



- (1) REPORTABLE: **YES**
- (2) OF INTEREST TO OTHER JUDGES: **YES**
- (3) REVISED: **YES**

30 June 2026

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026 – 124618

In the matter between:

DEPARTMENT OF CORRECTIONAL SERVICES

First Applicant

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Second Applicant

and

**G4S CORRECTION SERVICES (BLOEMFONTEIN)
(RF) (PTY) LTD**

First Respondent

**BLOEMFONTEIN CORRECTIONAL
CONTRACTS (PTY) LTD**

Second Respondent

**POLICE AND PRISONS CIVIL RIGHTS UNION
(POPCRU)**

Third Respondent

**INDIVIDUALS WHOSE NAMES ARE LISTED IN
ANNEXURE "A" TO THE NOTICE OF MOTION
Respondents**

Fourth to Further

Heard: 18 June 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 30 June 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 application for leave to appeal – s 18 of Superior Courts Act – application for leave to appeal out of time – no suspension of order under s 18(1) – proper basis for stay not made out

Stay of execution – Rule 45A of Uniform Rules – discretion of the Court – principles relating to discretion considered – appeal against *causa* of order justifying stay – however no irreparable harm to applicants if stay not granted – no real purpose for seeking stay – no injustice if stay not granted – merits of appeal not relevant – applicant failing to make out proper case for stay

Costs – applicants pursuing stay of execution when entirely inappropriate – conduct unreasonable – costs order justified

JUDGMENT: REASONS

SNYMAN, AJ

Introduction

- [1] The applicants have instituted an urgent application to stay the execution of a judgment (order) by Gandidze J given on 5 May 2026 under case number 2026-065612. What the applicants are seeking is limited to interim relief, because the stay of execution is sought pending an application for leave to

appeal to the Labour Appeal Court (LAC) the applicants have brought on 25 May 2026. As the applicants seek interim relief, they need to satisfy four requirements, as set out 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 the first respondent, as well as the third and fourth to further respondents. For ease of reference, I will refer to the applicants jointly as ‘*the Department*’, the first respondent as ‘*G4S*’ the third respondent as ‘*POPCRU*’ and the fourth to further respondents as ‘*the employees*’. The second respondent did not participate in the proceedings.
- [3] I must from the outset say that I believe that it was simply not necessary for the Department to have pursued this application. Instead, they should rather have focussed on getting their application for leave to appeal decided as soon as possible. Or they could have asked G4S and POPCRU for an undertaking not to execute, as these parties clearly knew an application for leave to appeal (with a condonation application) was pending. And it also cannot be ignored that it was the Department’s own fault that they did not secure the protection of an automatic stay of the order of 5 May 2026 pending an appeal process, as they filed the application for leave to appeal late. It is not always appropriate to run straight to Court without more, when practicable alternative solutions are available.
- [4] The aforesaid introductory remarks having been made, the fact is that there is a stay application to decide. The application came before me for argument on 18 June 2026 and was heard virtually. After hearing argument on behalf of the Department, G4S, and POPCRU and the employees, and having perused the pleadings and heads of argument by the parties, I granted the following order on the same day:

¹ 2008 (5) SA 339 (SCA) at para 20.

1. The application is heard as one of urgency in terms of Rule 38.
2. The application is dismissed.
3. The applicants are ordered by the first respondent's costs on the party and party scale C, which shall include the costs of two counsel.
4. No costs order is made on behalf of the third and fourth respondents.
5. Written reasons for this order will be provided on 30 June 2026.

This judgment now constitutes the written reasons in terms of paragraph 5 of my order as aforesaid.

Background facts

- [5] The background facts in this case are straight forward and uncontroversial.
- [6] The substantive merits of the case concerns an application brought by G4S against *inter alia* the Department in terms of section 197 of the Labour Relations Act (LRA)². The application was brought as a result of the Department terminating the contracts of G4S with the Department, to manage and operate the Manguang Correctional Services maximum security prison (MCC prison) on behalf of the Department.
- [7] On 18 February 2026, the Department gave notice to G4S that the contracts in terms of which G4S managed and operated the MCC prison would terminate at the end of the term of such contracts, which term was expiring on 30 June 2026. The notice further informed G4S that the Department would take over the management and operation of the MCC prison upon termination of such contracts.
- [8] According to G4S, the termination of its contracts with the Department and the taking over of the MCC prison by the Department would constitute a transfer of a business / undertaking as contemplated by section 197 of the LRA, from

² Act 66 of 1995 (as amended)

G4S to the Department, especially considering a provision to this effect contractually made in 2023. G4S attempted to engage the Department concerning the application of section 197, without success. In fact, the Department sought to advertise the filling of employee vacancies at the MCC prison.

- [9] Consequently, G4S brought an urgent application to this Court on 19 March 2026. In this application, G4S sought declaratory relief to the effect that it be declared that the termination of the contracts between G4S and the Department relating to the management and operation of the MCC prison, and the Department then assuming and taking over the management and operation of the MCC prison, constitutes a transfer as contemplated by section 197 of the LRA, effective 1 July 2026. G4S sought further relief that it be declared that the employees of G4S employed on the MCC prison contracts be automatically transferred to the Department upon termination of the contracts.
- [10] The application came before Gandidze J on 21 April 2026. In an order given on 30 April 2026, the learned Judge granted G4S the declaratory relief sought. The order was followed by comprehensive written reasons in the form of a written judgment handed down on 5 May 2026 by the learned Judge.
- [11] On 8 May 2026, G4S wrote to the Department. In this letter, it was recorded that the Department had as yet not complied with the order of 5 May 2026, as the advertisements for filling the vacancies at the MCC prison had not been withdrawn, and the Department had not engaged with G4S in facilitating the transfer of the employees. The Department was requested to confirm engagement with G4S to facilitate the transfer, by 15 May 2026, failing which G4S would seek to enforce the order. On 11 May 2026, the Department indicated that it was taking legal advice and considering its options.
- [12] Further on 11 May 2026, G4S issued a notice as contemplated by section 189(3) to the employees, of its intention to commence a restructuring / retrenchment process. In the notice, reference was made to the judgment of 5 May 2026 and the fact that in terms thereof, the Department was required to automatically take over all the employees of G4S on the terminated MCC prison contracts. It was further said in the notice that G4S contemplated that

the Department would apply for leave to appeal, and indicated that because this will have the effect of staying the order, G4S would have to commence a section 189 process in respect of these employees, as it would be compelled to cease managing and operating the MCC prison as from 1 July 2026.

