(1) Reportable ~~Yes~~/No
(2) Of interest to other Judges: ~~Yes~~/No
(3) Revised
01-08-2026

Signature Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2026 - 167220

In the matter between:

KAMAL CAPE TOWN IRON AND STEEL COMPANY (PTY) LTD **Applicant**

and

SERKAN CAYDAVUL **First Respondent**

IBRAHIM KINYAS GURCU **Second Respondent**

THE SHERIFF OF THE HIGH COURT KUILSRIVER SOUTH **Third Respondent**

Heard: **21 July 2026**

Delivered: **This judgment was handed down electronically by uploading on *Caselines*; circulation to the parties' legal representatives by email, and publication on the Labour Court's website and *SAFLII*. The date for hand-down is deemed to be 01 August 2026.**

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

[1] In this urgent application, the applicant, relying on Rule 45 of the Uniform Rules and the common law, seeks an order interdicting and restraining the third respondent (Sheriff) from proceeding with the sale in execution scheduled for 22 July 2026, pursuant to a writ issued under case number JS619/23. It further seeks to set aside the writ and the attachment of its movable property effected by the Sheriff, and to direct the latter to release and restore the attached property to it.

[2] In the alternative, the applicant seeks to interdict and restrain the Sheriff from proceeding with the sale in execution, pending the determination of an application brought by another entity, Kamal Steel Limited (Tanzania) on 8 July 2026, to declare the judgment and order under case number JS619/23 null and void.

[3] Central to the applicant's contention in seeking the above relief is that during the Labour Court proceedings under JS619/23, the Court had substituted it with another entity, Kamal Steel Ltd (Tanzania). It argues that the judgment was therefore granted against the latter entity. The application is opposed by the first and second respondents (Herein referred to as 'Respondents').

Background:

[4] The Respondents instituted a claim for unpaid salaries against the applicant in December 2023. The matter came before Daniels J, who delivered judgment on 9 June 2025 in favour of the Respondents, and ordered the Applicant to pay amounts of R1 676 428, 76 and R4 020 376,32 respectively to each of the individual Respondents.

[5] Upon delivery of the judgment, it is common cause that attempts by the applicant to overturn the judgment through a leave to appeal, petitions to the Labour Appeal and the Constitutional Courts all failed. The Constitutional Court's order putting the matter to rest was according to the Applicant, issued

in May 2026. The Respondents contend that it was issued in April 2026. A copy of the order was, however, not attached to the pleadings.

[6] In between attempts at overturning the judgment, the Respondents obtained a writ of execution on 8 December 2025, directing the Sheriff to attach and execute against the applicant's movable property. Pursuant to the writ, the Sheriff on 15 January 2026 attached the movable property of the applicant at its premises. The Sheriff had scheduled a sale in execution of the attached property for 22 July 2026. In light of the dates of the hearing of this application and that of the scheduled execution, the Court had, at the conclusion of the proceedings, issued an interim order to halt the execution pending delivery of this judgment.

The Applicant's primary submissions:

[7] The essence of the applicant's case is that it had undergone a process of business rescue, and that its business was ultimately acquired by Kamal Steel Ltd (Tanzania) as a going concern in terms of section 197 of the Labour Relations Act. Thereafter, the company operated under the name of Kamal Cape Town Iron and Steel.

[8] The applicant submitted that at the commencement of the trial proceedings before Daniels J, the parties had agreed that the correct Defendant was Kamal Steel Ltd (Tanzania) since it had acquired Kamal Cape Town as a going concern, and that the judgment recorded that the citation of the parties was accordingly amended. According to the applicant, the agreement came about after the Respondents had also pleaded in their claim that the business of the Applicant had been transferred to Kamal Steel (Tanzania) as a going concern. In light of the agreement, it was submitted that the Respondents had secured a substitution, and could not now seek execution against the original company that they had agreed was not the proper defendant at the trial proceedings.

[9] The applicant attributed its continuous citation in the judgment and subsequent legal processes to a clerical error or administrative oversight, which it contended did not change the substance of that judgment. It

contended that its previous legal representatives failed to appreciate the legal consequences of the alleged substitution as recorded in the judgment. It was contended that despite the substitution and amendment of the citation, neither the applicant nor its previous legal representatives had realised that this meant that the judgment was against Kamal Seel (Tanzania), rather than the applicant. It was submitted that, based on that misunderstanding and further legal advice from its former attorneys, the applicant had continued to pursue various legal processes in its own name.

