(1) Reportable: Yes
(2) Of interest to other Judges: Yes
(3) Revised

Signature 30/07/2026

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2026-169766

In the matter between:

AGRICULTURAL RESEARCH COUNCIL (ARC)	**Applicant**
And	
NTOKOZO MAJOLA	**First Respondent**
LERATO SEKWANE N.O.	**Second Respondent**
COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION	**Third Respondent**

Date heard: 28 July 2026

Date of judgment: 30 July 2026

Summary: Urgent application to stay arbitration award and to be released from providing security pending review: principles regarding security and the stay of awards reiterated; application dismissed.

JUDGMENT

HARVEY, J

[1] The applicant, the Agricultural Research Council (ARC) applies for an urgent hearing, and for orders suspending the operation, and staying enforcement, of an arbitration award which directs it to pay compensation to the first respondent (the employee) on account of an unfair labour practice. It also requests exemption from furnishing security in terms of s145(7) of the LRA, pending review of the award.

[2] The employee, Mr Majola, did not deliver an answering affidavit but attended the hearing in person, explaining that he lacked the means to engage a legal representative but wished to make submissions opposing the application, based on the applicant's papers.

Background

[3] On 2 May 2026 the CCMA issued an arbitration award in favour of the employee. The commissioner found that ARC committed an unfair labour practice relating to promotion and ordered it to pay compensation to the employee in the amount of R306 860.10.

[4] ARC delivered a review application on 12 June 2026. The review application is pending, the record not having yet been delivered.

[5] ARC did not furnish security as contemplated by section 145(7) of the LRA. Instead, together with the review application, it launched the present application seeking both to stay the award and to be exempted from the obligation to furnish security.

Urgency

[6] ARC contends that the employee has commenced steps to enforce the arbitration award, and that its request for an undertaking that he would not enforce the award pending the review was refused.

[7] I am satisfied that, once execution proceedings commenced, ARC faced the imminent enforcement of the award. This renders the application urgent. Whether ARC is entitled to exemption from furnishing security rather than avail itself of the statutory mechanism in section 145(7) goes to the merits, not urgency.

<u>The law concerning stay of awards and furnishing of security</u>

[8] Section 143(1) read with 143(3) of the Labour Relations Act[1] provides that an arbitration award is final and binding, and that it is enforceable as if it were an order of the Labour Court in respect of which a writ has been issued, provided it is certified. Section 145(3) of the LRA, however, provides that this court 'may' stay the enforcement of an award, pending its review.

[9] Sections 145(7) and 145(8) were introduced when the LRA was amended in 2014.[2] They provide that the institution of review proceedings does not suspend the operation of an arbitration award <u>unless</u> the applicant furnishes security to the satisfaction of the court, which, in the case of an order of compensation, must be equivalent to the amount of compensation awarded.[3]

[10] In *Free State Gambling*,[4] a decision given not long after sections 145(7) and (8) were introduced, Rabkin-Naicker J held that a public entity need not provide security, because the object of doing so is satisfied since the public entity's budget and finance management is governed by the Public Finance Management Act and Treasury Regulations. Two years later, however, Snyman AJ in *Rustenburg Local Municipality*[5] held that this decision was wrong, and that no distinction should be drawn between public and private entities in respect of the duty to furnish security.

[11] The Labour Appeal Court in *City of Johannesburg v SA Municipal Workers Union on behalf of Monareng & another*[6] considered these conflicting judgments, and authoritatively pronounced upon the principles governing the stay of awards and the furnishing of security - as follows:

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[1] Act 66 of 1995, hereinafter 'the LRA'.

[2] These amendments were introduced by s22 of Act 6 of 2014.

[3] Section 145(8)(b) of the LRA.

[4] *Free State Gambling & Liquor Authority v Commission for Conciliation, Mediation & Arbitration & others* (2015) 36 ILJ 2867 (LC) at para 6.

[5] *Rustenburg Local Municipality v SA Local Government Bargaining Council & others* (2017) 38 ILJ 2596 (LC) at para 36.

[6] *City of Johannesburg v SA Municipal Workers Union on behalf of Monareng & another* (2019) 40 ILJ 1753 (LAC) (hereinafter *Monareng*).

