



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

02.08.2026

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026-119315

In the matter between:

PSA obo N. MOHOBOKO

Applicant

And

DEPARTMENT OF HOME AFFAIRS

First Respondent

DIRECTOR GENERAL L MAKHODE N.O.

Second Respondent

MINISTER OF HOME AFFAIRS

DR LEON SCHREIBER N.O.

Third Respondent

Date heard: 28 July 2026

Date of judgment: 02 August 2026

Summary: application under s18(3) of the Superior Courts Act to permit operation and execution of an urgent interim order despite a pending application for leave to appeal/appeal; requirements for relief established including exceptional circumstances, irreparable harm to employee and no irreparable harm to employer. This judgment was varied on 03 August 2026 Bon by removal of duplicate of paragraph 16.

JUDGMENT

HARVEY, J

- [1] This is an urgent application brought in terms of section 18(3) of the Superior Courts Act 10 of 2013 for an order directing that the interim order granted by Daniels J on 2 June 2026 continue to operate pending the determination of the respondents' application for leave to appeal, and any appeal that may follow. The application turns upon whether exceptional circumstances exist and whether the applicant has established the irreparable harm contemplated by section 18(3).

Background

- [2] The applicant, Ms Mohoboko, who is represented by her trade union, was employed by the Department of Home Affairs (the Department) as Deputy Director-General: Human Resources (the DDG position). In December 2022, following a disciplinary enquiry into allegations of misconduct, the chairperson imposed a disciplinary sanction of demotion to the level of Director. The chairperson directed that, should the applicant decline the demotion, the alternative sanction of dismissal would apply. The applicant thereafter commenced work in the position of Director: Learning Provisioning (the Director position).
- [3] The applicant referred an unfair labour practice dispute to the General Public Service Sectoral Bargaining Council in January 2023, challenging the fairness of her demotion. Almost 3 years later, on 3 December 2025, the arbitrator found that the disciplinary sanction constituted an unfair labour practice and ordered that the applicant be reinstated to the DDG position with retrospective effect.
- [4] The Department launched review proceedings against the arbitration award and furnished security in terms of section 145(7) and (8) of the LRA. The operation of the award was accordingly suspended pending the determination

of the review, with the result that the applicant remained employed in the Director position.

- [5] On 21 April 2026, the Department advised the applicant that, by challenging the disciplinary sanction after having accepted the demotion, she had repudiated the agreement pursuant to which the demotion had been implemented. It contended that it was therefore '*left with no option but to implement the alternative sanction of dismissal as determined by [the chairperson] on 3 December 2022*' and invited the applicant's representations.
- [6] Following an exchange of correspondence, the applicant's representatives were granted an extension until 8 May 2026 to make representations. On 7 May 2026, the applicant launched urgent proceedings to interdict the Department from implementing her dismissal. Notwithstanding the pending urgent application, the Department dismissed the applicant on 8 May 2026 with a month's pay in lieu of notice.
- [7] On 2 June 2026, Daniels J granted urgent interim relief setting aside the notice of dismissal and interdicting the Department from dismissing the applicant for the misconduct which formed the subject of the 2022 disciplinary proceedings, pending the determination of the review application (the Order).
- [8] The Department has applied for leave to appeal the Order. In terms of section 18(1) of the Superior Courts Act, the operation and execution of the Order were suspended when the Department applied for leave to appeal.

Urgency

- [9] The Department submitted that the application is not urgent because it was instituted approximately four weeks after the application for leave to appeal.
- [10] The delay does not deprive the application of urgency. The efficacy of the relief sought depends upon its determination during the period for which the Order is suspended by section 18(1). The application should accordingly be enrolled and heard as one of urgency.

The legal principles

[11] Section 18 of the Superior Courts Act 10 of 2013 permits a court, under exceptional circumstances, to depart from the ordinary consequence that delivery of an application for leave to appeal suspends the operation and execution of an order. A court may only so order if the applicant proves, on a balance of probabilities, that it will suffer irreparable harm if the order is not granted, and that the respondent will not suffer irreparable harm if it is.¹

[12] The principles governing the section 18(3) enquiry are settled and were recently discussed in the LAC's decision in *Moqhaka Local Municipality and Another v Tshabalala*:²

12.1 Whether exceptional circumstances exist is a question of fact. The circumstances said to be exceptional must arise on the particular facts of the matter and be unusual, uncommon or different.³ The court must also take into account the prospects of success on appeal.⁴

12.2 The enquiry into irreparable harm is not a balancing exercise. The applicant must establish that it 'will' suffer irreparable harm if the order is not implemented, and that the respondent 'will not' suffer irreparable harm

¹ "18. **Suspension of decision pending appeal**

(1) 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 application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders."

² *Moqhaka Local Municipality and Another v Tshabalala* (JA7/25) [2025] ZALAC 36; [2025] 9 BLLR 947 (LAC); (2025) 46 ILJ 2439 (LAC) (11 June 2025) at paras 27-31.

³ *Incubeta Holdings and Another v Ellis and Another* (2013/ 30879) [2013] ZAGPJHC 274; 2014 (3) SA 189 (GSJ) (16 October 2013) at paras 17-18.