[10] The applicant attributed the same mistake, or misunderstanding to the Respondents, whom it alleged also failed to raise the issue of substitution in the appeal proceedings. It contended that it lacked any standing to challenge a judgment granted against Kamal Steel (Tanzania). The Applicant viewed the error as common on both sides and a bona fide mistake, rather than a deliberate attempt to delay enforcement of the judgment. It was against this background that it was submitted that the writ authorising execution against the assets of the applicant had no legal basis.

[11] Following the failed attempts at overturning the judgment of Daniels J as already pointed out, it is common cause that on 8 July 2026, Kamal Steel (Tanzania), which is also represented by the applicant's attorneys of record, launched separate proceedings. In that pending application, it seeks a declaratory order that the judgment of Daniels J is null and void, on the basis that it was never properly notified of the substitution and was not afforded an opportunity to defend the claim upon being substituted, in violation of its rights to be heard. The applicant contends that this signifies the contention that the issue of substitution was only properly recognised at that stage, prompting both this urgent application and the Kamal Steel (Tanzania) application to declare the judgment a nullity.

The Respondents' opposition:

[12] The Respondents' contention in opposing the application was that the application raised no genuine legal disputes and constituted an abuse of process. They submitted that the application was frivolous and constituted an

attempt to avoid compliance with the judgment after multiple appeals had failed. They deny that any substitution took place during the trial proceedings, specifically since no formal application was launched under Rule 52(5) of the Rules of this Court for a substitution.

[13] They relied on the transcript of the trial proceedings, as referred to and attached to the answering affidavit, and conceded that discussions did take place at the commencement of the proceedings regarding the proper citation of the defendant. They, however, deny that there was any agreement that Kamal Steel Ltd (Tanzania) would substitute the applicant as the defendant. They contended that the only agreement reached was in respect of an amendment and addition to the defendant's name, by the inclusion of 'Company' in the applicant's citation which was initially omitted, to reflect it as 'Kamal Cape Town Iron and Steel Company'. They, however, denied that this amendment to the citation in any manner reflected a substitution of the parties to the claim.

[14] The Respondents further submitted that despite the applicant's denials that it was not the employer, or that it had ceased to be a party to the proceedings, its conduct nonetheless belied this contention, and was inconsistent with its argument that Kamal Steel Ltd (Tanzania) was the true defendant. They referred to the applicant's conduct of having conducted a full defence at the trial, presented evidence through its witnesses, pursued multiple appeals, engaged with them in settlement discussions before and after the judgment was delivered, and also engaged in settlement discussions with other employees in different disputes brought against it.

[15] The Respondents further pointed out that even if it were found that some form of substitution took place, the Applicant's conduct over thirteen months since the judgment was delivered amounted to unequivocal acceptance of that judgment and was therefore bound by the doctrine of peremption. This was evinced by its actions of defending the action, pursuing appeals in which it had consistently confirmed that it was the employer and proper defendant. It was pointed out that as late as March 2026, the applicant's former attorneys had merely threatened urgent proceedings to stay the execution, and had also

entered into settlement discussions with them, thus understood itself to be the judgment debtor. In this regard, it was submitted that the Applicant lost the right to challenge its status as the judgment debtor, after having consistently acted as though it were properly before the Court.

[16] To the extent that the Applicant sought to blame its former legal representatives for not realising the purported mistake, the Respondent's submissions were that the history of litigation demonstrated that the Applicant and its successive representatives consistently accepted that it was the correct defendant and judgment debtor. This was demonstrated by its challenge to the judgment on the merits of the dispute in multiple appeal processes, and by not raising at any stage any contention that it had ceased to be a party.

[17] They argued that, notwithstanding attempts to blame the former attorneys, the applicant had not attached any confirmatory affidavit to verify the alleged mistake or misunderstanding of the legal effect of the alleged substitution. They further submitted that even if the former attorneys did make a mistake, the applicant was generally bound by the conduct and legal advice of its chosen legal representatives.

Preliminary points:

(i) Authority to institute the application

[18] The Respondents challenged the authority of Mr Ashok Kumar Singh to institute the application. They submit that even though Singh alleged that he was a director of Kamal Cape Town, the CIPC documents and search attached to the founding affidavit did not reflect his name as a director, and therefore he failed to establish the authority to litigate on behalf of the applicant.