- [13] G4S wrote to the Department again on 21 May 2026, as no application for leave to appeal was forthcoming. In this letter, it was indicated that the time period for filing an application for leave to appeal had expired, and as such, the order was immediately enforceable. It was pointed out that the Department had still not complied with the order. A formal demand was made that the Department confirm by close of business on 22 May 2026 that it will comply with the order and engage with G4S to facilitate the transfer of the employees. It was further indicated that if the Department did not comply with the demand, urgent steps would be taken to enforce the order by way of contempt of court proceedings.
- [14] The Department then sought to challenge the judgment and order of 5 May 2026 on appeal to the LAC, by way of an application for leave to appeal filed on 21 May 2026. In terms of Rule 67(3) of the Labour Court Rules, the Department ought to have filed its application for leave to appeal within ten days after the written judgment was handed down. This means the application for leave to appeal had to be filed on or before 19 May 2026. Because it was only brought on 21 May 2026, it is thus three days out of time. Consequently, on 25 May 2026, the Department filed an application for condonation for the late filing of the application for leave to appeal.
- [15] On 26 May 2026, G4S again wrote to the Department. In this letter, the history relating to the conduct of the matter so far was elaborated on. The Department was accused of acting in bad faith in pursuing the leave to appeal. It was pointed out that because the application for leave to appeal was filed out of time, it did not have the effect of suspending / staying the order of 5 May 2026, and that the Department was required to immediately comply with the order in full. The Department was again requested to engage with G4S to facilitate the transfer of the employees. Nonetheless, G4S extended a proposal to the Department for the parties to attempt to resolve the matter by way of a meeting to be held on 2 June 2026. It was suggested that in this meeting, it

would be discussed that G4S would not oppose the application for leave to appeal and condonation application, provided the Department co-operated with G4S to have the application for leave to appeal decided on an 'extremely urgent' basis. Further in terms of this proposal, it was suggested that in this meeting of 2 June 2026, the Department would be required to engage with G4S to make 'practical arrangements' to cater for the period from when the contracts expired effective 1 July 2026, and until the leave to appeal or any subsequent appeal is concluded.

- [16] The letter by G4S of 26 May 2026 set a deadline of 28 May 2026 for the Department to respond to the proposals. It was recorded that if the proposals made were not accepted by the deadline, the application for condonation for the late filing of the application for leave to appeal would be opposed, and if the condonation is refused, the order will be enforced. If condonation was granted, the application for leave to appeal will not be opposed, and G4S would launch an application in terms of section 18(3) for the interim enforcement of the order pending the determination of the leave to appeal. No further mention was made of contempt of Court proceedings.
- [17] On 27 May 2026, the Department answered and indicated it was amenable to the proposals made in G4S's letter of 26 May 2026. G4S was asked to provide particulars of what was envisaged by 'practical arrangements'. But nothing was said about the meeting proposed for 2 June 2026.
- [18] G4S responded on 28 May 2026. It indicated that the Department gave no answer to the proposed meeting of 2 June 2026, and the proposals made were conditional upon the meeting being agreed to. It was explained that it was contemplated that the parties would discuss the practical arrangements referred to in this meeting. It was demanded that the Department confirm the meeting of 2 June 2026 by 17h00 that same day, or the proposals would lapse. And lastly, it was stated that in such event, G4S would proceed to take steps to enforce the order, which would include opposing the application for leave to appeal and condonation application, bringing an application in terms of section 18(3) for interim enforcement, and reporting the matter to the relevant Portfolio Committee of Parliament. Again, no specific mention was made of contempt of Court proceedings.

- [19] The Department did not provide the confirmation sought and did not respond to the letter of 28 May 2026. As a result, and on 1 June 2026, G4S reported the entire matter to the Portfolio Committee, and asked for intervention. The issue is still pending before that Committee. But other than making this report, G4S has not yet pursued any further enforcement proceedings against the Department.
- [20] As matters stood when the matter was argued before me, the application for leave to appeal was in all respects complete, the parties had filed written submissions as contemplated by Rule 67(5), and G4S has requested Gandidze J to decide the application for leave to appeal together with the condonation application as one of urgency.
- [21] On 15 June 2026, the Department then launched the current urgent application to stay execution of the order of 5 May 2026.

Urgency

- [22] Urgent applications are governed by Rule 38 of the Labour Court Rules. The ordinary requirements necessary to establish urgency was summarized in *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another*³ as follows: (a) the applicant has to set out explicitly the circumstances which renders the matter urgent with full and proper particularity; (b) the applicant must set out the reasons why the applicant cannot be afforded substantial redress at a hearing in due course; (c) where an applicant seeks final relief, the court must be even more circumspect when deciding whether or not urgency has been established; (d) urgency must not be self-created by an applicant, as a consequence of the applicant not having brought the application at the first available opportunity; (e) the possible prejudice the respondent might suffer as a result of the abridgement of the prescribed time periods and an early hearing must be considered; and (f) the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency.

