an application is refused, to then, on the back of that application, claim that the Chairperson's refusal to postpone the disciplinary proceedings constitutes a self-standing basis to launch yet another urgent application.¹² Urgency is not something that can be manufactured. All things considered, the application so instituted, after the delivery of the First Judgment, was *par excellence* a naked but shameless attempt to relitigate that which had been litigated in front of Tlhotlhemaje J (the question of urgency) and to obtain a second, if not a third, bite at the proverbial legal cherry.

[21] One would have thought that Ms Lion and her legal representatives, having been so chastened in the First Judgment, would have heeded the sentiments expressed in that judgment. Leaving aside the circumstance that the First Judgment found that Ms Lion could obtain substantial redress in due course, any reasonable legal practitioner would have realised that because of the finding of self-created urgency, any urgency which may have existed had been irretrievably lost owing to the passage of time and Ms Lion's inertia in the form of participating in the disciplinary hearing for several months without instituting legal proceedings. In such circumstances, any reasonable practitioner would have appreciated that, given the findings in the First Judgment, the proverbial horse had bolted and that by the time the current

¹² *Cf in SA Post Office v Bhana NO & Others* (2013) 34 ILJ 1595 (LC) wherein the Court, at paragraph 19, explained that it is impermissible to misrepresent applicable time periods by making repeated demands or lodging repeated grievances. In my view, the same principle applies when it comes to seeking to artificially create urgency by making repeated applications for postponements.

application was brought, that horse cut a distant and ever-diminishing figure on the horizon. Any reasonable legal practitioner would also have appreciated that it would not be permissible to ask another Court to effectively overrule the finding in the First Judgment to the effect that Ms Lion could obtain substantial redress, by pursuing an automatically unfair dismissal dispute in the event of her being dismissed.

- [22] The legal team of Ms Lion failed to appreciate or, worse, intentionally flouted the trite principle that, given the hierarchy of Courts, one Court cannot overturn a finding on urgency made by another Court of the same status where the circumstances remain unchanged and where the reasons on which the first decision was based remain intact. That would be tantamount to the second Court upholding a horizontal appeal or review.¹³ The duty of litigants, indeed judges, to respect Superior Court judgments has its source in Section 165(5) of the Constitution. In *Department of Transport v Tasima (Pty) Ltd*,¹⁴ Khampepe J, dealing with the constitutionally prescribed authority of the Courts, explained as follows:

"[183] ...The obligation to obey court orders "has at its heart the very effectiveness and legitimacy of the judicial system". Allowing parties to ignore court orders would shake the foundations of the law, and compromise the status and constitutional mandate of the courts. The duty to obey court orders is the stanchion around which a state founded on the supremacy of the Constitution and the rule of law is built."

- [23] One would also have thought that when Ms Lion and by extension, her legal representatives, were castigated in the First Judgment, for not having taken a hint from the fact that the first application was struck from the Roll with costs, and for having brought more than one application dealing with the same matter, they would not have dared to repeat the conduct of bringing yet another purportedly urgent application, as if the First Judgment did not exist.

¹³ Although it is unnecessary to make a finding on this point, I note that, whilst findings on urgency are generally not appealable because they are not final in nature, if the interests of justice demand and the effect of the finding on urgency is final, the authorities suggest that there may be scope for an appeal.

¹⁴ 2017 (2) SA 622 (CC)

There was thus an element of recklessness, if not contempt, in the bringing of the third application. This conduct was as astounding as it was disgraceful. Outrageously and to crown it all, Ms Lion sought a punitive costs order against both the Department and the First Respondent (the Chairperson), who had no dog in the fight and was performing his quasi-judicial task of chairing the hearing, despite Ms Lion herself having already been saddled with a punitive costs order for bringing what was, effectively, the same application which she now sought to prosecute again. Just how she thought she could obtain a judgment contrary to the First Judgment in terms of which the costs order would be reversed, boggles the mind. Ms Lion's legal representatives can count themselves fortunate that this Court did not make a formal order referring the matter to the Legal Practice Council for investigation, although nothing prevents it from doing so should it be so minded.

