THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case no: 2026 – 111057

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

29 May 2026

In the matter between:

AEGIS OUTSOURCING SOUTH AFRICA (PTY) LTD
t/a STARTEK **Applicant**

and

KRISHNAVENI GOVENDER & 20 OTHERS **First Respondent**

THE STANDARD BANK OF SOUTH AFRICA LIMITED **Second Respondent**

THE SHERIFF, DURBAN COASTAL **Third Respondent**

Heard: **20 May 2026**

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 29 May 2026.

Summary: Urgent stay application – principles considered – application urgent – no substantial redress in ordinary course – application considered as one of urgency

Stay of execution – principles considered – stay pending petition for leave to appeal – Rule 45A of Uniform Rules – s 18 of Superior Courts Act – proper basis for stay made out

Stay of execution – discretion of the Court – principles relating to discretion considered – appeal against *causa* of order justifying stay – irreparable harm to applicant if stay not granted – merits of appeal not relevant – proper case for stay made out

Costs – respondents pursuing execution when entirely inappropriate – attempt by applicant to secure undertaking spurned – conduct of respondents unreasonable – costs order justified

---

JUDGMENT: REASONS

SNYMAN, AJ

Introduction

[1] In this instance, the applicant has brought an urgent application to stay the execution of a judgment (order) of this Court given on 19 November 2025. The applicant seeks interim relief, as the stay of execution is sought pending an application (petition) for leave to appeal the applicant intends to pursue to the Labour Appeal Court (LAC). As the applicant seeks interim relief, it needs to satisfy four requirements, as set out in in *National Council of SPCA v*

Openshaw[1] as follows: *'… (a) A prima facie right. What is required is proof of facts that establish the existence of a right in terms of substantive law; (b) A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted; (c) The balance of convenience favours the granting of an interim interdict; (d) The applicant has no other satisfactory remedy …*'.

[2] The application has been opposed by all the individual first respondents, save for Krishnaveni Govender (Govender), who has indicated, in a notice to oppose, that she would abide by the decision of the Court and would only oppose any costs order sought against her. Govender had her own legal representative, distinct and separate from the legal representative of all the other first respondents. These other first respondents have filed an answering affidavit, challenging the merits of the applicant's application, as well as urgency. For ease of reference, I will refer to all of the first respondents that are opposing this matter as '*the individual respondents*'.

[3] As will be dealt with later in this judgment, I believe this application should never have been necessary. This is a case where, if the individual respondents had simply applied a modicum of common sense, they would not have persisted with seeking execution of the Court order of 19 November 2025. Instead, a combative approach was adopted, and considering what was at stake, it must have been patently apparent what the applicant would have to do to stop manifest and irremediable prejudice to it and its business. So here we are.

[4] The above said as introduction, this matter came before me for argument on 20 May 2026. After hearing argument on behalf of the applicant and the individual respondents, and having perused the pleadings by both parties, I granted the following order on the same day:

1. The applicant's non-compliance with the rules of court is condoned and the matter is heard on an urgent basis in terms of Rule 38(2).

2. The writ of execution issued out of the Labour Court under case

[1] 2008 (5) SA 339 (SCA) at para 20.

number D378/2024 at the instance of the first respondents is suspended pending the final determination of the applicant's application to the Labour Appeal court for leave to appeal against the Labour Court's Judgment dismissing the application for leave to appeal and any further competent proceedings thereafter.

3. The third respondent is ordered to uplift any attachment already made in terms of the writ of execution under case number D378/2024.

4. The second respondent is ordered to uplift any hold over the applicant's account held by it that was placed on the applicant's account virtue of the writ or warrant of execution under case number D378/2024.

5. The first respondents, save for Krishnaveni Govender, are ordered to pay the costs of the application on the party and party scale B.

6. Written reasons for this order will be provided on 29 May 2026.

This judgment now constitutes the written reasons in terms of paragraph 6 of the above order.

Background facts

[5] The background facts in this case are straight forward, and mostly undisputed. It speaks of a long and unfortunate process of litigation, but this earlier litigation only involved the applicant at the latter stages thereof.

[6] The individual respondents are former employees of Telkom SA SOC Ltd (Telkom), who were transferred to WNS Global Services (Pty) Ltd (WNS) in 2014 / 2015 by way of section 197 of the Labour Relations Act (LRA)[2]. However, and in 2016, the individual respondents were dismissed by WNS, and the fairness of their dismissals was then challenged by them. This challenge proceeded through various stages of litigation, which included arbitration, Labour Court proceedings involving a review application, as well as an application to reinstate the review, and the whole matter ultimately ended

[2] Act 66 of 1995 (as amended).

up in the LAC. At all times, these legal proceedings were between the individual respondents and WNS, and did not involve the applicant at all.

[7] The appeal as aforesaid, under case number DA 2 / 2022, was heard on 12 September 2023. In a judgment handed down on 26 February 2024, the LAC upheld the appeal, and reinstated the review application that had been bought by the individual respondents. The LAC further set aside an arbitration award that had been handed down in favour of WNS that was the subject matter of the review application by the individual respondents, substituted such award with a determination that the dismissals of the individual respondents were unfair, and determined that they be reinstated in their former positions at the remuneration they would have earned but for their dismissals. The LAC further awarded back pay until 1 January 2023. The judgment is reported as *Govender and Others v Commission for Conciliation, Mediation and Arbitration and Others*[3].

[8] But whilst all this litigation between the individual respondents and WNS was ongoing, the applicant had taken over the business of WNS as a going concern and had taken transfer of the business in terms of section 197 of the LRA. This transfer took place on 1 October 2021.