³ (2016) 37 ILJ 2840 (LC) at paras 20 – 26, and all the authorities cited there.

[23] 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 the obtaining thereof would not be possible.⁴ 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*⁵ 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, however, such substantial redress is available in due course, then the court ought to refuse to accord the matter urgency.’

[24] In the current application, the issue of urgency was not challenged by any of the respondents in their heads of argument, and when the matter was argued. And justifiably so. It is clear that the Department did not unduly procrastinate in bringing this application, and all the respondents have had a sufficient opportunity to oppose and answer the matter. The issue to be decided in this case is for all intents and purposes an issue of law, with little factual disputes at stake. But probably the most critical consideration in this case is that there is no substantial redress available to the Department in the ordinary course. There is no other basis upon which it can obtain a stay of execution of the order of 5 May 2026, should a stay of execution be found on the merits to be justified and substantiated. On the issue of prejudice, this is directly linked to one of the considerations this Court must decide when determining a stay of execution application and should thus not separately decided under the auspices of urgency.

⁴ 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.

⁵ (2025) 46 ILJ 2664 (LC) at para 18.

[25] Therefore, the Department has made out a proper case of urgency, and the requirements of Rule 38 have been satisfied. In sum, the Department has acted with due expedition in bringing the application, and has no substantial redress available in the ordinary course. I in any event consider it to be in the interests of justice that the application be decided as one of urgency.

Analysis

[26] The Labour Court is a Court of the same status as the High Court.⁶ Thus, any order granted by the Labour Court has the same effect and consequence as an order of the High Court. In this respect, the Court in *Rham Equipment (Pty) Ltd v Lloyd and Others*⁷ 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.

[27] The aforesaid being the case, it is now trite that section 18 of the Superior Courts Act⁸ finds application in the Labour Court.⁹ This means that in terms of section 18(1), any application for leave to appeal brought against an order of the Labour Court would automatically stay operation / execution of such order.¹⁰ So, and ordinarily, the application for leave to appeal by the

⁶ 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.

⁷ (2008) 29 ILJ 3033 (LC) at para 9.

⁸ Act 10 of 2013.

⁹ For some 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).

¹⁰ The section 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

Department would suspend / stay the order of 5 May 2026. In fact, and in the founding affidavit, the Department alludes to the fact that order is stayed in terms of section 18(1). But unfortunately, the fact that the application for leave to appeal was filed outside the time limit imposed in terms of Rule 67(3) makes all the difference.

[28] Where an application for leave to appeal is filed out of time, the automatic consequence of that is that any leave to appeal is considered to have lapsed, and this in turn results in section 18(1) not finding application, until an application for condonation is granted to revive it. This was made clear in the judgment of *Panayiotou v Shoprite Checkers (Pty) Ltd and Others*¹¹. The Court in that case had specific regard to how the provisions of Rule 49(11) of the Supreme Court Rules, being the predecessor to section 18 of the Superior Courts Act, were dealt with *Schmidt v Theron and Another*¹². In the judgment of *Schmidt*, the Court said that: *'The appeal having so lapsed, an application for condonation in terms of Appellate Division Rule 13 is required if an appellant who has failed to comply with the Rules wishes to revive or reinstate it. ... The position therefore is that in the present case the appeal has lapsed. No condonation in terms of the Appellate Division Rule 13 has been granted and accordingly the order made by this Court on 22 October 1990 is no longer suspended in terms of Supreme Court Rule 49(11) ...'*. The Court in *Panayiotou supra* then had specific regard to these *dicta* and held that, in specifically applying section 18:¹³

'The failure to serve notices of appeal or court records within the prescribed periods is commonplace. The result of such failures is that the appeals lapse and require condonation to revive them. ...'

The Court in *Panayiotou*, again with specific reference to the *dicta* from *Schmidt* concluded:¹⁴

application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal'.

¹¹ 2016 (3) SA 110 (GJ).

¹² 1991 (3) SA 126 (C) at 129H – 130G.

¹³ *Id* at para 13.

¹⁴ *Id* at para 15.

‘The inherent logic of the position is unassailable. It can be tested by asking what would happen if many months or years were to pass before an application for condonation is lodged. It is untenable that upon the service of a condonation application the judgment would then be suspended. Accordingly the application fails for want of even a prima facie right that the judgment of Legodi J be suspended ...’

- [29] The reasoning in *Panayiotou* was applied by the Full Court, on appeal, in *Zilwa Attorneys Incorporated and Another v Road Accident Fund (Appeal)*¹⁵ where the Court held:

‘The interpretation of s 18 (1) of the Act, read with Rules 49 (1) (b) reveal that a precondition for suspension of operation and execution of a judgment or order is the existence of an application for leave to appeal that was brought within 15 days after judgment; or within such extended time thereafter that would have been authorised by the court as envisaged in Rule 49 (1) (b). Having found that the application for leave does not comply with Rule 49, coupled with the non-existent order of a court extending 15 days, the operation and execution of the orders by Mjali J was not the subject of an application for leave to appeal, or an appeal, as contemplated by the legislature in s 18 (1). Therefore, the belated application for leave to appeal a High Court lapsed, with the consequence that the judgment against which leave to appeal is sought is excluded from the operative effect of section 18 (1) ...’

- [30] This Court in *Trendy Greenies (Pty) Ltd t/a Sorbet George v De Bruyn and Others*¹⁶ also applied the reasoning in *Panayiotou supra* and decided:¹⁷

‘In this instance, the court is also faced with a situation in which an appeal has not been noted within 15 days of leave to appeal being granted as required by Labour Appeal Court rule 5(1). In the light of the judgment in *Incubeta* and since s 18(5) determines that it is a prerequisite for an order being made under s 18(1) read with s 18(3) that a notice of appeal must have been lodged with the registrar in terms of the rules, the basis for bringing an application

¹⁵ 2025 JDR 3866 (ECM) at para 20. See also *Lee v Road Accident Fund* 2024 (1) SA 183 (GJ) at para 20; *Myeni v Organisation Undoing Tax Abuse NPC* 2021 JDR 0258 (GP) at paras 23 – 26.

