THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026 – 090955

(1)	REPORTABLE: **YES**/~~NO~~
(2)	OF INTEREST TO OTHER JUDGES: **YES**/~~NO~~
(3)	REVISED: **YES**/~~NO~~
	22 May 2026

In the matter between:

HOPEWELL NOYINGANA **Applicant**

and

ETHEKWINI MUNICIPALITY **First Respondent**

THE MUNICIPAL MANAGER OF ETHEKWINI MUNICIPALITY **Second Respondent**

THE HUMAN RESOURCES MANAGER OF ETHEKWINI MUNICIPALITY **Third Respondent**

This judgment was handed down electronically by circulation to the parties and legal representatives by email and uploading onto CaseLines. The date and time for hand-down is deemed to be 22 May 2026

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<u>Summary:</u> Jurisdiction – Labour Court does have jurisdiction to consider urgent applications for breach of contract in terms of section 77 of the BCEA – exceptional and compelling reasons however required to justify urgent intervention – exceptional circumstances not shown – urgent intervention not appropriate

Urgency – principles considered – applicant failing to satisfy requirements of urgency – application not brought at first available opportunity – full substantial redress available in ordinary course – matter not urgent

Nature of claim – claim by employee founded on breach of contract – claim is for finite sum of money – not appropriate to determine such claims as a matter of urgency – claim must be pursued in ordinary course – motion proceedings also not appropriate – urgent application not competent

No basis for urgent application in this instance – application struck from the roll with costs

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JUDGMENT: REASONS

SNYMAN, AJ

<u>Introduction</u>:

[1] In this instance, the applicant has brought an urgent application in terms of which the applicant seeks payment, on an urgent basis, of an amount the applicant contends is due to him in salary for the period since he was reinstated in terms of an arbitration award, and until he was actually reinstated by the first respondent as his employer. The application was opposed by the first respondent, not on the basis of filing an answering affidavit on the merits, but instead on the basis of raising several preliminary objections. It is however not necessary to decide this matter on the merits or to finally decide all of the objections raised by the first respondent, for the simple reason that I do not

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consider it appropriate and justified that this application be disposed of solely on the basis of a lack urgency.

[2] The matter came before me for hearing on 19 May 2026. After considering the argument presented by both parties, and having considered all the process that had been filed, I gave the following order on 19 May 2026:

1. The application is struck from the roll.

2. The applicant is ordered to pay the first respondent's costs on the party and party scale B.

3. Written reasons for this order will be provided on 22 May 2026.

[3] This judgment now constitutes the written reasons referred to in paragraph 3 of my order above. Because this matter falls to be decided on the basis of the issue of urgency, I will only set out a short exposition of the background facts, which I consider to be relevant when deciding the issue of urgency. I make no factual findings on the merits of the case.

<u>The relevant background</u>:

[4] The applicant is employed by the first respondent as an outreach officer. He was dismissed on 10 May 2016, and pursued an unfair dismissal dispute to the South African Local Government Bargaining Council (SALGBC). The dispute was arbitrated and in an arbitration award dated 12 May 2017, arbitrator Madikizela determined that the dismissal of the applicant by the first respondent was substantively and procedurally unfair. The arbitrator then afforded the applicant consequential relief in the form of fully retrospective reinstatement to the date of his dismissal, with back pay of R223 793.50.

[5] The first respondent challenged this arbitration award on review to the Labour Court. This review application ultimately came before Khuzwayo AJ in the Labour Court in Durban on 30 January 2025. In a judgment handed down on 12 May 2025, the learned Judge dismissed the review application. The effect of the dismissal of the review application was that the first respondent was

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compelled, from date of the judgment, to forthwith comply with the arbitration award in favour of the applicant.

[6] The first respondent has since complied with the arbitration award. The applicant has been reinstated back into his post and the sum of R223 793.50 (plus interest) as awarded to him in the arbitration award has also been paid to him. This then left the issue of the applicant's unpaid salary for the period from when he was reinstated in terms of the award, being 17 May 2017, to the date when he was actually reinstated, being 1 July 2025.

[7] On 8 September 2025, the applicant brought an urgent application to compel the respondents to '*immediately finalise the calculation and pay to the applicant all salaries, benefits and backpay due in terms of the arbitration award and Labour Court judgment dated 12 May 2025 under case number D771/2017'.* The applicant also sought an order that the amount due then be paid immediately upon finalisation of this calculation. On 19 September 2025, this application was struck from the roll for lack of urgency. The application appears not to have been pursued further, however it still remains extant.

[8] In the applicant's supplementary founding affidavit, there is no indication of what exactly the applicant did after the abortive application in September 2025 to pursue the matter further. There is only an indication of several items of correspondence between the parties' respective attorneys in February and March 2026, about the calculation and then payment of the amount due to the applicant. This exchange of correspondence culminated in a letter on 27 March 2026 by the applicant's attorneys, in which the applicant's attorneys forwarded the first respondent's attorneys a reconciliation and then quantification of the amount alleged to be due to the applicant, together with supporting documents. The applicant's attorneys stated that there were no further outstanding issues, and demanded that the first respondent complete its calculations as to the amount payable by 2 April 2026. There was no response to this letter.

[9] On 8 April 2026, a further letter was sent by the applicant's attorneys to the first respondents' attorneys, again referring to the prior correspondence of 27

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March 2026 and the first respondent's failure to respond thereto. The first respondent was given to close of business the following day to respond. No response was forthcoming. It is clear on the facts that at no point in time did the first respondent ever acknowledge or agree to the amount due as quantified by the applicant, nor did it determine what the amount was that it believed was due to the applicant, nor did it tendered payment of any specific amount.

[10] The current urgent application was filed on 22 April 2026. It appears to have been served on the respondents only on 24 April 2026. This is more than two weeks after the applicant's last deadline given to the first respondent in the aforesaid correspondence. In the notice of motion, the relief sought by the applicant appears to be the substantially the same as the relief sought in the previous urgent application struck from the roll on 19 September 2025. The applicant prayed for relief that the respondents be ordered to finalise the calculation of the salary due to the applicant, and then make payment of the same immediately upon finalisation of such calculation. The respondents were given five court days to file an answering affidavit.

