



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

Signature

Date

**IN THE LABOUR COURT OF SOUTH AFRICA,
GQEBERHA**

Not Reportable
Case no: PR56/20

In the matter between:

VUSUMZI KATE

Applicant

and

DEPARTMENT OF CORRECTIONAL SERVICES

First Respondent

GPSSBC

Second Respondent

JOHN MASHIKA NO

Third Respondent

PUMEZA NDABAMBI NO

Fourth Respondent

Decided: In Chambers

Delivered: This judgment was handed down electronically by emailing a copy to the parties on 22 June 2026. This date is deemed to be the date of delivery of this judgment.

JUDGMENT

KROON AJ

Overview

[1] In a judgment handed down on 25 February 2026 the Court issued the following order:

“Order:

1. *The application is removed from the roll.*
2. *The application is not to be re-enrolled until the Court file is in order.*
3. *The Applicant is given 30 calendar days within which to ensure that the Court file is to the satisfaction of the Registrar. In so doing, the Applicant is required to address the issues identified in this judgment.*
4. *The costs of the proceedings are reserved.*
5. *The Applicant’s legal representative is afforded 21 calendar days within which to provide a full explanation on oath for his conduct as described above and to make submissions as to why a de bonis propriis costs order should not be granted. In that affidavit (supported by confirmatory affidavit(s) where necessary), he is required to:*
 - 5.1 *Record any issues which he may have with the recitation of the facts contained in the judgment.*
 - 5.2 *Explain why an attempt was only made on 12 or 13 February 2026 to index the Court file when it would have been apparent*

that indexing and pagination were required after the order granted on 20 November 2025.

5.3 Explain as to how it came to be that the Applicant's legal representative was unaware that the Court file had not been paginated. The explanation should include:

5.3.1 Details of the attempt(s) made to index the Court file, including when they were made, how they were made and who from the office of the Registrar was involved.

5.3.2 All communications relevant to how the Applicant's legal representative was informed that the Court file could not be paginated because it was "with the judge".

5.4 Set out a detailed timeline of the events which occurred on 19 February 2026 subsequent to the adjournment of the matter and, in particular, to disclose the times and details of each communication which he had with an official from the Court about the file, as well as Ms Govender of the State Attorney about the file.

5.5 Explain why, when informed by Ms Majola and/or the State Attorney that he was not supposed to take the Court file out of the building, the Applicant's legal representative did not forthwith return it."

[2] The factual matrix appears from the judgment of 25 February 2026. It is not my intention to repeat same in this judgment.

[3] The gravamen of the complaint about the conduct of the Applicant's legal representative is that, after the matter was stood down on 25 February 2026 to be heard the following day, 26 February 2026, he left the Court building with the court file without the Registrar's permission. His conduct was aggravated by the distress caused amongst the Court staff. These events culminated in the Court being disinclined to hear the matter and issuing an order that the Applicant's legal representatives be afforded 21 days within

which to make representations as to why a costs order *de bonis propriis* should not be made against them. The Applicant was furthermore given 30 calendar days within which to ensure that the court file is to the Registrar's satisfaction.

- [4] As to the latter requirement of satisfying the Registrar that the court file is in order, the Applicant admits non-compliance with this time period. As I understand the submissions, the Applicant seeks condonation of non-compliance with the 30 days. It is, however, not the intention of this Court to deal with this aspect. The correct route is for the Applicant to lodge a proper condonation application, which can then be considered by the Court hearing the application.
- [5] The explanatory affidavit appears to have been filed on 16 April and then on 22 April 2026. It was thus out of time. There is no formal application for condonation. The explanation for the late delivery of the explanatory affidavit is contradictory. On the one hand, the Applicant's legal representative contends that he was, for want of a better expression, indisposed because his father's brother was ill and he had to attend to him "...*from time to time*". On the other hand, he says, in effect, that he was too busy attending to other matters to comply with the Court order. Nonetheless, in the Court's view, it is in the interests of justice to have regard to the contents of the affidavit deposed to by the Applicant's legal representative.

Failure to ensure that the file was in order

- [6] Regarding the unsatisfactory state of the file, including the absence of indexing and pagination, the explanation is twofold.
- [7] Firstly, the Applicant's legal representative states that he was very busy during the week in question and, in this regard, lists several matters for which he was responsible and which were on the roll during the week in question. This explanation can be disposed of easily. The courts have long since held that it is no excuse for a practitioner to contend that he is too busy to afford a

matter for which he is responsible, the care and diligence it deserves. I quote from *Kgobane and Another v Minister of Justice*¹ as follows:

*“...The attorney for the applicants attributed his neglect to observe the Rules of this Court and to ensure that his instructions were carried out to his working under pressure and being away from his office. When an attorney tells this Court, in effect, that he is too busy to study the Rules of this Court and to supervise the prosecution of an appeal, his explanation is quite unacceptable...”*²

[8] The second component of the explanation found expression in an attempt by the Applicant’s legal representative to shift the blame onto his “assistants”, including a candidate attorney. Again, this explanation is not acceptable. If the Applicant’s legal representative was in charge of the file, whilst he is entitled to delegate certain functions to subordinates and staff underneath him, he cannot delegate his professional responsibility.³ What was required was for the Applicant’s legal representative to properly supervise the persons in his office to whom he had delegated tasks, to exercise professional oversight.⁴ The shifting of blame onto underlings is ordinarily regarded as an aggravating factor.⁵

[9] The Court notes further that, in his explanation, the Applicant’s legal representative says that he will now personally attend to the file. That is something which should have occurred at the outset, or at least there should have been proper supervision from the outset.