¹⁶ (2021) 42 ILJ 1771 (LC) at para 14. See also *Chemical Energy Paper Printing Wood and Allied Workers Union and Others v Mashanda NO and Others* (2023) 44 ILJ 520 (LC) at paras 100 – 102; *Aspen Pharmacare Ltd v Chemical Energy Paper Printing Wood & Allied Workers Union on behalf of Tabata and Another* (2024) 45 ILJ 2024 (LC) at para 49.

¹⁷ Id at paras 15 – 16

under s 18(3) does not exist, irrespective of whether it was necessary for the applicant to demonstrate urgency.

Consequently, as things currently stand, until and unless the condonation application before the LAC has been determined in the respondents' favour, there is no decision which is subject to an application for leave to appeal. Paradoxically therefore, even though s 18(3) is not applicable and no relief can be granted in terms of that section, the judgment of this court on 21 October 2020 still remains in force and compliance therewith can be enforced through contempt proceedings.'

[31] As said, the Department's application for leave to appeal was filed late. As such it does not suspend the operation of the order of 5 May 2026 in terms of section 18(1) of the Superior Courts Act, as it has lapsed. The fact that a condonation application has been brought does not change that. The purpose of the condonation is to revive the application for leave to appeal that has lapsed. The application for leave to appeal can only be revived if the condonation application is granted. The order of 5 May 2026 remains executable and is not stayed.

[32] But it is undeniable that there indeed exists an application for leave to appeal together with application for condonation to regularize its late filing, as a fact. The Department has made its intentions clear that it intends to pursue an appeal, and it has the right to do so. But in the absence of an automatic stay, the order of 5 May 2026 nonetheless remains operative and executable, and must be complied with. So, where does this leave the Department? The answer is straight forward, being that this Court must exercise its discretionary powers to stay execution, which the Court still retains even if section 18(1) does not apply.¹⁸ These discretionary powers are found in Rule 45A of the Uniform Rules of the High Court. 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 in the Superior Courts Act, which, as discussed above, does not find application in this case at this juncture. In the absence of a specific Rule in the

¹⁸ See *Ndevu and Others v Westonaria South Property Holding (Pty) Ltd and Others* 2022 JDR 0760 (GP) at paras 20 – 21.

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.¹⁹ In *Rham Equipment supra*, the Court confirmed the application of Rule 45A in the Labour Court, finding that: ‘... *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.*’²⁰

[33] It follows that the Department’s current application to stay the order of 5 May 2026 would be founded on the application of the principles under Rule 45A of the Uniform Rules. 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*²¹, 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.

¹⁹ 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.

²⁰ Id at para 9. See also *Gois t/a Shakespeare’s Pub v Van Zyl and Others*. 2011 (1) SA 148 (LC) at para 37.

²¹ 2011 (1) SA 148 (LC) at para 37.

(e) The court is not concerned with the merits of the underlying dispute - the sole enquiry is simply whether the causa is in dispute.'

[34] The aforesaid *ratio* in *Gois supra* has been consistently applied since.²² In particular, and in *Stoffberg NO v Capital Harvest (Pty) Ltd*²³ the Court 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] In applying the aforesaid principles, it is perhaps appropriate to start with the issue of the prospects of success of the Department's application for leave to appeal. The Department has contended it has substantial and strong prospects of success on appeal. G4S in turn has said that the prospects of success of the Department on appeal are very poor. The simple answer to these contradictory adopted positions must be that prospects of success on appeal do not matter in deciding this case. Prospects of success is simply not a relevant consideration when deciding whether or not to stay enforcement of an order, as made clear in *Gois supra*. As also pertinently said in *Denel SOC Ltd v National Union of Metalworkers of SA on Behalf of Petersen and Another*²⁴: '... 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,

²² 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 Equipment (supra)* at para 11; *City of Johannesburg v SA Municipal Workers Union on behalf of Motaung and Others* (2014) 35 ILJ 3374 (LC) at paras 22 – 24; *JDJ Diagnostics (Pty) Ltd v Kruger and Others* (2025) 46 ILJ 1942 (LC) at para 35. .

²³ 2021 JDR 1644 (WCC) at para 26.

²⁴ (2022) 43 ILJ 2303 (LC) at para 40.

such a party must demonstrate that the deference does not carry its potential possibility — to remove the causa ...’.

- [36] It is in fact the issue of the possible removal of the *causa* referred to in *Denel supra* that alludes to the real enquiry, insofar as it may involve an issue of prospects of success in proceedings such as these. 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*.²⁵ 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*²⁶ 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.’

- [37] I am aware that in *Provincial Government North West and Another v Tsoga Developers CC and Others*²⁷ the Constitutional Court dealt with the issue of prospects of success in the context of a stay of execution. But in that case, the Court was not deciding on, nor applying the principles relating to the stay of execution, as being the gravamen of the case before it. That case concerned, in the end, the applicants asking the Court to order the repayment of a sum of money that had been attached, pending finalisation of Part B of litigation proceedings. The remarks thus appear to be obiter. Nonetheless, the Court indeed said:²⁸

‘On the matter of the stay of execution pending finalisation of the R8.8 million claim, not much more detail was given besides what is set out in paragraph 12

²⁵ 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.

²⁶ 2011 (4) SA 149 (SCA) at para 52.

²⁷ 2016 JDR 0553 (CC).