[19] Even though the Respondents had not properly raised the issue through a formal Rule 7 of the Uniform Rules application, it is my view that based on the grounds upon which the authority of Singh is challenged, this point lacks merit

in light of the principles set out in *Ganes and Another v Telecom Namibia Ltd*[1].

[20] In the present instance, attached to the replying affidavit deposed to by Singh was a confirmatory affidavit deposed to by a Mr Santosh Malay Gupta, a director of the applicant. He confirmed Singh's authority to institute the proceedings. The issue of the belated filing of the resolution on the matter is neither here nor there. On the approach in *Ganes*, Singh did not need to be authorised to depose to the founding affidavit. In this case, any challenge to the authority to institute and prosecute the proceedings cannot be sustainable in the light of Gupta's confirmatory affidavit. It follows that this preliminary point must fail.

(ii) Urgency:

[21] The requirements to be met when urgent relief is sought are trite, emanating from now familiar authorities[2]. Under Rule 38 of the Rules of this Court, an applicant seeking urgent relief must, in the founding affidavit, set out the reasons for urgency; why urgent relief is necessary; and the reasons why the requirements of the rules were not complied with. Aligned to these requirements is that an applicant cannot claim urgent relief where, on the facts and circumstances of the case, it is apparent that the urgency claimed is self-created.

[22] Further considerations the Court must take into account are the interests of the respondent party, and any prejudice it may suffer if the matter is disposed of on an urgent basis. Equally so, an applicant must also explicitly advance

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[1] (608/2002) [2003] ZASCA 123; [2004] 2 All SA 609 (SCA); 2004 (3) SA 615 (SCA); (2004) 25 ILJ 995 (SCA) at para 19, where it was stated that;

> 'In my view it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. In the present case the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the respondent.'

[2] See *Jiba v Minister: Department of Justice and Constitutional Development and Others* (2010) 31 ILJ 112 (LC) at para 18; *Tshwaedi v Greater Louis Trichardt Transitional Council* [2000] 4 BLLR 469 (LC) at para 11; *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited* [2023] ZAGPPHC 709 (21 August 2023); *Luna Meubel Vervaardigers v Makin and* Another 1977 (4) SA 135 (W) at 136H-137F); *Ntozini and Others v African National Congress and Others* [2018] ZAGPJHC 415 at para 10.

the reasons why it claims that it will not be afforded substantial redress in due course if it had brought the matter to Court by way of an ordinary non-urgent procedure. The question of whether a matter is sufficiently urgent to be enrolled is underpinned by the issue of the absence of substantial redress in an application in due course. Where an applicant fails to establish that substantial redress is not available in due course, the matter must be struck from the roll[3].

[23] The Respondents argue that the urgency in this matter is self-created since the applicant knew of the judgment in June 2025; the attachment since January 2026; and the intended execution once the appeal processes were exhausted. It was contended that despite threatening urgent proceedings to stop the execution in March 2026, the applicant only approached the Court on 13 July 2026, a few days before the execution. It was contended that the urgent application was merely an afterthought.

[24] The applicant contends that the attachment or original judgment did not trigger the urgency. It submits that urgency only arose when the applicant realised the legal consequences of the judgment on 8 July 2026, when Kamal Steel Ltd Tanzania) served its application to have that judgment nullified. It contended that there was no delay once it appreciated the legal basis of the relief sought by Kamal Steel.

[25] It is accepted without reference to the application for nullity by Kamal Steel Ltd, that the applicant could only have approached the Court once it had exhausted its rights of appeal against the judgment. This is further buttressed by the general rule that the execution of a court order is suspended pending an appeal. Of course, to the extent that this application was only served on 14 July 2026, there was a delay since the dismissal of the petition by the Constitutional Court (whether it was issued in April or May 2026). No attempt was made to explain this delay, other than the contention that the legal consequences of the judgment were allegedly only realised on 8 July 2026, when Kamal Steel Ltd (Tanzania) served its nullity application.

