



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: 2025-155699

In the matter between:

NOMBUSO PORTIA KHOZA

Applicant

and

**THE SOUTH AFRICAN POLICE SERVICE
NATIONAL COMMISSIONER OF THE SOUTH**

First Respondent

AFRICAN POLICE SERVICE

Second Respondent

SEHLAHLE FANNIE MASEMOLA

Third Respondent

Heard: 27 March 2026

This judgment is handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down this judgment is deemed to be 10h00 on 11 May 2026.

JUDGMENT

DE KOCK, AJ

Introduction

- [1] This judgment concerns an interlocutory application brought by the respondents in the contempt proceedings between the applicant and the South African Police Service (SAPS), the National Commissioner of SAPS, and Lieutenant General Sehlahle Fannie Masemola NO. The application seeks the joinder of the National Head of the Directorate for Priority Crime Investigation (the DPCI) as a fourth respondent to the proceedings, alternatively leave for the National Head to intervene as a party. The respondents further seek declaratory relief that the applicant's contract of employment is inconsistent with section 17CA(6) and (7) of the South African Police Service Act 68 of 1995 (the SAPS Act) and is therefore invalid; alternatively, that the contract is to be construed as a fixed-term appointment under section 17CA(6) which terminated by operation of law on 31 January 2026. The contempt application was not argued on 27 March 2026 and falls to be determined on 4 June 2026. This judgment disposes of the joinder application and the application for declaratory relief only.

Background

- [2] The Labour Court, on 9 September 2025, issued an Order directing the second and/or third respondent to appear at the Labour Court to show cause, on 10 October 2025, why he should not be found guilty of contempt of court to comply with the arbitration award. It is not necessary for purposes of this judgment to refer to the full Order granted by Daniels J, save to add that the Court granted leave to the applicant to approach this Court on the same papers, duly supplemented, if necessary, for any further or alternative relief.

- [3] The Labour Court, on 10 October 2025, and following an agreement between the parties, issued an Order containing, in summary, the following orders: (i) directing the respondents to reinstate the applicant; (ii) ordering the respondents to pay to the applicant retrospective remuneration for the period 29 September 2021 to 30 September 2025; (iii) ordering that the applicant shall report for duty at the premises of the Directorate for Priority Crime Investigation (DPCI); (iv) directing the respondents to ensure that the applicant suffers no prejudice in respect of her pensionable service and benefits under the Government Employees Pension Fund (GEPF); (v) in the event of non-compliance with any term of the Order, granting the applicant leave to re-enrol the contempt application on the same papers, duly supplemented where necessary, on an expedited basis; and (vi) ordering the respondents to pay the applicant's costs for the opposed review application under case number C315/2023 and contempt application under case number 155699/2025.
- [4] It is necessary to repeat that this Order was granted by agreement between the parties as cited above, i.e., between the applicant and the first, second and third respondents. In fact, the third respondent concedes in his answering affidavit that he agreed to the 10 October 2025 Order. The statement that he agreed to the Order because he feared non-compliance with the September Order does not assist the third respondent given that he consented to the Court Order dated 10 October 2025. It is simply not permissible for a party to consent to a Court Order due to fear of non-compliance of a previous Order and then, thereafter, attempt to dispute the Court Order because the SAPS was not the employer. If that was the case, the issue ought to have been raised with the Court. It was never raised.
- [5] The validity of the applicant's contract was not disputed leading to the Order being granted, nor was there any issue raised by or on behalf of the respondents that the wrong employer was cited. Gandidze J had no reason not to issue the Order on the terms agreed upon by the parties. The Order was

therefore properly issued on a clear agreement having been reached between the parties as cited in the Court Order.

- [6] The respondents, at no stage from 10 October 2025 to the 27th of March 2026 when the contempt application came before this Court, applied for the variation or rescission of the Court Order dated 10 October 2025, nor have the respondents applied for leave to appeal in respect of the said Order. The Order, as issued on 10 October 2025, therefore remains a valid and binding Order between the parties.¹
- [7] On 28 January 2026 the applicant filed an urgent supplementary contempt application in terms of paragraph 7 of the Order dated 10 October 2025, which granted the applicant leave to re-enrol the contempt application on the same papers, duly supplemented where necessary, on an expedited basis. The matter came before this Court on 30 January 2026 where a rule *nisi* was issued calling upon the second and/or third respondents to show cause on 6 March 2026 why the Order should not be made final. It is not necessary for purposes of this judgment to set out the nature of the Order, save to state that the essence of the rule *nisi* was declaring that the second and/or third respondents are in contempt of Court for their failure to comply with the Court Order dated 10 October 2025.
- [8] On 25 February 2026, Barthus AJ issued an Order declaring, in essence, that the continued reflection on PERSAL, PERSAP, and POLFIN of the applicant's employment status as "inactive" and/or "contract expiry" is in breach of the interim Order dated 30 January 2026 and granting the applicant leave to approach this Court on the same papers, duly supplemented, for further relief, including contempt in the event of non-compliance in respect of the Order dated 25 February 2026.