[9] Following the order of the LAC as aforesaid, which was only made against WNS, the individual respondents brought an application against the applicant on 11 July 2024 in the Labour Court under case number D 378 / 2024, in which the individual respondents sought declaratory and consequential relief to enforce the LAC order against the applicant. Or differently put, the individual respondents brought legal proceedings to enforce the LAC order made against WNS, against the applicant as well, based on the section 197 transfer that happened in October 2021.

[10] The individual respondents' application came before Bulose AJ on 2 May 2025, where it was argued by the parties. In a judgment handed down on 19 November 2025, the learned Judge granted the individual respondents the relief sought, which relief directed the applicant to implement the reinstatement of the individual respondents at its business, and also discharge the payment

[3] (2024) 45 ILJ 1197 (LAC).

obligations as contained in the order of the LAC made against WNS in favour of the individual respondents. In short, the order by Bulose AJ made the applicant liable towards the individual respondents in respect of the order granted against WNS, despite the applicant not being a party to the earlier proceedings.

[11] The applicant brought an application for leave to appeal on 28 November 2025. Ordinarily, this would stay any enforcement of the Labour Court judgment of 19 November 2025. However, and undeterred by the application for leave to appeal, the individual respondents sought to execute the payment provisions of the Labour Court order, had a warrant of execution issued on 17 December 2025, and caused the sheriff to attach the applicant's only operating bank account in execution of such order.

[12] This resulted in an urgent application brought by the applicant under case number 2025 – 250383 to stay the execution of the Labour Court order pending the final determination of its application for leave to appeal. On 24 December 2025, Lallie J granted the applicant's urgent application, and suspended the warrant of execution issued under case number D378/2024 pending the outcome of the application for leave to appeal lodged on 28 November 2025. The order further directed the Sheriff and Standard Bank to uplift the attachment and banking hold on the applicant's operating bank account.

[13] This stay in execution continued until a judgment dated 5 May 2026 was handed down by Bulose AJ, dismissing the application for leave to appeal with costs. Not letting any grass grow under their feet, the individual respondents virtually immediately caused the warrant of execution issued on 17 December 2025 to again be executed by the Sheriff. The Sheriff was instructed by the individual respondents on 12 May 2026 to effect the attachment, and on the same day, the Sheriff once again attached, in execution, the applicant's only operating bank account, for a sum of R37 765 912.79. Standard Bank was compelled to put a hold on the account as a result.

[14] However, and before the Sheriff was even instructed by the individual respondents to execute the writ of execution, and on 8 May 2026, the applicant's attorneys sent an e-mail to the individual respondents' attorneys,

informing them that the applicant had given instructions that a petition for leave to appeal be pursued to the LAC, as Bulose AJ had now refused leave to appeal. It was stated that the applicant would do so expeditiously, however the applicant had, in terms of the Rules of the LAC, until 27 May 2026 to file petition for leave to appeal. The applicant's attorneys in the e-mail *inter alia* requested the individual respondents to confirm that they will not report for duty and / or proceed with execution of the order, pending the expiry of the period for the petition for leave to appeal to be filed.

[15] The individual respondent's attorneys did not even answer this e-mail. Instead, the individual respondents reported for work at the applicant on 11 May 2026 and refused to leave. This prompted a further letter, sent on 11 May 2026 by the applicant's attorneys to the individual respondents' attorneys, confirming that the applicant would pursue a petition for leave to appeal to the LAC, and had until 27 May 2026 to file it. It was indicated that the applicant had a legal right to file such a petition. The individual respondents were warned that any attempt to still execute the order under such circumstances would be an abuse of process. The individual respondents were requested to provide a written undertaking by close of business on 13 May 2026 that they would not proceed with execution of the order, pending the petition for leave to appeal to follow.

[16] Despite this letter, as well as the e-mail of 8 May 2026, the individual respondents simply proceeded with the execution on 12 May 2026, as referred to above, without even seeking to engage with the applicant. In fact, and only on 14 May 2026, after the execution had already been effected, did the individual respondents' attorneys answer by e-mail indicating that in their view, that there was no basis for the leave to appeal, the petition was ill-advised, and an application would be made in terms of section 18 for interim enforcement should it be filed. It was stated that execution would be proceeded with, nonetheless.

[17] This left the applicant with no alternative but to institute the current application. I will now turn to deciding this application, by first dealing with the issue of urgency.

<u>Urgency</u>

[18] The individual respondents have disputed that the application is urgent. They contend that the applicant has not made out a sufficient case of urgency and that any urgency was self-created. And further, they claim this matter is only about financial losses, which are not urgent.

[19] 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: Department of Justice and Constitutional Development and Others*[4] said the following concerning the application of Rule 8: *'… 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.

[20] A critical consideration for establishing urgency is 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.[5] If there is in fact substantial redress available in the ordinary course, urgent relief should be declined, but if not, then urgent relief should ordinarily be granted. This was made clear in *Madonsela v Legal Practice Council and Others*[6] as follows:

> '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,

[4] (2010) 31 ILJ 112 (LC) at para 18.
[5] See *Mojaki v Ngaka Modiri Molema District Municipality and Others* (2015) 36 ILJ 1331 (LC) at para 17; *Maqubela v SA Graduates Development Association and Others* (2014) 35 ILJ 2479 (LC) at para 32; *Transport and Allied Workers Union of SA v Algoa Bus Co (Pty) Ltd and Others* (2015) 36 ILJ 2148 (LC) at para 11; *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.
[6] (2025) 46 ILJ 2664 (LC) at para 18.

however, such substantial redress is available in due course, then the court ought to refuse to accord the matter urgency.'

