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

_____ _____
Signature Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: 2026-115323

In the matter between:

GWINA ATTORNEYS INCORPORATED Applicant

and

EVANS MANDOWA
First Respondent

COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION Second Respondent

COMMISSIONER D.A. PRETORIUS N.O. Third Respondent

THE SHERIFF OF SANDTON SOUTH Fourth Respondent

CLIFFE DEKKER HOFMEYR INC. Fifth 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 28 May 2026.**

Summary: **Urgent application – Stay of enforcement of arbitration award pending review – Sections 145(3), (7) and (8) of the LRA conjunctive – Applicant failed to discharge onus to be exempt from furnishing security or a reduction – Application dismissed – No order as to costs.**

JUDGMENT

MOTSHEKGA, AJ

Introduction

[1] The applicant, Gwina Attorneys Incorporated (Gwina), is a law firm incorporated in terms of the laws of the Republic of South Africa. It has a staff complement of approximately twenty-five (25) persons. The first respondent, Evans Mandowa (Mandowa), is a former employee of Gwina. Cliffe Dekker Hofmeyr Incorporated (CDH) acts as attorneys of record for Mandowa and is cited as the fifth respondent in these proceedings.

[2] Gwina seeks an urgent stay of the enforcement of an arbitration award (the award) issued under CCMA case number GAJB10121-24 on 4 December 2025 by Commissioner D.A. Pretorius (the Commissioner), in terms of section 145(3) of the Labour Relations Act[1] (the LRA), pending the final determination of a review application instituted under case number 2026-027474. Additionally, Gwina seeks an exemption from, alternatively, the reduction of, the security requirement under sections 145(7) and (8) of the LRA, and an interdict restraining Mandowa and CDH from proceeding with enforcement and instructing the fourth respondent, the Sheriff, pending the review of the award.

[3] The application is opposed by Mandowa and CDH.

Background

[4] Briefly, in terms of the award, the Commissioner found that Mandowa had been constructively dismissed by Gwina in circumstances where his work environment had been rendered intolerable by Gwina's conduct during a performance improvement plan (PIP) process. The Commissioner further found that Mandowa had not been obliged to exhaust internal grievance

remedies, having regard to the conduct of Gwina's senior directors during the PIP process. Resultantly, Mandowa was awarded compensation in the amount of R475,000.00, the equivalent of five months' remuneration, together with interest.

[5] On 9 February 2026, Gwina filed a review application in terms of section 145 of the LRA within the prescribed six-week period. The review application remains pending before this Court. No security was furnished simultaneously with the filing of the review application, nor at any time thereafter.

[6] Following the institution of the review by Gwina, is a trail of correspondence prior to this application and against which the urgency dispute arises. On 13 February 2026, prior to CDH's involvement, Mandowa addressed correspondence to Gwina enquiring whether security had been furnished in terms of section 145(8) of the LRA. On the same date, Gwina responded requesting a written undertaking that Mandowa would not enforce the award pending the review application, without addressing the issue of security. On 16 February 2026, CDH now on record for Mandowa responded by informing Gwina that it would revert regarding the written undertaking. No such response was ever received by Gwina.

[7] On 27 March 2026, CDH applied to the CCMA for certification of the award in terms of section 143 of the LRA, copying Gwina on that correspondence. Prompted thereby, Gwina wrote to CDH requesting notification upon certification and seeking clarity on whether enforcement was intended. CDH did not respond, nor was the notification of the certification of the award furnished to Gwina.

[8] On 12 May 2026, the Sheriff attended at Gwina's premises and effected an attachment of moveable property. The Sheriff indicated that removal would take place within seven days. This constituted the first notice Gwina received that enforcement had been initiated pursuant the award. On 14 May 2026, Gwina demanded a written undertaking from CDH within twenty-four hours that enforcement would be stayed pending the review application. CDH

acknowledged receipt on 15 May 2026 and indicated it would revert on Monday 18 May 2026. On 18 May 2026, CDH declined to issue the undertaking, stating that it would await a Rule 37(20) notice which requires an applicant to notify all parties once security has been furnished.

[9] Following failed attempts to obtain a written undertaking from CDH and the Sheriff's attendance at its offices, Gwina launched an initial urgent application on 19 May 2026 which was procedurally defective, having been served without first obtaining a date from the Registrar. The initial application was retracted the same afternoon and replaced with the present application on 21 May 2026, set down for hearing on 26 May 2026.

[10] The Sheriff's inventory, as quantified by this Court from the papers, reflects attached movable property with an approximate value of R30,200.00.