[11] This initial notice of motion was followed by a further notice of motion on 30 April 2026, now containing a hearing date of 19 May 2026. The relief sought in remained the same. And again, the respondents were given five Court days to answer

[12] However, before the respondents' answer was due, and on 7 May 2026, the applicant withdrew the aforesaid notice of motion and founding affidavit. Then, and on 8 May 2026, the applicant served and filed an amended notice of motion and supplementary founding affidavit. This was done because, in the applicant's own words: '*The purpose thereof was to properly clarify, regularize and formulate the issues and the relief sought before this Honourable Court after counsel identified legal and factual concerns in the initial papers'*. This new (amended) notice for motion now prayed for an order directing the first respondent to pay a specific sum of money, quantified to be the sum of R4 813 945.70. The respondents were given until 13 May 2026 to file an answering affidavit.

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[13] Instead, and on 13 May 2026, the respondents served a notice of an irregular step on the applicant, raising a number of preliminary concerns and objecting to the process adopted by the applicant of withdrawing the previous application then substituting it by filing an amended notice of motion and supplementary founding affidavit. The respondents contended that the applicant failed to comply with Rule 20. The respondents also complained that the supplementary founding affidavit was served without annexures, yet required a response by 13 May 2026. It was also alleged that the applicant altered the case as first pleaded, which was not permissible. But of importance to the current case, the notice of an irregular step recorded that: '*the applicant's conduct undermines the orderly conduct of urgent proceedings*', and '*the matter is not urgent and he applicant can obtain substantial redress in due course and by way of action proceedings'*.

[14] The applicant answered this notice of an irregular step on 14 May 2026, and in this answer provided the annexures not served when the supplementary founding affidavit was served on 8 May 2026. Therefore, the respondents only received these annexures, which are obviously important to consider when answering the supplementary founding affidavit, after the deadline to file the answering affidavit had expired. The applicant also explained in his answer to the irregular step notice why the previous application was withdrawn and the amended application filed. According to the applicant, the Labour Court always has a discretion to allow the applicant to file such amended / supplemented process.

[15] And lastly, only on 18 May 2026, the day before the hearing, the applicant filed (uploaded) an actuarial and industrial psychologist reports, substantiating the quantum of his claim. These reports are unsupported by affidavit.

<u>Urgency</u>

[16] Urgent applications are governed by Rule 38 of the Labour Court Rules, being the successor to the erstwhile Rule 8. The Court in *Jiba v Minister:*

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Department of Justice and Constitutional Development and Others[1] applied Rule 8 as follows:

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

These same considerations, in my view, equally apply to Rule 38.

[17] When considering whether urgency has been established, an important consideration, which is of particular application *in casu*, would be whether an applicant would not be afforded substantial redress in due course, and the applicant must provide proper reasons in support of a case that this would not be possible.[2] As succinctly described by the Court in *Maqubela v SA Graduates Development Association and Others*[3]:

> 'Whether a matter is urgent involves two considerations. The first is whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. In all instances where urgency is alleged, the applicant must satisfy the court that indeed the application is urgent. Thus, it is required of the applicant adequately to set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary. …'

[18] If there is in fact substantial redress available in the ordinary course, urgent relief should be declined. This was made clear in *Madonsela v Legal Practice Council and Others*[4] as follows:

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[1] (2010) 31 ILJ 112 (LC) at para 18.

[2] *Mojaki v Ngaka Modiri Molema District Municipality and Others* (2015) 36 ILJ 1331 (LC) at para 17; *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2012] JOL 28244 (GSJ) at para 6; *Vanguard of Organised Labour v Mahlangu and Another* (2026) 47 ILJ 619 (LC) at para 7.

[3] (2014) 35 ILJ 2479 (LC) at para 32. See also *Transport and Allied Workers Union of SA v Algoa Bus Co (Pty) Ltd and Others* (2015) 36 ILJ 2148 (LC) at para 11.

[4] (2025) 46 ILJ 2664 (LC) at para 18.

> 'It is trite that what amounts to substantial redress depends on the circumstances of the case, and the nature of the rights involved, and is a distinct issue from that of a lack of an alternative remedy. Thus, if the applicant can demonstrate that she will not be afforded substantial redress at the hearing in due course, then the matter should be accorded urgency. If, however, such substantial redress is available in due course, then the court ought to refuse to accord the matter urgency.'

[19] Where an applicant seeks final relief, the Court must be even more circumspect when deciding whether or not urgency has been established.[5] In *Tshwaedi v Greater Louis Trichardt Transitional Council*[6] the Court said:

> '… An applicant who comes to court on an urgent basis for final relief bears an even greater burden to establish his right to urgent relief than an applicant who comes to court for interim relief. ….'

[20] The Court must also consider the interests of the respondent party, and in particular, the prejudice the respondent may suffer if the matter is urgently disposed of. In *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another*[7] the Court held as follows:

> 'But it is not just about the applicant. Another consideration is possible prejudice the respondent might suffer as a result of the abridgement of the prescribed time periods and an early hearing.'

[21] Finally, urgency must not be self-created by an applicant, as a consequence of the applicant having not brought the application at the first available opportunity.[8] As the Court said in *Northam Platinum supra*[9]:

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[5] [2002] JOL 9452 (LC) at para 8.
[6] [2000] 4 BLLR 469 (LC) at para 11.
[7] (2016) 37 ILJ 2840 (LC) at para 26. See also *IL & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Another* 1981(4) SA 108 (C) at 113D-114C.
[8] See *Golding v HCI Managerial Services (Pty) Ltd and others* [2015] 1 BLLR 91 (LC) at para 24; *National Union of Mineworkers v Lonmin Platinum Comprising Eastern Platinum Ltd and Western Platinum Ltd and Another* (2014) 35 *ILJ* 486 (LC) at para 50.
[9] Id at para 26. See also *Sihlali and Others v City of Tshwane Metropolitan Municipality and Another* (2017) 38 ILJ 1692 (LC) at para 18; *National Union of Metalworkers of SA and Others v Bumatech Calcium Aluminates* (2016) 37 *ILJ* 2862 (LC) at para 26; *Soobedar and Another v Minister of International Relations and Cooperation and Another* (2021) 42 ILJ 1762 (LC).at para 20.

