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

Signature 07/08/2026

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no.: 2026-145875

In the matter between:

TSHEPANG RAMATAPA **APPLICANT**

and

THE PROPERTY PRACTITIONERS' REGULATORY AUTHORITY (PPRA) **FIRST RESPONDENT**

THATO RAMAILI **SECOND RESPONDENT**

THE BOARD OF DIRECTORS OF THE PPRA **THIRD RESPONDENT**

Heard: **10 March 2026**

Delivered: **07 August 2026**

Contempt - defence of prescription - statutory arbitration award – it is the underlying claim, not the award, that constitutes a 'debt' for purposes of the Prescription Act - referral to CCMA interrupts prescription - statutory arbitration award prescribes after 30 years - wilful and mala fide non-compliance established - suspended custodial sentence.

JUDGMENT

HARVEY, J

[1] On 13 November 2025, this Court (per Morajane AJ) issued a *rule nisi* calling upon the second respondent, the Chief Executive Officer of the first respondent (the PPRA), to appear on 10 March 2026 and show cause why she should not be held in contempt of court for failing to comply with a CCMA arbitration award issued on 10 November 2020.

[2] The award arose from a dispute referred to the CCMA by 5 PPRA employees in terms of sections 6 and 10 of the Employment Equity Act 55 of 1998 (EEA). They alleged that the PPRA discriminated against them by remunerating them on a cost-to-company basis, whilst paying other employees on a more favourable basis, known as the basic-plus-benefits salary structure.

[3] The arbitrator upheld their claim, concluding that the employer unfairly discriminated against the 5 employees on the listed grounds of political opinion and conscience. In his award dated 10 November 2020 (the Award), he ordered the PPRA to pay each employee compensation of R30,000 and to place them on the basic-plus-benefits salary structure (hereinafter referred to as 'basic+') with effect from 1 November 2020, by no later than 16 November 2020. He also directed the PPRA to take steps to prevent the same or similar unfair discrimination from occurring in future.

[4] On 13 November 2020, Mr Oscar Mangole, the PPRA's Human Resources Manager, sent an email to the 5 employees confirming that their R30,000 compensation had been paid. The email continued:

I refer to point 30 on the Award, which states that the employer should put all of you on the basic+plus structure with effect from 01 November 2020 by no later than 16 November 2020. Please note that because of the payroll cut-off dates this month the employer will effect the changes accordingly with the December payroll. Should there be any monies due to you as a result of the migration from CTC to basic+plus salary structure, that will be backdated from 01 November 2020 and paid with the December payroll.'

[5] Despite this assurance, it is common cause that the employer has not, to date, 'migrated' the 5 employees to basic+.

[6] The applicant, Mr Ramatapa, is one of the 5. He remains in the PPRA's employ as a Provincial Transformation Administrator.

[7] On 30 March 2021 the arbitration award was certified by the CCMA in terms of section 143(3) of the LRA.[1]

[8] In her answering affidavit Ms Ramaili, the PPRA's CEO, acknowledges the existence of the Award and the respondents' knowledge thereof. She submits that the employer complied with the Award 'partially' in that the R30,000 compensation was paid, as ordered. She admits, however, that the employees were not placed on basic+.

[9] Ms Ramaili submits that the non-compliance with the Award was neither wilful nor *mala fide.* She offers 3 '*reasons for non-compliance*', being:

9.1 '*Operational and/or financial reasons*': the Board of Directors has resolved that it is uneconomical to retain all employees on basic+. On 29 July 2025 all employees were informed that the PPRA would be migrating them to the cost-to-company salary structure. The employer then consulted with its employees and, as of December 2025, all but 3 had agreed to be so migrated;

9.2 '*A conflicting Award by the Pension Fund Adjudicator (PFA)*': In January 2021, a group of employees, including Mr Ramatapa, referred a complaint to the PFA, including that their pension fund deduction was too expensive. Ms Ramaili avers that in its decision the PFA 'endorsed' the cost-to-company salary structure; and

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[1] Section 143 of the LRA is headed '**Effect of arbitration awards**' and provides that:

(1) An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, unless it is an advisory arbitration award…

(2) …

(3) An arbitration award may only be enforced in terms of subsection (1) if the director has certified that the arbitration award is an award contemplated in subsection (1).