[21] Where an applicant seeks final relief, the Court must be even more circumspect when deciding whether or not urgency has been established.[7] In *Tshwaedi v Greater Louis Trichardt Transitional Council*[8] 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. ….*'. In this instance the applicant is seeking interim relief pending the final determination of an appeal, so such precautionary circumspection is not really relevant.

[22] 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*[9] 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.*' As will be discussed below, the issue of prejudice, both to the applicant and the individual respondents, is intricately interwoven with the merits of the case in respect of the stay of execution relief sought by the applicant. This consideration, for the reasons discussed later, favours the applicant.

[23] 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.[10] As the Court said in *Northam Platinum supra*[11]: *'… 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*

[7] [2002] JOL 9452 (LC) at para 8.
[8] [2000] 4 BLLR 469 (LC) at para 11.
[9] (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.
[10] 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.
[11] 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.

urgency is diminished. In short, the applicant must come to Court immediately, or risk failing on urgency. …' And in *Madonsela supra* the Court added:[12]

> '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.'

[24] Applying the aforesaid *in casu*, an important consideration must be that the exact same circumstances as applicable now, in the application before me, was before the Labour in December 2025 when the applicant brought an identical urgent application to stay execution, which application came before Lallie J on 24 December 2025. Having regard to the same considerations as would be applicable to deciding urgency in this case, the learned Judge decided that the matter was urgent and granted the applicant relief. I can see no reason why a different outcome should follow in this case, where it comes to urgency.

[25] But probably the most critical consideration in this case is that there is no substantial redress available to the applicant in the ordinary course. There is no other basis upon which it can obtain the release of its only business operating bank account, which has effectively been frozen by the attachment. To suggest that the applicant can wait for relief in due course is untenable, for the simple reason that without the bank account, the applicant cannot do business. In fact, not to grant the applicant relief now could be destructive of its business. In short, to gain access to its bank account to trade the applicant needs the hold on the account to be lifted. The only way that can be done is by way of the current urgent proceedings. Thus, the fact that substantial redress in the ordinary course is not available strongly motivates this application being decided as one of urgency.

[26] On the issue of prejudice, as I have mentioned above, this is directly linked to one of the considerations this Court must decide when determining a stay of execution application. I will therefore not deal with it separately in respect of

[12] Id at para 13.

the requirement of urgency. What I will say, based on what follows later in this judgment, is that the consideration of prejudice in this case undoubtedly favours the applicant.

[27] And finally, can it be said that the applicant unduly procrastinated and failed to bring this application at the first available opportunity? Or differently put, did the applicant create its own urgency? I do not think so. I believe that the applicant acted in line with the requirement of taking expeditious action as it relates to establishing urgency. The applicant cannot be legitimately criticised for '*self-creating'* its own urgency. The undeniable reality is that the applicant had a proper stay of execution order in place until 5 May 2026, when leave to appeal was refused. It was only once leave to appeal was refused that further action became necessary. Following that, the applicant did not procrastinate. It immediately and pertinently informed the individual respondents on 8 May 2026 that it intended to pursue a petition for leave to appeal which would be brought within the time limit prescribed by the Rules of the LAC to do so. It requested an undertaking from the individual respondents not to execute in the interim. The letter went unanswered. Then the individual respondents instead simply reported for work on 11 May 2026. This prompted a formal demand to their attorneys on the same day, requesting an undertaking not to execute to be provided by 13 May 2026, for the same reasons as reflected in the e-mail of 8 May 2026. Instead of providing the undertaking or even engaging with the applicant, the individual respondents simply executed on 12 May 2026 without more.

[28] What is clear from the above factual summary is that the applicant acted immediately when receiving the outcome of the leave to appeal. It did the responsible thing by rather asking the individual respondents for an undertaking not to execute, which would avoid the need for any litigation. Its initial approach was more on an amicable basis, considering the tone and content of the e-mail of 8 May 2026. But this approach was simply spurned by the individual respondents. This prompted the applicant to follow a formal approach of a comprehensive written demand for an undertaking on 11 May 2026, with a deadline to provide it of 13 May 2026 The execution happened before the deadline to provide the undertaking even expired, The urgent application was brought on 15 May 2026, three days later, which I consider to

be prompt an immediate action. I am therefore satisfied that the applicant has acted with the necessary expedition in bringing the current application, and the contention that its urgency is self-created is devoid of merit.

[29] I must confess that I consider the conduct of the individual respondents to be in bad faith. When leave to appeal was refused, the applicant immediately informed them of its intentions, and of its right to pursue a petition for leave to appeal. They knew that the applicant had 15 days to do so. They however effectively snatched at the bargain of the order of Lallie J having expired along with the refusal of leave to appeal. They knew what was coming, and they knew what would happen if they sought to execute. To then come to this Court an in essence criticise the applicant based on a lack of urgency of its application is simply unfounded. This conduct also has a significant implication where it comes to the issue of costs, as will be dealt with the conclusion of this judgment.

[30] Therefore, I conclude that the applicant has properly made out a case of urgency. The requirements of Rule 38 have been satisfied. In sum, the applicant acted with due expedition in bringing the application, after attempting to first avoid it by seeking an undertaking. Importantly, the applicant has no substantial redress available in the ordinary course. Considerations of prejudice favours the applicant, in the sense that it will suffer irreparable harm if urgent relief is not granted. And lastly, it is simply in the interests of justice that the application be decided as one of urgency.