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> '… the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to Court immediately, or risk failing on urgency. …'

And in *Madonsela supra* the Court added:[10]

> 'One of the fundamental requirements when seeking urgent relief is to approach the court at the first available opportunity. This in my view implies that where harm, prejudice or unlawfulness is likely to arise from a set of facts, a party must take immediate action to protect its rights against the alleged harm.'

[22] Having regard to the facts *in casu*, as will be dealt with below, I believe the following *dictum* in *O'Connor v LexisNexis (Pty) Ltd*[11] is apposite, where the Court had the following to say:

> 'The first factor, self-created urgency, relates to a scenario where the applicant has created the need for an urgent hearing because it has culpably delayed in approaching the court. This is a justifiable limitation on the right of urgent access to court because, but for the applicant's culpable conduct, there would be no need to burden the administration of justice with an urgent hearing (or push other litigants further back in the queue for justice).'

<u>Analysis</u>

[23] For the purposes of deciding urgency in this judgment, it is not necessary for me to delve into whether the applicant was entitled to withdraw his previous application and then in effect substitute it with the amended notice of motion and supplementary founding affidavit, as complained of by the first respondent. The only relevant issue in this regard is the chronology of events in this respect, and what it means for the issue of urgency. For the purposes of deciding this application, I will simply accept, without deciding whether it was competently introduced, the applicant's amended notice of motion and

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[10] Id at para 13.
[11] (2024) 45 ILJ 1287 (LC) at para 27.

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supplementary founding affidavit as being properly before Court. I will also consider the first respondent's notice of an irregular step, and the applicant's answer thereto.

[24] It is clear from the amended notice of motion and supplementary founding affidavit that the applicant has approached this Court in terms of section 77 of the Basic Conditions of Employment Act (BCEA),[12] based on an alleged breach of his employment contract. This breach has been described in the supplementary founding affidavit as follows:

> 'By reinstating me, the Municipality revived the employment contract rendering me entitled to the arrear salaries I would have been paid for the period of the reinstatement order from the bargaining council (17 May 2017) to the date that I was finally reinstated by the Municipality (1 July 2025);
>
> I am accordingly entitled to my arrear salary, less any income received over the aforegoing period, in the amount of reasonably estimated at R4 813 945.70.'

[25] This is undoubtedly a contractual claim for damages in the form of unpaid salary, and has nothing to do with the arbitration award given in the applicant's favour. The first respondent has already fully complied with such award, by reinstating the applicant and then paying his back pay as quantified in the arbitration award itself. The arbitration award and the reinstatement of the applicant revived the applicant's contract of employment, with effect from the date of reinstatement in the award itself (17 May 2017), and any salary he would be entitled to in terms of such revived contract of employment would be a purely contractual claim. The non-payment of salaries due under the contact of employment would clearly constitute a breach of such contract. In *Themba v*

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[12] Act 75 as 1997 (as amended). Section 77(3) provides: '*The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract'*. Further section 77A(e) provides that the Labour Court has the power to make: *'… a determination that it considers reasonable on any matter concerning a contract of employment in terms of section 77 (3), which determination may include an order for specific performance, an award of damages or an award of compensation*'.

Mintroad Sawmills (Pty) Ltd[13] the Court said, referring to salary payments going forward, after date of reinstatement under an arbitration award:

> 'However, and going forward from 28 December 2009, the issue is not one concerning retrospectivity of the reinstatement. The applicant has been reinstated, and this reinstatement applied from 28 December 2009. The pending challenge by the respondent of the arbitration award by way of the review application does not change this. This means that the applicant's entitlement to be paid by the respondent whilst the review is pending does not arise from the reinstatement award, but actually arises directly from his contract of employment which has been restored to all its former glory by the reinstatement. Contractually, the applicant is an employee of the respondent and as from 28 December 2009 he is entitled to be paid his salary in terms of his contract of employment, being such an employee.'

[26] And in *Coca Cola Sabco (Pty) Ltd v Van Wyk*[14] it was held as follows:

> 'The reinstatement order — as stated above — only serves to revive the contract of employment. The rights and obligations of the parties would therefore, as in the beginning, again be governed by the contract of employment. …
>
> Therefore if the employee, after the reinstatement order and during the time that the employer exercises its review and appeal remedies to exhaustion, tenders his/her labour he/she does so in terms of the employment contract. He/she is therefore entitled to payment in terms of the contract of employment. The claim is therefore a contractual one, wherein the employee would have to set out sufficient facts to justify the right or entitlement to judicial redress. The employee would inter alia have to prove that the contract of employment is extant; that he/she tendered his/her labour in terms thereof; and that the employer refuses or is unwilling to pay him/her in terms of that

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[13] (2015) 36 ILJ 1355 (LC) at para 31. This *dictum* was applied in *National Commissioner of the SA Police Service and Another v Myers* (2018) 39 ILJ 1965 (LAC) at para 55.

[14] (2015) 36 ILJ 2013 (LAC) at paras 22 and 24. The Constitutional Court in *Mavundla v Gotcha Security Services (Pty) Ltd* (2025) 46 ILJ 2073 (CC) followed the same approach, where the Court said at para 26: '*'Mr Mavundla's claim was for payment of remuneration benefits due to him in terms of his contract of employment which had been restored'*.

contract. The employer on the other hand would have all the contractual defences at his/her disposal.'

