



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CIRCUIT LOCAL DIVISION, THEMBALETHU**

JUDGMENT

Case number: 648/2025

In the matter between:

THABANG MOTJAMELA

APPLICANT

And

GEORGE LOCAL MUNICIPALITY

RESPONDENT

Neutral citation: Thabang Motjamela v George Local Municipality (Case no 648/2025) [2026] ZAWCHC ____ (23/04/2026)

Coram: GOLIATH, DJP

Heard: 23 March 2026

Delivered: 23 April 2026

ORDER

The application for leave to appeal is dismissed with costs.

JUDGMENT ELECTRONICALLY DELIVERED ON 23 APRIL 2026

GOLIATH, DJP

[1] This is an application for leave to appeal. On 08 December 2026 the applicant, who is self-represented, launched an urgent application seeking delictual damages from respondent. On 06 February 2026 the court handed down an ex-tempore judgment and granted an order striking the matter from the roll for being *res judicata*, having already been ventilated in other legal proceedings. On 8 February 2026 the applicant lodged an application for leave to appeal against the aforesaid order. The respondent opposes the application for leave to appeal.

The nature of the relief sought by Applicant

[2] The urgent application has its genesis in an employment dispute referred to the Bargaining Council in terms of section 198B of the Labour Relations Act (LRA), the applicant contending that he was deemed to be permanently employed by George Municipality on account that he had been employed on fixed term contracts for a period exceeding three months. At the time the applicant was employed at the Municipality in terms of Extended Public Works Programme (EPWP) contracts.

[3] The arbitrator found that the applicant signed two EPWP contracts, that same was justified in terms of section 198B (4) (g) of the LRA and that the employment contract had lawfully expired at the time of the referral. The applicant-initiated litigation

seeking to review and set aside the arbitration award in the Labour Court, which was dismissed by Van Niekerk J.

Relief under case number 125/2025

[4] On 2 May 2025 Dolamo J dismissed an urgent application launched by the applicant under case number 125/2025 on the basis that the matter was *res judicata*. In that matter the applicant sought reinstatement as a permanent employee of the Municipality following his appointment in terms of EPWP contracts, compensation in the sum of R 65 million, enforcement of section 198B of the LRA as well as an order directing the Municipality to cease exploitation of temporary workers under the EPWP scheme. The applicant sought to subpoena a list of documents from the Municipality relating to his employment and the EPWP framework. Applicant claimed that these documents were crucial to prove allegations of fraud, exploitation, misrepresentation, and unfair discrimination in the workplace.

[5] The Municipality provided a detailed history of the matter that was referred to arbitration under the auspices of the Western Cape Division of the South African Local Government Bargaining Council (SALGBC) under case number WCP101805, taken on review and subsequently dismissed by the Labour Court under case number C824/2019. The Municipality indicated that the applicant unsuccessfully petitioned the Labour Appeal Court for leave to Appeal, and thereafter approached the Constitutional Court, which application was dismissed as it was found to have no reasonable prospects of success.

[6] It is evident that Dolamo J reasoned that the relief sought by the applicant stemmed from the same facts as the Labour Court dispute. It is against this background that Dolamo J found that the relief sought under case number 125/2025 was res judicata. Applicant subsequently filed an application for leave to Appeal against the ruling, which Dolamo J dismissed with costs on 12 June 2025. There is no pending application for leave to appeal before the Supreme Court of Appeal in that matter. The two orders made by Dolamo J are annexed to this judgment marked A and B.

Relief sought in this matter

[7] In this matter the applicant sought relief declaring the respondent delictually liable for wrongful, negligent, unlawful conduct and misrepresentation committed against the applicant during his employment at the Municipality in terms of EPWP arrangements, which according to applicant, were engineered to exploit cheap labour. The applicant stated that the Municipality had failed to comply with the provisions of section 198B of the LRA and unlawfully employed EPWP mechanisms to avoid statutory and constitutional duties and discriminate against the applicant. The applicant submitted that the Municipality had failed to recognize his permanent employment status and sought compensation for:

- 7.1 past loss of income;
- 7.2 future loss of earnings;
- 7.3 General damages for emotional distress, psychological harm, humiliation, and loss of dignity;
- 7.4 constitutional damages; and
- 7.5 legal costs.