Analysis

[31] As touched on earlier, the purpose of the applicant's application is to obtain a stay of execution of the order of Bulose AJ of 19 November 2025, pending the exercise of the applicant's right to appeal. In this context, it must be considered that this is not an application concerned with seeking a stay of execution of arbitration awards under the LRA, pending a review application. It is those kinds of stay applications that most often entertain this Court, and the principles relating to the same have been settled. In those cases, the Court is specifically empowered under section 145(3) to stay execution, or a stay of execution can in effect be purchased by way of setting security under sections

145(7) and 145(8).[13] But section 145 does not apply in this case. What the applicant is seeking is a stay on execution of an actual order of this Court, determining a matter / dispute as a Court of first instance. In this respect, the Court in *Rham Equipment (Pty) Ltd v Lloyd and Others*[14] said:

> 'In terms of the provisions of s 163 of the Labour Relations Act 1995 (hereinafter referred to as the LRA), it is provided that any decision, judgment or order of this court may be served and executed as if it were a decision, judgment or order of the High Court of South Africa for purposes of execution. It therefore follows that once an order is made by this court, it is deemed to have the attributes of an order of the High Court. This in turn implies that it would have the same effect and consequences as far as its execution is concerned. In terms of rule 45A of the Uniform Rules of the High Court, the court may suspend the execution of any order for such period as it may deem fit. …'

[32] In the absence of a specific Rule in the Labour Court Rules dealing with the stay of execution of an order of this Court, it would thus be appropriate to apply Rule 45A of the Uniform Rules of the High Court.[15] Rule 45A reads: *'The court may, on application, suspend the operation and execution of any order for such period as it may deem fit: Provided that in the case of an appeal, such suspension is in compliance with section 18 of the Act.*' The reference to section 18 is that section as found in the Superior Courts Act[16]. The relevant provision *in casu* is section 18(1) which reads: '*Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the*

[13] See *City of Johannesburg v SA Municipal Workers Union on Behalf of Monareng and Another* (2019) 40 ILJ 1753 (LAC) at paras 7 – 10; *Rustenburg Local Municipality v SA Local Government Bargaining Council and Others* (2017) 38 ILJ 2596 (LC) at paras 23 – 28.
[14] (2008) 29 ILJ 3033 (LC) at para 9.
[15] Rule 71 of the Labour Court Rules reads: '*If a situation for which these rules do not provide arises in proceedings or contemplated proceedings, the court may adopt any procedure that it deems appropriate in the circumstances, and may act in any manner it deems expedient to achieve the objects of the Act, and in doing so may have regard to any appropriate rule in the Uniform Rules*'. See also for example *Liquid Telecommunication (Pty) Ltd v Carmichael-Brown* (2018) 39 ILJ 1779 (LC); *Langa and Another v Skyline Global Logistics and Others* (2014) 35 ILJ 1584 (LC); *Kareeberg Local Municipality and Another v Solidarity on behalf of Brittnell: In re Solidarity on behalf of Brittnell v Kareeberg Local Municipality and Another* (2025) 46 ILJ 2900 (LC), regarding instances where the Uniform Rules of the High Court were applied, in the absence of an applicable Rule in the Labour Court Rules.
[16] Act 13 of 2010.

application or appeal'.[17] Certain provisions of the Superior Courts Act equally find application in the Labour Court, as it is a Court of the same status as the High Court.[18] In particular, section 18 of the Superior Courts Act has been consistently applied in the Labour Court.[19]

[33] Where it comes to considering applications for the stay of execution of a Court order under Rule 45A, the principles to be applied was authoritatively summarised in *Gois t/a Shakespeare's Pub v Van Zyl and Others*[20], where the Court decided that:

> 'The general principles for the granting of a stay in execution may therefore be summarised as follows:
> (a) A court will grant a stay of execution where real and substantial justice requires it or where injustice would otherwise result.
> (b) The court will be guided by considering the factors usually applicable to interim interdicts, except where the applicant is not asserting a right, but attempting to avert injustice.
> (c) The court must be satisfied that:
> (i) the applicant has a well-grounded apprehension that the execution is taking place at the instance of the respondent(s); and
> (ii) irreparable harm will result if execution is not stayed and the applicant ultimately succeeds in establishing a clear right.
> (d) Irreparable harm will invariably result if there is a possibility that the underlying causa may ultimately be removed, ie where the underlying causa is the subject-matter of an ongoing dispute between the parties.
> (e) The court is not concerned with the merits of the underlying dispute - the sole enquiry is simply whether the causa is in dispute.'

[17] Section 18(2) and (3) do not find application in this case.
[18] In *Luxor Paints (Pty) Ltd v Lloyd and Another* (2017) 38 ILJ 1149 (LC) at para 13, it was said: '*Section 151 of the Labour Relations Act 66 of 1995 establishes this court as a court of law and equity, and as a superior court that has the authority, inherent powers and standing, in relation to matters under its jurisdiction, equal to that of a division of the High Court. There can be no question therefore that this court falls within the definition of a 'Superior Court' for the purposes of the Superior Courts Act. …*'. See also *Road Traffic Management Corporation v Tasima (Pty) Ltd* (2019) 40 ILJ 1785 (LAC) at para 14; *SA Municipal Workers Union v Qina and Others* (2018) 39 ILJ 2740 (LC) at para 18.
[19] For some more current examples of this see *Letsholonyane v Minister of Human Settlements and Another* (2023) 44 ILJ 2757 (LC); *Nhlapho v Member of the Executive Council, Gauteng Department of Education and Another* (2023) 44 ILJ 1772 (LC); *National Education Health and Allied Workers Union v Minister of the Public Service and Administration and Others* (2023) 44 ILJ 1207 (LAC); *Rand Water SOC Ltd v SA Municipal Workers Union on Behalf of Members and Others* (2021) 42 ILJ 1753 (LC).
[20] 2011 (1) SA 148 (LC) at para 37.