[27] As the non-payment of salary / remuneration as aforesaid would indeed constitute breach of contract, the applicant, when claiming payment of such unpaid salary, would be claiming damages for breach of contract. As stated in *Trotman and Another v Edwick*[15]: *'… A litigant who sues on contract sues on contract sues to have his bargain or its equivalent in money or in money and kind …*' When claiming money for breach, it is a damages claim, as appears from the following *dictum* in *Holmdene Brickworks (Pty) Ltd v Roberts Construction Co Ltd*:[16]

> '… The fundamental rule in regard to the award of damages for breach of contract is that the sufferer should be placed in the position he would have occupied had the contract been properly performed, so far as this can be done by the payment of money and without undue hardship to the defaulting party …'

And further in *Katzenellenbogen Ltd v Mullin*[17] it was held:

> 'In order to enable a court to give effect to this fundamental rule, it must necessarily be furnished with an appropriate yardstick by which to measure the sum of money (if any) required to place a plaintiff in the position he would have occupied had the contract been properly performed.'

[28] By way of comparable example, the Court in *Sandlundlu (Pty) Ltd v Shepstone and Wylie Inc*[18] and *Molefe v Sishen Iron Ore Company*[19] considered the instance a loss of rental income under a lease agreement to be a contractual claim for damages. In my view, this is exactly the same where salary of an employee under a contract of employment is not paid, considering it is income earned by such employee under such contract. The point is that it constitutes a claim where the employee is sought to be placed

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[15] 1951 (1) SA 443 (A) at 449B
[16] 1977 (3) SA 670 (A) at 687B-D. see also *Scoin Trading (Pty) Ltd v Bernstein* NO 2011 (2) SA 118 (SCA) at para 18.
[17] 1977 (4) SA 855 (A) at 875C-E.
[18] 2010 JDR 1482 (SCA) at para 20.
[19] 2013 JDR 1280 (GNP) at para 30.

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in the position, by way of the payment of a monetary amount, the employee would have been in, if the employment contract was not breached.

[29] There are three reasons why the above exposition of the legal position where it comes to the applicant's claim is important, in the context of deciding urgency. The first is that it is seldom, if ever, competent or appropriate to bring an application to claim contractual damages, instead of referring the matter to trial by way of a statement of claim, especially where the amount claimed is illiquid or undetermined. The second is that in the case of contractual claims for damages, a litigant invariably has full (substantial) redress available in the ordinary course, making it entirely inappropriate to decide such a case on the basis of urgency. And finally, contractual claims for damages, no matter in what form it is brought, as a general proposition, is rarely urgent *per se*.

[30] It must be remembered that when entertaining any contract claim under section 77 of the BCEA, this Court is effectively in the exact same position as the High Court. In other words, this Court would deal with such claim in the same manner the High Court would deal with it. This flows from the notion of concurrent jurisdiction of this Court with the High Court, as provided for in section 77.

[31] Dealing first with the issue of damages claims being incompetent in motion proceedings, the High Court has consistently held that contract claims for damages that are illiquid because the *quantum* thereof must still be decided by the Court, are generally not competent by way of motion proceedings.[20] The *locus classicus* in this regard is *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd*[21] where the Court said:

> 'I propose to set out, first, as I understand it, the general position in regard to the permissibility of motion proceedings as opposed to trial actions. Two types

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[20] See *Hillingdale Capital (Pty) Ltd v Dust-A-Side Holdings (Pty) Ltd and Another* 2024 JDR 5356 (GP) at para 9, where it was said: *'… Generally, breach of contract claims are launched through action proceedings for the simple reasons that dispute of facts are inherent in such claims …'*. See also *Atlas Organic Fertilisers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd* 1978 (4) SA 696 (T) at 699B where it was held: *'… it is in my opinion relevant that motion proceedings are inappropriate for claims for damages …'*. See also *Juscar Metale (Pty) Ltd v National Commissioner of Police and Another* 2025 JDR 2712 (GJ) at para 11.

[21] 1949 (3) SA 1155 (T) at 1161.

of proceedings may be mentioned, as falling outside the scope of this enquiry. (1) There are certain types of proceeding (e.g., in connection with insolvency) in which by Statute motion proceedings are specially authorised or directed: in these the matter must be decided upon affidavit and Rule 9 may be invoked, as shown in *Mohamed v Malk* (1930 TPD 615), to permit *viva voce* evidence to be led in order to counteract any balance of probability appearing from affidavits. (2) There are on the other hand certain classes of case (the instances given by DOWLING, J., are matrimonial causes and illiquid claims for damages) in which motion proceedings are not permissible at all. But between these two extremes there is an area in which (as I see the position) according to recognised practice a choice between motion proceedings and trial action is given according to whether there is or is not an absence of a real dispute between the parties on any material question of fact.' (emphasis added)

And in particular where it comes to calculating damages as part of such claim, the Court in *Minister of Safety and Security v Omar*[22] pertinently said:

'… In *Hack Stupel and Ross Attorneys v Leslie Kgang* Case No 560/06 the Supreme Court of Appeal has reiterated the principle that it is impermissible to claim damages on affidavit where it is unclear how the damages were computed …'[23]

[32] An apposite example of the point can be found in *Ferreira v Afiswitch (Pty) Ltd and Others*[24] where the Court, in considering whether a claim for damages on motion was appropriate, decided as follows:

'The applicant seeks R40 million in constitutional and general damages. The quantification, causation, and responsibility for any proven harm are disputed and cannot be fairly resolved on affidavit. Such a claim (if pursued) belongs in the ordinary course, on properly ventilated papers or at trial, not in urgent motion with contested facts and a non-joined source custodian.'

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[22] 2013 JDR 0823 (GNP) at para 22.

