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

12 June 2026

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

CASE Number: 2026 – 103960

In the matter between:-

DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT **Applicant**

and

ELVISO ADAMS *N.O* **First Respondent**

GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL **Second Respondent**

DANIEL DUMISA LUDIDI **Third Respondent**

Summary: **Urgent application by applicant to stay arbitration – principles relating to urgency considered – applicant satisfying requirements of urgency – application urgent**

Practice and procedure – stay of arbitration pending determination of review application – principles considered – interests of justice and fairness decisive – applicant failing to establish proper basis for stay of arbitration – substantial redress available to applicant in due course – interests of expedition paramount – application to stay arbitration refused

Review jurisdiction – review application *in medias res* – s 158(1B) considered – meaning of just and equitable considered in context of review application as basis to stay further proceedings – review application competent – however still requires exceptional circumstances for intervention – applicant failing to establish exceptional circumstances – applicant's review *in medias res* not justifying stay – application to stay dismissed

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JUDGMENT

SNYMAN, AJ

Introduction

[1] This judgment concerns an urgent application brought by the applicant on 7 May 2026, in which the applicant seeks relief interdicting the second respondent from continuing with arbitration proceedings, involving an unfair dismissal dispute between the applicant and the third respondent, pending the determination of a review application brought by the applicant on 29 April 2026 to review and set aside a condonation ruling issued under the auspices of the second respondent. In terms of this condonation ruling, the third respondent's late referral of his unfair dismissal dispute to the second respondent was condoned. The application has been opposed by the third respondent, on the basis that it would not be appropriate to intervene in arbitration proceedings that are not finalised, and also on the basis that the matter was not urgent.

[2] I will first deal with the issue of urgency. The applicant received the condonation ruling on 15 April 2026. The review application followed on 29 April 2026. Whilst it is true that the arbitration sought to be interdicted was set down for 18 and 19 June 2026 by way of a notice of set down on 10 April 2026, the applicant had not even received the condonation ruling when this happened. It is the service of the condonation ruling on the applicant that serves as the catalyst for bringing the stay application. It was also only appropriate to have brought the current urgent proceedings once the review application was filed, as this would serve as the basis for the stay. It only took the applicant some two weeks after receipt of the condonation ruling to complete and file the review application, which I consider to be prompt action.

[3] In addition, the applicant, immediately after filing the review application, also acted responsibly by first seeking an undertaking on 30 April 2026 from the third respondent to hold the arbitration in abeyance pending the deciding of the review application, which would have removed the need for the current application. The third respondent was not willing to agree to such a stay by way of an answer provided on 4 May 2026. The urgent application followed three days later. I consider this to be sufficiently expeditious action on the part of the applicant. I further believe that it is in the interest of all parties that the matter be disposed of on the merits on an urgent basis. I am therefore satisfied that the applicant gave proper effect to the principles of urgency as set out in *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another*[1], and I will therefore decide this matter as an urgent application.

[4] After hearing argument by both parties on 5 June 2026, and considering the pleadings and heads of argument filed, I granted the following order on the same date:

1. The application is heard as one of urgency in terms of Rule 38.

2. The application is dismissed.

3. There is no order as to costs.

4. Written reasons for this order will be provided on 12 June 2026.

[1] (2016) 37 ILJ 2840 (LC) at paras 21 – 26.

[5] This judgment now constitutes the written reasons referred to in paragraph 4 of my order, above, starting with an exposition of the relevant background facts.

The relevant background

[6] The facts of this matter are straight forward, and largely undisputed. The third respondent commenced employment with the applicant on 1 December 2012 as a Project Manager within the Western Cape Directorate of Rural Infrastructure Development. On 17 July 2024, the third respondent resigned from his employment, contending he was constructively dismissed, in that the applicant rendered his continued employment intolerable.

[7] The third respondent however only referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) on 8 October 2024. Because such referral was obviously out of time, the third respondent also subsequently filed an application for condonation with the CCMA on 23 January 2025. Further, and since the second respondent has jurisdiction in this matter, the dispute was ultimately transferred to the second respondent in terms of section 147 of the Labour Relations Act (LRA)[2]. But it seems the condonation application was never transferred to the second respondent along with the dispute referral itself.

[8] There was also another dispute referral made by the third respondent to the second respondent directly on 27 May 2025. There are a number of further dealings between the parties relating to this referral, but this does not need to concern this judgment.

[9] The third respondent's unfair dismissal dipsute (constructive dismissal) came to be set down for arbitration on 9 March 2026, for a period of two days. The applicant raised a preliminary point that the third respondent's dispute referral had been filed out of time, and the third respondent had not brought a condonation application. The third respondent in answer referred to the earlier condonation application filed in the CCMA. After considering submissions by both parties, the presiding arbitrator directed that the condonation application be re-filed by the applicant before the bargaining council (the second

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

respondent). The third respondent immediately complied and filed the condonation application with the second respondent on 10 March 2026. The grounds for seeking condonation were the same as the grounds contained in the condonation application filed in the CCMA. The applicant opposed the condonation application and filed opposing papers.