[34] The aforesaid *ratio* in *Gois supra* has been consistently applied since.[21] In particular, and in *Stoffberg NO v Capital Harvest (Pty) Ltd*[22] the Cort applied the aforesaid *dictum* in *Gois* as follows:

> 'The broad and unrestricting wording of rule 45A suggests that it was intended to be a restatement of the courts' common law discretionary power. The particular power is an instance of the courts' authority to regulate its own process. Being a judicial power, it falls to be exercised judicially. Its exercise will therefore be fact specific and the guiding principle will be that execution will be suspended where real and substantial justice requires that. 'Real and substantial justice' is a concept that defies precise definition, rather like 'good cause' or 'substantial reason'. It is for the court to decide on the facts of each given case whether considerations of real and substantial justice are sufficiently engaged to warrant suspending the execution of a judgment; and, if they are, on what terms any suspension it might be persuaded to allow should be granted.'

[35] The point of departure in deciding whether to grant a stay of execution must therefore be that where the applicant seeks to pursue an appeal challenging the *causa* of the order of Bulose AJ of 19 November 2025, the effect of section 18(1) is that any execution of such order is automatically stayed / suspended pending the conclusion of the appeal. The applicant has a right to pursue a petition for leave to appeal to the LAC, in the case where the Labour Court refuses leave to appeal. It is part and parcel of the same appeal process. It follows that what the applicant is seeking to do in this case is to assert its right to appeal. It further follows that if practically deprived of this right, which would be result of execution of the order appealed against at this point, the applicant will be materially prejudiced. The Court in *Knoop NO and Another v Gupta (Execution)*[23] held as follows in this respect:

> 'The immediate execution of a court order, when an appeal is pending and the outcome of the case may change as a result of the appeal, has the potential to cause enormous harm to the party that is ultimately successful. …

---

[21] See *Malas (Pty) Ltd v Mossie and Another* 2024 JDR 4750 (GP) at paras 9 – 10; *Dynamic Sisters Trading (Pty) Limited v Nedbank Limited* 2023 JDR 3204 (GP) at para 11; *Passenger Rail Agency of South Africa SOC Ltd (PRASA) v Sheriff for the District of Goodwood and Others* [2018] ZALCJHB 423 (27 December 2018) at paras 12 – 13; *Rham* (*supra*) at para 11.
[22] 2021 JDR 1644 (WCC) at para 26.
[23] 2021 (3) SA 135 (SCA) at paras 1 – 2.

> At common law, unless the court in the exercise of a discretion ordered otherwise, an application for leave to appeal and an appeal pursuant to leave being granted suspended the operation of the order. It was not open to the successful party to execute on, or otherwise act pursuant to, that order. …'

[36] It has been consistently said that when exercising its discretion whether or not to stay execution of a Court order pending an appeal, the Court will as a general principle be inclined to grant such a stay, where pursuing such an appeal challenges the underlying *causa* of the order, and such appeal, if successful, could materially change or alter such *causa*.[24] The possibility of this alteration in *causa* renders execution before this process is concluded inappropriate and likely unjust as well. This was made clear in *Van Rensburg and Another NNO v Naidoo and Others NNO; Naidoo and Others NNO v Van Rensburg NO and Others*[25] as follows:

> 'A court will grant a stay of execution in terms of Uniform Rule 45A where the underlying causa of a judgment debt is being disputed, or no longer exists, or when an attempt is made to use the levying of execution for ulterior purposes. As a general rule, courts acting in terms of this rule will suspend the execution of an order where real and substantial justice compels such action.'

And in *Janse van Rensburg v Obiang and Another*[26] the Court held:

> '… a court will grant a stay of execution where the underlying causa of the judgment in question is being disputed or no longer exists, or when an attempt is made to use the machinery of execution for ulterior or improper purposes.'

[37] Most of the cases found in the law reports concerning the stay of execution of a Court order for the payment of a sum of money, relates to instances where an application for rescission of the order containing the underlying *causa* is sought. But *in casu*, what is being pursued, as is clear from the above, is an appeal. Because it is an appeal, section 18(1) of the Superior Courts Act cannot be ignored. It in effect provides for an automatic stay of execution in the case of a pending appeal. The Court in *Denel SOC Ltd v National Union of*

[24] See *MEC, Department of Public Works and Others v Ikamva Architects and Others* 2022 (6) SA 275 (ECB) at para 87; *Dalrymple v Riach and Others* [2026] JOL 73621 (WCC) at para 20; *Rham* (*supra*) at para 10.
[25] 2011 (4) SA 149 (SCA) at para 52.
[26] 2023 (3) SA 591 (WCC) at para 43.

Metalworkers of SA on Behalf of Petersen and Another[27] had the following to say about this:

> '… section 18(1) automatically suspends the operation and execution of a decision which is subject to an application for leave to appeal or of an appeal pending the decision on the application or appeal.
>
> On a proper reading of s 18(1), it is not a requirement for suspension of the operation or execution of the order that the appellant or applicant must demonstrate some prospects of success before the order or execution thereof may be suspended. Clearly the legislature in legislating suspension of execution recognises that an appeal may remove the causa. A stay application gives deference to a pending decision that may upset the causa in the same way as s 18(1) gives deference to the pending appeal. Thus I still agree with Gois that in a stay the merits play no role. I also maintain that in an instance where a party seeks to disturb the deference, such a party must demonstrate that the deference does not carry its potential possibility — to remove the causa.'