²⁸ *Id* at para 54.

above. It is so that a stay of the execution of a judgment pending the determination of proceedings still to be instituted is legally cognisable. An order of that nature may be granted where real and substantial injustice would otherwise result. It goes without saying that the applicant for the stay of execution must demonstrate that the proposed claim has prospects of success. Otherwise, what would the point of the stay be? In *Cooper* the Court held that the applicant must show a *prima facie* right. ...’ (emphasis added)

[38] But despite the aforesaid *dictum* in *Tsoga Developers*, the approach remained that considering prospects of success on appeal was not a relevant consideration when deciding whether or not to grant a stay of execution. In this regard, the Court in *BP Southern Africa (Pty) Ltd v Mega Burst Oils and Fuels (Pty) Ltd and Another; BP Southern Africa (Pty) Ltd v ZA Petroleum (Pty) Ltd and Another*²⁹ had the following to say:

‘This seems to me, with great respect, to be too narrow an application of the court’s discretion. Of course a discretion must be judicially exercised, and not a judge’s whim. A litigant with an enforceable judgment is entitled to payment, and only in rare cases would be delayed in that process. In my view there may be exceptional cases where a court would still exercise a discretion to prevent an injustice in staying execution. The fact that a petition for leave to appeal is to be served soon is potentially a significant factor in staying execution. If an applicant were to undertake (as has happened in this case) that an application for leave to appeal will be delivered, one should, in my view, then consider the prospects of success with such a step as best one can (and as was in fact done in *Municipal Workers Retirement Fund*) to determine if an injustice would be done. An intended petition may have no merit at all.

I am not prepared not to consider prospects of success, as argued by the applicant. I find the common law on exercising a discretion to execute pending an appeal instructive. See *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 544H – 545B: ...’

And more recently, in *Dalrymple v Riach and Others*³⁰, it was decided as follows in this regard:

²⁹ 2022 (1) SA 162 (GJ) at para 25 – 26.

³⁰ [2026] JOL 73621 (WCC) at paras 18 – 19.

'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.'

[39] But even more directly, the Full Court in *MEC, Department of Public Works and Others v Ikamva Architects and Others*³¹ had occasion to specifically consider the aforesaid *dictum* in *Tsoga Developers supra*. After referring to the general principles applicable to deciding stay applications, as discussed above, the Court concluded as follows, in deciding that prospects of success on appeal were not a relevant consideration:³²

'The Constitutional Court in *Tsoga* dealt with stay of execution in a single paragraph and expressed support for *Cooper*, framing the need to establish a *prima facie* right as an absolute requirement: 'It goes without saying that the applicant for the stay of execution must demonstrate that the proposed claim has prospects of success. Otherwise, what would the point of the stay be? In *Cooper* the Court held that the applicant must show a *prima facie* right. ...'

Does this statement overtake the developments that resulted in a distinction in cases where an applicant seeks to avert injustice? In our view, the present matter is distinguishable, and reliance on the approach in *Gois* remains appropriate. It is significant that the limited remarks regarding a stay of execution in *Tsoga* appear in the context of considering whether leave to appeal should be granted against an interim order of execution. As indicated, that matter considered the setting-aside of a settlement agreement in circumstances where an order of court had been granted pursuant to the agreement and remained unchallenged. The issue of a stay arose only tangentially in *Tsoga*: the applicants raised a potential future claim in the sum of R8,8 million as the basis for staying the execution of the order based on the settlement agreement. There was a paucity of detail about the possible future claim. At best for Ikamva, *Tsoga* stands as authority for the following: an

³¹ 2022 (6) SA 275 (ECB).

³² Id at para 90 – 91.

applicant who seeks a stay of execution pending finalisation of a future claim, yet to be instituted, must demonstrate that the proposed claim has prospects of success. The present matter, in which a stay is sought pending final consideration of a petition for leave to appeal, and any consequent appeals to the self-review proceedings already launched, is very different.’

[40] I believe the same reasoning found in *Ikamva Architects* is apposite *in casu*. All said, it is undeniable that the underlying *causa* of the order of 5 May 2026 is being disputed and should that dispute be successful, it could materially alter such *causa*. That makes the order eligible to being stayed, by virtue of the considerations set out above. But that is not where the enquiry ends. Deciding whether or not to grant a stay involves a lot more than just looking at whether the underlying *causa* is challenged and what the outcome thereof may be. In my view, and what lies at the heart of determining the current application, is deciding whether a real and substantial injustice will result if the order of 5 May 2026 is not stayed. Tied in with this consideration would be looking at prejudice (harm). A further important factor is deciding if the Department has a well-grounded apprehension that the execution is taking place at the instance of G4S. It is my view that based on these considerations, and despite the *causa* being challenged, a stay of the order of 5 May 2026 is simply not appropriate and competent, for the reasons to follow.

[41] First, what would be an ‘injustice’ for the purposes of justifying a stay? The first consideration in this respect would be whether the Department would effectively forfeit its rights to challenge the order on the merits if it is not stayed. Or differently put, will execution of the order at this point render the appeal valueless even if it is successfully pursued. This situation often arises in the context where the execution concerns the payment of a sum of money, the litigant in favour of whom execution was granted is not a person of means, and it being likely that such payment would never be recovered even if the appeal is successful. As explained in *Rham supra*:³³

‘... It is also undisputed on the papers that, unless the stay of execution is granted, the applicant will lose his right to dispute his indebtedness. It is furthermore also undisputed on the papers that the respondent is a man of

³³ Id at para 13.

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:³⁴

‘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.’

