



(1) Reportable No
(2) Of interest to other Judges: No

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: 2026/ 113638

In the matter between:

MEC FOR THE DEPARTMENT OF HUMAN SETTLEMENT,

GAUTENG PROVINCE

First Applicant

THE HEAD OF DEPARTMENT: GAUTENG PROVINCIAL

DEPARTMENT OF HUMAN SETTLEMENTS

Second Applicant

and

MAFUTHA DANIEL SKHOSANA

First Respondent

SHERIFF JOHANNESBURG CENTRAL

Second Respondent

Heard: 26 May 2026

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email; and publication on the Labour Court website and released to SAFLII. The date for hand-down is deemed to be on 27 May 2026

JUDGMENT

MOTSHEKGA, AJ

Introduction

- [1] This is an opposed urgent application wherein the applicants, the MEC for the Department of Human Settlements, Gauteng Province, and the Head of Department: Gauteng Provincial Department of Human Settlements, seek to stay a writ of execution pending the final determination of a rescission application instituted under case number JR 2125/24.
- [2] The order sought to be stayed was granted by this Court on 3 September 2025. It directed the reinstatement of the first respondent and the payment of arrear remuneration.
- [3] The rescission proceedings remain pending before this Court, with the Judge President having directed the parties to file heads of argument therein.
- [4] Notwithstanding, the first respondent has proceeded with enforcement of the order; a writ has been issued and the Sheriff, being the second respondent in the matter, has commenced with execution proceedings against the applicants' property.

Urgency

- [5] The applicants submit that the matter is urgent on the basis of the impending execution process. The first respondent contends that the urgency is self-created
- [6] Briefly, the chronology is as follows. The order was granted on 3 September 2025. It was served on the applicants, together with a letter of demand, on 8 September 2025. The applicants filed their rescission application on 30 September 2025, without any simultaneous application to stay execution.

- [7] That a rescission application does not suspend a competent order is incontrovertible.
- [8] In February 2026, the first respondent approached this Court before Justice Lallie on an urgent basis seeking a declaratory order that the 3 September 2025 order was executable. Absent any undertaking to the contrary, the applicant ought to have reasonably apprehended that enforcement would follow.
- [9] The Sheriff attended at the Applicants' premises on 5 May 2026. This urgent application was launched on 19 May 2026, eight months following the order and a letter of demand being served on the applicants.
- [10] The chronology is disconcerting. The applicants were expressly warned from 8 September 2025 that enforcement would follow noncompliance with the order. They did not file a stay in the ordinary course when they launched the rescission application. Not even an application to this Court to declare the order executable prompted the applicants to approach the Court for a stay of the execution. It was only when the Sheriff was at their doorstep that they deemed it fit to approach this Court for a stay. Accordingly, the submission by the applicants' counsel that the Sheriff's attendance at the applicants' premises was the 'trigger' is unsustainable.
- [11] However, even where urgency is self-created in material respects, the Court retains a discretion to hear the matter where the interests of justice so demand. In the present matter, the execution has already commenced. The property attached belongs to a provincial department and is utilised in the discharge of its constitutional and statutory obligations. The prejudice confronting the applicants is palpable. This Court is satisfied that, notwithstanding that the applicants contributed to the urgency, the interests of justice warrant the matter being heard.

The stay of execution

- [12] Turning to the merits of the application for a stay. The applicants have instituted rescission proceedings in respect of the underlying order. Those proceedings are extant and appear to be at a progressive stage. The first

respondent contends that the rescission application is without merit and is fatally defective. As correctly submitted by counsel for the applicants, this Court is not called upon to determine the merits of the rescission. It suffices that the underlying dispute between the parties accordingly remains alive.

- [13] The first respondent's right to enforce the order is not in dispute. However, the Court finds that the balance of convenience favours the granting of a stay. The continued attachment and imminent removal and sale of such property will cause unnecessary interruptions to the effective functioning of the Department. The prejudice to the first respondent, by comparison, can be mitigated by an order for security, which has been tendered by the applicants during oral submissions.

Costs

- [14] The Constitutional Court in *Sibongile Zungu v Premier of the Province of KwaZulu-Natal and Others*¹ confirmed that the rule of practice which in terms of which costs follow the result does not apply to labour matters. The discretion to award costs is to be exercised in accordance with the principles of law and fairness.²
- [15] As recorded above, the applicants were expressly warned of imminent enforcement yet failed to seek a stay timeously.
- [16] However, the applicants' conduct must be weighed against the context within which this application arises. The rescission proceedings are ongoing and appear to be at an advanced stage. Thus, the underlying dispute between the parties remains unresolved. In the circumstances, and having regard to the requirements of law and fairness, this Court is not persuaded that a costs order against the applicants as urged by the first respondent's counsel would be justified. In the result, the following order is made:

¹ (2018) 39 ILJ 523 (CC) at para 24.

² Section 162 of the Labour Relations Act 66 of 1995.

Order

1. The forms, service and time periods prescribed by the Rules of the Labour Court are dispensed with in terms of Rule 38, and this application is heard as one of urgency.
2. The enforcement of the writ of execution issued in respect of the order granted on 3 September 2025 under case number JR 2125/24, and all execution steps taken pursuant thereto, are hereby stayed pending the final determination of the rescission application instituted under case number JR 2125/24.
3. The stay of the enforcement of the writ of execution is conditional upon the Applicants lodging with the Registrar of this Court, within fifteen (15) court days of the date of this order, a bond of security in the amount of R4,142,310.64 (Four Million, One Hundred and Forty-Two Thousand, Three Hundred and Ten Rands and Sixty-Four Cents).
4. There is no order as to costs.

M. J. Motshekga

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Adv Setlhako
Instructed by:	State Attorney
For the First Respondent:	Adv SI Ngwetjana