(4) If a party fails to comply with an arbitration award certified in terms of subsection (3) that orders the performance of an act, other than the payment of an amount of money, any other party to the award may, without further order, enforce it by way of contempt proceedings instituted in the Labour Court.

9.3 '*The arbitration award has prescribed*': Ms Ramaili submits that the Award is a debt which prescribed after 3 years in terms of section 11(d) of the Prescription Act 68 of 1969 (the PA), and '*consequently, the Award cannot be enforced as it prescribed on 10 November 2023*.'

[10] Mr Segage, who appeared for the respondents, focused in argument on the proposition that the Award had prescribed after 3 years – that is, on 10 November 2023. He argued that the contempt application, which was launched in August 2025, must accordingly be dismissed. This was because, in his submission, the primary purpose of contempt proceedings is to secure compliance, whereas the employer is no longer under an obligation to migrate Mr Ramatapa to basic+. He also argued that the employer's non-compliance was neither wilful nor in bad faith, because the intention was 'always' to move the basic+ employees onto the cost-to-company salary structure and Mr Ramatapa was (now) being treated the same way as everyone else.

[11] Mr Ramatapa represented himself. He submitted that the employer had deliberately defied the CCMA's directive to migrate him to basic+. Despite the CCMA's finding of unfair discrimination and the clear directive that the employer take steps to prevent the same or similar unfair discrimination from occurring in the future, it chose to perpetuate the discriminatory conduct for more than five years and continues to do so.

[12] Mr Ramatapa explained that, had the Award been implemented, he would not have been required to make certain monthly contributions associated with the cost-to-company remuneration structure, including contributions towards his pension fund and medical aid and a monthly 'staff debt' deduction of R3,973. He had repeatedly demanded that the employer implement the Award, cease making those deductions, and reimburse him for the amounts he had paid as a consequence of its continued non-compliance. He sought to be placed in the financial position he would have been in, had the Award been implemented.

[13] Neither party asked for costs.

<u>Prescription</u>

[14] The employer contends that the Award prescribed in November 2023 and that this necessarily disposes of the contempt application. The latter proposition does not necessarily follow from the former. Even if an arbitration award were to prescribe, it does not inevitably follow that contempt proceedings based on earlier non-compliance are thereby precluded. It is a crime unlawfully and intentionally to disobey a certified arbitration award, and contempt proceedings are concerned not only with securing compliance, but also with vindicating the dignity and authority of courts and, in cases such as the present one, tribunals such as the CCMA. Past contempt is, to my mind, a different question from present enforceability.

[15] I begin by examining the premise that the Award has prescribed. Counsel's submissions proceeded on the basis that it is settled law that statutory arbitration awards prescribe after 3 years. I am not persuaded that the authorities are to this effect.

[16] The interaction between the Labour Relations Act and the Prescription Act has been explored by the Constitutional Court and the Labour Appeal Court in a number of cases, and it is helpful to examine the leading decisions to identify the decided legal principles.

Myathaza

[17] In *Myathaza v Johannesburg Metropolitan Bus Services*[2] the Constitutional Court was called upon to determine whether an arbitration award reinstating an employee was a 'debt' under the Prescription Act 68 of 1969 (the PA) which had prescribed after 3 years. The employer's review application had remained pending for more than 4 years when Mr Myathaza applied to make the award an order of court. The Labour Court held that the award constituted a 'debt' for purposes of the PA and that it had prescribed after 3 years. The LAC similarly held that an award is a simple debt that prescribes after 3 years, and that prescription is not interrupted by the institution of review proceedings.

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[2] *Myathaza v Johannesburg Metropolitan Bus Services (SOC) Ltd t/a Metrobus and others* [2017] 3 BLLR 213 (CC) (*Myathaza*).