[42] But the aforesaid is not the case *in casu*. Whilst it is so that the Department contends that a stay of execution under Rule 45A is essential to effectively safeguard its entrenched right of appeal, I do not believe there is substance in this contention. If a stay of execution is refused, this cannot in any manner compromise the rights of the Department to pursue its case in terms of section 197 on appeal or diminish the effectiveness of a successful appeal outcome. If anything, and even under section 18(3), this Court has said that interim enforcement of an order under section 197 is not appropriate.³⁵ There are many instances where cases concerning the application of section 197 have been pursued all the way to the Constitutional Court, without the rights of the parties being compromised by the original order in this regard being stayed subject to and pending the appeal.³⁶ Of course, and if the order is stayed, then G4S would have to deal with the employees and likely retrench them. Nonetheless, and if the appeal is ultimately unsuccessful, then the Department would still have to take over those employees effective 1 July 2026, despite them having been retrenched by G4S, and G4S would be able to recover all its expenses incurred in this regard from the Department. If the Department however is successful on appeal, then the retrenchment process initiated by

³⁴ Id at para 45. See also *Minister of Forestry Fisheries and Others v Siyabonga Fishing (Pty) Ltd* 2026 JDR 1138 (WCC) at paras 74 – 75.

³⁵ See for example *CCI SA (Umhlanga) (Pty) Ltd and Others v Mobile Telephone Networks (Pty) Ltd and Others* (2023) 44 ILJ 1055 (LC).

³⁶ See for example *National Education Health and Allied Workers Union v University of Cape Town and Others* (2003) 24 ILJ 95 (CC); *Aviation Union of SA and Another v SA Airways (Pty) Ltd and Others* (2011) 32 ILJ 2861 (CC); *Rural Maintenance (Pty) Ltd and Another v Maluti-A-Phofung Local Municipality* (2017) 38 ILJ 295 (CC); *Road Traffic Management Corporation v Tasima (Pty) Ltd; Tasima (Pty) Ltd v Road Traffic Management Corporation* (2020) 41 ILJ 2349 (CC).

G4S stands, and the Department will suffer no prejudice. In the end, and even if it may take longer, the Department's right will not be compromised in the case of a successful appeal.³⁷ In sum, there simply can be no injustice to anyone if a stay of execution is not granted.

[43] If the condonation application in the application for leave to appeal is successful, which I believe it will be, considering the short delay and nature of explanation provided (I make no decision on this), then the leave to appeal and / or any further appeal process depending on whether it is refused or granted, will bring about a stay of execution, unless of course G4S successfully pursues interim enforcement proceedings under section 18(3). But that is another fight for another day. The point is that the issue of interim enforcement is best dealt with under section 18(3) of the Superior Courts Act, because it concerns interim enforcement pending an appeal, and *in casu* the outcome of the appeal process is immanent, considering the fact that the leave to appeal and condonation applications are ripe for hearing and Gandidze J has been requested to immediately deal with it as one of urgency. All said, I believe that a stay of execution now, at this very juncture, is an exercise, practically speaking, in futility, and will be overtaken by events shortly. These immanent events will simply bring the whole exercise of deciding whether or not to stay execution up all over again, but now in the properly envisaged context under section 18(3) (if pursued). In short, it is simply inappropriate to intervene now.

[44] According to the Department, if an interim stay is not granted and it ultimately succeeds in the condonation and leave to appeal applications, it would have to take on the employees for a period without the proper funding and logistics, and it is common cause that the employees earn more than the Department's other similar employees. It argued that enforcement of the order during the appeal proceedings would result in the excessive and wasteful spending of public funds, which will not be reimbursed should the employment of the employees then be terminated in the event the outcome of the appeal favours the Department. I do not believe that even these considerations as they stand establish irreparable harm for the purposes of a stay in execution. I have

³⁷ See *Janse van Rensburg v Obiang and Another Obiang* 2023 (3) SA 591 (WCC) at paras 50 – 51.

discussed earlier all the practical consequences of an ultimate appeal outcome, and none of this leaves the Department with irreparable harm. But even more importantly, most of these considerations appear purely financial. Taking a leaf out of the book of irreparable harm in the case of proceedings under section 18(3), which I think should basically be the same considerations applicable here, the Constitutional Court in *Road Traffic Management Corporation v Tasima (Pty) Ltd; Tasima (Pty) Ltd v Road Traffic Management Corporation*³⁸, specifically in the context of section 197 proceedings, said:

‘In any event, the non-payment of wages or salaries pending finalisation of an appeal cannot constitute exceptional circumstances for the purposes of s 18(3) without bringing almost every labour matter within the ambit of the section. It is impossible to find that Tasima's employees' position pending appeal must be protected, without finding that this must be the case in almost every labour dispute. Differently put, the exceptional circumstances that s 18(3) requires, ordinarily should not be located purely in the non-payment of wages or salaries pending appeal.’

[45] As said, and specifically in the context of the Department having to take on the employees as from 1 July 2026, I do not believe that realistically, having regard to what the actual case in this matter is all about, and the fact that an appeal is being pursued no matter how critical G4S may be about it, an execution by way of contempt proceedings will follow even if a stay is not granted. One must apply a modicum of common sense in this respect. G4S is represented by competent and experienced legal practitioners. As I will discuss further below, I simply do not think that G4S would seek to forthwith hammer the Department with contempt to compel compliance effective 1 July 2026. That simply has not been their approach so far. Although contempt was initially intimated, G4S's entire attitude changed when the leave to appeal application was actually filed. Seeking compliance by way of contempt now will be in the interest of no one, considering what is actually still pending. This alleged harm propagated by the Department is thus more speculative, than real.

³⁸ (2020) 41 ILJ 2349 (CC) at para 131. See also *CCI SA (Umhlanga) (Pty) Ltd and Others v Mobile Telephone Networks (Pty) Ltd and Others* (2023) 44 ILJ 1055 (LC) at para 32 – 33; *Maphalle v National Heritage Council and Others* (2023) 44 ILJ 579 (LC) at para 31.