[38] On the facts *in casu*, the original order of the LAC of 26 February 2024 did not pertain to the applicant. It was an order made only against WNS in favour of the individual respondents. Executing that order, as it stands, will not compromise the applicant at all, as it cannot be executed against the applicant, and can only be executed against WNS. But this is not what this case is about. It is the order made by Bulose AJ on 19 November 2025 that establishes the *causa* against the applicant, and makes the order of the LAC enforceable against the applicant. If the appeal against the order of 19 November 2025 is successful, it will materially alter the *causa* establishing the liability of the applicant towards the individual respondents, even if the underlying LAC order of 26 February 2024 stands and remains unchallenged. This being the case, as a general principle, execution of the Labour Court order of 19 November 2024 should be stayed. On the facts, there is nothing to show otherwise.

[39] There can be little doubt that any prejudice consideration by far favours the applicant. As it explained, and which was not contradicted, its only operating bank account has been attached and frozen. This means it cannot pay its

[27] (2022) 43 ILJ 2303 (LC) at paras 39 – 40.

staff, creditors or SARS. If that is not materially prejudicial to the operation of the applicant's business, it is difficult to understand what would be. In fact, this kind of prejudice could have the consequence of irreparably damaging the applicant's business, which is not in the interest of anyone. Then it comes to the sum of money attached. It is close on R38 million. To take this sum of money out of the applicant's cash flow in one shot is obviously materially prejudicial as well, especially considering that there is a chance that such liability may be entirely expunged if the appeal is successful. The only alternative available to the applicant, other than this application, was to seek an undertaking, which it did, but this was spurned by the individual respondents.[28] These considerations also support a stay of execution.

[40] If the execution is not stayed, the Sheriff would be compelled to pay the amount attached over to the individual respondents. And once that is done, there is little likelihood that it will ever be recovered, even if an appeal is successful. It is undisputed that the individual respondents are not persons of means, and it would be likely that they would not be able to repay the monies paid to them in terms of the execution, in the case of a successful appeal. This will result in the applicant having to incur further expense and effort to try and recover the same, without any guarantees of recoupment. This compounds what is effectively already irremediable prejudice caused by having to pay it in the first place. At a practical level, it is tantamount to a *de facto* forfeiture of the applicant's right to challenge its indebtedness to the individual respondents in the first place. As explained in *Rham supra*:[29]

> '… It is also undisputed on the papers that, unless the stay of execution is granted, the applicant will loose his right to dispute his indebtedness. It is furthermore also undisputed on the papers that the respondent is a man of straw and that it is likely that the applicant will have no recourse against him should the sale in execution be allowed to proceed.'

And in *Denel supra* the Court held:[30]

---

[28] As said in *Minister of Forestry Fisheries and Others v Siyabonga Fishing (Pty) Ltd* 2026 JDR 1138 (WCC) at para 76, where one of the reasons given by the Court for granting a stay of execution was: '*The only alternative remedy available to the applicants, an undertaking was refused*'.
[29] Id at para 13.
[30] Id at para 45. See also *Siyabonga Fishing* (*supra*) ay paras 74 – 75.

> 'Therefore, real and substantial justice requires that the contested default award be stayed otherwise an injustice will result. There is a real and substantial risk that Denel may not recover the money from Petersen once the default arbitration award is reversed after having been put into operation. Such constitutes irreparable harm. The balance of convenience certainly favours Denel. Denel will suffer greater harm should the stay be refused.'

[41] Turning to the issue of balance of convenience and prejudice, as opposed to the prejudice suffered by the applicant if execution is not stayed, the prejudice suffered by the individual respondents if it is stayed, is somewhat diminished. The undeniable reality is that stopping the execution does not in any manner whatsoever diminish the existing liability the applicant has towards the individual respondents in terms of the order of 19 November 2025. If an appeal is unsuccessful, the individual respondents would still be able to execute it. The delay in payment could be ameliorated by an appropriate award of interest, considering it is about the payment of fixed monetary amounts. In the end, and even if it may take longer, the individual respondents could obtain full redress in the case of an unsuccessful appeal.[31]

[42] The individual respondents have complained that they have been waiting for some ten years to get what was due to them, and have been consistently frustrated and prejudiced by unjustified litigation by their employer. The difficulty with this contention is that it does not really apply to the applicant. This may be justified criticism dispensed at WNS, but the applicant itself was never a party to any of this. It only came into the picture in July 2024 when the proceedings under case number D 378 / 2024 was instituted against it. That litigation proceeded in the normal course without undue delay and dilatory tactics on the part of the applicant. It is simply wrong to paint the applicant with the same brush as WNS. Insofar as the individual respondents are critical about the applicant's decision to pursue an appeal, little needs to be said about it, other than making it clear that it is the applicant's right to pursue an appeal, and it cannot be criticised for pursuing what it is legally entitled to pursue. If the LAC may later find the appeal to be completely lacking in merit, that is the kind of situation what would be addressed by an appropriate costs order. But it cannot serve as a basis to scupper the stay of execution.

[31] See *Obiang* (*supra*) at paras 50 – 51.