[10] The condonation application was then considered by the first respondent on the papers, and in a comprehensive condonation ruling dated 25 March 2026, the first respondent granted condonation. The applicant, as set out earlier, only received this ruling on 15 April 2026. The review application challenging this condonation ruling followed on 29 April 2026.

[11] In the interim, and on 10 April 2026, the second respondent set the matter down for arbitration on the merits for 18 and 19 June 2026. The current urgent application is aimed at interdicting these arbitration proceedings, pending the final determination of aforesaid review application.

Analysis

[12] In deciding this matter, there is a particular imperative that squarely comes into play. This imperative is that unfair dismissal and unfair labour practice proceedings conducted under the auspices of the CCMA and the relevant bargaining councils must be finally determined with expedition and without undue delay. The relevant time limits prescribed by the LRA for this to be done clearly speaks to this imperative.[3] The Constitutional Court has made a number of firm pronouncements on this as well. In *Khumalo and Another v Member of the Executive Council for Education: KwaZulu-Natal*[4], it was said: *'… The importance of resolving labour disputes in good time is thus central to the LRA framework …*'. Similarly, and in *Aviation Union of SA and Another v SA Airways (Pty) Ltd and Others*[5], that Court held: '*… Speedy resolution is a distinctive feature of adjudication in labour relations disputes ….*' The following sentiment was expressed in *National Education Health and Allied Workers Union v University of Cape Town and Others*[6] : *'… By their very nature labour disputes must be resolved expeditiously and be brought to finality so that the*

[3] See for example the short time limits in section 191 of the LRA.
[4] (2014) 35 *ILJ* 613 (CC) at para 42.
[5] (2011) 32 *ILJ* 2861 (CC) at para 76.
[6] (2003) 24 *ILJ* 95 (CC) at para 31.

parties can organize their affairs accordingly. They affect our economy and labour peace. It is in the public interest that labour disputes be resolved speedily …'. And finally, in *Food and Allied Workers Union on behalf of Gaoshubelwe v Pieman's Pantry (Pty) Ltd*[7] it was decided: '*… Our courts have, on occasion, pronounced on the importance of labour disputes to be conducted with expedition. For example, in National Research Foundation the Labour Court held: '[15] It is now trite that there exists a particular requirement of expedition where it comes to the prosecution of employment law disputes. …*'. This imperative is unfortunately often overlooked where it comes to deciding whether or not to intervene in incomplete arbitration proceedings.

[13] It is my experience that especially the CCMA has been quite effective in giving effect to this imperative, with the average matter, from beginning to end, being resolved in less than six months. Proper care should be taken by this Court to ensure that what is in effect interlocutory proceedings should not unduly interfere with this core notion, and the CCMA should, barring truly exceptional circumstances, should be left to finishing its job before this Court comes into play.

[14] It is of course true that one of the functions of the Labour Court is to supervise proceedings conducted in the CCMA or bargaining councils. This was made clear in *Minister of Correctional Services v Mashiya and Others*[8] where the Court said: *'… it has to be stated that this court has a supervisory duty over the CCMA and bargaining councils, their functions, and of the arbitration proceedings conducted under their auspices. If the applicant is prohibited from raising an irregularity of the kind that occurred in casu, then this supervisory duty would be compromised …*'. To this end, the Labour Court is *inter alia* bestowed with review jurisdiction. There can be no argument with the general proposition that any party to the dipsute resolution processes under the LRA being entitled and having the right to challenge any decision, ruling or determination made in the course of such process on review to the Labour Court, even before the particular proceedings are completed, pursuant to such

[7] (2018) 39 ILJ 1213 (CC) at para 187.
[8] (2023) 44 ILJ 1536 (LC) at para 87. See also *Satani v Department of Education, Western Cape and Others* (2016) 37 ILJ 2298 (LAC) at paras 21 – 22; *ZA One (Pty) Ltd t/a Naartjie Clothing v Goldman No and Others* (2013) 34 ILJ 2347 (LC) at para 37; *Deutsch v Pinto and Another* (1997) 18 ILJ 1008 (LC) at 1011 and 1018; *Van Rooy v Nedcor Bank Ltd* (1998) 19 ILJ 1258 (LC) at para 17; *Pep Stores (Pty) Ltd v Laka NO and Others* (1998) 19 ILJ 1534 (LC) at para 23.

duty of supervision by the Labour Court. But this right and entitlement may have an unforeseen consequence, which is what would then happen to the arbitration proceedings that were still not concluded and where the merits of the case still had to be decided. Does this mean that everything must stop until the Labour Court has first discharged its supervisory duty? This issue is particularly crucial in the context of the imperative of the expeditious resolution of employment disputes, dealt with earlier.