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[3] *SARS v Hawker Air Services (Pty) Ltd* [2006] ZASCA 51; 2006(4) SA 292 (SCA)

[26] Of course, very little can be attached to the applicant's contention that it only realised the consequences of the alleged substitution and impact of Daniels J's judgment on 8 July 2026 for the purposes of determining urgency. This is especially so since it had had the judgment from June 2025, and thereafter pursued several appeal processes. The Court, however, accepts that a delay on its own cannot deny an applicant an urgent hearing, and that the ultimate test when considering urgency is whether the applicant will be denied substantive redress in due course if the application is not heard on an urgent basis[4].

[27] In this regard, despite the failure to explain the delay, regard must be had to the importance of this case, the prejudice to respective parties and the dictates of the interests of justice. In this regard, it is accepted that once the sale of execution takes effect, one cannot seriously speak of substantial redress in due course which may be available to the applicant. It is not far-fetched to assume that once the payments resulting from the execution are made, the applicant may have difficulties recovering its property to the extent that it may be successful in its application in the ordinary course. Against these conclusions, the Court deems it appropriate to treat the matter as urgent.

The merits and legal approach:

[28] In the main, the applicant seeks a final order to interdict and restrain the sale in execution of its property attached pursuant to the writ of execution, and to set aside the writ and the attachment. The requirements for final interdict are trite. These are that the applicant must establish a clear right, an injury actually committed or reasonably apprehended, and absence of a satisfactory remedy.[5]

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[4] *10 & 10a Kenmere CC v Ndebele and Others* (2018/31110) [2019] ZAGPJHC 199 (19 June 2019) at para 17

[5] *Hotz and Others v University of Cape Town* 730/2016) [2016] ZASCA 159; [2016] 4 All SA 723 (SCA); 2017 (2) SA 485 (SCA) at para 29 where it was held that;

> 'The law in regard to the grant of a final interdict is settled. An applicant for such an order must show a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by any other ordinary remedy. Once the applicant has established the three requisite elements for the grant of an interdict the scope, if any, for refusing relief is limited. There is no general discretion to refuse relief. That is a logical

[29] The applicant contends that it had established a clear right that the judgment was not against it and therefore the writ lacks its *causa* and validity, and thus fell to be set aside. To the extent that the sale was set down for 22 July 2026, it contended that the injury it would face was imminent, and that the sale itself would breach its clear right to have the writ set aside. It contended that it had no alternative remedy to protect its rights, and that once its property was sold at auction to a third party, it would have no recourse to regain ownership of the said property.

[30] The principles applicable where a stay of execution is sought are equally trite. This Court has the inherent power, in its discretion, to stay the execution of a writ or judgment[6]. In *Gois t/a Shakespeare's Pub vs Van Zyl*[7] it was held that a court will grant a stay of execution where real and substantial justice requires it or where injustice would otherwise result. The court will be guided by the factors usually applicable to interim interdicts, except where the applicant is not asserting a right, but attempting to avert injustice.

[31] Against the above principles, it is accepted that a stay would ordinarily be granted where, *inter alia*, on the facts, it is apparent that the writ pursuant to the order or judgment is non-compliant with the original judgment, or where there are errors regarding the parties named in the order or judgment. In this case, the applicant's principal contention is that at the commencement of proceedings before Daniels J, it was substituted by Kamal Steel Ltd (Tanzania), following an agreement between the parties. It therefore contends that the judgment and order run against the latter, and not it.

corollary of the court holding that the applicant has suffered an injury or has a reasonable apprehension of injury and that there is no similar protection against that injury by way of another ordinary remedy. In those circumstances, were the court to withhold an interdict that would deny the injured party a remedy for their injury, a result inconsistent with the constitutionally protected right of access to courts for the resolution of disputes and potentially infringe the rights of security of the person enjoyed by students, staff and other persons on the campus.

[6] *Robor (Pty) Ltd (Tube Division) v Joubert and others* (J2264/08) [2009] ZALC 38; [2009] 8 BLLR 785 (LC); (2009) 30 ILJ 2779 (LC)

[7] 2011 (1) SA 148 (LC) At para 37. See also *Van Rensburg NO and Another v Naidoo NO and Others, Naidoo NO and Others v Van Rensburg NO and Others.* (155/09, 455/09) [2010] ZASCA 68; [2010] 4 All SA 398 (SCA) ; 2011 (4) SA 149 (SCA) at para 51 - 52

[32] Reliance for the above proposition is premised on paragraph 2 of the judgment of Daniels J, which reads;