[43] This brings me neatly to the next point, namely the individual respondents' contention that the appeal is effectively hopeless and has no prospects of success. In fact, the bulk of what is contained in the answering affidavit is devoted to illustrating how unmeritorious the applicant's proposed petition for leave to appeal would be. The problem with this contention is that it calls upon this Court to decide whether the appeal has merit, which is an issue specifically designated to the LAC to decide. This Court should therefore not pronounce on, or consider, the prospects of success on appeal, when exercising its discretion whether or not to stay execution. All this Court must consider is whether the underlying *causa* could be altered as a result of the appeal. In short, prospects of success on appeal is not a relevant consideration. This was dealt with in *Dalrymple v Riach and Others*[32] in the following manner:

> 'The correct threshold is a possibility that the underlying causa may ultimately be removed, in which event irreparable harm will invariably result if the stay of execution is not granted.
>
> … the sole inquiry being simply whether or not the causa is in dispute. In this regard, and to the extent that the bulk of the first respondent's oral and written argument was dedicated to the merits of the rescission application, this approach was incorrect. It is legally unsustainable and therefore unhelpful to the first respondent's defence.'

[44] The last point made by the individual respondents is that when the order was executed, there was no petition for leave to appeal filed, and thus there was no appeal pending that could be considered to be a legitimate challenge to the underlying *causa* of the order. This argument, in my view, is entirely short sighted, and completely negates what exactly the applicant's rights are under the Rules of the LAC, which regulate to the process relating to the right to appeal. Rule 4(5) provides that: '*A petition must be delivered within 15 days of the date on which leave to appeal is refused …*'. These are Court days.[33] Leave to appeal was refused on 5 May 2026, which means that the prescribed time period only expires on 27 May 2026. The applicant clearly indicated to the

[32] [2026] JOL 73621 (WCC) at paras 18 – 19.
[33] See the definition of 'day' in Rule 1 of the LCA Rules.

individual respondents its intention to pursue this course of action, in writing, on 8 and 13 May 2026, and undertook to do so by the stipulated deadline. There is nothing to indicate that the applicant will not pursue this course of action in time, and truth be told with due regard to the events so far, I believe that it is undeniable that it would. This state of affairs has the same effect, where it comes to deciding a stay of execution, as an extant petition for leave to appeal, at least until the deadline for bringing it expires.

[45] A pertinent example of the above can be found in the judgment of *Sheriff, High Court, Giyani v Makhubele*[34]. Whist it is true that case was decided in the context of a contempt order being granted against a litigant seeking leave to appeal, it must be remembered that contempt proceedings are nothing else but execution of a court order *ad factum praestandum*. It is for all intents and purposes the same as executing a monetary sum by way of attachment by the Sheriff. In *Makhubele supra*, there was a Court order directing the Sheriff to pay Makhubele an amount of approximately R220 000 realised from a sale in execution at a public auction. The Sheriff pursued an application for leave to appeal against that order, however leave to appeal was refused. Immediately upon leave to appeal being refused, Makhubele demanded compliance with the original order, failing which contempt proceedings would be pursued. The Sheriff answered that he intended to file a petition for leave to appeal, and payment would not be made until this had been finalised. Similar to the case *in casu*, the Sheriff was still within the time limit allowed for filing such a petition. Makhubele nonetheless proceeded and obtained a contempt of court order in the High Court against the Sheriff for failing to pay the amount. The Sheriff had argued in these contempt proceedings that he could not be regarded as having been *mala fide* in not complying with the court order, in circumstances where he had made it clear that he intended to challenge the order and was still within the prescribed time period for lodging a petition prescribed by the Rules. The SCA upheld the appeal by the Sheriff, and *inter alia* held as follows, in finding that a contempt order should not have been granted:[35]

> 'The problem was compounded when the High Court granted a contempt order in circumstances where the sheriff had at all times evinced an intention

[34] 2025 (6) SA 212 (SCA).
[35] Id at para 66.

> to appeal the July order and when he was still within the 30 days prescribed by the rules of court to do so. In fact, this court ultimately granted leave to appeal on petition to the full bench of the Limpopo Division of the High Court, Thohoyandou, against the July order. The appeal has not yet been heard. Should the sheriff be successful, then the potential for harm alluded to in Knoop (Execution) would come to pass.'

[46] The same considerations as in *Makhubele supra* equally apply *in casu*. The applicant had indicated its clear intention to pursue a petition for leave to appeal. It was still well within the time limit allowed to do so. Should the appeal ultimately be successful, the applicant would suffer irreparable harm where it comes to restoring the *status quo* prior to execution. Worse still, a successful appeal will expunge the liability of the applicant to pay, *per se*. The appeal process must therefore be allowed to run its course, and whist that is happening, any execution of the order by Bulose AJ of 19 November 2025 must be stayed.

[47] I believe one final consideration bears specific mention. As made clear in *Obiang supra*, a stay of execution may be justified where the execution process is being used for ulterior purposes. *In casu*, and unfortunately, I believe this to be the case. Considering what was at stake, and the amount involved, the individual respondents clearly knew what would happen where it came to effecting execution at this point. The applicant's position and intent with regard to an appeal was made clear in the application for leave to appeal. When the individual respondents, despite this pending leave to appeal, sought to nonetheless execute, an urgent stay order was sought by the applicant, and granted. When leave to appeal was refused, the individual respondents were immediately told by the applicant what would follow, and undertakings not to execute was sought from them. Without even attempting to engage with the applicant, they simply executed. This is bad faith and improper execution, designed to put undue pressure on the applicant and its business. It cannot be allowed to perpetuate.

[48] For all the reasons as set out above, I was convinced that it would be justified and fair to grant the applicant's application to stay the execution of the order of Bulose AJ of 19 November 2025, pending the finalisation of the applicant's petition for leave to appeal, and any appeal process that may follow after that.