[8] The applicant based his claim on the following background facts:

- 8.1 His first appointment by the Municipality as an EPWP worker on or about the 19th of February 2018, expired on the 30th of June 2018;
- 8.2 His second appointment by the Municipality as an EPWP worker on or about the 2nd of July 2018, expired on the 21st of December 2018;
- 8.3 His belief that his fixed term appointments were to be made permanent as they exceeded the three (3) month threshold and triggered the provisions of section 198B(5) of the Labour Relations Act; and
- 8.4 His belief that the Municipality allegedly misrepresented the nature of his employment above to him entitling him to the damages sought.

Applicant's Submissions

[9] Applicant submitted that this matter is not *res judicata* since none of the previous cases addressed delictual damages or triggered constitutional issues. Applicant therefore argued that the cause of action in the other matters differed substantially from the facts in this matter, and the fact that there may be overlapping issues do not render a matter *res judicata*. Applicant also takes issue with the fact that the matter was considered as being *res judicata* on the basis of the ruling of Dolamo J in case number 125/25. Applicant stated that the matter before Dolamo J is legally distinct from this matter and the dismissal was premature and unfair.

[10] Applicant contended that he was employed by respondent for 10.5 months continuously under fixed-term contracts, but was wrongfully treated as a temporary

worker, thus resulting in him being denied of job security and employment benefits. Appellant argued that Section 198B of the LRA was never interpreted in a constitutional context, which justifies his contention that the matter is not *res judicata*. The applicant referred to case law in support of his contentions that delictual liability is independent of statutory liability; constitutional damages can co-exist with other remedies; multiple cases cannot block a separate cause of action; and the principle of *res judicata* should not be applied restrictively.

[11] Applicant submitted that he has a constitutional and legal right to be heard on the merits of this case, and another court may find that the principle of *res judicata* was misapplied and that his dismissal was premature and unfair. He therefore contended that he has reasonable prospects of success on appeal. In his submissions the applicant criticized the approach adopted by Van Niekerk J, the Labour Appeal Court, as well as the Constitutional Court in dismissing his claims. Applicant therefore argued that it is in the interests of justice that leave to appeal be granted in this matter.

Respondent's Submissions

[12] As in case number 125/2025 the Municipality raised a multitude of technical defences in this matter, but in the main contended that the applicant's claims are *res judicata*. With reference to **Evins v Shield Insurance**,¹ respondent noted that the SCA expressed its views on the interplay between the once and for all rule and *res judicata*, as follows:

¹ [1980] 2 All SA 40 (A); 1980 (2) SA 814 (AD)

“[The once and for all rule] is a well-entrenched rule. Its purpose is to prevent a multiplicity of actions based upon a single cause of action and to ensure that there is an end to litigation. Closely allied to the "once and for all" rule is the principle of res judicata /which establishes that where a final judgment has been given in a matter by a competent court, then subsequent litigation between the same parties, or their privies, in regard to the same subject matter and based upon the same cause of action is not permissible and, if attempted by one of them, can be met by the exceptio rei judicatae vel litis finitae. The object of this principle is to prevent the repetition of lawsuits, the harassment of a defendant by a multiplicity of actions and the possibility of conflicting decisions.”

[13] Respondent averred that the labour dispute (“the EPWP dispute”) had finally been determined by the Labour Court (case number C824/2019). Respondent indicated that Van Niekerk J dismissed the review application and the application for leave to appeal as having no prospects of success. The Labour Appeal Court and Constitutional Court also dismissed the applications for leave to appeal, citing no prospects of success. Respondent contends that the relief sought in this matter is substantially similar to the relief sought under case number 125/2025, which was considered, argued and dismissed for being *res judicata* on the 2nd of May 2025 by Dolamo J.