Taking the file out of the Court building

¹ 1963 (3) SA 365 (AD)

² 369 A to C

³ *AMCU obo Langbooi v Benteler and Others* decision (PR177/22) 12 June 2026

⁴ *MEC for Health Eastern Cape v A.S obo S.S (842/2023) [2025] ZASCA 2 (15 January 2025) paras [15] and [21]* in terms of which the Supreme Court of Appeal castigated an attorney for leaving the prosecution of an appeal in the hands of a candidate attorney who was unsupervised and where the principle attorney was in a different office. *Mavundla v MEC: Department of Co-Operative Government and Traditional Affairs KwaZulu-Natal and Others 2025 (3) SA 534 (KZP) paras [40], [46] and [54]*.

⁵ *Benteler* para [61]

- [10] When it comes to the explanation furnished for taking the Court file out of the building without authorisation, the Applicant's legal representative states that he "...got carried away..." and that he had "...so much in [his] head...".
- [11] The explanation so furnished is the type of explanation that falls to be rejected out of hand. The Court fails to understand how the Applicant's legal representative could have been, as it were, swept away in the moment. The task he was about to perform was not an emotionally charged one. It was a mundane and clerical one, that of photocopying. The Applicant's legal representative was not under pressure. He had the whole day to sort out the file. No basis was laid in the affidavit to explain why he, so to speak, lost his objectivity and composure and acted in such an unprofessional and reckless manner.
- [12] What is of further concern to the Court is the lack of detail in the explanation. As has often been said, albeit in a different context, what is required is an explanation containing sufficient particulars to place the Court in a position where it can properly assess the conduct and motives of the applicant.⁶
- [13] A lack of candour may be illustrated as follows. If regard is had to paragraphs 5.4 and 5.5 of the order, the Applicant's legal representative was expressly required to provide details of *when* the State Attorney, per Ms Govender, informed him that he was not allowed to take the Court file out of the building. He was also required to explain why he did not heed the admonition from the State Attorney. The Applicant's legal representative is, however, silent on this aspect. He does not, in his explanation, provide any detail about when the State Attorney informed him that he should not take the file out of the Court building. He also does not disclose to the Court why he did not pay any heed to the warning given to him by the State Attorney that he was not supposed to take the file out of the Court building.
- [14] There was an important reason why the Court required the Applicant's attorney to disclose the time when the State Attorney admonished him not to remove the entire Court file from the building. It is this. The narrative, which is

⁶ *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 345 (A) at 353A

contained in the explanation which has been furnished by the Applicant's attorney in his affidavit, seeks to give the reader the impression that he was only informed, or reminded, by the Court staff, of the fact that he should not be in possession of the file outside of the Court building without authorization, midway through the exercise of photocopying in the Office of the State Attorney.

[15] It is, however, common cause that, leaving aside any communications from the staff of the office of the Registrar with the Applicant's attorney, he was also told by the State Attorney, Ms Govender, that he was not allowed to take the Court file out of the building. If this communication had occurred, as, on the facts, seems likely, before the Applicant's attorney had commenced photocopying the contents of the file, then the narrative in the explanation would not be accurate. It would mean that the Applicant's legal representative was warned to return the file before he even commenced with the exercise of photocopying. As mentioned, the Court has been left in the dark about this crucial aspect and, in its view, it is entitled to draw an adverse inference from the fact that the Applicant's legal representative failed to take the Court into his confidence as to when the State Attorney informed him that he should not take the Court file out of the building.

[16] The Applicant's legal representative did profusely apologise. Recently, in *Nelson Mandela Bay Municipality v Bukula*,⁷ Prinsloo J, in considering whether a *de bonis propriis* cost order should be made, observed that there is a limit to what an apology can achieve. It cannot undo conduct which justifies a *de bonis propriis* cost order. There comes a stage where legal representatives must suffer the consequences that the law attaches to their conduct, and an apology, *ex post facto*, whilst welcome, if it is genuine, is insufficient to nullify the conduct and, accordingly, its consequences.

[17] In all the circumstances, in the Court's view, this is not a case where the client should be penalised for the conduct of the Applicant's legal representative and that a costs order *de bonis propriis* is warranted.

⁷ PR 17323 (12 June 2026)

Order

1. The Applicant's attorneys are ordered to pay the costs occasioned by the postponement of the matter, inclusive of the appearance costs of both 19 and 20 February 2026, on Scale B *de bonis propriis*.

P N KROON

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr Qotoyi of Mbulelo Qotoyi Attorneys

For the Respondent: Ms. L Ah Shene

Instructed by: Gqeberha State Attorney