[23] The Court was referring to *Hack Stupel and Ross Attorneys v Kgang* (560/06) [2007] SCA 132 (SCA) (28 September 2007) at para 16, where it held as follows referring to the judgment of the Court *a quo*: '*The first problem with the judgment is that it granted judgment for damages in motion proceedings contrary to the basic rule that damages are not claimable in motion proceedings …*'. The Court in *Kgang* in fact applied the aforesaid quoted *dictum* in *Room Hire*.

[24] 2026 JDR 0823 (GP)at para 14.

[33] There is simply no reason why the applicant could not have instituted the claim for his contractual damages by way of action proceedings and the filing of a statement of claim. Whilst it is of course not for this Court to prescribe to a litigant how the litigant should bring its claim, this Court must always have regard to what is the most appropriate process for a claim to be brought when deciding an application brought on an urgent basis. I consider the following *dicta* in *Triponza Trading 548 CC and Others v Head of Department of the Gauteng Department of Roads and Transport and Others*[25] to be most apposite:

> '… It is not the duty of a Court to dictate for a litigant as to how to approach a Court to stake a claim. Those litigants who choose motion proceedings must brace themselves with the risk attendant to such proceedings. There seems to be a particularly good and practical reason that money claims should be instituted by way of an action as opposed to motion proceedings. …
>
> A claim involving allegations of a breach of a contract is a mission impossible in urgent motion proceedings. Generally, motion proceedings are not geared for resolution of disputes of facts, particularly in an urgent Court. Ineluctably, allegations of breach of contract propel a Court to an interpretative exercise and consideration of contractual defences. …'[26]

[34] The applicant's counsel argued that nonetheless, the applicant was perfectly entitled to bring his contract claim on motion. I have no quarrel with the argument that a contract claim could be brought by way of motion proceedings, however the difficulty I do have, and which counsel could not answer, is that motion proceedings are not appropriate where the contract claim is accompanied by a claim for the payment of damages for breach of contract in respect of an amount still to be determined. The applicant's

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[25] 2026 JDR 0321 (GP) at paras 1 – 2.

[26] These available contractual defences are, as articulated in *Holmdene Brickworks* (*supra*) at 687C-F: '*… To ensure that undue hardship is not imposed on the defaulting party the sufferer is obliged to take reasonable steps to mitigate his loss or damage (ibid.) and, in addition, the defaulting party's liability is limited in terms of broad principles of causation and remoteness, to (a) those damages that flow naturally and generally from the kind of breach of contract in question and which the law presumes the parties contemplated as a probable result of the breach, and (b) those damages that, although caused by the breach of contract, are ordinarily regarded in law as being too remote to be recoverable unless, in the special circumstances attending the conclusion of the contract, the parties actually or presumptively contemplated that they would probably result from its breach …*'.

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counsel referred me to *Mavundla v Gotcha Security Services (Pty) Ltd*[27], which he argued concerned a claim for contractual damages brought on motion, which was upheld by the Constitutional Court. But I do not believe this judgment assists the applicant. It appears that in that case, the Court never considered the issue of what is the appropriate course of legal proceedings to follow where it comes to determining, under a contract claim, the quantum of damages the employer would be ordered to pay. The only question before the Court in *Mavundla* was whether the employee concerned was entitled to payment of his salary for the full period between date of reinstatement under the arbitration award and date of actual reinstatement, which, as I have already said, is simply not the issue *in casu*, and was never in contention. The Court in *Mavundla* said nothing about how the quantum of such a salary claim is to be determined, and in essence determined a crisp legal question about the entitlement to payment *per se*, which is a question distinct and separate from determining the actual amount of damages payable pursuant to such an entitlement.

[35] In sum in this respect, I believe that it was an inappropriate course of action for the applicant to have brought his claim by way of urgent motion proceedings. By making this finding, I do not finally decide whether the applicant's current application is competent or not. That is another determination for another day. I make this finding purely to substantiate why it is not appropriate to decide this case as one of urgency. I may add that the first respondent specifically raised this very issue as a ground of challenge in its notice of an irregular step.

[36] Next, I have regard to the general principle that contract claims for damages, especially where it concerns the payment of a monetary sum, is rarely, if ever, urgent. Despite the applicant's counsel imploring me to have due regard to the fact that this is a Court of equity, I am compelled to reiterate what I said earlier about the fact that when this Court decides these kinds of claims, it acts in the same manner as the High Court. That being so, the High Court has

[27] (2025) 46 ILJ 2073 (CC).

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consistently held that contractual claims for damages are not urgent.[28] In *Eskom Holdings SOC Ltd v City of Johannesburg Metropolitan Municipality and Others*[29] the Court said:

> '… Other types of cases are generally regarded as not being urgent in nature – this notwithstanding that the party seeking relief may consider its claim to be pressingly urgent, or even where the applicant may stand to suffer some form of serious prejudice. Money claims, as a rule, fall into the latter category. This is not because of lack of potential prejudice to the applicant if the claim is not heard on an urgent basis or if relief is not granted urgently. On the contrary, the reality is that parties claiming payment of moneys routinely suffer prejudice as a result of delays in the legal system and their consequent inability to extract payment from their creditors on an expedited basis. Indeed, such parties may and quite often do find themselves unable to pay their own creditors and may well find themselves driven to insolvency. This has however never been regarded as a basis for an urgent hearing. The reason is obvious: the urgent rolls would be flooded, and the system would collapse. This is not to say that a case could never be made out for an urgent hearing in respect of a claim sounding in money (although I have some doubts). As I have already indicated, each case has to be assessed on its own facts.'

[37] Two further refences in this respect bear specific mention. In *Maphalle v National Heritage Council and Others*[30] the Court held:

> 'It is my view that breach of contract claims seldom warrant being dealt with on the basis of urgency. Ordinarily, this court should be reluctant to entertain these kinds of urgent applications, considering the fact that there is no reason, in general, why a dispute concerning the breach of a contract of employment cannot be pursued in the ordinary course, as would be the case where an ordinary civil court is seised with such a contract dispute.'