> *"The parties agreed that the* <u>*correct citation*</u> *of the defendant was Kamal Steel Ltd (Tanzania). The court was informed that the defendant, against whom the plaintiffs instituted the action, Kamal Cape Town Iron and Steel Co. (hereafter ''CISCO'') had been purchased as a going concern by Kamal Steel Ltd (Tanzania). The* <u>*citation was amended accordingly*</u>." (emphasis underlined)

[33] Despite the applicant's contentions that the Court was not called upon to interpret Daniels J's judgment, it, however, interpreted paragraph 2 of that judgment to mean that what was recorded was not merely a correction of a name but was, in effect, a substitution of the parties. It contended that it was replaced by the new employer, Kamal Steel Ltd (Tanzania), following automatically from the principles of section 197 of the LRA.

[34] Section 34 of the Constitution affords everyone the right to have any dispute that can be resolved by application of law decided in a fair public hearing before a Court. It is against this principle that Rule 52(5) requires that any application for a substitution be on notice to all the parties that may be affected by any Court order in that regard. This is meant not only to ensure continuity of the proceedings, but also to allow the affected party to be heard in proceedings that may affect it.

[35] The starting point is whether the amendment to the citation as indicated in paragraph 2 of the Daniels J's judgment involved a correction of a mere misnomer (i.e., a misdescription of the correct party who is already before Court) or whether it constituted a substitution of the applicant by Kamal Steel Ltd (Tanzania) as alleged by the applicant. This enquiry is important in view of the fact that a substitution carries a larger risk of prejudice or injustice than the correction of a mere misnomer[8]. A further distinguishing factor is that once a

[8]See *Essence Lading CC v Infiniti Insurance Ltd Mediterranean Shipping Company (Pty) Ltd* (2022/4024) [2023] ZAGPJHC 676; [2023] 3 All SA 410 (GJ); 2024 (2) SA 407 (GJ) at para 63 where it was held;

party has been substituted for another, it plays no further role in the proceedings, and the substituted party must now be before the Court.

[36] In further answering the enquiry above, the provisions of Rule 52(5)[9] of the Rules of Court (or the old Rule 22(5) of the Rules of this Court), together with the facts of the case as pleaded before Daniels J and the transcribed record[10] are of utmost relevance.

[37] It is common cause that no Rule 52(5) application was before the Court to seek a substitution. It needs to be said that there is an obvious distinction between a substitution of a party to the proceedings and an amendment of a citation of parties as already pointed out above. Paragraph 2 of the judgment, on its plain reading, refers to the *correction* and *amendment to the citation*. Bearing in mind the principles set out in *Temba Big Save CC v Kunyuza and Others*[11], it is of importance to read paragraph 2 in relation to the body of the judgment and the record of proceedings rather than piecemeal. It is indeed unhelpful for a party to merely extract from the judgment or the record what it believes advances its case, to the exclusion of the essence of the judgment.

[38] A reading of the judgment in conjunction with the transcribed record, which the Respondents had copiously referred to in the answering affidavit, indicates how this amendment to the citation came about. At Page 3, lines 10 – 20 of the transcript, it is apparent that the issue of the correct citation was raised at the commencement of the proceedings. Mr Du Plessis, who appeared on behalf of the applicant before Daniels J, had conceded at the trial that the entity referred to at paragraphs 7-8 of the pre-trial minute referred to the name

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> 'There is no rule cast in stone in this regard. The applicable general question is whether the amendment will result in an injustice that cannot be cured, in which event the amendment will be refused. The question whether the error is a mere misnomer, or the amendment is a substitution, plays a role in determining the possible prejudice. In *Tecmed (Pty) Ltd and Others v Nissho Iwai Corporation and Another* it was pointed out that a substitution carries a larger risk of prejudice or injustice, than the correction of a mere misnomer.'

[9] Which reads:

> 'If in any proceedings it becomes necessary to substitute a person for an existing party, any party to such proceedings may, on application and on notice to every other party, apply to the court for an order substituting that party for an existing party and the court may make such order, including an order as to costs, or give such directions as to the further procedure in the
> proceedings as it deems fit.'