[46] Why contempt enforcement at this stage would not be practicable is evident from the legal principles applicable to deciding contempt applications. The fact is that to execute the order of 5 May 2026 is not a simple exercise of dispatching the Sheriff to attach. A contempt application will have to satisfy all the legal requirements to hold the Department in contempt, beyond a reasonable doubt.³⁹ This is simply not likely, considering it will be very difficult to show a wilful and mala fide non compliance with and / or disregard of the order of 5 May 2026, where the Department is acting on legal advice pending an existing application for leave to appeal. It must also be remembered that the primary purpose of contempt proceedings is not to punish, but rather to secure compliance.⁴⁰ This in turn means that there are several remedies available to the Court other than sending someone to prison or fining them. It includes the remedy of a *mandamus*, or a coercive or directory order. As made clear in *Matjhabeng Local Municipality v Eskom Holdings Ltd and others*⁴¹: ‘... *Not every court order warrants committal for contempt of court in civil proceedings. The relief in civil contempt proceedings can take a variety of forms other than criminal sanctions, such as declaratory orders, mandamus, and structural interdicts. All of these remedies play an important part in the enforcement of court orders in civil contempt proceedings. Their objective is to compel parties to comply with a court order. ...*’. In this context, I believe that even if there are contempt proceedings, the Court would rather pursue these kinds of compliance remedies, which would then be unlikely to be granted where there is an actual appeal pending.

[47] A pertinent example of the point can be found in *Sheriff, High Court, Giyani v Makhubele*⁴². In that case, the Sheriff had applied for a stay of execution of

³⁹ As held in *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at paras 9 – 10: ‘*The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed deliberately and mala fide. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith). These requirements - that the refusal to obey should be both wilful and mala fide, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt - accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. ...*’.

⁴⁰ As said in *Fakie* (supra) at para 42(a): ‘... *The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements ...*’.

⁴¹ 2018 (1) SA 1 (CC) at para 54. See also para 67 of the judgment. See further *Pheko and Others v Ekurhuleni City* 2015 (5) SA 600 (CC) at para 37.

⁴² 2025 (6) SA 212 (SCA)

the order pending the expiry of the dies to file an application for leave to appeal, which application was still to be filed. According to the Court *a quo*, this amounted to an acknowledgement that he was in contempt of court. The SCA however rejected this notion, finding that:⁴³

‘Contempt of court does not consist of mere disobedience of a court order, but of the ‘contumacious disrespect for judicial authority’. ^[44] Thus it would have to be proved beyond reasonable doubt that the sheriff, a legal officer, deliberately, wilfully and maliciously defied the court order. This is not the case here.

These are the relevant facts which mitigate against any findings of bad faith and malice. When leave to appeal by the sheriff had been dismissed by the High Court, the attorneys of the sheriff informed Mr Makhubele's attorneys of their intention to petition this court. This was confirmed under oath in the sheriff's affidavit in support of its counter-application deposed to on 13 September 2023. They had a period of one month after judgment in which to file the application for leave to appeal to the SCA in terms of s 17(2)(b) of the Act, which period had not yet expired (and, as stated earlier, the sheriff did in fact petition this court, which granted leave to appeal to the full bench). It was also, correctly, pointed out by the sheriff that they would not be able to file the petition without the transcribed judgment of Tshidada J on 5 September 2023, dismissing leave to appeal.

The sheriff's conduct is not indicative of a contumacious disrespect for the court. Rather, the sheriff was acting within his rights to appeal an order and then to petition a higher court, as the law allows. To act in terms of the law, as the sheriff was doing, is evidence of respect for the law, the very opposite of a contemptuous bad faith disregard for the law ...’

The same reasoning would in my view clearly apply *in casu*, should it be suggested that the Department was acting in contempt. Its actual application for leave to appeal, together with the condonation application, as it exists, would squarely work against enforcement by way of contempt of court proceedings, until those issues have been decided. So, in short, a stay is not necessary.

⁴³ Id at paras 73 – 75.

- [48] The Department has made much in its argument about the threats by G4S made in earlier correspondence of pursuing enforcement by way of contempt. I however believe that calling this a realistic threat of execution is exaggerated. It is nothing more than posturing, which one often finds in letters of demand, to indicate to an opponent the seriousness of the intentions of the litigant in order to motivate compliance. It does not mean that such threatened litigation inevitably follows. In fact, the actual facts of this matter speak to this. As dealt with earlier, the threats of contempt were never repeated once the leave to appeal application was actually filed. When push came to shove towards the end of May 2026, G4S never said that if the deadline of 28 May 2026 to agree to a meeting is not met, the next step would be enforcement by contempt. Instead, it is indicated that a vigorous challenge of all aspects of the Department's application for leave to appeal will be pursued, which includes opposing the condonation application. There is, simply put, no indication of actual enforcement by way of contempt.
- [49] In the end, there is simply no well-grounded apprehension that could exist on the part of the Department that G4S is intending to execute the order at this stage. If anything, I am convinced by the correspondence and by what G4S has to say in answer to this matter that their main focus is securing an expeditious outcome of the application for leave to appeal and associated condonation application, as this is what would inform the next steps it intends to take in this matter. This is another important factor that works against granting a stay of execution of the order of 5 May 2026.
- [50] The Department further contends that the balance of convenience favours the granting of the interim stay of the order. In this respect, it relies on the fact that G4S has commenced with a retrenchment process, and as a result it will suffer no prejudice if the stay is granted and the appeal decided later. As opposed to this, so the argument does, if relief is not granted, the Department would be compelled to take on the employees without more. But these contentions in my view cannot be correct. G4S has proactively instituted the retrenchment proceedings because the Department has not complied with the order. It is simply seeking to limit its own possible prejudice. This should not be held against it in conducting the balance, where it comes to the balance of convenience. In fact, G4S made it clear that it was the conduct of the

Department that left it with no choice in this regard. And as I have discussed above, there is little prospect of the Department being compelled by way of a contempt application to take on the employees effective 1 July 2026, at this juncture, and whilst the leave to appeal and condonation application must still to be decided, considering the approach adopted by G4S to this matter. At best, the balance of convenience in this case is a neutral factor and certainly does not support the granting of a stay of execution.