[15] It is to resolve the aforesaid tension that section 158(1B) of the LRA was adopted in 2015.[9] It was adopted because an unfortunate pattern of obstruction, be it deliberately or innocently, had emerged. It is trite that in the course of proceedings before them, CCMA and bargaining council arbitrators may be required to make a number of rulings / determinations that do not finally dispose of the case on the merits, but may have an impact on the conducting of the proceedings. This would be, for example, rulings relating to discovery of documents and legal representation. But it would also include, as is the case *in casu*, a ruling in which condonation is granted.[10] When a litigating party then seeks to review such rulings upon it being made, that review would then serve as a basis for seeking that further proceedings be stayed until the review is decided. This inevitably causes significant delays in the finalisation of the proceedings, and increases the administrative burden on the dipsute resolution bodies in having to manage and deal with these pending processes. And all the while the imperative of expeditious dispute resolution is compromised. This difficulty was succinctly summarized in *Trustees for the time being of the National Bioinformatics Network Trust v Jacobson and Others*[11], as such:

> 'There are at least two reasons why the limited basis for intervention in criminal and civil proceedings ought to extend to uncompleted arbitration proceedings conducted under the auspices of the CCMA, and why this Court

[9] Section 158(1B) reads: '*The Labour Court may not review any decision or ruling made during conciliation or arbitration proceedings conducted under the auspices of the Commission or any bargaining council in terms of the provisions of this Act before the issue in dispute has been finally determined by the Commission or the bargaining council, as the case may be, except if the Labour Court is of the opinion that it is just and equitable to review the decision or ruling made before the issue in dispute has been finally determined*'.

[10] A ruling refusing condonation obviously finally deposes of the merits of the matter, and reviewing this ruling will not be *in medias res*.

[11] (2009) 30 ILJ 2513 (LC) at para 14. See also *EOH Abantu (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (2010) 31 ILJ 937 (LC) at para 16.

> ought to be slow to intervene in those proceedings. The first is a policy related reason — for this Court routinely to intervene in uncompleted arbitration proceedings would undermine the informal nature of the system of dispute resolution established by the Act. The second (related) reason is that to permit applications for review on a piecemeal basis would frustrate the expeditious resolution of labour disputes. In other words, in general terms, justice would be advanced rather than frustrated by permitting CCMA arbitration proceedings to run their course without intervention by this Court.'

[16] Therefore, the very purpose of adopting section 158(1B) of the LRA was that litigating parties are statutorily discouraged from instituting review applications *in medias res*. This was made clear by the LAC in *Moolman v Commission for Conciliation, Mediation and Arbitration and Others*[12] as follows:

> 'When section 158 (1B) of the LRA was introduced in 2014, the legislative policy considered was to regulate and avoid piecemeal processing of arbitration and mediation proceedings through reviews of interlocutory rulings made by commissioners during those proceedings. This section guides litigants to delay their challenges to interlocutory rulings pending the finalisation of the hearing. In other words, review applications are not encouraged until the award is issued and the arbitration proceedings are finalised. This consideration bears significant weight when the Labour Court considers the exercise of discretion to intervene in uncompleted proceedings.'

[17] The only exception to the general rule of review applications *in medias res* generally not being competent, by virtue of section 158(1B), is that the Court is given the discretion to nonetheless permit such applications being brought, if the Court considers it '*just and equitable*' to do so. This was explained in *Cibane and Another v Premier of Province of Kwazulu-Natal*[13] in the following manner:

> '… the appellants sought to review the second respondent's ruling in medias res. There is a general rule against a review court entertaining a review application in these circumstances. Specifically, in a labour context, s 158(1B) expresses the general rule applicable in the Labour Court in respect of the review of rulings issued during the course of any conciliation or arbitration proceedings conducted under the LRA. The Labour Court may not review any

[12] (JA98/22) [2024] ZALACJHB 339 (22 August 2024) at para 42.
[13] (2025) 46 ILJ 2587 (LAC) at para 31.

> decision or ruling until a final determination has been made, except where the court is of the opinion that it would be just and equitable to do so before the stage of final determination.'

And further, in recent judgment of the LAC in *South African Cabin Crew Association obo Members v South African Airways (Soc) Ltd and Others*[14], the Court succinctly held that:

> 'Although the Labour Court may review interlocutory rulings made by commissioners under section 158(1)(g) of the LRA, sound reasons underpin the Labour Court's reluctance to intervene in incomplete arbitrations. The first reason is policy-related: such intervention *in medias res* would undermine the informal nature of the dispute resolution process. The second reason is that piecemeal reviews would hinder the prompt resolution of labour disputes. This legislative policy was confirmed in *Trustees for the time being of the National Bioinformatics Network Trust v Jacobson & others* as follows. 'In other words, in general terms, justice would be advanced rather than frustrated by permitting CCMA arbitration proceedings to run their course without intervention by this Court.'
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> Section 158(1B) of the LRA gives effect to the policy consideration that judicial intervention would generally be deferred until the issue in dispute had been finally determined. To this end, this section provides that the Labour Court may not review any decision or ruling made during consideration or arbitration proceedings before final determination of the issue in dispute by the CCMA, except if the Labour Court is of the opinion that it is just and equitable to review the decision or ruling. …'

[18] So, the general rule under section 158(1B) is clear. No review application *in medias res*, prior to the final completion of the arbitration proceedings on the merits, is allowed. The exception to this rule is that a review applicant must convince the Court that it is just and equitable to permit that application. There is a reason these considerations are important in deciding whether or not to stay arbitration proceedings still to follow. This is because if the review application *in medias res* should not have been brought in the first place, then how can it serve as a basis to stay the pending arbitration proceedings. Therefore, whether the review application is competent in the first instance is

[14] [2025] 10 BLLR 1048 (LAC) at para 26.

dispositive of the entitlement to any relief seeking to stay the pending arbitration. In other words, if the review application *in medias res* is not permitted in the particular circumstances in the first place, then the application to stay the arbitration proceedings must necessarily fail.