¹ See *Department of Transport and Others v Tasima (Pty) Ltd* 2017 (1) BCLR 1 (CC); 2017 (2) SA 622 (CC) at paras 181–189. A court order, regardless of whether it was wrongly granted or otherwise objectionable, must be obeyed unless and until it is set aside.

- [9] This Court, on 6 March 2026, issued an Order making a draft order, as agreed between the parties, an Order of this Court. The essence of this Order is that the rule *nisi* was extended to 27 March 2026 and provided time periods in which further pleadings were to be filed.
- [10] The matter then again came before this Court on 27 March 2026. However, despite the matter having been enrolled for the applicant's contempt application, the respondents, in the period between 6 March 2026 and 27 March 2026, filed the interlocutory application as a Notice of Application. The respondents sought leave to bring a counter application and requested the Court to join a party to the matter. The interlocutory application will be addressed more fully below.
- [11] This Court, on 27 March 2026, after hearing submissions from both parties, reserved judgment in respect of the interlocutory application. The contempt application was not addressed, and the parties were advised that a judgment will be delivered in respect of the interlocutory application first. The contempt application was postponed to 4 June 2026 to allow for the judgment to be delivered in respect of the interlocutory application.

The respondents' interlocutory application

- [12] The respondent, on or about 16 March 2026, filed a Notice of Application, citing the respondents in the contempt application as the applicants in respect of the interlocutory application. This Court will continue to refer to the parties in respect of the application served on or about 16 March 2026 as their respective citations in the contempt application. The respondents, cited as applicants in the application, also cited the National Head of the DPCI as the fourth applicant / intervening applicant. The respondents, in terms of the application, are seeking an order as follows: (i) that the National Head be joined as a party to these proceedings; (ii) alternatively, that the National Head is granted leave to join, alternatively, intervene as a party in these proceedings; (iii) declaring, in the event of the relief sought as aforementioned is granted, that the employment contract concluded between the applicant and the DPCI is set aside on the

basis that it is inconsistent with the provisions of section 17CA(6) and (7) of the South African Police Service Act 68 of 1995 and therefore invalid and unlawful; alternatively, that the employment contract concluded between the applicant and the DPCI on 1 February 2016 is a contract as contemplated in section 17CA(6) and (7) of the South African Police Service Act 68 of 1995 concluded for a maximum period of ten years with effect from 1 February 2016 and has terminated on 31 January 2026.

- [13] It is important to note that this application was only served on the applicant on or about 16 March 2026. The contempt application came before this Court on 30 January 2026 when a rule *nisi* was issued. Despite the issuing of the rule *nisi* on 30 January 2026, the respondents did not bring the interlocutory application and the relief sought therein, which was filed on or about 16 March 2026, to the Court's attention. In fact, further pleadings were exchanged between the parties wherein the respondents failed to bring the issues contained in the interlocutory application to the Court's attention.
- [14] As already stated above, the matter was heard before Barthus AJ on 25 February 2026 and again the respondents failed to raise these issues when the contempt application was heard and considered by Barthus AJ. When this Court considered and granted an Order, as drafted and agreed upon between the parties on 6 March 2026, the respondents failed to raise these issues. It was only on 16 March 2026, some 9 court days before the contempt application was to be heard on 27 March 2026 that the Notice of Application was filed.
- [15] Rule 35 of the 2024 Labour Court Rules provides for applications in general. In terms of Rule 35(4)(e), an application must contain a notice advising the other party that if it intends to oppose the matter, that party must deliver an answering affidavit within 10 days after the application has been served. The respondents' Notice of Application does not contain such a notice. Instead, the respondents' notice gave the applicant a self-imposed deadline to deliver an opposing affidavit on 23 March 2026. This self-imposed time period did not afford the applicant the required 10 days in which to serve and file an answering affidavit.

It is not for a party to self-impose the dates on which a substantive answering affidavit is to be delivered in opposition to a substantive application. The 10-day requirement has not as yet expired on 27 March 2026 when the matter came before this Court.