This is because the applicant is seeking to assert a right it has, and the execution of the order at this stage will only serve to inappropriately and unfairly compromise and / or diminish that right. The merits of the pending appeal is simply not a relevant consideration, as that will be left up to the LAC to decide. But what is undeniable, which is all that needs to be considered, is that a successful appeal, based on the grounds of appeal raised by the applicant, will materially alter the underlying *causa* of the order forming the basis of the execution. The balance of convenience favours the applicant, and it would be materially prejudiced if the execution of the order is not stayed at this stage. And lastly, nothing that was considered when grating the stay of execution in this case can serve to diminish the individual respondents' right to still execute the order in the case of an ultimately unsuccessful appeal. The applicant is thus entitled to the relief it seeks in its notice of motion.

Costs

[49] This then only leaves the issue of costs. In this respect, and in terms of section 162(1), I have a wide discretion. The individual respondents were legally assisted throughout these proceedings, and thus should thus have known, from the outset, that the current application was bound to succeed. This was especially evident from the fact that an identical order had already been granted under identical circumstances on 24 December 2025, despite their opposition. I believe that the individual respondents snatched at the bargain resulting from the unfortunate fact that the order of 24 December 2025 did not apply to any further appeal process, other than the application for leave to appeal, which would ordinarily be the case. There was no legitimate reason for the individual respondents to have refused to provide the applicant the undertakings it sought on both 8 and 11 May 2026 until at least the deadline for filing the petition for leave to appeal had expired. The individual respondents' attorney conceded that despite knowing the applicant's position, it was pertinently decided to proceed with execution. I find this conduct to be in bad faith, and entirely unreasonable.

[50] I also consider the fact that the individual respondents did not even bother to engage the applicant where it came to its correspondence of 8 and 11 May 2026. They simply executed, without more. And to then make it worse, the individual respondents' attorneys answered only 14 May 2026, after the

execution, stating that the applicant's intended appeal is hopeless and they will proceed with execution. Again, I consider this behaviour to be unacceptable, and the kind of approach adopted by the individual respondents should be frowned upon.

[51] The criticism of the conduct of the individual respondents can perhaps be best illustrated by having regard to what Govender did, as one of the first respondent parties in this case. Govender had her own attorney representing her. That attorney clearly appreciated what was at stake, and that the execution of the order at this stage would not be appropriate or justified. In that context, I was informed by her attorney that Govender never sought execution of the order in her favour because of the pending appeal process, and that she had no objection to execution of the award being stayed. She only became involved in the matter because of a possible costs order against her. A modicum of due case displayed by the legal representatives for the individual respondents would have yielded the same responsible approach.

[52] I am mindful of the sentiments expressed by the Constitutional Court in In *Union for Police Security and Corrections Organisation v SA Custodial Management (Pty) Ltd and Others*[36] concerning costs orders in employment disputes. However, this is not a blanket immunization against costs orders. Costs may still be awarded by this Court, if the facts justify it, and if there are proper substantive reasons for such orders. In this respect, I fully align myself with the following *dictum* in *Mokoena v Merafong Municipality and Others*[37]:

> 'In casu, the applicant brought a meritless application to this court and fairness dictates that the respondents cannot be expected to endure enormous costs defending litigation where more thought and consideration had to be put in before approaching this court on an urgent basis. …'

[53] Whilst it is true that the Court in *Mokoena supra* was talking about a costs award against an applicant that brought an unmeritorious application, the same sentiment must equally apply to opposition to an application, which opposition is completely lacking in merit. And that certainly was the case with the opposition by the individual respondents in this case. Considering the legal

[36] (2021) 42 ILJ 2371 (CC) at para 35. See also *Zungu v Premier of the Province of Kwa-Zulu Natal and Others* (2018) 39 ILJ 523 (CC) at para 25.
[37] (2020) 41 ILJ 234 (LC) at para 36.

principles as set out above, the opposition to the current application, especially considering that the individual respondents had refused to provide the undertakings sought that would have avoided it, was in my view hopeless. In *Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others*[38] the Court had the following to say:

> 'Whether a case is hopeless has two aspects. It is hopeless if it is advanced on a basis that is legally untenable. It is also hopeless if it is advanced in the absence of any credible evidence to support it. These are categories that have long been recognised in our law and practice. A case is legally hopeless if it could be the subject of a successful exception. It is factually hopeless if the evidence available and potentially available after discovery and other steps directed at procuring evidence will not sustain the cause of action on which the claim is based. …'

[54] I finally consider that what the individual respondents did in seeking to execute the order of 19 November 2025 under the circumstances of this case was an abuse of process. The following dictum in *Leshabane v Minister of Human Settlements and Others*[39] is apposite:

> '… What in reality happened in this instance as abuse of process. This court has consistently said that this kind of unfounded litigation is deserving of costs orders. 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 and always in compliance with the rules and processes of the court.'

[55] All said, I believe this is a situation where a costs order against the individual respondents is certainly earned, and justified, with the appropriate order being a party and party costs order, scale B. Govender must however be excluded from any such costs order, considering the responsible and proper approach she chose to adopt.

Order

[56] It is for all the reasons as set out above that I made the order that I did as reflected in paragraph 4 of this judgment, *supra*.

---

[38] 2013 (2) SA 213 (SCA) at para 35.
[39] (2024) 45 ILJ 833 (LC) at para 58.

_____

S Snyman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Advocate W N Shapiro SC
Instructed by:	Allardyce & Partners Inc
For the First Respondents:	Ms S Moore from Moore & Associates
For Respondent Govender:	Mr R B Donachie of Henwood Britter & Caney