[19] I do not intend to set out a detailed exposition of what could be considered to be just and equitable in order to permit a review application *in medias res*. For the purposes of deciding the current mater, I do accept that the notion of just and equitable would include where the substance of the review application brought *in medias res* would finally dispose of the merits of the matter, without such merits having to be actually ventilated in arbitration. A prime example of this would be where the jurisdiction of the CCMA or bargaining council is at stake. It is trite that a finding on jurisdiction, where it is found that no jurisdiction exists, finally disposes of the matter without deciding the merits. And further, the CCMA or bargaining councils are not at liberty to finally determine their own jurisdiction, can only make preliminary findings in this regard for convenience purposes, and it is always up to the Labour Court to finally decide the issue of jurisdiction.[15] I accept that a condonation ruling, which is at stake *in casu*, resorts in this category, and it would be just and equitable to permit the applicant to bring the review application. The fact that the applicant therefore has a competent review application means that it has passed the first hurdle to obtaining the stay relief it seeks.

[20] But what simply cannot be forgotten in the current case is that this Court is not, at this juncture, dealing with the substance of review application relating to the condonation ruling. The Court is being asked to stay the arbitration hearing set down later in June 2026 pending the final determination of this review application. This is an entirely different matter, and involves an entirely different decision. In conducting this enquiry, the consideration shifts to what is generally called '*exceptional circumstances*', which is a far higher burden than '*just and equitable*'. It means that even if there is a competent pending review application, there is a second and further enquiry, wherein the applicant must

[15] As held in *SA Rugby Players Association and Others v SA Rugby (Pty) Ltd and Others* (2008) 29 *ILJ* 2218 (LAC) at para 40: *'….The CCMA is a creature of statute and is not a court of law. As a general rule, it cannot decide its own jurisdiction. It can only make a ruling for convenience. …*'. See also *Qibe v Joy Global Africa (Pty) Ltd: In re Joy Global Africa (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (2015) 36 ILJ 1283 (LAC) at para 5; *Universal Church of the Kingdom of God v Myeni and Others* (2015) 36 ILJ 2832 (LAC) at para 27.

demonstrate that there exists truly exceptional circumstances that would necessitate the stay of the arbitration proceedings pending the determination of the review application. In *Ethekwini Municipality v South African Local Government and Others*[16] the Court opined:

> '… the existence of a proper and competent review application is not *per se* determinative of the applicant's entitlement to interdictory relief. It is simply a possible basis for it. But more is needed to justify urgent intervention to interdict / stay pending arbitration proceedings. In this context, the determination moves beyond the consideration of what is just and equitable, and into the realm of what is truly exceptional circumstances. Or differently put, the applicant must also prove that there exists truly expectational circumstances that justify the suspension of the pending arbitration proceeding until the review is decided, which is more than the just and equitable consideration. Having due regard to several of the primary objectives of the LRA, especially those relating to a simplified dispute resolution process and the imperative of expeditious dispute resolution, this is a hefty burden to discharge.'

The Court in *Moolman supra*[17] similarly decided, where the Court had the following to say:

> 'It should be noted that the legislature did not introduce a total prohibition on reviews of interlocutory rulings in arbitration and mediation proceedings but rather allowed for an exception to the general rule. As a matter of principle, interference in uncompleted arbitration proceedings through review is only permissible in exceptional circumstances. The requirement to intervene in exceptional circumstances is underpinned by the legislative policy requiring speedy finalisation of labour disputes, which dictates that the court should not interfere with incomplete proceedings but allow a hearing to run its course. This underscores the importance of the Court's role in ensuring a fair and just resolution, which should strike a balance between the interests of all parties involved.'

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[16] [2025] JOL 71860 (LC) at para 30.

[17] Id at para 43. See also *Department of Agriculture, Land Reform and Rural Development v Kayster NO and Others* [2025] JOL 73973 (LC) at para 8, where the Court, with reference to *Moolman*, described these considerations as '*stringent*'. See further *Tswai v Commission for Conciliation, Mediation and Arbitration and Others* [2025] JOL 71807 (LC) at para 2; *Independent Development Trust v Commission for Conciliation, Mediation and Arbitration and Another* [2025] JOL 71801 (LC) at paras 11 – 12.