[18] Mr Myathaza approached the Constitutional Court, which unanimously held that the award should be made an order of the Labour Court, but was evenly divided as to why:

18.1 Jafta J (supported by Nkabinde ADCJ, Khampepe J and Zondo J), held that the PA cannot apply to matters determined under the 1996 LRA. They held that the LRA is post-1994 legislation enacted to give effect to the constitutional right to fair labour practices, whereas the PA is pre-1994 legislation regulating the prescription of ordinary civil debts.[3] In a separate concurring judgment, Zondo J pointed out that, apart from judgment debts, the PA provides for the extinction of debts for which liability has not yet been finally determined, whereas a statutory arbitration award is not such a debt because, like a judgment, it finally determines liability between the parties.[4]

18.2 Froneman J (supported by Madlanga and Mhlantla JJ and Mbha AJ) held otherwise. In his view, the PA is not inconsistent with the LRA, provided the PA is reinterpreted in a manner that protects the fundamental right of access to justice.[5] He held that an unfair dismissal claim (which seeks reinstatement, re-employment or compensation) is a claim for a 'debt' under the PA.[6] Referring such a claim to the CCMA interrupts prescription, and such interruption continues until review or appeal proceedings are finalised.[7]

[19] No clear ratio emerged from *Myathaza*. The first judgment holds that the PA cannot apply to matters decided under the LRA. The second judgment (the approach later endorsed by the Constitutional Court) holds that the PA applies but makes it clear that it is the unfair dismissal claim, as opposed to the award determining that claim, that constitutes a debt capable of prescription. The claim prescribes after 3 years, whereas a (certified) arbitration award

[3] *Myathaza* at 53-58.

[4] *Myathaza* at 109-111.

[5] *Myathaza* at 66-67.

[6] *Myathaza* at 79.

[7] *Myathaza* at 68 and 84-88.

prescribes after 30 years (the period of prescription applicable to a judgment debt).[8]

Mogaila and van Tonder

[20] In *Mogaila*,[9] decided the following year, the Constitutional Court found that, on either approach in *Myathaza*, the appellant was entitled to an order declaring that her reinstatement award had not prescribed. The LAC in *Van Tonder*[10] adopted the same approach.

Pieman's Pantry

[21] In March 2018 the Constitutional Court returned to the question of prescription in *FAWU obo Gaoshubelwe v Pieman's Pantry*.[11] In that matter, employees dismissed for participating in an unprotected strike had referred an unfair dismissal dispute to the CCMA. The CCMA had ruled that it lacked jurisdiction to arbitrate, and the Labour Court dismissed the employees' application to review that ruling. By the time the employees referred the dispute to the Labour Court, more than 3 years had passed since the certificate of non-resolution had been issued. Both the Labour Court and the Labour Appeal Court upheld the employer's assertion that the employees' claim for reinstatement had prescribed.

[22] Kollapen AJ, writing for the majority, noted that the core legal question for determination was whether the PA applies to litigation involving unfair dismissal claims brought under the LRA.[12] He concluded that it does, thus settling the question that had divided the Court in *Myathaza*. On the facts of that matter, however, the employees' claim for reinstatement had not prescribed, because

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[8] *Myathaza* at 71.

[9] *Mogaila v Coca-Cola Fortune (Pty) Ltd* (2017) 38 ILJ 1273 (CC); [2017] 5 BLLR 439 (CC); [2017] ZACC 6 (CC); 2018 (1) SA 82 (CC).

[10] *Van Tonder v Compass Group (Pty) Ltd and others* [2017] 10 BLLR 1023 (LAC).

[11] *Food and Allied Workers' Union obo Gaoshubelwe v Pieman's Pantry (Pty) Limited* [2018] ZACC 7 (*Pieman's Pantry*).

[12] *Pieman's Pantry* at 138 and at 1.

their referral of the unfair dismissal dispute to the CCMA for conciliation had interrupted prescription.

Brompton Court

[23] *Pieman's Pantry* was decided on 20 March 2018. Three days later, the Supreme Court of Appeal issued its judgment in *Brompton Court Body Corporate v Khumalo*.[13] That case concerned the effect of a private arbitration under the Arbitration Act 42 of 1965. The SCA held that a private arbitration award does not create a new debt, thus beginning a fresh 3-year period of prescription. Rather, under s 13(1)(f) of the Prescription Act, pending private arbitration is an 'impediment' to the completion of prescription of the underlying debt. Significantly, however, the SCA expressly held that different considerations would apply to statutory arbitration under the Labour Relations Act.[14]