Preliminary points

[11] Two preliminary points arise for determination. The first is raised by CDH and Mandowa jointly, who contend that the founding affidavit is fatally defective for failure to comply with Rule 35(5)(a) read with Rule 38 of the Labour Court Rules, in that it does not clearly and concisely set out the names, descriptions and addresses of the parties.

[12] This point is without merit and is dismissed. The parties are fully identified in the notice of motion, which forms an integral part of the application and must be read with the founding affidavit. The founding affidavit further incorporates by reference the founding affidavit in the review application, which contains a full description of the parties. No party has been prejudiced or misled. It has consistently been held by our courts that 'rules exist for the courts, not the courts for the rules', and that where interests of justice so dictate, a Court may depart from strict observance of rules.[1].

[1] *Eke v Parsons* 2016 (3) SA 37 (CC) at para 39.

[13] The second preliminary point is raised by Gwina against the answering affidavit of Mandowa, which was filed approximately three to four hours late and not as prescribed in the notice of motion, without a condonation application. This point is equally without merit. The principle that the law does not concern itself with trifles applies in this regard. A delay of three to four hours in an urgent application, although not insignificant, is not unreasonable to the point of causing undue prejudice and should not be used to deprive a litigant of vindicating their vouchsafed right to access to court.[2] Where the time periods are not prescribed in the rules but by a party, failure to adhere to those time periods do not require any condonation by a court.

Urgency

[14] An applicant for urgent relief must demonstrate, first, the circumstances that render the matter urgent and, second, that it cannot be afforded substantial redress at a hearing in the ordinary course.[3]

[15] The chronology set out above is instructive. Gwina was placed on notice as early as 13 February 2026 that Mandowa was actively enquiring about security and contemplating enforcement. The review was filed on 9 February 2026. Nothing precluded Gwina from applying for a section 145(8) exemption simultaneously with the review. The certification application of 27 March 2026, on which Gwina was copied, was a further signal of imminent enforcement. Gwina failed to act.

[16] However, that is not the end of the matter. CDH undertook on 16 February 2026 to revert on Gwina's undertaking request and simply failed to do so. Gwina's 27 March 2026 request for notification upon certification, addressed directly to CDH, was not responded to either. In these circumstances, it cannot be said with precise conviction that Gwina was in a position to anticipate the precise timing of enforcement.

[2] Section 34 of the Constitution of the Republic of South Africa, Act 108 of 1996.
[3] Rule 38, Labour Court Rules.

[17] Significantly, the assets of a functioning law firm employing twenty-five persons have been attached and stand to be removed and sold in execution imminently. The Court thus finds that urgency was not entirely self-created and that the matter is to be heard on an urgent basis.

Legal Framework

[18] The starting point for determination is whether section 145(3) of the LRA operates independently of the security provisions in sections 145(7) and (8), such that a stay may be granted without Gwina furnishing security.

[19] Section 145(3) provides that the Labour Court may stay the enforcement of the award pending its decision. Section 145(7) provides that the institution of review proceedings does not suspend the operation of an arbitration award unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8). Section 145(8) provides that, unless the Labour Court directs otherwise, security must be equivalent to twenty-four months' remuneration in the case of reinstatement, or equivalent to the compensation awarded in the case of a compensation order.

[20] The Labour Court in *Emalahleni Local Municipality v Phooko NO and Others*[4] and subsequently in *Marques Finance v Quinn and Another*[5] (per Moshoana J) held that a section 145(3) application is a discrete and distinct application from the requirement to furnish security as contemplated in section 145(7), and that the requirements of an interim interdict alone suffice for the granting of a stay.

[21] The above construction has been authoritatively and definitively rejected by the Labour Appeal Court (LAC) as patently erroneous. In *Italsafaris CC t/a Viva Safaris v NUFBWSAW obo Members and Others* (*Italsafaris*)[6] per

[4] (2021) 42 ILJ 2196 (LC).
[5] (J966/23) [2023] ZALCJHB 219 (19July 2023).
[6] (2024) 45 ILJ 2004 (LAC) at para 18.

Nkutha-Nkontwana JA, with Van Niekerk JA and Molahlehi AJP (as he then was) concurring, the Labour Appeal Court held as follows:

"…Section 145 cannot be read disjunctively as it deals with the review of arbitration awards. Thus, only one application is conceivable in terms of sections 145(3), (7) and (8) where a single enquiry is conducted. There is no stand-alone application to which section 145(3) applies... the construction of section 145(3) adopted by the Labour Court in Emalahleni and followed in Quinn is patently erroneous as it negates the context and the purpose or the mischief the provisions were intended to cure."(Own emphasis)

[22] The Labour Appeal Court in *Italsafaris* further affirmed its earlier judgment of *City of Johannesburg v SA Municipal Workers Union obo Monareng and Another*[7] (*Monareng*), which established that where an applicant seeks to be absolved from furnishing security, or to furnish security in an amount less than the statutory threshold, the applicant must make an application in terms of section 145(3) and must make out a proper case both for the stay and for the security to be dispensed with or reduced in accordance with section 145(8).