A similar sentiment was expressed in *Mohlahlo v Monaswe and Others*[31] as follows:

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[28] See for example *Neffex (Pty) Ltd and Another v Impala Platinum Holdings Ltd and Others* 2025 JDR 0300 (GP) at para 33.
[29] 2024 JDR 4092 (GJ) at para 5.
[30] (2023) 44 ILJ 579 (LC) at para 3.

> 'The nub of the applicant's case is that his civil claim deserves an urgent hearing. In argument, it was submitted that he recently learnt that the full capital amount of R3,237,622.55 was paid by the RAF to the second respondent. It was also submitted that this matter deserves urgent attention since the applicant is in a financially compromised position and his health is deteriorating. …
>
> In my view, I find that the applicant has failed to satisfy this court that the matter is urgent. He would most certainly be afforded substantial redress in the normal course. The fact that he claims to have a civil claim does not afford him automatic access to the urgent court.'

[38] But probably the greatest obstacle in the path of the applicant being entitled to have his case decided as one of urgency is the fact that he has full substantial redress available in the ordinary course.[32] His claim, even on his own version, is for a fixed amount in damages. As the applicant has already been reinstated, there are no further damages that could accrue. It is just about deciding what the damages are that the applicant has already suffered for breach of contract up to 1 July 2025. In this respect, and when a Court decides what these damages are and awards the same to the applicant, he obtains full and complete redress. There is simply zero cause or reason to decide it as a matter of urgency. Therefore, and considering that the applicant has full redress available in the ordinary course, this in itself should scupper the urgency of the application, without more. For this reason, as well, the applicant's contention of urgency in this matter must fail.

[39] What also concerns me is that what the applicant wants this Court to do, on an urgent and final basis, is to order the first respondent to pay an amount of close on R5 million that according to applicant's own version is a best estimate and where such quantum still needs to be decided. This is an untenable proposition. The assessment and determination of damages is quintessentially an evidentiary issue best determined at trial. In this regard, and a day before the hearing on 18 May 2026, the applicant uploaded expert

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[31] 2022 JDR 3118 (GP) at paras 5 and 8.

[32] See *Maphalle* (*supra*) at para 33; *Triponza Trading* (*supra)* at para 14.

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reports, referred to above, to substantiate his claim, without those reports ever being properly introduced into evidence or the first respondent even having an opportunity to test the same. The point is simply this. Whilst it may be true and undisputed that the applicant is contractually entitled to his salary from 17 May 2017 to 1 July 2025, what this amount would be is very much undecided and unquantified and still to be determined.

[40] The fact is that determining the quantum of such contractual damages is not a straightforward thing of just taking a fixed salary and multiplying it by the unpaid period. As is evident from the applicant's own supplementary founding affidavit, it involves increases, pay progressions, employer benefit contributions and interest. In this regard, a proper consideration of expert evidence which has been tested is important. And then there mitigating issues to be considered, such as determining, on proper facts, what the applicant may have earned in the interim. Although the decision on quantum is ultimately that of the Court, a proper decision in this regard can only be made after due consideration of proper expert evidence, together with the first respondent's contractual defences, as substantiated at trial. This was recognised in *Molefe v Eskom Pension and Provident Fund and Others*[33] where the Court held as follows:

> '… I conclude that the court a quo erred when it proceeded to do the calculation. Able as a judge may be, judges should proceed with caution when experts disagree, especially when the supporting evidence indicates that there are facts that need clarification. In such instances evidence is required to determine the issue. Only if this is done will the court be able to execute its function as arbiter of the dispute properly. …'

[41] In argument, the applicant sought to counter this obvious difficulty to his case by saying that the evidence in this regard is unopposed, and what is said in the supplementary founding affidavit should thus simply be accepted as it stands. I however consider this contention to be patently wrong. Whilst it may be true that the applicant submitted the quantum of his claim to the first

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[33] 2026 (1) SA 234 (GP) at para 33.

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respondent by way of correspondence at the end of March 2026, the point is that this was never accepted or conceded by the first respondent. Further, all the prior proceedings up to the point of the amended notice of motion of 8 May 2026 did not seek to claim an actual amount in damages, and primarily sought relief to the effect that an amount be quantified, and then once quantified, that it be paid. So, what has really happened in this case is that the first respondent is confronted in litigation for the first time on 8 May 2026 on an urgent basis with a claim of just short of R5 million, and expected to offer a defence in less than a week. This is simply irregular and unfair. But it gets worse. The annexures forming the basis of the claim articulated in the supplementary founding affidavit of 8 May 2026 are only provided on 14 May 2026, less than a week before the hearing. And finally, as a cherry on top, the substantiating expert reports are provided, without more, by uploading these reports on 18 May 2026, the day before the hearing. To under these circumstances ask this Court to treat the supplementary founding affidavit as unopposed is in my view an unacceptable proposition. The first respondent simply has not been given a fair and proepr change to consider the applicant's case, and answer it, which is materially prejudicial to the first respondent. The Court in *Adelakun v First Rand Bank Ltd and Others*[34] had the following to say, which I believe can equally be applied *in casu*:

> '… The applicant used a situation to create a basis to approach the court to engage its resources and summoned respondents to court on extremely unreasonable timelines. The respondents were then required to defend a matter that should never been pursued in this court, let alone have been instituted on an urgent basis …'

[42] Considering the aforesaid events relating to the prosecution of the application by the applicant, in the context of the further urgency requirements, two issues stand out. First, the first respondent is materially prejudiced by determining this matter as one of urgency, given the entirely unrealistic time frames the applicant set for it to present its case. And second, as the applicant is seeking a final determination for the payment of a substantial

[34] 2024 JDR 3397 (WCC) at para 33.

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amount of money, this Court must even be more circumspect in deciding this case as one of urgency. These considerations equally work strongly against the matter being decided as one of urgency.