Motsoaledi v Mabuza

[24] In September 2018, the LAC delivered its judgment in *Motsoaledi v Mabuza*.[15] Ms Mabuza had referred a dispute to the bargaining council, claiming that the employer's failure to translate her to the post of Deputy Manager: Nursing amounted to an unfair labour practice. She had obtained an award in her favour dated 7 October 2010. The employer did not comply with the award. The award was certified on 3 October 2013, and Ms Mabuza applied to make it an order of the Labour Court. Shortly thereafter, she launched an application to hold the employer in contempt of court, to which it responded that certification of the award had not interrupted prescription, and that the award had prescribed on 6 October 2013. The Labour Court held that certification had interrupted prescription, and made the award an order of court. The matter was taken on appeal to the LAC.

[13] *Brompton Court Body Corporate v Khumalo* (398/2017) [2018] ZASCA 27 (*Brompton Court*).

[14] *Brompton Court* at para 9, referring to *Myathaza* and *Mogaila*.

[15] *Motsoaledi and Others v Mabuza* (JA47/16) [2018] ZALAC 43; [2019] 1 BLLR 21 (LAC); (2019) 40 ILJ 117 (LAC) (6 September 2018) (*Mabuza*).

[25] The LAC summarised the legal principles established in *Myathaza* and *Pieman's Pantry*: a claim for unfair dismissal activates proceedings for the recovery of a 'debt' as contemplated in the PA; there is no conflict between the PA and the LRA; the referral of a dispute to the CCMA interrupts prescription of the claim; and such interruption continues until the outcome of review proceedings.[16] There was no reason to treat claims for unfair labour practices differently from claims for unfair dismissal. An unfair labour practice claim is accordingly a 'debt'[17] in respect of which prescription begins to run as soon as it is due. The debt is extinguished after 3 years.[18]

[26] The LAC then considered whether the debt (the unfair labour practice that was the subject of the arbitration proceedings) had prescribed in accordance with the PA as interpreted by the Constitutional Court. It noted that the Constitutional Court in *Pieman's* had adopted Froneman's approach in *Myathaza*, namely that the interruption of prescription ceases when review proceedings are terminated by judgment. The judgment continues:[19]

> *[26] ….The award in this appeal was not taken on review. So when did the interruption of prescription cease?*
>
> *[27] The reasoning in Myathaza suggests that the interruption of prescription ceases when the award is published because the publication of the award gives rise to a new prescription period of 30 years. This follows from the observation made in the judgment at para 71:*
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>> *'[71] Where a debt is the object of a dispute subjected to arbitration, the period of prescription is delayed. The award of an arbitrator in terms of an arbitration agreement has the status of a court order between the parties, and the applicable prescription period is that which is applicable to a judgment debt. There seems little reason why parties subjected to statutory arbitration should not enjoy similar protection in respect of arbitration awards in their favour.'*

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[16] *Mabuza* par 20.

[17] *Mabuza* par 22.

[18] *Mabuza* par 24.

[19] *Mabuza* paras 26-28.

[28] It follows that, on the application of Froneman's judgment in Myathaza to the facts of this appeal, the award gave rise to a new period of prescription of 30 years. This period had not expired when the respondent's application to hold the appellant in contempt of court was served.

[27] In its judgment the LAC also considered the SCA's decision in *Brompton Court Body Corporate v Khumalo*[20] and observed, obiter, that on that approach Mabuza's claim would have prescribed.[21]

[28] The LAC nevertheless held that it was bound by the Constitutional Court's decision in *Pieman's* and by Froneman's approach in *Myathaza*.[22] On the facts, the arbitration award gave rise to a new prescription period of 30 years, which period had not yet expired when Ms Mabuza applied to hold the employer in contempt of court.[23] Although it was unnecessary, in view of this conclusion, to decide whether an application to certify an award interrupts prescription, the LAC held that it does not.[24]

Majebe

[29] In *NUM obo Majebe v Civil and General Contractors*[25] the Labour Court had refused to make an arbitration award, which had been taken on review, an order of court, on the basis that it had prescribed. Coppin JA observed that the majority judgment in *Pieman's* had confirmed the judgment of Froneman in *Myathaza* and that the law is that:[26]

29.1 The PA applies to claims under the LRA;

29.2 A claim for reinstatement is a debt and prescribes after 3 years;

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[20] *Brompton Court Body Corporate v Khumalo* [2018] ZASCA 27; 2018 3 SA 347 (*Brompton*).