- [24] For the sake of completeness, the Court would add only that, in its view, matters were not helped by the manner in which Ms Lion and her legal team sought to deal with the First Judgment. The First Judgment was not mentioned by Counsel for Ms Lion in his initial address. It was not attached to the founding affidavit. The contents of the First Judgment were not canvassed in the founding affidavit save for the inclusion of the fundamentally unsound refrain that because the First Judgment had not dealt with the merits of the matter, it was therefore irrelevant. In response to queries from the Bench as to why this was so, the unconvincing reply was two-fold. Firstly, it was contended that there was a reference to the First Judgment in one of the annexures (the Chairperson's decision). Secondly, it was contended that the First Judgment was dealt with in the replying affidavit after it had been raised as an impediment by the Department. Although my judgment does not turn on this point, I have reservations as to whether there was a full and frank disclosure of the First Judgment, all the more so, in the light of the fact that the matter served on a crowded urgent roll¹⁵ and that, if anything, there was a greater duty for transparency.

¹⁵ There were seven opposed urgent applications set down on 11 December 2025.

The question of *lis alibi pendens*

[25] Counsel for Ms Lion contended that the doctrine of *lis alibi pendens* did not apply to urgent applications and, on the strength of this argument, it was submitted that, for this reason alone, the objection by the Department to the bringing of the third application relying on this principle should fail. In my view, the fixation on the principle of *lis alibi pendens* misses the point. It is settled law that it constitutes an abuse of Court process to generate unnecessary litigation by instituting the same claim more than once. If an urgent application is struck or removed from the Roll and there are developments in the matter which may constitute grounds for contending for supervening urgency, then *that* application may be set down again, properly supplemented. The one thing a litigant is not permitted to do is to bring another application on the same facts seeking the same relief.

[26] In *Steyn v Gauteng Provincial Liquor Board and another*¹⁶ the Court deprecated the practice of litigants bringing more than one urgent application “of the same nature based largely on the same reasoning”.¹⁷ In *Manamela v Maite*,¹⁸ the applicant had his contempt of Court application struck from the Roll for lack of urgency. It accordingly remained pending, to be heard in the normal course. A second urgent application was then launched.¹⁹ The Court took a dim view of this conduct explaining as follows:²⁰

“[53] It is clear that the applicant and her attorney of record have entirely misconceived the proper procedures and due legal process. Centrally, the present contempt application is one which impermissibly seeks to review or appeal the decision of Motha J to strike the application from the roll. On this basis alone, the second contempt application should be dismissed.

¹⁶ [2013] JOL 30327 (GNP)

¹⁷ para [17]

¹⁸ [2023] JOL 60781 (GJ)

¹⁹ paras [15] to [21]

²⁰ para [53]

[54] *It would have been open to the applicant to seek leave to supplement her papers in the first contempt application, if a proper case was made out to do so. Simply launching a second contempt application, whilst the first remained pending, was an improper avenue to pursue.*” (own emphasis)

[27] The Bench directed an enquiry to Counsel for Ms Lion seeking an explanation why the third application had been brought and, in particular, why the application which served before Tlhotlhemaje J, which was still pending, was not set down, duly supplemented if necessary. I quote as follows:

“COURT: Okay, but just assuming that to be the case, then why did you not seek to re-enrol that application?

...

*MR SADIKI: M'Lord, the ruling are with regards to the set down from the 9th until the 12th, was only made available to the parties last week, on Friday. So, that is the reason why we had to bring the new urgent application, and we have made a lot of amendments, M'Lord, to that effect, and we, if M'Lordship would have noticed, that the cited parties are also different, although my learned colleague in his answering affidavit, attempted to make an argument with regards to that. So, M'Lordship, if you allow me to also reply on the allegation of *lis pendens* that has been made by my learned colleague.*

*So, I would like to emphasize that under the case of Caesarstone, *lis pendens* requires that the new application must have the same cause, same parties, same relief, and a previous determination on merits, which is not the case here, M'Lord. So, we submit that this point should fail.”*

[28] There was no merit in the response from Counsel and his attempt to distinguish the application which served before Tlhotlhemaje J from the current one was contrived and artificial. Firstly, all the parties cited in the application before this Court were also cited in the application before Tlhotlhemaje J. Secondly, an elementary comparison of the respective notices of motion reveals that, aside from the dates, the relief sought was all but identical when it came to the interdict of the disciplinary hearing. As mentioned earlier, the only material difference was that Ms Lion decided not to

challenge her suspension. Shorn of all elaboration, in both applications Ms Lion sought, on an urgent basis, to interdict the disciplinary proceedings and to have them declared unlawful.