[21] I conclude in this respect with reference to the following pertinent *dictum* in *SA Broadcasting Corporation SOC Ltd v Commission for Conciliation, Mediation and Arbitration and Others*[18] where the Court decided:

> *'*… In the present instance, the application has been brought in circumstances where the clear legislative policy, reflected in the introduction of s 158(1B) in 2014, is that reviews of rulings made by commissioners ought not to be brought piecemeal. A case must be truly exceptional to warrant a departure from the norm that a review is appropriate only once the dispute has been finally determined in a completed arbitration hearing. This is consistent with the statutory purpose of expeditious dispute resolution which the LRA seeks to achieve. …*'*

[22] It is where it comes to the requirement of truly exceptional circumstances that I have difficulty with the applicant's case. In deciding what is meant by exceptional circumstances in the context of a stay of arbitration proceedings, I take guidance from what the former LAC in *Zondi and Others v President, Industrial Court and Others*[19] decided, being as follows:

> 'There is no universal or absolute test governing the question when a court will interfere in uncompleted proceedings, but one thing is clear from the cases and that is that a court will only interfere in medias res in exceptional circumstances, or when there is very good reason to do so. In ordinary circumstances the time to take any proceedings on appeal or review is at the termination thereof. The reasons for this attitude are equally clear. To permit interference in unterminated proceedings delays the continuation and completion of such proceedings. If such termination were to be readily permitted the proceedings might be interrupted at various times, and to deal with reviews or appeals piecemeal is clearly not practicable. In any event, the irregularity, even if it is allowed to stand, will not necessarily affect the result which might otherwise have followed. The tribunal concerned might for example in any event come to a conclusion favourable to the party otherwise affected by the irregularity. Even if the irregularity does in the end

[18] (2020) 41 ILJ 493 (LC) at para 14. See also *Ntombela and Others v United National Transport Union and Others* (2019) 40 ILJ 874 (LC) at para 31.

[19] (1991) 12 *ILJ* 1295 (LAC) at 1300D-G. The aforesaid *dictum* in *Zondi supra* has been consistently applied by this Court, and I refer, as examples, to the judgments in *Magoda v Director-General of Rural Development and Land Reform and Another* (2017) 38 ILJ 2795 (LC) at paras 12 – 13; *Ngobeni v Passenger Rail Agency of SA Corporate Real Estate Solutions and Others* (2016) 37 *ILJ* 1704 (LC) at para 13; *Ramthlakgwe v Modimolle-Mookgopong Local Municipality and Another* (2023) 44 ILJ 2297 (LC) at paras 18 – 19.

lead to a conclusion adverse to the person affected thereby, the time to put it right, as I have already said, is at the termination of proceedings.'

[23] Further, and in seeking to establish what '*exceptional circumstances*' would mean, the Court in *South African Cabin Crew Association supra*[20] described it as: *'… Exceptional circumstances justifying judicial intervention in incomplete proceedings have been found to exist where such intervention was necessary to prevent illegality, to prevent grave injustice, or where justice could not otherwise be achieved …*'. In the same vein, the Court in *Spar Group Ltd t/a Spar South Rand Distribution Centre v CCMA and Others*[21] said: *'… This Court may in exceptional cases where a grave injustice might otherwise result or where justice might not by other means be attained, interdict uncompleted proceedings …*'. And lastly, I refer to *Marule v Nonceba NO and Others*[22] where it was held: *'… The precise meaning of the "just and equitable" depends on the circumstances of each matter. However, given the purpose of the amendment, it makes sense that the Court will only intervene in 'exceptional circumstances,' in the 'interests of justice' or to avoid a 'grave injustice …*'.

[24] Thus, and what we have when deciding to stay pending arbitration proceedings off the back of a competent review application *in medias res*, is a further exceptionality enquiry, which goes far beyond just deciding what may be just and equitable. Simply put, whilst it may be just and equitable to bring the review, it simply does not follow that this per se establishes exceptional circumstances needed to stay the pending arbitration proceedings. At the heart of this latter exceptionality enquiry lies the essentialia of the expeditious resolution of employment disputes and the prevention of piecemeal review applications, which must always be given proper effect to. This was neatly articulated in *Mthini v Commission for Conciliation, Mediation and Arbitration and Others*[23] in the following manner:

> 'Section 158(1B) discourages piecemeal litigation, and only in limited circumstances may the Court intervene in ongoing arbitration proceedings. In this matter, the applicant seeks not only to review the interlocutory ruling, but

[20] Id at para 27.
[21] 2010] JOL 26397 (LC) at para 8.
[22] [2025] JOL 71805 (LC) at para 12.
[23] [2026] JOL 74791 (LC) at para 10.

she wants to do so on an urgent basis and to obtain final relief. This raises the bar considerably. The enquiry is no longer confined to whether intervention would be just and equitable; the applicant must demonstrate the existence of exceptional circumstances justifying immediate judicial interference. Such an assessment necessarily includes whether the matter is genuinely urgent and whether the applicant will be deprived of substantial redress if she waits until the arbitration is finalised.'

[25] Turning then to the merits of the application to stay *in casu*, and applying the aforesaid principles thereto, the applicant has argued that because the review application concerns a condonation ruling, it is an issue that goes directly to the jurisdiction of the bargaining council to arbitrate the matter. According to the applicant, it would always be competent to being a review application *in medias res* where it comes to the issue of the jurisdiction of the CCMA or bargaining councils to arbitrate a matter, because such bodies cannot finally decide their own jurisdiction, and then it must necessarily follow that the incomplete arbitration proceedings be stayed based on such review. The applicant then further argues that attached to this, it must equally follow that the existence of this review application satisfies the requirement of exceptional circumstances justifying intervention. For the reasons to follow, I cannot agree with these arguments.