[21] *Mabuza* par 36. The LAC here omitted to engage with the SCA's express disclaimer to the effect that different considerations apply to statutory arbitrations under the LRA (*Brompton* par 9).

[22] *Mabuza* par 39.

[23] *Mabuza* par 28. This is because an application to certify an award does not satisfy section 15(1) of the PA, as it is not a process claiming payment of the debt, nor must it be served on the debtor.

[24] *Mabuza* par 30.

[25] *NUM obo Majebe v Civil and General Contractors* [2021] JOL 49619 (LAC) (*Majebe*).

[26] *Majebe* par 32-33.

29.3 Referring an unfair dismissal dispute to the CCMA interrupts prescription, and prescription remains interrupted until review proceedings are finalised.

[30] The LAC held that the award had not prescribed because the review had interrupted prescription.

[31] At paragraph 38, the LAC held that 'the appellant's award for reinstatement and back pay, which is a debt as contemplated in the PA, has not yet prescribed because the respondent's application to review that award has not been finalised'. It continues:

[39] While the facts in Pieman's were slightly different from those in the present matter, they are similar in material respects. To reiterate, there the majority of the Constitutional Court concluded that a claim in terms of the LRA for reinstatement, or re-employment and/or compensation was a 'debt' as contemplated in the Prescription Act and the prescriptive period was three years. <u>While a claim for such relief and an award granting such relief are conceptually different, it is rather artificial to conclude that such a claim is a 'debt' in terms of the Prescription Act, but that an award, in terms of which such a claim is granted, is not</u>. In any event, an award made pursuant to a claim for reinstatement (or for re-employment, or compensation) also seeks to enforce a legal obligation and enjoins the employer to do something positive. In this instance, to essentially resuscitate Mr Majebe's employment agreement with it and to pay him back-pay. A quintessential 'debt', and as contemplated in the Prescription Act.

[40] More importantly, the Constitutional Court in Pieman's held that a referral to the CCMA interrupts prescription, and prescription remains interrupted until the finalisation of the processes relating to it, which would include the review proceedings of the award made consequent to the referral.

[40] …

[41] That view is confirmed in the amendment to section 145 of the LRA. Section 145(9) provides, in essence, that a review application does interrupt the running of prescription in respect of an award made in terms of the LRA.

[42] Thus, while the Labour Court was correct in applying this Court's decision in Myathaza (LAC), it erred in its conclusion, as this Court erred, that the review application brought by the respondent did not interrupt prescription. In the circumstances, the decision of the Labour Court cannot stand. [emphasis added]

Koopman

[32] Counsel for the employer also relied on *SAMWU obo Koopman v City of Cape Town and others*[27] in support of his proposition that awards prescribe after 3 years. In that matter, the Labour Court had dismissed the employee's contempt application on the basis that the award, which had been issued more than 9 years prior and had not been taken on review, had prescribed. In an appeal to the LAC, the union argued that an arbitration award is not a debt that prescribes after 3 years but, once certified, it prescribes after 30 years like a judgment of the Labour Court. It submitted that it is the claim, not the award, that prescribes. The LAC recorded these submissions, but elected to decide the matter only with reference to the undisputed fact that the employee had failed to tender his services, making it unnecessary to decide the question of prescription.

Summary of legal principles

[33] Three legal principles relevant to the present enquiry emerge from these authorities:

33.1 First, that it is the underlying LRA claim (the unfair dismissal or unfair labour practice claim) that constitutes the 'debt' for purposes of the PA. That claim prescribes after three years (*Myathaza*, as confirmed in *Pieman's Pantry*);

33.2 Second, that referring the claim to the CCMA (or bargaining council with jurisdiction) interrupts prescription until the statutory process, including

[27] *South African Municipal Workers Union obo Koopman v City of Cape Town and Others* (CA5/2023) [2025] ZALAC 7; [2025] 5 BLLR 495 (LAC); (2025) 46 ILJ 1132 (LAC) (22 January 2025) (*Koopman*).

statutory arbitration and any review proceedings, has been concluded (*Myathaza*, as confirmed in *Pieman's Pantry*);

33.3 Third, that the prescription period applicable to a statutory arbitration award that finally determines the LRA claim is that applicable to a judgment debt (*Mabuza*, relying on paragraph 71 of Froneman J's judgment in *Myathaza*).