11.1 the Labour Court has a discretionary power under s145(3) of the LRA to stay the enforcement of an arbitration award pending the outcome of a review application, with or without conditions, and may in terms of s145(8) either exempt the employer from paying security or reduce the quantum of such security to an amount below that specified in s145(8) (a) and (b);

11.2 s145(3) read with ss145(7) and (8) means that where an applicant in a review application furnishes security in compliance with s145(8) the award is automatically suspended pending the outcome of the review and there is no need for the employer to apply for a stay;

11.3 all employers, whether in the public or private sectors, must provide security; public sector employers are not automatically absolved from providing security in order to hold off enforcement of an award pending review;

11.4 public finance legislation does not prohibit the provision of security in compliance with s145(8) of the LRA and, even if it did, s210 of the LRA provides that the LRA prevails over such public finance legislation in all employment matters;

11.5 the purpose of the LRA provision requiring security is '*essentially to dissuade employers from bringing frivolous review applications with no prospects of success and ensure that they are timeously and expeditiously prosecuted*'.[7] In this regard, the LAC agreed with this court's finding in *Rustenburg Local Municipality* to the effect that the security requirement is an effective measure to persuade public sector senior management not to commit funds unless satisfied that the review application has prospects of succeeding, thus avoiding wasteful expenditure on litigation;[8]

11.6 when the Labour Court exercises its discretion under s145(8) it must have regard to the circumstances of the case and take into account

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[7] *Monareng* (note 6 above) at paras 10 and 21.

[8] *Monareng* (note 6 above) at para 16 referring to *Rustenburg Local Municipality* (note 5 above) at paras 38-40.

considerations of equity and fairness to both the employer and the employees;

11.7 'one factor' to be taken into consideration is whether the employer is in possession of assets of sufficient value to fulfil its obligation to satisfy the award in the event of the reviewing court upholding it, so that the dismissed employees are not left unprotected; an employer wishing to be absolved from providing security bears the onus to prove that it has such assets.[9]

[12] This court in *Panorama Park Retirement Village v Commission for Conciliation, Mediation & Arbitration & Others*[10] noted with displeasure a pattern of employers routinely instituting review proceedings without furnishing security, and described this as:

…an affront on the very purpose of the provisions of s 145(7) and (8) of the LRA, [which] must come to an end. The purpose of these provisions is essentially to dissuade employers in particular from bringing frivolous review applications with no prospects of success and ensure that they are timeously and expeditiously prosecuted.[11]

[13] In *Emalahleni Local Municipality v Phooko NO*[12] the Labour Court considered *Monareng* but held that section 145(3) of the LRA created a stand-alone remedy. On that approach, an employer could obtain a stay of enforcement without invoking the security provisions in sections 145(7) and (8), provided the ordinary requirements for a stay had been established.

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[9] In *Monareng* (note 6 above) the decision ordering the employer to furnish security was overturned on appeal because the court below had given no reasons for its order, whereas the employer had provided evidence of its asset & income base and its favourable credit rating, and it was undisputed that service delivery would be compromised were the City required to provide security in its 17 pending reviews.

[10] *Panorama Park Retirement Village v Commission for Conciliation, Mediation & Arbitration & Others* (2020) 41 ILJ 1200 (LC).

[11] *Panorama Park* (note 10 above) at para 9.

[12] *Emalahleni Local Municipality v Phooko NO and Others* (J396/21) [2021] ZALCJHB 61; [2021] 9 BLLR 941 (LC); (2021) 42 ILJ 2196 (LC) (5 May 2021) (hereinafter *Emalahleni*).