[43] This then only leaves the consideration of whether the applicant acted with the necessary expedition. I have little hesitation is concluding that the applicant did nothing of the sort. He was reinstated on 1 July 2025 without being paid for the time period before then. He only brought an urgent application relating to such payment, irrespective of how he may have couched the relief, in September 2025, which then failed on the basis of a lack of urgency. There is no indication in the supplementary founding affidavit what he did since then, and until February 2026, when the issue once again was raised in correspondence. If the applicant was seeking to quantify his claim for himself, there is no explanation why this would take some five months. And finally, when the applicant is effectively ignored throughout and makes his final demand with a deadline of 2 April 2006 to respond, he still takes just more than two weeks to bring an urgent application seeking more or less the same relief as the application stuck from the roll on 19 September 2025. If all this is not undue procrastination and a classic case of self-created urgency, I simply do not know what would be. The applicant therefore has failed to act at the first reasonably available opportunity, and has therefore not satisfied this requirement for urgency to exist.

[44] I will refer, in conclusion, to some of the considerations raised by the applicant to establish a case of urgency, in his supplementary founding affidavit. The first contention is that the first respondent in reality has no substantive legal basis to challenge his claim, and this must mean the breach of contract in this matter is *per se* susceptible to be urgently decided. But as I have discussed before, the claim in essence has two components. The first would be whether the first respondent is liable to pay the application for the period 17 May 2017 to 1 July 2025. This is clearly not in issue or dispute, and in any event, is not even at stake in this case. The second component is however the determination of what the quantum of applicant's claim would be, which is very much undetermined, which the first respondent has not had a proper

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opportunity to answer, and still needs to be decided. The fact that the first respondent may have procrastinated and failed to give the applicant its co-operation in this regard for months, does not establish urgency and cannot excuse the applicant from still acting with due expedition and then bringing the claim in the proper and appropriate manner. As held in *Mpahalle supra*:[35]

> 'As a point of departure, the applicant seeks to tie urgency to the issue of the breach of her contract of employment, per se. In other words, and according to the applicant, because her contract of employment has been so flagrantly and materially breached, it must follow that the application is urgent. But this proposition is misdirected and cannot be correct. As explained in *Northam Platinum*:
>
> 'The substance of the applicants' case on urgency bears out what I consider to be the situation in the aforesaid paragraph. It is a case based squarely on considerations of hardship, sympathy and the merits of the case itself. In simple terms, it is said that urgency is established by the alleged unlawfulness of the first respondent's conduct which will cause the individual applicants extreme hardship. In my view, this approach is squarely founded on the kind of "licence" assumed by practitioners following the judgment in *SABC*, as I have discussed above. The applicants in fact say it in so many words in the founding affidavit. But, and as I have already said, the judgment in *SABC* does not support such an approach. It is not the "licence" the applicants believe it to be, and the allegations of unlawfulness of the conduct of the first respondent cannot in themselves serve to establish urgency.'[36]

[45] The applicant also contends in the supplementary founding affidavit that the first respondent's '*ongoing and deliberate failure*' to pay him what is due to him in arrear salaries is causing him '*sustained, real, and irreparable prejudice, depriving me of my lawful remuneration, undermining my financial stability, and preventing me from exercising control over my livelihood*'. The applicant adds that this state of affairs caused him and his family severe and ongoing prejudice. He makes a bald statement he is unable to meet basic living expenses, service debts, maintain his house and provide adequately for

[35] Id at para 23.
[36] The Court was referring to *Northam Platinum* (*supra*) at para 33.

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his dependents, including his tertiary child, who is now facing imminent financial exclusion and is unable to proceed with her studies. This kind of case was dealt with in *Maphalle supra*, as follows:[37]

> ‘Looking at the applicant’s case of financial hardship as contained in the founding affidavit, it is based on the applicant being unable to meet her monthly expenses. Those expenses include bond instalments, medical aid, vehicle instalments, credit card payments and general costs of living. The applicant also claims that her sudden dismissal meant she was unable to make ‘financial arrangements' to mitigate her harm
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> I am unconvinced that any explanation by the applicant concerning her financial prejudice is compelling or exceptional. None of what the applicant has set out in her founding affidavit makes the applicant’s case different to the thousands of other cases where employees have been dismissed, and as a result, lost their salaries. As harsh as it may sound, the applicant is in exactly the same position as anyone else who has not received a salary, and there is no reason why she cannot wait in the queue to obtain an order to secure payment of that which may be contractually due to her, just like everyone else …’

[46] Therefore, and *in casu*, as harsh as this may sound, there is nothing exceptional or unique in anything the applicant has said that makes his case so extraordinary that it justifies urgent intervention. What the applicant is describing is commonplace with each and every dismissed employee that was not paid by an employer. There are many cases before this Court where employees are claiming contractually due salaries as a result of reinstatement under an arbitration award, followed by an unsuccessful review, and the amount due to be paid still falls to be determined. All of these employees are in exactly the same boat as the applicant. If each of these employees, because of this personal prejudice, have an open ticket to this Court on an urgent basis, it would be a recipe for chaos completely overwhelm the urgent Court and compel the Court to decide such cases in a manner that is simply not appropriate. And finally, with the applicant being reinstated, he is currently

[37] Id at paras 30 – 31.

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actually earning and being paid a salary, and this has been ongoing since 1 July 2025.

[47] Importantly, as a general proposition, financial hardship is not a abasis for urgency, barring truly exceptional circumstances.[38] This was made clear by the LAC in *De Beer v Minister of Safety and Security and Another*[39] where the Court decided: *'… The grounds for 'semi-urgency' which were primarily relied upon by the appellant, were that he was not receiving a salary and had no other source of income, his savings were almost exhausted and that he had ongoing financial commitments that he could not, or had difficulty in honouring. The loss of salary and benefits, with the concomitant financial hardship, are not regarded as sufficient to establish urgency …*'. Further, even this kind of prejudice, as has been discussed earlier in this judgment, can never serve to negate the existence of full substantial redress in the ordinary course being available, as there is nothing in these considerations that can detract from the applicant's ability to get that redress. As held in *O'Connor v LexisNexis (Pty) Ltd*[40]:

> 'To pass the first leg of the urgency test the applicant need only show that it will not obtain 'substantial redress' in the normal course. This is not equivalent to irreparable harm; it is something less. What constitutes 'substantial redress' will depend on the facts of each case, but generally speaking financial compensation in due course, plus interest, will meet this definition.'