- [16] The respondents are not entitled to invoke Rule 58 of the Rules of this Court to justify the truncated time periods. Rule 58(1) authorises a contempt application to be brought on an *ex parte* basis, as a departure from Rule 35(1), and the respondents themselves recognise this in their heads of argument. The respondents' interlocutory application, however, is not a contempt application. It is a substantive application for joinder and for declaratory relief in respect of the validity of the applicant's contract of employment. As such, it falls squarely within Rule 35 and the prescribed time periods. Any abridgement of those time periods requires an application to court, supported by a proper case for urgency or expedition. No such application was made.
- [17] It is this Court's finding that, based on the respondents' failure to file a proper application in terms of Rule 35, and their failure to allow 10 days in which the applicant was to file an answering affidavit, the Notice of Application is procedurally defective. There is no reasonable explanation why the respondents only filed the Notice of Application on 16 March 2026, without containing the notice requiring the applicant to file an answering affidavit within 10 days, and why the applicant was not afforded the full 10 days in which to file an answering affidavit. The respondents had sufficient opportunities and time, with at least 3 prior court appearances, to bring this application and chose to do so only on 16 March 2026. For the reasons that follow, this Court goes further and addresses the substance of both applications.
- [18] This Court will, however, despite the defective application, nonetheless address the issues raised therein. This Court does so to ensure that all issues are determined before the contempt application is heard on 4 June 2026. It is not in the interest of justice to continue delaying the contempt application and to

unnecessarily use the valuable time of this Court to consider, and dispose of the contempt application.

The application for joinder

- [19] Insofar as the respondents are seeking to join the National Head of the DPCI to the contempt proceedings as a fourth/intervening respondent, this Court finds that there is no justifiable reason to do so. The National Head was not a party to the 10 October 2025 Order issued by agreement between the applicant and the first, second and third respondents. The National Head was not a party to the Court proceedings on 30 January 2026, 25 February 2026 and on 6 March 2026. The respondents' belated attempt to join the National Head on 16 March 2026 cannot succeed. The first, second and third respondents agreed to the Court Order of 10 October 2025 and participated in all three subsequent Court hearings. The National Head cannot be part of a contempt application when the 10 October 2025 Order did not include him as a party in the agreement made an Order of Court. In respect of the Court Order of 25 February 2026, the National Head complied with the Order insofar as he was directed to file an affidavit. The order that the National Head must file an affidavit did not have the result that he became a party in the contempt proceedings, which is conceded by the respondents given their application to apply for a joinder.
- [20] There is, in any event, a more fundamental reason why the National Head of the DPCI cannot be joined to face contempt of the 10 October 2025 Order. A court cannot, by way of an order taken by agreement, impose enforceable obligations on a non-party who did not consent to that agreement and who was not before the court when the Order was granted. Insofar as paragraphs 5 and 6 of the 10 October 2025 Order make reference to the DPCI, those paragraphs must be understood as obliging the cited respondents, who include the National Commissioner of the South African Police Service, to take all necessary steps, including procuring DPCI cooperation, to give effect to the reinstatement and to ensure pension continuity directed by the Order. The obligation rests on the cited respondents. They consented to the Order. They are bound by it. The

DPCI's conduct may well be evidential, in the contempt enquiry on 4 June 2026, to the extent that it bears on whether the cited respondents have discharged the obligations they undertook; but it is not the subject of the contempt enquiry. To find otherwise would be to permit a contempt finding against an entity that never had the opportunity to be heard before the Order was granted, and which never consented to the obligations purportedly imposed on it. Such a finding would offend the *audi alteram partem* principle, which is a foundational requirement of natural justice.

- [21] The first, second and third respondents agreed to the Order and compliance with the Order was their responsibility. Inasmuch as the respondents agreed to the Order and were obliged to give effect to the Order, so too should they be held liable for any non-compliance of the Court Order and any possible contempt proceedings that arises from any non-compliance thereof. Should this Court allow this belated application for joinder, when the National Head is not the subject of the Court Order of 10 October 2025, it would unnecessarily delay and frustrate these contempt proceedings, waste this Court's valuable time, and cause even further unnecessary legal fees for the applicant. It is not in the interest of justice or in the interest of speedy and effective resolution of labour disputes to entertain this belated application for joinder.
- [22] The Court notes, in any event, that Lieutenant General Dumisani Patrick Mbotho, in his capacity as Acting National Head of the DPCI, deposed to a compliance affidavit on 3 March 2026 pursuant to the Order of Barthus AJ. The respondents are entitled to refer to and rely upon that affidavit on 4 June 2026 to the extent that its contents bear on the issues for determination in the contempt enquiry. The filing of that affidavit is, in this Court's view, sufficient for the respondents to address whatever relevant information is contained therein in showing why they should not be found in contempt.
- [23] The application for joinder is accordingly dismissed.