- [29] Returning to the issue of *lis alibi pendens*, the Court is prepared to assume, without deciding, that the doctrine does not strictly apply where there has not been a determination on the merits of the matter. But this case is not about an application of *lis alibi pendens* or *res judicata*. It is about an abuse of Court process. The Court has inherent jurisdiction to regulate its own processes in matters within its remit. This includes the power to ensure that earlier decisions are not circumvented and that there is consistency in the Court's decisions, to prevent procedural abuse such as forum or judge shopping, to guard against the wasting of judicial resources and to protect the integrity of its processes generally.
- [30] In *Maughan*,²¹ the High Court, in a decision which was confirmed on appeal, dealt extensively with what constitutes an abuse of the Court process. The Court observed that an abuse of Court process will occur in circumstances when, *inter alia*, the Rules are used for an ulterior or improper purpose.²² It needs only to be stated that the Rules of Court are not designed to allow litigants to bring the same application twice; when this happens, the Rules are being used for an ulterior purpose, and the administration of justice is under threat. As has been said by the apex Court, sooner or later, litigation must come to an end.²³ It has also always been the case that no person should be permitted to harass another by way of a second litigation on the same subject. These two principles are embodied in the maxims *interest reipublicae ut sit finis litium*²⁴ and *nemo debet bis vexari pro una et eadem causa*.²⁵

- [31] In *Nyandeni Local Municipality v MEC for Local Government and Traditional*

²¹ *Maughan v Zuma and Others* [2023] 3 All SA 484 (KZP); 2023 (5) SA 467 (KZP); 2023 (2) SACR 435 (KZP)

²² paras [70] to [73]

²³ *Minister of Justice v Ntuli* 1997 (6) BCLR 677 (CC); 1997 (3) SA 772 (CC) para [29]

²⁴ It is in the public interest that there be an end to litigation.

²⁵ No-one should be vexed (troubled) twice for the same cause.

*Affairs and Another*²⁶ the Court commented as follows:

“[106] In *Hudson v Hudson and Another* 1927 AD 259 at 268 , DeVilliers JA said:

“When therefore the Court finds an attempt to use for ulterior purposes machinery devised for the better administration of justice; it is the duty of the Court to prevent such abuse.”

[107] *The learned Judge relied on Remington v Scoles* (1897, 2 Ch. D. p.5) and referred with approval as follows to various dictae in the case:

“LINDLEY, L.J., at page 6: ‘I think the learned Judge has not gone wrong when he says, as he does, that this is a defence which never ought to have been put in, and that it is a mere sham defence-not an honest defence, but framed with a view to gain time.’ And LOPES, L.J.: ‘It has been set up, not honestly and bona fide as a substantial defence, but for the purpose of delay.’ The case of *Stephen v Garnett* (67 L.J. Q.B. 447) is instructive. In that case it was held that litigating identically the same question in a subsequent action is an abuse of the process of the Court. A. L. SMITH, L.J. expressed himself as follows: ‘I do not base my judgment upon the ground that the question is res judicata, but upon another ground- namely, that the issue raised in this action is identically the same issue as that which was raised in the proceedings before the County Court Judge, when the question arose as to the taxation of costs.’” (own emphasis)

[32] In my view, the reasoning and sentiments expressed by Lord Justice Smith in the Court of Appeal apply equally to this matter. Although the application does not fall strictly within the contours of the principles of *res judicata* or *lis alibi pendens*, it, nonetheless, amounts to an abuse of Court process; an impermissible attempt to circumvent a direction given by this Court that any application seeking to halt the continuation of the disciplinary proceedings should not be heard on an urgent basis. It follows, in my view, that there was a gross abuse of the court process. When the matter is viewed holistically, it is difficult not to get the impression that there was an element of

²⁶ 2010 (4) SA 261 (ECM)

underhandedness in the prosecution of the allegedly urgent application. If the Court is wrong in its characterisation of underhandedness, then, as mentioned above, there was certainly a recklessness which accompanied the bringing of the application. The matter was one exceptionally deserving of censure.