[34] What, then, is to be made of paragraph 39 of *Majebe*, which describes the award itself as a debt? In my view, that observation is *obiter*; it was unnecessary to the issue before the Court, namely whether prescription of the underlying claim had been interrupted by the review. I therefore do not read that paragraph as having displaced the ratio in *Mabuza*, particularly in the absence of any express consideration by the LAC of that decision.

[35] In support of his conclusion that an LRA award falls to be treated, for purposes of prescription, like a judgment debt, Froneman J observed that there is no reason why parties who must submit their labour disputes to statutory arbitration should not enjoy the same protection in respect of their awards as parties whose disputes fall to be adjudicated in the Labour Court.[28] The allocation of labour disputes between the CCMA/bargaining councils and the Labour Court is purely 'pragmatic' and is not based on any substantive distinction between the rights in issue.[29] The disputes all involve the vindication of statutory rights enacted to give effect to constitutional rights, and all are resolved by the application of law either in the Labour Court or before the CCMA/bargaining council, which is a 'tribunal'. It would be anomalous if a CCMA award prescribed after 3 years whereas an order of the Labour Court prescribed after 30 years, because the enforceability of a final determination of constitutional rights would then depend solely upon the forum to which Parliament had directed the dispute.

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[28] *Myathaza* at 71; see also *National Union of Metalworkers of South Africa obo M Fohlisa and Others v Hendor Mining Supplies (a division of Marschalk Beleggings (Pty) Ltd)* (CCT04/16) [2017] ZACC 9; [2017] 6 BLLR 539 (CC); 2017 (7) BCLR 851 (CC); (2017) 38 ILJ 1560 (CC) (30 March 2017) confirming that an order for backpay consequent upon reinstatement is a judgment debt.

[29] *Myathaza* at 84-85.

[36] Finally, in support of the contention that an award prescribes after 3 years, counsel for the employer pointed me to section 145(9) of the LRA, which provides that the institution of review interrupts the running of prescription '*in respect of the award*'. Froneman J expressly considered that LRA provision in *Myathaza*[30] and observed *obiter* that it was doubtful whether it sufficiently indicated a legislative intention that the PA should apply to arbitration awards, suggesting instead that it was enacted in response to earlier Labour Court and Labour Appeal Court decisions. In my view, the wording of section 145(9) does not support the proposition that the award, as opposed to the underlying claim, is itself a debt for purposes of the PA. The subsection can be read consistently with *Myathaza* and *Pieman's Pantry* as referring to the underlying statutory claim finally determined by the award.

Conclusion regarding the point of prescription

[37] As the point was not raised or argued before me, I shall assume, without deciding, that a claim of unfair discrimination under the EEA is, like an unfair dismissal or unfair labour practice claim under the LRA, a claim for a 'debt' for purposes of the PA. A claim of unfair discrimination would, in that case, prescribe after 3 years. Prescription is interrupted by referral of the claim to the CCMA and remains interrupted until the dispute has been finally determined, whether by arbitration (and any review proceedings) or by judgment of the Labour Court (and any appeal proceedings).

[38] It follows that the Award in favour of Mr Ramatapa, issued by the CCMA on 10 November 2020, has not prescribed.

[39] In light of my conclusion that the Award has not prescribed, it is unnecessary to determine whether the subsequent prescription of a statutory arbitration award would, in any event, preclude contempt proceedings founded upon earlier wilful non-compliance with that award.

[30] *Myathaza* at 61. See also *Majebe* at para 41.

<u>Contempt</u>

[40] The present contempt application concerns the respondents' failure to comply with paragraph 30 of the Award, which required that Mr Ramatapa be migrated to basic+ with effect from 1 November 2020.