[14] Respondent therefore submitted that the applicant continuously and opportunistically litigates against the Municipality based on the same cause of action in multiple forums camouflaged in different proceedings. According to respondent there

are no outstanding legal and factual matters relating to the dispute arising from the EPWP employment contract between the parties requiring determination.

[15] Respondent referred to the judgment of this Court dated 20 October 2025 under case number 267/2025 (a vexatious litigant judgment), where Thulare J, with reference to the applicant, held that:

“[13] ... The respondent also simply changed fora when he failed in one. Out of the same facts he approached the Labour Court under case C824/2019. When he failed, he instituted proceedings in the High Court in case number 125/25, and when he failed, he went to report a fraud criminal case in George CAS 569/9/2024.”²

[16] Respondent pointed out that not only do the disputes above stem from the same set of facts as this matter for which leave to appeal is sought, but emphasised that this Court in 267/2025 has already found that the applicant forum shops and institutes litigation based on the same facts as against the Municipality. Respondent contends that even should the nature of the relief change between the different actions (i.e. relief in terms of the LRA and/or common law and/or based in delict), the *once and for all rule*, as highlighted in **Evins** (supra) would still find application as the factual basis had already been pronounced upon.

[17] Respondent submitted that there is no reasonable prospects of success on the merits of the applicants claim because applicant's claims have prescribed in law as they stem from 2018; applicant failed to comply with the provisions of the Institution of

² Paragraph 13 of the judgment.

Legal Proceedings Against Certain Organs of the State Act 40 of 2002 prior to instituting case number 648/2025; applicant failed to institute action proceedings knowing that a material dispute of fact would arise between the parties for which evidence would have to be led; and the relief sought by the applicant falls within the remedies provided for in the LRA.

[18] Respondent argued that the Municipality cannot continuously utilize public funding to oppose unmeritorious High Court litigation with no recourse available to it. Respondent noted that this is the exact reason why the relief was sought in the proceedings under case number 267/2025 to declare the applicant as a vexatious litigant. The respondent submitted that the granting of a costs order in opposing this application for leave to appeal, would negate further unsuccessful attempts by the applicant at seeking an appeal in a matter with no merit. The respondent therefore contended that leave to appeal should be refused, with an order for costs.

Further Submissions

[19] After the hearing of this matter the applicant sought permission to file further submissions, which were filed on 17 April 2026. In the submissions the applicant emphasised that he relies on the provisions of sections 23, 34 and 195 of the Constitution. He stated that was engaged by the respondent on two successive fixed term contracts, ending on 21 December 2018. Applicant argued that respondent's use of fix term contracts falls to be considered in light of section 198B of the LRA, which regulates the use of fixed term employment. He further stated that the continued use of fix term contracts triggers a dispute as to whether the employment relationship remained fixed-term or become indefinite by operation of law.

[20] Applicant submitted that objective indicators such as employment records, organograms, and salary records are inconsistent with a purely external or short-term EPWP placement. Applicant referred to case law in support of his contention that the true nature of his employment was that of a permanent worker, and argued that labour legislation must be interpreted consistently with constitutional rights and the realities of employment relationships. Furthermore, the termination of his employment depends on the correct classification of the employment relationship at the time.

[21] With regard to *res judicata*, applicant argued that this doctrine does not dispose of the matter since no prior proceedings determined the full merits of the nature of the employment relationship. Applicant therefore noted that the present dispute involves broader questions of the legal characterisation and constitutional interpretation which were not fully adjudicated. Applicant further submitted that the matter engages constitutional consideration, including the right to fair labour practices, lawful administrative action, and access to court.

[22] Respondent contended that applicant expressly requires the court to revisit the question as to what the true nature of the employment relationship was between the parties. Respondent pointed out that a court would first have to make a definitive finding on the nature of applicant's employment before it can make any determination whether there is a valid delictual claim for damages. Respondent emphasised that the nature of the employment contract was definitively pronounced upon by the SALGBC and Labour Court.