Declarator

- [24] This Court now turns to the belated declaratory relief sought by the respondents. As stated above, the respondents, in essence are seeking an order that the applicants' contract of employment is inconsistent with the provisions of section 17CA(6) and (7) of the South African Police Service Act 68 of 1995 and is therefore invalid and unlawful. The respondents seek an order that the employment contract be set aside.
- [25] This Court is not in a position to entertain a belated application for a declarator in the contempt application. The respondents agreed to the Court Order of 10 October 2025 and continued to participate as the affected parties in another three subsequent court hearings. The belated attempt to declare the contract of employment invalid and unlawful in contempt proceedings is irregular. If the respondents were of the genuine belief that the contract of employment was invalid and unlawful, they should not have entered into the agreement, which was made an order of this Court on 10 October 2025.
- [26] The respondents' relief was to ask for a variation or rescission of the Court Order, alternatively to seek leave to appeal against the Court Order. None of this was done. A further possible alternative was to file an application for such a declarator as soon as the respondents became aware of the alleged invalidity and unlawfulness of the contract of employment. The proper route to have been followed would in all probability have been to approach the Court for a variation or rescission of the 10 October 2025 Court Order based on any new information that may have come to light.
- [27] The respondents have raised, in their answering affidavit, criticism of the manner in which the orders of 9 September 2025 and 30 January 2026 were obtained, contending that they were not afforded a proper opportunity to oppose. Those criticisms do not withstand scrutiny by this Court. The orders stand and the respondents were given more than sufficient opportunity to deliver their response by 27 March 2026. In respect of the Court Orders of 10 October 2025 and 25 February 2026, the appropriate route available to the respondents to challenge them was through variation, rescission or leave to

appeal. The respondents took none of those steps. They cannot now seek to relitigate the propriety of those orders by way of an answering affidavit in contempt.

- [28] The respondents were obliged to comply with the Court Order of 10 October 2025, which was granted by agreement between the parties. A party who has consented to an order, who has acted under it, and who has invoked its machinery for several months, cannot thereafter be heard to contend that it never bound them at all. It is not for the respondents to determine, on their own, that the contract of employment is invalid and unlawful and in the process fail to comply with the Court Order, if there was indeed such a failure. This Court will determine the contempt application on 4 June 2026 and a determination will only be made after reading the papers and after having listened to the parties' legal representatives' submissions. No decision has yet been made whether there was non-compliance with the Court Order and whether the respondents are to be held in contempt.

Conclusion

- [29] The respondents' belated application for joinder and for a declarator that the employment contract is invalid and unlawful is dismissed. The interlocutory application bears the hallmarks of an abuse of process: it was filed late, in violation of the prescribed time periods, without condonation, and after three prior court appearances at which the issues could have been raised. It served only to delay the contempt enquiry and to dilute the accountability that the rule *nisi* was designed to enforce. This leaves the question of costs. This Court is mindful of the requirements that awarding costs must be based on law and fairness. There is no reason why the respondents should not be ordered to pay the applicant's costs in respect of the Notice of Application served on 16 March 2026 and costs for the proceedings held on 27 March 2026.² The costs for the

² See *Zungu v Premier of the Province of KwaZulu-Natal and Others* 2018 (6) BCLR 686 (CC); (2018) 39 ILJ 523 (CC); [2018] 4 BLLR 323 (CC) at para 24. Section 162 of the Labour Relations Act 66 of 1995 confers on this court a discretion to award costs in accordance with the requirements of law and fairness.

postponement of 6 March 2026 will be determined when the contempt application is heard.

Order

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

1. The application for joinder is dismissed.
2. The application for a declarator is dismissed.
3. The respondents are ordered to pay the applicant's costs of the interlocutory application served on 16 March 2026 and of the proceedings on 27 March 2026, on Scale C.
4. The costs of the postponement on 6 March 2026 are reserved for determination at the hearing of the contempt application.
5. The contempt application is postponed to 4 June 2026 for argument.
6. The rule *nisi* issued on 30 January 2026 is extended to 4 June 2026.



C. de Kock

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Mr C Hendricks from Marais Muller Hendricks Inc
For the Respondents:	Adv E A De Villiers-Jansen SC
Instructed by:	State Attorney