[10] Part 2 – Annexure AA9 to the Answering Affidavit (Caselines 004 – 66 – 004 – 170)

[11] (JA40/2015) [2016] ZALAC 36; [2016] 10 BLLR 1016 (LAC); (2016) 37 (ILJ) 2633 (LAC)

of Kamal Steel Limited, and that the citation was *Kamal Cape Town Iron & Steel (Pty) Ltd, which would be the same citation*.

[39] The applicant's witness at the trial proceedings, Ms Diane Carol Lee, who was the Human Resources Manager of Kamal Cisco, agreed under examination in chief that the name of the company that currently owned the business was *Kamal Cape Town Iron & Steel (Pty) Ltd* trading as Kamal Cisco[12]. Towards the end of the proceedings, and after the parties had closed their respective cases, the issue arose again after the representatives had a discussion. Flowing from those discussions, Mr Ngubeni for the Respondents had agreed that the name of the defendant was correct, save for the need for an amendment to include *'Company'* in the citation. Mr du Plessis, upon being asked by the Court, had confirmed that the correct citation of the defendant was *Kamal Cape Town Iron & Steel Company (Pty) Lt*d[13].

[40] Effectively, it ought to be concluded that what was amended before Daniels J following discussions between the parties' representatives and engagement with the Court was the description of the applicant, which cannot be said to have constituted a substitution. That amendment to the citation, as can be gleaned from the record, came about after both Mr du Plessis and Ms Lee had confirmed that Kamal Cape Town Iron & Steel (Pty) Ltd was the correct citation. At the time, the applicant had not claimed any prejudice resulting from that amendment or correction to reflect the true state of affairs[14].

[41] I therefore fail to appreciate the basis upon which it can be said that what took place was in effect a substitution of parties rather than a mere amendment to the citation as correctly reflected in paragraph 2 of the judgment. A substitution of the parties could not have taken place in the absence of a proper application under Rule 52(5). Equally, I fail to appreciate how, in circumstances where there was a substitution of the parties, any court would have continued with the proceedings as if the same parties were still before it. Equally so, I fail to appreciate why the applicant would have participated in the

[12] At page 57 line 1 – 7 of the transcript.
[13] At Line 20 of p86 & p 87 lines 1 - 15
[14] See *Four Tower Investments (Pty) Ltd v Andre's Motors* 2005(3) SA 39 (NPD).

proceedings when the alleged substitution had effectively absolved it from the Respondents' claim.

[42] It is against the above conclusions that the Respondents' reliance on the doctrine of peremption has merit. The principle underlying the doctrine is that a person cannot be allowed to take up two opposing or inconsistent positions when considering to pursue or defend litigation[15].

[43] The principle is meant to safeguard the integrity of the judicial process by preventing litigants from oscillating between contradictory positions and ensuring judicial consistency and fairness[16]. It has further been held that the principle ensures finality and stability in legal proceedings, which is essential for maintaining public trust in the justice system[17].

[44] In *South African Revenue Service v Commission for Conciliation, Mediation and Arbitration and others*[18]*,* it was held that the onus to establish peremption would be discharged only when the conduct or communication relied on does "point indubitably and necessarily to the conclusion" that there has been an abandonment of the right to appeal and a resignation to the unfavourable judgment or order[19].

[45] In arguing peremption, the Respondents are correct in pointing out that the applicant had consistently accepted that it was the correct party. It had participated in the Court proceedings before Daniels J and opposed the claim as though it were the defendant even after the alleged substitution. It had not at any stage during trial contended that Kamal Steel Ltd (Tanzania) was the

[15] *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others* [2021] ZACC 28; 2021 (11) BCLR 1263 (CC), at paragraph [101]

[16] See *Hlatshwayo v Mare and Deas* 1912 AD 242, at 259, and also at page 253, where the Court said:

> '(T)he important question arises as to what is meant by a party to an action acquiescing in the judgment. In my opinion the effect of the authorities on this subject is to show that when once a party to an action has done an act from which the only reasonable inference that can be drawn by the other party is that he accepts and abides by the judgment, and so intimates that he has no intention of challenging it, he is taken to have acquiesced in it."

[17] *Minister of Defence and Others v South African National Defence Force Union and Another* (161/11) [2012] ZASCA 110 at para 23

[18] (CCT19/16) [2016] ZACC 38; [2017] 1 BLLR 8 (CC); (2017) 38 ILJ 97 (CC); 2017 (1) SA 549 (CC); 2017 (2) BCLR 241 (CC).