De bonis propriis costs order

[33] In light of what has been set out above, it is unsurprising that Counsel for the Department urged that the Court make a *de bonis propriis* costs order, a prayer contained in the answering affidavit. In the application before Tlhotlhemaje J, such a request had been made but the Learned Judge, in his discretion, elected to express the Court's displeasure by making a punitive costs order against Ms Lion. In substance, what was submitted on behalf of the Department was that the most recent application was also an abuse of Court process, but for a reason different to that contained in the First Judgment (which was based strictly on a lack of urgency), namely, because it amounted to a thinly veiled endeavour to undermine the First Judgment.²⁷ I agree.

[34] I pertinently raised with Counsel, who appeared on behalf of Ms Lion, whether the bringing of the application did not constitute an abuse of the Court process. I quote as follows:

"COURT: Okay, I think the one you need to address is that this – this looks like, on the face of it, one of the worst types of forum shopping or actually Judge shopping that I have ever come across, and it – it is a matter of deep concern.

MR SADIKI: If M'Lordship maybe will rephrase that so that I can respond, knowing exactly what I need to respond. I just want M'Lordship to guide me as to what he is referring to specifically, so that I can address the Court on this specific ...[intervenes]

²⁷ Counsel for the Department, constructively and correctly so, focused his address solely on this point so as to save time given the congested roll.

COURT: The impression which is created, is that you did not like the first judgement. So now you are in front of a different Judge, asking for the same relief. Is that not an abuse of the process?

MR SADIKI: No. Absolutely no, M'Lord, because the reason why, as I have reiterated earlier, the reason why this application was brought is because last week, on Friday, we received a notice of set down for the internal disciplinary hearing to proceed from the 9th, until the 12th. Obviously that sort of gave us the necessary urgency insofar as this application is concerned, something that we lacked, we did not have during our previous urgent application, and which was the main reason why our application was struck off the roll." (own emphasis)

- [35] The answer given by Counsel on behalf of Ms Lion did not remotely address the fact that (a) in the First Judgment the Court found that the application had been brought in bad faith and that it was a "ruse" and an abuse of the process, (b) any urgency which did exist was entirely self-created and (c) substantial redress could be obtained in due course. The launching of a further purportedly urgent application could not, alchemically, undo these findings.
- [36] In *PM obo Minor: MDM v MEC for Health: Gauteng Province*,²⁸ the plaintiff re-enrolled an urgent application for interim payment four times. On the fourth instance, the Court requested an affidavit to be filed to explain why the matter had been re-enrolled on the urgent roll the day after it had been struck off that roll on the same papers as the third occurrence. The attorney's conduct attracted a *de bonis propriis* costs order. I illustrate by quoting from the judgment as follows:

"[31] Mr Malatji's conduct in immediately re-enrolling the application on the urgent court roll the day after it had been struck in the knowledge of the facts set out in paragraph [30] above indisputably constituted an abuse of the court process which merits not only a punitive costs order, but also that he pay the costs de bonis propriis. The consequences of his conduct ought not to be visited upon the plaintiff," (own emphasis)

²⁸ [2025] JOL 69477 (GJ)

[37] It has been held, albeit in a different context, that where legal representatives persistently or repeatedly bring the same application and where the Court has explained that it has no merit, this, in and of itself, will be sufficient to warrant a *de bonis propriis* costs order.²⁹ In *Wheatley v Commission for Conciliation, Mediation and Arbitration and Others*,³⁰ the Court had occasion to consider, in some detail, the circumstances in which a Court would consider imposing a personal costs order. The Court observed that the doors of the Court are open to *bona fide* litigants who pursue *legitimate* claims,³¹ that frivolous or vexatious litigation constitutes an abuse of Court process³² and that it is not open to a legal practitioner, even if instructed to do so, to persist with a claim or a contention with which no reasonably competent legal practitioner would persist.³³ In *Wheatley*, it was stressed that a legal representative is much more than the mere mouthpiece or hireling of his or her client.³⁴

[38] In my view, it is appropriate to make a *de bonis propriis* costs order against Ms Lion's legal representatives. I say this for three primary reasons. Firstly, I cannot see how, either as a matter of law or fairness, Ms Lion, who stated in her affidavit that in bringing the application she had relied on the advice of her legal representatives, should, on these facts, be penalised for the legal strategy which her legal representatives advised her to employ.