⁴ *University of the Free State v Afriforum and Another* (929/2016) [2016] ZASCA 165; [2017] 1 All SA 79 (SCA); 2018 (3) SA 428 (SCA) (17 November 2016) at para 15.

if it is.⁵ Where both parties will suffer irreparable harm, the application must fail.⁶

Evaluation

Are the circumstances of this case exceptional?

[13] The facts of this matter are that:

13.1 the applicant underwent a disciplinary process culminating in demotion to the Director position, the fairness of which she challenged as an unfair labour practice;

13.2 the bargaining council held that the demotion was unfair and reinstated her to the DDG position, and the Department exercised its right to review the award, which is now suspended pending review;

13.3 the applicant had occupied the Director position for more than 3 years when, some months after instituting the review, the Department dismissed her, claiming that it was entitled to revive the 'alternative' sanction of dismissal arising from the very disciplinary process whose outcome remained the subject of pending review.

[14] The Order against which the Department wishes to appeal interdicts the Department from dismissing the applicant pending the review. The ordinary consequence of the appeal is to undo this court's intervention, which is aimed at preserving the employment relationship while the statutory process runs its course. That consequence is at odds with the scheme of the LRA and defeats the very purpose of the Order, which is to preserve the *status quo* until the statutory dispute-resolution process has run its course.

[15] These circumstances are, in my view, exceptional because, if the Order is suspended, the preservation of the employment relationship pending review is defeated. If the relationship remains terminated before the review is determined, the arbitration award restoring her to the DDG position will, if

⁵ *University of the Free State v Afriforum and Another* (Ibid) at para 10.

⁶ *Helen Suzman Foundation and Another v Minister of Police and Others* (23199/16) [2017] ZAGPPHC 151; [2017] 3 All SA 253 (GP) (10 May 2017) at para 19.

ultimately upheld, be incapable of implementation because she will no longer be an employee.

[16] As to its prospects of success on appeal, the Department contends that Daniels J erred in treating the pending review as a basis for preserving the employment relationship, arguing that the dismissal rests upon a separate legal foundation and is not affected by the review outcome. I disagree. The Department's stated reason for dismissing the applicant was that, by pursuing her unfair labour practice dispute, she had repudiated the contractual agreement pursuant to which the demotion had been implemented, thereby entitling the Department to revive the alternative sanction of dismissal. Whether that proposition is correct cannot be divorced from her challenge to the fairness of the disciplinary sanction from which the asserted right to dismiss arises. The Department's asserted position confuses contract law with the law protecting the constitutional right to fair labour practices: the law of contract governs how the contractual consequences of the disciplinary sanction of demotion are implemented, whereas the LRA governs whether the disciplinary sanction is fair. The applicant's contractual acceptance of the Director position could not constitute a waiver of her LRA right under section 186(2)(b) to challenge the disciplinary sanction short of dismissal.

[17] The Department also submits that Daniels J erred in treating the employment relationship as subsisting when he made the Order, and that he granted relief beyond that sought by the applicant. Those are grounds properly for determination on appeal. Having taken them into account, I am nevertheless not persuaded that the Department's prospects of success are sufficient to displace my conclusion that the circumstances of this case are exceptional. The Order correctly preserves the integrity of the statutory dispute-resolution process established by the LRA, and to suspend it permits the Department to render the process impotent. That would not serve the interests of justice.

Will the applicant suffer irreparable harm if the Order is not implemented?

[18] I am satisfied that she will.

- [19] The purpose and effect of the Order is to preserve the employment relationship pending the determination of the review. If the Order is suspended, the employment relationship terminates before the review court has determined the reasonableness of the award reinstating her to the DDG position. The interim protection afforded by the Order can never be regained.
- [20] The Department submits that the applicant can claim relief via an unfair dismissal dispute. That is a different remedy directed at a different dispute. It cannot address the loss of the interim protection afforded by the Order. I am satisfied that the harm is irreparable.

Will the Department suffer irreparable harm if the Order is implemented?

- [21] I am satisfied that the Department will not.
- [22] The Order preserves the position that has existed since December 2022: the applicant remains employed in the Director position pending the outcome of the review. Implementing the Order does not require the Department to tolerate any arrangement different from that which it has maintained for more than 3 years.
- [23] The Department identifies two forms of prejudice: the continued payment of remuneration from public funds, and the alleged breakdown of the employment relationship.
- [24] Neither constitutes irreparable harm. The first is purely financial and, in any event, regardless of who occupies the Director position, the Department must remunerate its incumbent. The second is inconsistent with the Department's own conduct in continuing to employ the applicant in the Director position for more than 3 years after she challenged her demotion by referring the unfair labour practice dispute.
- [25] In any event, as a matter of law and public policy, the exercise by an employee of a statutory right conferred by the LRA does not and cannot, without more, impair the relationship of trust between employer and employee.
- [26] I am satisfied that there will be no irreparable harm to the Department should the Order be implemented pending appeal.

Costs

[27] The Department sought a costs order. The union did not. Having regard to the requirements of the law and fairness, I see no reason to depart from the ordinary approach in labour matters that there should be no order as to costs.

Order

[28] The application is enrolled and heard as one of urgency.

[29] The Order granted by Daniels J on 2 June 2026 shall not be suspended pending the final determination of the respondents' application for leave to appeal and any appeal arising therefrom.

[30] There is no order as to costs.

SJ Harvey

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr Mothoa (PSA official)

For the Respondents: Mr Myburgh SC with Mr Itzken instructed by
Werksmans