[14] That interpretation has, however, since been rejected by the Labour Appeal Court in *Italsafaris CC t/a Viva Safaris v NUFBWSAW obo Members*[13] which held that sections 145(3), (7) and (8) of the LRA must be read together as a single statutory scheme. An employer seeking a stay without furnishing the prescribed security must establish a proper basis for exemption from, or reduction of, the statutory security, failing which the default position in section 145(7) applies. The Court described the interpretation adopted in *Emalahleni* as 'patently erroneous'.[14]

<u>Application to be released from furnishing security</u>

[15] ARC accepts that, in terms of *Monareng*, public entities are not automatically exempt from furnishing security. Counsel for ARC, Mr *Malema*, however, prevailed upon the Court to exercise its discretion in ARC's favour because, in submission:

15.1 it is not a profit-making institution, but a statutory body established to conduct research and promote agricultural development in the public interest;

15.2 requiring it to furnish security would divert public funds away from its statutory mandate;

15.3 the employee will suffer no prejudice because he remains employed and earns a salary every month;

15.4 ARC has sufficient financial resources to satisfy the award should the review fail;

15.5 it enjoys reasonable prospects of success in the review application, which is *bona fide* and not dilatory; and

15.6 the balance of prejudice favours ARC in the sense that, if enforcement takes place but the review ultimately succeeds, it may be hard to recover the money from the employee.

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[13] *Italsafaris CC t/a Viva Safaris v NUFBWSAW obo Members and others* (JA74/2023) [2024] ZALAC 28 (31 May 2024).

[14] Ibid at para 20.

[16] ARC annexed extracts from its audited financial statements reflecting annual revenue exceeding R2 billion, cash and cash equivalents of approximately R190 million, and net assets exceeding R318 million. Mr *Malema* also relied on the bank's confirmation that, as at 4 June 2026, ARC held sufficient funds in a call account to meet the amount of the award. Despite the letter expressly stating that it does not constitute a guarantee or endorsement, Mr *Malema* submitted that this provided the employee with practical assurance that the award would be satisfied if the review failed.

[17] Mr *Malema* also relied on *Emalahleni*[15] in support of his proposition that the Court should exercise its discretion in favour of exempting the applicant from the requirement to provide security.

[18] Mr *Majola* opposed the application, submitting that ARC had failed to establish any basis for exemption from furnishing security. He argued that ARC plainly had the means to furnish the required security and was simply seeking to delay enforcement of the award.

Evaluation

[19] I am not persuaded that ARC should be excused from the obligation to furnish security, if it wishes to suspend the operation and enforcement of the award pending the review.

[20] ARC's submissions do not overcome the statutory purpose underlying sections 145(7) and (8) of the LRA. As the LAC has explained, those provisions are directed not only at protecting employees who have succeeded at arbitration, but also at discouraging employers from routinely instituting review proceedings to delay compliance with arbitration awards.

[21] ARC's status as a public entity, the employee's continued employment, and the bank's confirmation that ARC has sufficient funds do not justify a different conclusion. Public entities are not entitled to exemption merely because they perform public functions. The fact that the employee remains employed and continues to earn a salary does not diminish the statutory purpose served by

[15] Note 12 above.

the requirement to furnish security. The bank's letter is not security furnished to the satisfaction of the Court, but merely evidence of ARC's financial position in June 2026. ARC’s asserted prospects of success on review do not alter my conclusion: even accepting that the review is *bona fide*, ARC has not shown why that should relieve it of the statutory requirement, and its concern that it may be unable to recover the money from the employee is speculative, particularly as he remains in its employ.

[22] ARC has not established that furnishing security in the amount of R306 860.10 will impede the discharge of its statutory function. On the financial information placed before the Court, the security required is modest relative to its available resources.

[23] ARC has failed to establish a sufficient basis upon which this Court should exercise its discretion to exempt it from furnishing security.

<u>The applications for suspension and stay of the award</u>

[24] The applications for suspension and stay of enforcement of the award likewise fall to be dismissed.

[25] The operation of the award will be suspended automatically if ARC furnishes security in accordance with sections 145(7) and (8) of the LRA. If it elects not to do so, the award remains enforceable in accordance with section 143 of the LRA.

<u>Costs</u>

[26] Neither party pursued a costs order. Having regard to the requirements of the law and fairness, I see no reason to depart from the ordinary approach in labour matters that each party should pay its own costs.

<u>Order</u>

[27] The matter is enrolled and heard as one of urgency.

[28] The applications to suspend the operation of the arbitration award and to stay execution of the arbitration award are dismissed.

[29] The application to be exempted from providing security is dismissed.

[30] There is no order as to costs.

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SJ Harvey

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr Malema instructed by Padi Inc Attorneys

For the First Respondent: Mr Majola (in person)