[39] Even if Ms Lion had not relied on the advice of her legal representatives, as pointed out in *Wheatley*, there comes a stage where legal representatives are, in terms of their overarching duty to the Court, obliged to refuse to follow instructions which would make them a party to an abuse of the Court process. The Court put it like this:

"[43]... No reasonably competent legal representative would have persisted with the application. A bare assertion that the practitioner was acting on instructions does not constitute an answer where those instructions, if followed, would necessarily involve a departure from the

²⁹ *Webb and Others v Botha* 1980 (3) SA 666 (N) at 672C-673H

³⁰ [2026] ZALCD 1 (13 January 2026)

³¹ para [37]

³² para [42]

³³ para [43]

³⁴ para [38]

practitioner's paramount duty to the Court. As explained in Engen Petroleum Ltd v Moodley NO and Another, a legal representative's duty to a client "...never translates into the embarrassing charade of putting up silly points that are unarguable...".³⁵ The duties of legal practitioners in this respect have now been formalised in the Code. The Code is not confined to forbidding direct abuse of Court process: It equally condemns a supine or acquiescent posture that enables a practitioner to facilitate or become a conduit for such abuse.³⁶

- [40] In *Brown and Another v Papadakis and Another NNO*,³⁷ Davis J, dealing with an abuse of the process of Court and an attempt to frustrate a proper hearing of the matter, awarded costs *de bonis propriis* on an attorney and own client scale, the same order which the Court made in this matter. The sentiments expressed by the learned Judge apply to the current matter, and it is apposite to quote from the judgment:

"The question therefore arises as to costs. A punitive order of costs needs to be made in this case. There is no proper basis for this application. It is misconceived; there is no order against which an appeal is lodged. It is nothing more than a desperate rummaging-around in affidavits to throw dirt at the bench to prevent due process from taking its course.

The question arises as to whether the costs order should be de bonis propriis,
...

*Mr Khan submits that he was given instructions to so pursue this course of action, but attorneys must surely apply a professional standard in deciding to do this. See the dictum of Innes CJ in *Vermaak's Executor v Vermaak's Heirs* 1909 TS 679 at 691. Applicants have rights, but the courts are not playthings, to be abused at the convenience of litigants who raise spurious, reckless arguments which jeopardise the integrity of the court, ...*

In my view, this is a case where the court should say: Of course, litigants have rights; of course, courts must fastidiously respect these rights; of course, all

³⁵ [2017] ZAGPJH 78 para [52]

³⁶ The Code provides that:

"60.1. A legal practitioner shall not abuse or permit abuse of the process of court or tribunal and shall act in a manner that shall promote and advance efficacy of the legal process." (own emphasis)

³⁷ 2009 (3) SA 542

rights should be exhausted and an attorney should act as energetically as he or she may be able, to protect these rights. But when the boundary is overstepped so grossly in circumstances where there is no legal basis, no precedent, no serious evidential edifice on which to launch such an application (ie even on these vague affidavits could a recusal application ever be brought?), the court should say, you have overstepped the mark and have crossed a bridge in circumstances where an order of costs de bonis propriis must follow." (own emphasis)

[41] Secondly, the Court is not dealing with a 'first offence', as it were. Three purportedly urgent applications have been pursued, all of which were doomed from the outset for reasons relating to urgency. When the first urgent application was brought to challenge her suspension, it is significant that Ms Lion made an election not to challenge the validity of her disciplinary proceedings or to contend that they constituted an occupational detriment, when all the facts on which such an application could be based were in existence. In the First Judgment delivered pursuant to the second urgent application, Tlhotlhallemaje J bemoaned the fact that a cue had not been taken from the fact that the first application, which sought to impugn the suspension of Ms Lion, had been struck from the Roll for lack of urgency. In this Court's view, it would not be out of place to describe the subsequent disregard by Ms Lion's legal team of the criticism and sentiments expressed by Tlhotlhallemaje J as brazen. Added to this is the circumstance that, in the hearing before Tlhotlhallemaje J, the Department had sought a costs order *de bonis propriis*. Ms Lion's legal team must thus have known that such an order would be in the offing were they to repeat the conduct which had been so trenchantly criticized by Tlhotlhallemaje J. Ms Lion's legal representatives must, or at least should, have known that the First Judgment would follow them like a shadow and that any subsequent proceedings, purportedly brought on an urgent basis, would be viewed with a jaundiced eye through the prism of that judgment.