[19] At para 26

true defendant or that it lacked standing. It had effectively accepted the judgment as it was, and pursued various appeal proceedings against it. It is correct, as pointed out on behalf of the Respondents, that the applicant had considered itself bound by the position it had consistently adopted.

[46] The applicant's conduct after the judgment was delivered, including engagements with the Respondents in settling the dispute up to a point after the Constitutional Court order was issued, can only point to acquiescence in the judgment, and it had therefore perempted any right to contend that the judgment was not binding on it. This unequivocal conduct, contrary to the applicant's contention, clearly demonstrated an abandonment of any rights it had to contest that it was not the true respondent.

[47] The applicant's contention that it only became aware of the legal significance of paragraph 2 of Daniels J's judgment when it was served with Kamal Steel's Ltd (Tanzania) nullity application is, in my view, improbable. I fail to appreciate how the Court can exercise its discretion in its favour when peremption is clearly applicable, and the Respondents had discharged the onus in that regard.

[48] The facts of this case, the conduct of the applicant at the proceedings before Daniels J and the concessions made by the applicant's representative and witness as to the correct citation, combined with its conduct after delivery of the judgment as highlighted above, cannot be consistent with a posture that it was not the correct party, or that the judgment did not bind it. Its engagements with the Respondents to attempt to settle the dispute on the first day of the trial proceedings on 22 April 2025, as can be gleaned from the record, combined with similar overtures after the delivery of the judgment, belies any contention that it did not consider itself bound by the judgment. Furthermore, there is nothing to suggest from the papers that the purpose of any of the appeal proceedings was to raise the alleged substitution or that the applicant was not the true judgment debtor. All these factors point to the applicant's resignation to the unfavourable judgment, and the fact that it was indeed the true respondent before Daniels J.

[49] The applicant's primary defence and explanation, in not disputing its legal standing throughout until this application, is exculpatory and places all the blame on its erstwhile attorneys. It had contended that it was only after the nullity application was served by Kamal Steel Ltd (Tanzania) that it and its new attorneys understood the import of Daniels J's judgment and its legal position.

[50] Two important considerations come to mind when litigants seek to blame their own chosen attorneys when they receive an unfavourable outcome. The first is that in accordance with the principle restated in *Edcon Ltd v Steenkamp & Others*[20]*,* the fate of a failed legal strategy is doom. The Labour Appeal Court had added that;

> '…That risk is intrinsic to our system of litigation. Moreover, a fair litigation system demands that the adversaries know what cases they have to meet. It is not unknown to commence litigation, whether as a claimant or a defendant, having designed and formulated a claim or a defence on a given premise, only to be upended by developments in the law by the end of the case. This phenomenon is an occupational hazard in litigation. It is unthinkable that a party can claim a right to bite at the cherry, if the raspberry, initially chosen, is sour.'

[51] It can only be observed that the applicant's former attorneys adopted a strategy to conduct the proceedings before Daniels J, make concessions as they did, and pursue multiple appeals thereafter. The applicant must live with the consequences thereof, and cannot therefore seek a second bite at the proverbial cherry, based on spurious grounds.

[52] A second consideration is that, flowing from the established principle in *Saloojee and Another NNO v Minister of Community Development*[21]*,* there is a limit beyond which a litigant can escape the result of the conduct of its chosen representatives in the course of litigation. A litigant cannot be absolved from the normal consequences of the attorney-client relationship.

[53] A worrying feature of attempts to blame the previous attorneys, as correctly pointed out on behalf of the Respondents, is that there is no confirmatory or

[20] (2018) 39 ILJ 531 (LAC) at para 32
[21] 1965 (2) SA 135 (A) at 141C – E:

supporting affidavit deposed to by any of the attorneys that are now being blamed. There is nothing to confirm that lack of appreciation of the alleged substitution or the consequences thereof on the applicant's liability. There is nothing to demonstrate how they could have missed an obvious legal consequence of what took place at the proceedings before Daniels J, if indeed a substitution took place. Equally so, there is nothing before the Court to demonstrate that any amendment to the citation before Daniels J was effected in a manner inconsistent with the constitutional imperative of a fair and just process embodied in section 34 of the Constitution.