[26] I accept that there are instances where the Labour Court entertained, and then actually granted, urgent applications to stay further arbitration proceeding spending a review application challenging the jurisdiction of the CCMA / bargaining councils, in the form of seeking to review condonation rulings. For example, in *City of Johannesburg Metropolitan Municipality v Mphefo and Others*[24] it was reasoned: *'… The applicant seeks to challenge the ruling which determined that the SALGBC has jurisdiction and that the dispute be enrolled for arbitration. The reality is that the review application could be dispositive of the matter and could bring an end to the respondent's unfair dismissal claim. Should the review court find that the respondent was not dismissed, the underlying causa (namely, unfair dismissal) would be removed and the jurisdiction of the SALGBC to adjudicate the dispute will be ousted and the matter will go no further …*' And in *Payne v Department of Transport*

[24] [2024] JOL 66075 (LC) at para 27.

and Public Works Western Cape Provincial Government and Others[25] it was held: '*… In my view, in this case it is just and equitable for this Court to intervene because the matter relates to a ruling on jurisdiction and because the CCMA decides such matters for convenience. Whether or not the CCMA has jurisdiction is a matter for this Court to decide …*'.

[27] I take no issue with these judgments where it comes to the competence of review applications *in medias res* under section 158(1B) in the case of challenging condonation rulings. However, and as I have said above, whether the review application is competent and whether the arbitration proceedings should be stayed, are two entirely different matters. I believe that in the judgments of *Payne* and *Mphefo*, this distinction was not properly drawn, and what was considered to be just and equitable was misconstrued as also constituting exceptional circumstances, *per se*. But this cannot be correct, and I would respectfully differ from any such construction. In *Sebibeng Diamond Mine (JV) t/a Frontier Mining Project v NUMSA obo Phekoantoa and Others*[26] the Court specifically dealt with a stay application pending a review application *in medias res* concerning a condonation ruling, and held that it could not be granted without exceptional circumstances being shown. The Court in *Workforce Group (Pty) Ltd v National Textile Bargaining Council and Another*[27] also dealt with an urgent application to stay arbitration proceedings pending jurisdictional rulings and held that: *'… In order to establish a prima facie right for the urgent interim relief sought, the applicant has to show that this is one of those exceptional circumstances where the court should intervene in uncompleted arbitration proceedings …*'. And finally, as pertinently said in *Ethekwini Municipality supra*:[28]

> 'I accept the proposition that should it ultimately be found that the third respondent committed a material error of law in finding that the second respondent had jurisdiction, this could lead to an outcome that the entire arbitration proceedings that followed would be effectively vitiated without more, with all the time and expense wasted as a result of such outcome. It is indeed a factor to consider. However, I do not believe this would constitute a

[25] 2024 JDR 3117 (LC) at para 45.
[26] [2021] JOL 53841 (LC) at para 19.
[27] (2011) 32 ILJ 3042 (LC) at para 18. See also *South African Broadcasting Corporation* (*supra*) at para 9.
[28] Id at para 32.

> grave injustice or illegality necessary to establish exceptional circumstances. The point always remains that the jurisdictional ruling stands until set aside, and any consequences flowing from it will remain valid and binding if not set aside.'

[28] In *Mphefo supra* and *Payne supra*, a material consideration to the Court in those instances, in deciding to urgently intervene and stay the arbitration proceedings, was that the parties would be prejudiced if the arbitration proceedings were to continue before the issue of jurisdiction has been decided, as the parties will spend time, money and resources to participate in a process before a body which might not have had jurisdiction to adjudicate the dispute in the first place and the outcome of such process, would inevitably lead to further litigation and would contribute to the burden of the Labour Court. Whilst this reasoning is undoubtedly correct, I have difficulty in understanding how it is different from any other ruling / determination that leads to a possible successful *in medias res* review application. To illustrate, surely if a review application concerning the refusal of legal representation succeeds, the entire arbitration will be voided, the matter will be remitted back for arbitration *de novo*, and all the expense and effort will equally be wasted, with further litigation to follow. Yet it has been said that such a ruling would ordinarily not satisfy the requirement of exceptional circumstances.[29] The same applies to challenges relating to discovery rulings made by arbitrators. If a party was for example wrongfully deprived of documents essential to present a case as a result of a ruling by an arbitrator, then the same result will follow. All said, every successful review with regard to these kinds of rulings or determinations will result in an arbitration being voided. As said in *Sasol Infrachem v Sefafe and Others*[30]:

> '… The hearing must not only be fair, but must also be seen to be fair. Anything less than that would not suffice. The remedy employed must cure the irregularity; it must restore the right. Generally, nothing less than a complete rehearing would be required. The hearing must not only be fair, but must also be seen to be fair. Anything less than that would not suffice. The remedy

[29] See *Bojanala Platinum District Municipality v Fourie and Others* [2025] JOL 74518 (LC) at para 34; *Emfuleni Local Municipality v Taunyane and Others* [2025] JOL 71858 (LC) at para 11.
[30] (2015) 36 ILJ 655 (LAC) at para 54. See also para 62 of the judgment.

> employed must cure the irregularity; it must restore the right. Generally, nothing less than a complete rehearing would be required.'