[23] It follows that the default position under section 145(7) prevails unless the Labour Court, in the exercise of its discretion under section 145(3) read with section 145(8), directs otherwise. For that discretion to be exercised in favour of an applicant, a proper case must be made out with facts enabling the Court to assess whether the prescribed security would be unduly onerous and harmful.[8]

Analysis

[24] The employer must establish both the grounds for the stay and why security should be dispensed with or reduced in accordance with section 145(8).

[7] (2019) 40 ILJ 1753 (LAC).

[25] The provisions of sections 145(3), (7) and (8) are accordingly conjunctive, not disjunctive; a single integrated enquiry in which the stay and security cannot be separated.

[26] This Court finds that Gwina has not made out such a case.

[27] Gwina's submissions on security is threefold: first, a bare allegation on financial inability; second, an invitation for this Court to take judicial notice of the fact that a small law firm would not have R475,000 available; and third, a submission that the attached assets should serve as security in terms of sections 145(7) and (8)(b).

[28] On the first submission, it is settled that the onus is on the applicant seeking an exemption from security to establish, with proper evidence, that it has assets of sufficient value to meet its obligations should the review application fail, or that the prescribed security would be unduly onerous and harmful to its operations. A bare allegation of financial inability without supporting any financial evidence does not discharge that onus.

[29] On the second submission, despite being expressly invited by Mandowa in his answering affidavit to place financial evidence before this Court, Gwina's replying affidavit provides none. Instead, Gwina submitted that the Court ought to take judicial notice that a small law firm of its nature would not have funds of that magnitude readily available. Gwina's counsel persisted with this submission during oral argument. Counsel for Mandowa submitted that this submission is untenable, and this Court agrees. Judicial notice cannot serve as a substitute for evidence; it is reserved for matters of common knowledge, not the particular financial position of a specific litigant, unless perhaps the litigant is a listed entity whose financial affairs are matters of public record.

[30] On the third submission, counsel for Gwina referred the Court to the decision of the Labour Court in *Gauteng Department of Community Safety v General Public Service Sectorial Bargaining Council*[9] wherein the Court accepted as security, the assets listed in an inventory. The Court does not align itself with that approach. Assets listed in a Sheriff's inventory are by their nature subject to vagaries of valuations and cannot be equated to the certainty of security to the satisfaction of the Court as contemplated in section 145(7). However, even if the Court is wrong on this issue, the attached moveable property in *Gauteng Department of Community Safety* approximated the amount in the award. The facts in that decision can thus be distinguished from the current matter where value of the attached movable property amounts to R30,200.00 against an award of R475,000.00, exclusive of interest, a shortfall so substantial that the attached assets cannot constitute adequate security for the purposes of sections 145(7) and (8).

[31] This Court has taken cognisance of Gwina's reliance on the Constitutional Court judgment in *Maleka v Boyce N.O. and Others*[10] and does not discount those prospects. However, in exercising its discretion under section 145(3) read with sections 145(7) and (8) of the LRA, this Court is bound by the decision of the LAC in *Italsafaris*. Reasonable prospects of success on the review application do not, without more, absolve an applicant from the security requirement, nor do they constitute a basis upon which the default position under section 145(7) may be departed from.

[32] Accordingly, this Court finds that Gwina has failed to discharge the onus of establishing entitlement to the relief sought in its notice of motion. It follows that the default position under section 145(7) prevails and the application falls to be dismissed.

[9] [2025] ZALCJHB 261 (30 May 2025).
[10] (2026) 47 ILJ 839 (CC).

Costs

[33] In the circumstances of this matter and having regard to the requirements of law and fairness, each party is to bear their own costs.

Order

1. The forms and service prescribed by Rule 38 of the Labour Court Rules are dispensed with and the application is dealt with as one of urgency.

2. The application for a stay of execution of the arbitration award issued under CCMA case number GAJB10121-24 on 4 December 2025, together with all ancillary relief sought in the notice of motion is dismissed.

3. There is no order as to costs.

_____

M. J. Motshekga

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant:	Adv S.B. Radebe
Instructed by:	Gwina Attorneys Incorporated
For the First and Fifth Respondent:	Adv M. Mkhatshwa
Instructed by:	Cliffe Dekker Hofmeyr Incorporated