The test for leave to Appeal

[23] Section 17(1) of the Superior Courts Act, Act 10 of 2013 regulates applications for leave to appeal and provides:

“Leave to appeal

17. (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

- (a) (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
- (b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and
- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”

[24] The test, which was applied previously in applications of this nature, was whether there were reasonable prospects that another court may come to a different conclusion. With the enactment of section 17 of the Act the threshold for granting leave to appeal a judgment of a High Court has been significantly raised. In **Mont Chevaux Trust v Goosen & 18 Others**³ the following was stated:

“It is clear that the threshold for granting leave to appeal against the judgment of a high court has been raised in the new Act. The former test whether leave to appeal should be granted, was a reasonable prospect that another court might come to a different conclusion. See Van Heerden v Cronwright & Others 1985 (2) SA 342 (T) at 343H. The use of the word ‘would’ in the new

³ 2014 JDR 2325 (LCC) at para 6

Statute indicates a measure of certainty that another court will differ from the court who's judgment is sought to be appealed against."

[25] The fact that the test for leave to appeal is more stringent was reaffirmed by the SCA in the matter of **S v Smith**⁴ where the following was stated:

"In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but has a realistic chance of succeeding. More is required to establish that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorized as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal".

Analysis

[26] The grounds of appeal have been succinctly set out in the Notice of Application for leave to appeal. Most notably at paragraph 3.3 of the applicant's affidavit in support of his application for leave to appeal, he states that:

"While all disputes arise from the same employment, each claim has a separate cause of action, legal basis, and remedy."

[27] The matter before Dolamo J followed the same pattern as this matter, namely, an urgent application, a dismissal on the basis of the principle of *res judicata*, and an

⁴ 2012 (1) SACR 567 (SCA) at para 7

application for leave to appeal. The order of Dolamo distinctly refers to the fact that the Constitutional Court had considered the matter.

[28] Ultimately, the applicant seeks to revisit the lawfulness of the EPWP employment contract which was fully ventilated. Applicant exhausted all his legal remedies in this regard. Applicant had failed to overcome the first hurdle in challenging the finding that the EPWP contract was justified in terms of section 198 B (4) (g) of the LRA, and that applicant was deemed to be in temporary employment. All the other ancillary relief sought by the applicant such as reinstatement and damages stems from the status and interpretation of the EPWP contract. Significantly, the applicant conceded that all his claims arise from the same factual basis, which is exactly what the defence of *res judicata* seeks to prevent.

[29] I am satisfied that the claim and relief sought in this matter is substantially similar to that under case number 125/2025. Multiple forums have already delivered numerous judgments and orders dismissing the applicant's claims, which are based on the same set of facts, and it is accordingly highly unlikely that any other Superior Court would come to any other conclusion than those already reached. The applicant had exhausted all his remedies to challenge the EPWP contract and be reinstated as a permanent employee. The Labour Appeal Court and Constitutional Court dismissed the applications on the basis that there exist no reasonable prospects of success on appeal. The applicant's submissions that the matter triggers constitutional considerations cannot be sustained since the Constitutional Court had found, after a dispassionate assessment, that an appeal has no realistic, sound, or rational chance

of succeeding, or that another court would not reasonably reach a different conclusion.

Conclusion

[30] I have considered the facts of the matter, and the grounds of appeal in the Notice of Appeal, together with all the submissions made by the parties. I have carefully reconsidered my judgment and have concluded that the arguments raised by the applicant are without merit. Considering the above, I am satisfied that there are no reasonable prospects of success on appeal in this matter, that the matter is *res judicata* and stands to remain struck from this Court's roll.

[31] In the result, the following order is made:

The application for leave to appeal is dismissed with costs.

DEPUTY JUDGE PRESIDENT GOLIATH

Appearances

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