[29] The aforesaid is why, barring true exceptionality or grave injustice, the imperative of expeditious resolution of employment disputes must carry the day. Ordinarily, financial prejudice alone would not qualify in this context. In *Moolman supra*[31] the Court found as follows:

> 'In general, the Labour Court can intervene in incomplete arbitration proceedings where, if allowed to stand, the ruling would cause irreparable harm to the other party. The intervention would be justified if it is shown that the damage caused by allowing the ruling to stand could not be adequately remedied after the finalisation of the arbitration proceedings …'

[30] In my view, the applicant will not suffer undue or irremediable prejudice (harm) should arbitration on the merits continue. It will still be fully able to present its case on the merits. The continued existence of the condonation ruling will have no impact on this. The applicant has complained that the case concerns a constructive dismissal, is extensive, with more than a thousand pages of documentary evidence, and will likely last a number of days at arbitration. According to the applicant, it means that it will have to incur substantial expenditure in having to defend a case which it should not be expected to defend in the first place. But this consideration is simply not exceptional. It is, all considered, a financial consideration, which, as I have said, cannot serve to establish the kind of prejudice that would justify a stay in the proceedings.

[31] In fact, I venture to say that possible prejudice in the conduct of the proceedings considered, it would, considering the scope of the case complained of by the applicant, rather be in the interest of justice that the case be disposed of now without delay. Imagine all the difficulties that may result from preparing for such a substantial case, having witnesses available, the recollection of such witnesses, and continued availability of documentary evidence, if this case ultimately comes back to arbitration in two years' time, being the average time it takes to complete a review. And all this time, the third respondent would be languishing in an unresolved dispute. This state of affairs is far more prejudicial than having to spend money on arbitration now

[31] Id at para 46. See also *Mthini* (*supra*) at para 12.

that may ultimately, in the case of a successful review of the condonation ruling, be considered to have been wasted. And further, if the applicant is successful at arbitration on the merits, then the current review application may well be rendered moot, and those costs would be saved. All said, it is not in the interest of justice to stay the arbitration proceedings, as no grave injustice or irreparable harm will result if it continues. The following dictum in *South African Broadcasting Corporation supra*[32] is illustrative in this respect:

> 'In short, the SABC has failed to establish a prima facie right to the relief that it seeks. To the extent that the SABC contends that it will suffer irreparable harm should the relief not be granted, this is simply not the case. The SABC has invested significant energy and effort (and no doubt substantial legal fees) in delaying the determination of this dispute. Any irreparable harm that there may be is that suffered by the employee, who will face yet further delay in the determination of her dispute. Given the current backlog in the opposed motion court roll, it is unlikely that the review will be heard within the next 12 months. For the same reason, the balance of convenience favours the continuation and conclusion of the arbitration hearing.'

And in *Ethekwini Municipality supra*[33] the Court decided:

> 'One also cannot ignore the prejudice to the first respondent. The fact is that he would have to wait for years for the review to be heard. In the meantime, the fifth respondent would remain in the position and become entrenched in it, which would be a formidable obstacle in the way of the first respondent obtaining the relief of being considered for the position should he ultimately establish that he was unfairly treated in not being shortlisted for the position. The point is that this is an issue that must be resolved with expedition, and the only way to achieve this is to allow the arbitration to proceed. Again, it must be emphasised, in the context of the prejudice consideration, that the applicant always retains the backup of the right to challenge of any finding on the merits on review, without even compromising the current review application. I believe there is little prejudice to the applicant to just proceed with the arbitration.'

[32] Added to the above, and since the applicant has filed the review application, nothing would stand in the way of the applicant, should it be successful at arbitration, to only persist with the current review if it believes it has such good

[32] Id at para 13.
[33] Id at para 38. See also *EOH Abantu* (*supra*) at para 16.

merits where it comes to expunging the condonation ruling. The applicant was at pains to impress upon me how bad the condonation ruling was. But I believe this is not a basis for establishing exceptionality, in particular because even if the condonation ruling is so bad, nothing that will happen in the arbitration will detract from that. That case can always be presented to a review Court, in the ordinary course, should the applicant ultimately lose the arbitration. And even better for the applicant, it would also be entitled to seek the review of the arbitration award on the merits, and consolidate it with the review of the condonation ruling, if it loses the arbitration. This all means that the applicant can obtain full and complete redress in the ordinary course, even if the arbitration proceedings continue to finality. The following dictum in *Mthini supra*[34] is apposite in this respect:

> 'Indeed, she will not be left without substantial remedy or reinstatement as she seeks to argue. Should the third respondent fail to discharge its onus and her dismissal is found to be substantively unfair, reinstatement remains the primary available remedy under the LRA. If she is reinstated, she would have no reason to challenge a favourable award. Conversely, if the award goes against her and she challenges it and the Court finds that there are sustainable grounds for review, she will have adequate redress through the review process, where the award may be substituted with an order of reinstatement. On this reasoning, the issue is resolved without intervention in the pending arbitration.'