[41] The requirements for civil contempt are well established. Once the applicant proves the existence of the order, knowledge thereof, and non-compliance, wilfulness and *mala fides* (bad faith) are presumed. The respondent then bears an evidential burden to adduce evidence which establishes a reasonable doubt as to whether the non-compliance was deliberate and in bad faith. Wilfulness means deliberate non-compliance with the order. Bad faith entails that the non-compliance was not the result of an honest mistake, misunderstanding or inability to comply, but a conscious decision not to do so.

[42] The second respondent has failed to discharge that evidential burden. None of the explanations advanced by Ms Ramaili raises a reasonable doubt as to either wilfulness or bad faith. On her own version, the employer deliberately declined to implement paragraph 30 of the Award. Her affidavit seeks to justify that decision.

[43] None of the reasons advanced justifies the deliberate non-compliance. The employer's operational preference for the cost-to-company salary structure does not entitle it to disobey paragraph 30 of the Award. The Pension Fund Adjudicator's determination concerned the employer's failure to register employees and to pay over their contributions. It did not address, much less determine, Mr Ramatapa's entitlement to basic+. Nor do the 2025 consultations with employees relieve the employer of its obligation to comply with a binding arbitration award addressing a finding of unfair discrimination. Ms Ramaili's evidence that almost all employees accepted migration to the cost-to-company remuneration structure during 2025 neither excuses the respondents' failure to comply with paragraph 30 of the Award nor renders compliance impossible. If the first respondent wishes thereafter to consult with Mr Ramatapa regarding any future migration, it remains free to do so in accordance with the law.

[44] The respondents deliberately elected not to implement paragraph 30 of the Award because they disagreed with its consequences and preferred a different remuneration structure. That deliberate and unjustified non-compliance was not the product of any honest mistake, misunderstanding or inability to comply.

[45] I am accordingly satisfied, beyond a reasonable doubt, that the respondents' non-compliance with paragraph 30 of the Award was both wilful and *mala fide*. I find Ms Ramaili, in her capacity as Chief Executive Officer of the PPRA, in contempt of paragraph 30 of the arbitration award dated 10 November 2020.

<u>Sanction</u>

[46] The purpose of a sanction for civil contempt is twofold. It is intended both to secure compliance with the Award and to vindicate the dignity and authority of the Court. Those objectives must be balanced in determining an appropriate sanction.

[47] The first respondent has deliberately failed to comply with paragraph 30 of the Award for more than five years. Ms Ramaili has failed to raise reasonable doubt that the non-compliance was wilful and *mala fide*. The applicant approached this Court primarily to secure compliance with paragraph 30 of the Award. A fine payable to the Registrar would do little to achieve that objective.

[48] I am satisfied that that conduct warrants a custodial sentence. The sentence should, however, be suspended to afford the respondents a final opportunity to comply with paragraph 30 of the Award.

[49] As to the period for compliance, I consider that the first respondent has been aware of paragraph 30 of the Award since November 2020 and requires no further opportunity to comply. 30 calendar days is sufficient time within which to implement paragraph 30 of the Award and give it full retrospective financial effect. A suspended sentence of imprisonment therefore best serves the dual purposes of civil contempt proceedings by securing compliance with the Award while marking the seriousness of the continued non-compliance with a binding arbitration award.

Order

[1] The second respondent, Ms Ramaili, is declared to be in contempt of paragraph 30 of the arbitration award issued under case number GAJB24072-20 on 10 November 2020 (the Award).

[2] The second respondent, Ms Ramaili, is sentenced to 14 days' imprisonment, wholly suspended on condition that the first respondent, within 30 calendar days of the date of this order, fully complies with paragraph 30 of the Award by placing Mr Ramatapa on the basic-plus remuneration structure with effect from 1 November 2020 and by placing him in the financial position he would have occupied had paragraph 30 of the Award been implemented in accordance with its terms.

[3] In the event that the first respondent fails to comply with paragraph 2 of this Order, the applicant is granted leave to re-enrol the matter, on the same papers supplemented where necessary, for an order declaring that the condition of suspension has not been fulfilled and directing that the sentence of imprisonment be carried into operation.

[4] There is no order as to costs.

SJ Harvey

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr Ramatapa (in person)

For the Respondents: Mr Segage instructed by BZ Attorneys Inc