[42] Thirdly, the conduct of Ms Lion's legal representatives was not conducive to the proper administration of justice. It was repugnant to the ethos of the LRA, which has, as an imperative, the effective (and thus expeditious) resolution of

disputes. As pointed out by Tlhotlhemaje J, at paragraphs 40 and 42 of the First Judgment, this type of application destroys the utility of the urgent Roll.

Attorney and own client costs order

[43] As mentioned, the application that led to the First Judgment attracted a costs order on an attorney and client scale. Tlhotlhemaje J gave the clearest of warnings to Ms Lion and her legal representatives that any attempt to interdict the disciplinary proceedings at this belated stage constituted an abuse of Court process. To compound matters, the First Judgment criticised Ms Lion and her legal representatives for launching two applications in respect of her suspension when the First Judgment was struck from the Roll for lack of urgency. Yet, in a contemptuous vein, undeterred, Ms Lion's legal representatives repeated this exact conduct and sought to repackage the application, which had served before Tlhotlhemaje J, as a new and fresh application to be adjudicated, it would seem, as if the First Judgment did not exist. *In the result, the Court has one abuse of Court process heaped on top of another.* The first abuse of Court process attracted a costs order on an attorney and client scale. Regrettably, this measure appears to have fallen on deaf ears. In such circumstances, the Court is driven to go one step further when it comes to the scale of costs to be awarded in respect of the second abuse of Court process.

[44] There is no reason why the Department should be out of pocket at all, or why public funds should be expended on an application that was '*dead on arrival*'.³⁸ The application was untenable and accordingly unarguable. It was, in truth, an abuse of the Court process masquerading as an application in terms of which Ms Lion sought, at the eleventh hour, to revive what was, by that late stage, beyond resuscitation. The application brought to mind the words of Sutherland AJA³⁹, where the learned judge stated as follows:

³⁸ *Cf Public Protector of South Africa v Chairperson of the Section 194(1) Committee and Others* [2024] 4 All SA 693 (SCA); 2025 (4) SA 428 (SCA) para [44]

³⁹ *Samancor Chrome Ltd t/a Samancor Eastern Crome Mines v NUM obo Matshebele and Others* [2024] 12 BLLR 1281 (LAC)

“[1] It has been said of some cases that the effort to prosecute them is akin to flogging a dead horse. This case is not of that kind; rather, this horse was stillborn”

[45] It is for these reasons that the costs be ordered on the scale as between attorney and own client. For the assistance of the Taxing Master, having regard to the provisions of the tariff, had the costs order been made as between party and party, the scale of Counsel's costs awarded would have been on scale C.⁴⁰

Why dismiss the application as opposed to striking it?

[46] Although the current application was patently not urgent, because it is being disposed of on the basis that it amounted to an abuse of the Court process, the correct order is not to strike it but to dismiss it.⁴¹ If Ms Lion wishes to proceed with the relief sought (the interdicting of the disciplinary hearing), the avenue open to her is to set down the application, which was served before Tlhotlhemaje J, duly supplemented, if so advised. There has been no acceptable explanation why this was not done. The impression the Court gains is that a calculated decision was taken, for self-serving reasons, not to follow this route, as doing so would have placed the focus back on the First Judgment and the fact that Ms Lion had already been unsuccessful in establishing urgency in relation to the restraining of the disciplinary proceedings.

P N KROON

Acting Judge of the Labour Court of South Africa

⁴⁰ Cf. *Naude and Another v South African Legal Practice Council* (A262/2023) [2025] ZAGPPHC 774 (12 August 2025) para [70] which also concerned an urgent application brought without any earnest reflection.

⁴¹ *Wheatley* para [32]; *Vena and Another v Vena and Others* 2010 (2) SA 248 para [7]. *Mortimer v Municipality of Stellenbosch and Another* (18243/2003) [2008] ZAWCHC 306 per Gauntlett AJ on 27 November 2008 at page 7. *Tekoa Engineers (Pty) Ltd v Alfred Nzo Municipality and Others* (1284/20) [2022] ZAECKMKHC 84 (25 October 2022) paras [64] and [65]

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LABOUR COURT