[48] In summary, I am unconvinced that the applicant's application should be decided as one of urgency. The applicant unduly procrastinated and did not act at the first reasonably available opportunity. The urgency the applicant sought to create by way of his correspondence to the first respondent in March and April 2026 is nothing else but self-created urgency. The manner in which the applicant conducted this urgent application caused the first respondent undue prejudice, and compromised its ability to properly engage

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[38] *Northam Platinum* (*supra*) at para 37; *Maphalle* (*supra*) at para 28; *Democratic Nursing Organisation of SA and Another v Director-General, Department of Health and Others* (2009) 30 ILJ 1845 (LC) at para 19; *Jonker v Wireless Payment Systems CC* (2010) 31 ILJ 381 (LC) at para 16.

[39] (2013) 34 ILJ 3083 (LAC) at para 32.

[40] (2024) 45 ILJ 1287 (LC) at para 23. See also para 24 of the judgment.

in this matter and answer the applicant's claim. The amended notice of motion introduced a pure monetary claim for damages, which as a general proposition is never an urgent claim. The applicant has full and complete substantial redress available in the ordinary course. And lastly, there are simply no exceptional circumstances justifying urgent intervention. The application thus falls to be struck from the roll, not only on the basis of a lack of urgency, but also because of the manner in which it was brought and prosecuted.

Costs

[49] This only leaves the question of costs. Ironically, the very basis on which the applicant decided to bring the application works against him where it comes to costs. Because this does not concern a case under the LRA, the applicant does not enjoy the kind of costs immunity applicable to employment disputes under the LRA articulated by the Constitutional Court in *Zungu v Premier of the Province of KwaZulu-Natal and Others*[41]. Because this is in essence a contract claim, there is no reason why the normal principles relating to costs should not apply, being that costs follow the result. As held in *Pilanesberg Platinum Mines (Pty) Ltd v Ramabulana*[42]: *'… because this is a civil matter, there is no reason why costs should not follow the result …* '

[50] In any event, and even when exercising the wide discretion I have where it comes to costs under section 162(1) of the LRA, I believe a costs order against the applicant is justified. In bringing the application the applicant took up the valuable time and abused the already stretched resources of this Court. And in the applicant doing so, he compelled the first respondent to defend the case out of the constrained taxpayers purse, which is not acceptable.[43] What in reality happened in this instance is an abuse of

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[41] (2018) 39 ILJ 523 (CC) at para 24.
[42] (2019) 40 ILJ 2723 (LAC) at para 33. See also *Baise v Mianzo Asset Management (Pty) Ltd* (2019) 40 ILJ 1987 (LAC) at para 48.
[43] See *Botes v City of Johannesburg Property Co SOC Ltd and Another* (2021) 42 ILJ 530 (LC) at para 50; *Moses v Commission for Conciliation, Mediation and Arbitration and Others* (2019) 40 ILJ 2371 (LC) para 21.

process,[44] especially considering the manner in which this matter was pursued, as discussed earlier in this judgment. This Court has consistently said that this kind of unfounded litigation is deserving of costs orders.[45] The applicant must be told, in no uncertain terms, hopefully also serving as an example to others, that exercising his right of access to the Courts must be done in a responsible manner.[46] As pertinently said in *Choko-Choko and Others v Tharisa Minerals (Pty) Ltd*[47]:

> 'A costs order is a method of ensuring that decisions to litigate in this court are taken with due consideration of the law and the prospects of success, more so where an application is filed on an urgent basis.'

[51] And finally on the issue of costs, and considering the applicant was at all times legally assisted, I believe the following warning dispensed by the Court in *Mohlahlo supra* to be quite apposite:[48]

> 'It should be clear that when a client approaches a practitioner about an urgent application, the practitioner should determine the facts of the matter and whether the client can obtain real relief to protect his rights in due course. If not, then urgent proceedings should be recommended.'

[52] For all the reasons as set out above, I exercise my discretion by deciding that a costs award against the applicant is justified and fair, and the applicant should be ordered to pay the first respondent's costs, on the party and party scale B.

<u>Conclusion</u>

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[44] Compare *Pillay v Santam Ltd and Another* (2020) 41 ILJ 2695 (LC) at para 19.

[45] See for example *Democratic Nursing Organisation of SA on behalf of Ramaroane v Member of the Executive Council for Health, Gauteng Province and Others* (2019) 40 ILJ 2533 (LC) at para 20; *Sihlali and Others v City of Tshwane Metropolitan Municipality and Another* (2017) 38 *ILJ* 1692 (LC) at para 29.

[46] See *Ntombela and Others v United National Transport Union and Others* (2019) 40 ILJ 874 (LC) at para 70; *Mashishi v Mdladla NO and Others* (2018) 39 ILJ 1607 (LC) at para 14; *Ngobeni v Passenger Rail Agency of SA Corporate Real Estate Solutions and Others* (2016) 37 ILJ 1704 (LC) at para 14.

[47] (2025) 46 ILJ 2618 (LC) at para 80.

[48] Id at para 16. See also *Choko-Choko* (*supra*) at para 79.

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[53] In conclusion, it is for all the reasons set out in this judgment, as aforesaid, that I had made the order that I did on 19 May 2026, as set out in paragraph 2, *supra*.

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S Snyman

Acting Judge of the Labour Court of South Africa

<u>Appearances:</u>

For the Applicant: Advocate B Ford together with Advocate T Moloi

Instructed by: Matsepane Inc Attorneys

For the Respondents: Advocate L R Naidoo SC

Instructed by: Luthuli Sithole Attorneys

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