- [51] One also cannot ignore the fact that there were alternatives open to the Department, which it effectively, either directly or through procrastination, spurned. All G4S wanted was a meeting to discuss the practical management of what to do with the employees pending any appeal. It realised that enquiries under section 197 are often complex, and certainly have a realistic prospect of being entertained on appeal. That is why it suggested that if the Department was willing to meet to discuss and then agree on these interim arrangements, it would not oppose the condonation application and leave to appeal. So, in simple terms, all the Department had to do was to agree to a meeting, and this entire application would likely not have been necessary. This kind of conduct, especially where it involves section 197, the interests of the employees concerned, and with an opponent that is quite willing to talk, is simply unacceptable, and cannot be rewarded by way of a stay of execution of the order.
- [52] Lastly, I do not understand why the Department, if it believed execution was coming at pace, especially considering that such execution would be indicated by way of an actual contempt application, simply did not ask G4S to undertake not to execute, until the whole issue of the deciding of the leave to appeal, which was immanent, was concluded. If it then received a firm no and it was indicated that a contempt application would follow forthwith, then perhaps the matter could be viewed differently where it comes to well-founded apprehension of execution. I believe this step was essential, to justify an application to stay on an urgent basis, in this case.
- [53] For all the reasons as set out above, I am simply not convinced that it would be justified and fair to grant the Department's application to stay the execution of the order of Gandidze J of 5 May 2026, pending the finalisation of the

Department's application for leave to appeal together with the condonation application. I do accept that the Department is seeking to assert a right it has, with the underlying *causa* for the order being disputed, which dispute, if successful, would entirely compromise that *causa*. However, that is one element of the enquiry, and it is simply not enough to justify the relief sought. What is further apparent, in my view, is that declining the stay / suspension of the order at this stage will not inappropriately and unfairly compromise and / or diminish the right being asserted by the Department. The merits of the pending appeal is not a relevant consideration. Considering the particular facts of this case, no injustice will result from a refusal to stay execution. I also do not believe that the Department would suffer any irreparable harm. And lastly, at best, balance of convenience is a neutral factor. The Department is thus not entitled to the relief it seeks in its notice of motion, and the application falls to be dismissed.

Costs

[54] This then only leaves the issue of costs. In this respect, and in terms of section 162(1), I have a wide discretion. The Department was legally assisted throughout these proceedings, and thus should thus have known, from the outset, that the current application was bound to fail. This is especially so, considering all attempts pursued by G4S for an alternative solution. The Department would have been far better served to have simply properly engaged G4S on the proposals made by it, which would have removed the need for the current proceedings in its entirety. I also consider that the Department was faced with the current predicament due to its own fault because of the late filing of the application for leave to appeal. And lastly, what makes matters even worse is that at no point was there a realistic threat by G4S of the execution of the order, and all said, the contrary appears true, at last until the leave to appeal process had been concluded. There was no legitimate reason for the Department to have pursued the current application.

[55] I am mindful of the sentiments expressed by the Constitutional Court in *Union for Police Security and Corrections Organisation v SA Custodial Management (Pty) Ltd and Others*⁴⁴ concerning costs orders in employment

⁴⁴ (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.

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*⁴⁵:

‘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. ...’

[56] As said, I consider the Department’s application to be completely lacking in merit. Considering the legal principles as set out above, especially considering the avenues open to it to have resolved this entire issue by way of alternative means, rendered the Department’s application hopeless. In *Children’s Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others*⁴⁶ 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. ...’

[57] I finally consider that what the Department did in seeking a stay of execution under the particular circumstances of this matter was an abuse of process. The following *dictum* in *Leshabane v Minister of Human Settlements and Others*⁴⁷ 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

⁴⁵ (2020) 41 ILJ 234 (LC) at para 36.

⁴⁶ 2013 (2) SA 213 (SCA) at para 35.

⁴⁷ (2024) 45 ILJ 833 (LC) at para 58.

courts must be done in a responsible manner and always in compliance with the rules and processes of the court.'

[58] Where it comes to POPCRU and the employees, the Department was at pains to point out to me that there existed a number of material anomalies relating to the answering affidavit submitted by them. These irregularities all related to the commissioning of these affidavits. I must confess that there are some questionable activities in this regard, and the irregularities may have the result that the improperly commissioned affidavits do not constitute evidence before this Court. However, I do decline the invitation by the Department to finally decide these issues raised, as it will simply serve no purpose. In my view, this application can effectively be disposed of on the basis of the answering affidavit by G4S alone, considered together with the Department's own version. What I shall do instead, with regard to POPCRU's and the employees' opposition in this matter, is to make an order as to costs in their favour.

[59] All said, I believe this is a situation where a costs order against the Department is certainly earned, and justified, with the appropriate order being a party and party costs order, scale C, which shall include the costs of two counsel. This costs order shall only apply to G4S. Where it comes to POPCRU and the employees, no order as to costs is made.

Order

[60] 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*.

S Snyman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Advocate G Shakoane SC together with
Advocate M Mpahlwa

Instructed by: A M Vilakazi Tau Inc Attorneys

For the First Respondent: Advocate A Myburgh SC together with
Advocate J Davis

Instructed by: Webber Wentzel

For the Third and Fourth

to Further Respondents: Mr S Mutsengi of Mutsengi Attorneys Inc