[33] I wish to conclude by referring to examples of what may well be considered to constitute truly exceptional circumstances. A pertinent example is found in *Minister of the Department of Correctional Services v Mpiko NO and Others*[35], albeit in the context of the Court deciding what is 'just and equitable' under section 158(1B). In that case, the employer raised a preliminary point that certain issues the arbitrator was called on to decide had already been the subject of a judicial decision by the Labour Court which took those issues specifically off the table and thus rendered the same *res judicata*. The Court held:[36]

[34] Id at para 34.
[35] (2018) 39 ILJ 2038 (LC).
[36] Id at para 25.

> 'The arbitrator failed to appreciate and understand that the issues as identified in the preliminary objections were correctly regarded in law as res judicata given the content of a judgment handed down by this honourable court. The court's findings are binding on the arbitrator. There is, therefore, no legal basis for the arbitrator's finding that it is only the LAC which was empowered to decide whether the issues raised in the preliminary point were res judicata.'

[34] Why I refer to aforesaid example is because a res judicata jurisdictional challenge is quite different to challenging a condonation ruling. In a condonation ruling, an arbitrator is called upon to exercise a discretion[37], and the exercise of that discretion in favour of granting condonation is what clothes the CCMA with jurisdiction. A challenge of jurisdiction relating to a condonation ruling would thus involve determining if the discretion was judicially exercised, and that in turn involves a factual determination in respect of which it is feasible that one adjudicator may consider condonation to be justified, whilst another may not. That is why interference with such discretion is circumscribed.[38] As said in *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others*[39]: *'… it may interfere only when it appears that the lower court had not exercised its discretion judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it had reached a decision which in the result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles …*'. But in the case of *res judicata*, as the saying goes, it is what it is, and jurisdiction is disposed of without more once it exists. The same applies to issues like prescription, or where a matter has been settled. Under these kinds of instances, I would accept that it can be said that exceptional circumstances dictate intervention, before the arbitration proceeds. These examples are not a closed list, but simply an illustration. In the end in this respect, I venture to say that where an arbitrator exercises a true discretion when making the ruling subject to a review challenge *in medias res*, it would seldom be warranted to intervene in incomplete arbitration proceedings.

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[37] See *Mabaso v Law Society, Northern Provinces, and Another* 2005 (2) SA 117 (CC) at para 20.
[38] In *Coates Brothers Ltd v Shanker and Other* (2003) 24 ILJ 2284 (LAC) at para 5 these grounds when interference is warranted is described as *'… the court a quo 'acted capriciously, or acted upon a wrong principle, or in a biased manner, or for insubstantial reasons, or committed a misdirection or an irregularity, or exercised its discretion improperly or unfairly …*'. See also *Plsmidth Buffalo (Pty) Ltd v Hlakola* (2019) 40 ILJ 527 (LAC) at para 16.
[39] 2000 (2) SA 1 (CC) at para 11.

[35] In summary, in order for the applicant to succeed in obtaining the interim interdict it sought, it needed to show the following, as articulated in *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw*:[40]

> '… *(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.'

[36] Whilst it may be true that the applicant established the existence of a prima facie right in the form of a competent review application, it is equally true, for the reasons discussed above, that there is no irreparable harm to the applicant, nor does the balance of convenience favour it. And finally, there remains a satisfactory remedy available to the applicant in the ordinary course. The applicant has not satisfied all the requirements for obtaining the interim interdict it seeks. The application thus falls to be dismissed.

Costs

[37] This then only leaves the issue of costs. The fact is that this Court always retains a discretion, as contemplated by section 162(1) of the LRA, with regard to making a costs award against a party. In *Union for Police Security and Corrections Organisation v SA Custodial Management (Pty) Ltd and Others*[41] the Court said:

> 'In the labour context, the judicial exercise of a court's discretion to award costs requires, at the very least, that the court must do two things. First, it must give reasons for doing so and must account for its departure from the ordinary rule that costs should not be ordered. Second, it must apply its mind to the dictates of the fairness standard in s 162, and the constitutional and statutory imperatives that underpin it …'

[38] In exercising my discretion in line with the aforesaid, I was tempted to make a costs award against the applicant. However, I decide not to do so, as it is clear that deciding whether or not truly exceptional circumstances exist could be a

[40] 2008 (5) SA 339 (SCA) at para 20.
[41] (2021) 42 ILJ 2371 (CC) at para 35.

difficult horse to saddle. The proposition advanced by the applicant is certainly arguable and there is support for it. As the review application concerns the jurisdiction of the bargaining council, it was competently brought *in medias res*, which is a factor to be considered when deciding whether or not to make a costs award. Overall, I do not think the litigation was entirely unfounded, nor do I think bringing it was *mala fide* conduct on the part of the applicant and simply as a tactic to delay the arbitration. And lastly, the parties are still to engage each other in the upcoming arbitration proceedings, and I do not believe it would be appropriate to mulch any party with a costs order in such circumstances. All this considered, I do not think it is fair that no order as to costs be made.

[39] For all the aforesaid reasons, I thus believe it is appropriate to exercise my discretion with regard to costs by making no order as to costs.

Order

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

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S Snyman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Advocate S Mahlangu together with Advocate B Maphosa
Instructed by:	TBN Attorneys

For the First Respondent:	Advocate K Manqo
Instructed by:	Herold Gie Attorneys