[54] Obviously, the applicant's posture to blame its former attorneys without more is untenable and ought to be rejected. The Court cannot, in the exercise of its discretion, without any substantiation, accept that there was indeed a genuine mistake or misunderstanding of the alleged substitution and its implications on the applicant's liability. Equally so, there can be no common mistake of the parties, in circumstances where the Respondents had not during the trial proceedings or thereafter indicated that they shared the same incorrect belief that a substitution took place. At the heart of this dispute is whether there was a substitution, and the parties hold contrasting views.

[55] In *Nedbank Limited v Msomi and Others*[22], it was held that;

> '…a stay of execution is an extraordinary remedy. A successful litigant is ordinarily entitled to the fruits of its judgment and a court will not lightly interfere with that entitlement. A stay is therefore not granted merely because a judgment debtor wishes to delay execution or because further litigation is contemplated. Rather, the discretion is exercised where real and substantial justice requires intervention.'

[56] Against the above principles, on the facts of this case as pleaded, there is nothing before the Court, in the exercise of its discretion, to conclude that considerations of real and substantial justice were sufficiently engaged to warrant suspending the execution of the judgment. On the opposite end of the scale, the applicant was afforded an opportunity of a fair trial and had unsuccessfully availed itself of all legal avenues to challenge the judgment.

[22] (2024/126147) [2026] ZAGPJHC 613 (5 June 2026)

[57] The applicant's attempt to further rely on litigation launched by another entity to challenge the judgment, when it was not even a party to the proceedings before Daniels J, is indeed curious and cannot assist it. This is so in light of the basis and nature of the challenge to the judgment by Kamal Steel Ltd (Tanzania). It follows that the Respondents are clearly entitled to the benefits of the order and judgment of Daniels J, and the applicant cannot claim that any injustice would otherwise result, especially in circumstances where it had gone through a fair trial before Daniels J, and exercised all its rights in attempts to overturn the judgment.

[58] In summary, there is no basis for any conclusion to be reached that the applicant established a clear right that the judgment was not against it and therefore the writ lacked its *causa* and validity. There is further no basis to set aside the writ, since it is indeed compliant with the judgment, and the applicant was properly identified as judgment debtor, which remained bound by that judgment. Once it is found that the applicant failed to establish a clear right, it follows that it ought to be the end of the matter, and the application must be dismissed.

[59] Further, in the light of the above conclusions, it follows that there is no basis to grant any interim relief, more specifically in the light of the conclusions made on the alleged substitution.

Costs:

[60] It is trite that this Court has a discretion upon the consideration of law and fairness, to make cost orders. In *Baloyi*[23], it was held that the purpose underlying costs is to indemnify the successful litigant against the expenditure incurred as a result of having been unjustly compelled to either initiate or to defend litigation.

[61] The Respondents sought a punitive costs order. They submitted that the application was an abuse of process designed to frustrate or delay enforcement of the judgment, which had survived multiple appeal processes,

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[23] At para 51

and where the applicant had failed to raise the substitution argument despite various opportunities.

[62] It was submitted on behalf of the applicant that it had a legitimate basis for approaching the Court as its application raised genuine disputes regarding substitution, jurisdiction and the validity of the writ. It denied that the application was frivolous, speculative or a delaying tactic in respect of the execution of the writ. Instead, the applicant seeks costs on account of the Respondents having irregularly filed a supplementary answering affidavit without the leave of the court.

[63] The basis upon which the applicant sought relief has been rejected. The applicant, despite its failed attempts to overturn the judgment of Daniels J, had proceeded with this application when that was not justified. The application was merely a belated attempt to avoid execution. Despite attempts to scupper the results of the judgment, the Respondents were again compelled and unjustly so to defend the judgment in their favour. It is against these conclusions that the requirements of law and fairness clearly dictate that they be indemnified against the costs they incurred.

[64] Accordingly, the following order is made;

Order:

1. The applicant's non-compliance with the Rules of this Court relating to forms, service and time periods is condoned, and the matter is heard as one of urgency in terms of Rule 38.

2. The interim order issued by this Court on 21 July 2026 is discharged.

3. The applicants' urgent application is dismissed with costs.

Edwin Tlhotlhalemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:	Adv. M. Naidoo, instructed by Dev Maharaj and Associates Inc
For the 1st – 2nd Respondents:	Mr T Ngobeni of Ngobeni Attorneys