



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Not reportable

Case no: 1105/2016

In the matter between:

**MEC FOR DEPARTMENT OF HEALTH,
NORTH WEST**

Applicant

and

SOPHIE VICKIE SHASHAPE

First Respondent

**THE SHERIFF OF THE HIGH COURT,
MAHIKENG**

Second Respondent

Coram: Wessels AJ

Judgment reserved: 10 July 2026

(Receipt of Respondent's heads of argument)

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to

SAFLII. The date and time for the handing down of the judgment are deemed to be 16h00 on 19 August 2026.

Summary: Stay of warrant of execution pending proceedings on duplicated taxed items — authority challenge must follow rule 7(1) — prima facie right shown on duplication, not on fees — relief confined to disputed items — costs of one counsel only.

JUDGMENT

Wessels AJ

Introduction

[1] This is an urgent application to stay a warrant of execution issued on 22 June 2026 for R918,036.71. The applicant seeks the stay of the warrant of execution pending proceedings to establish that part of the alleged indebted amount is not owed. The first respondent opposes the application. The second respondent abides.

[2] The first respondent raises several points *in limine*, namely that the matter is not urgent, that the deponent lacked authority to bring the application and that the applicant has not met the requirements for an interim interdict. The respondent furthermore objected to the evidence of Mr Khadafi Lehabe ('Mr Lehabe') contained in a confirmatory and replying affidavit of the applicant as being hearsay evidence. The answering affidavit raises another point in limine, non-

joinder of the Taxing Master. That point is not advanced anywhere in the respondent's heads of argument and I treat it as not persisted with.

Background facts

[3] The taxed accounts that underlie this application arise from an action instituted by the first respondent against the applicant. The proceedings in this action were postponed on 17 March 2025, which gave rise to a wasted costs order in favour of the first respondent for which the applicant was liable. A final costs order, also in the first respondent's favour, followed on 5 August 2025. Two bills of costs and two taxations followed from these two orders. I refer to the taxation of the wasted costs bill as 'the first taxation', and to the taxation of the bill arising from the final costs order as 'the second taxation'. It is common cause that the first taxation took place on 5 December 2025 and that it was settled and taxed. The second taxation took place on 8 May 2026. In the second taxation, more than R800,000 was taxed off the first respondent's bill of costs. The State Attorney appointed Lehabe Attorneys as costs consultants for the applicant in the second taxation and seemingly also in the first taxation. I say seemingly because I could, from the papers before me, not conclude that Mr Lehabe attended the first taxation, but I am not enjoined to make a finding on this issue for the purpose of this application.

[4] The applicant contends that if the first respondent were allowed to proceed with the recovery of the amount reflected in the allocatur in the second taxation, she would effectively be compensated twice for the same wasted costs, which the applicant refers to as 'double dipping', as it appears that it contains items already taxed in the first taxation for which the first respondent had already received payment.

The second taxation

[5] The first respondent's attorney, whom I refer to as 'Mr Seeletso', states that the parties reached an agreement after considering the applicant's objections. About fifty per cent was taxed off the bill of costs in terms of that agreement. According to Mr Seeletso, the taxing master was presented with the agreement and signed the allocatur. The first respondent contends that the second taxation was attended, for the applicant, by a representative of Lehabe Attorneys and not by Mr Lehabe (a director of that firm), himself. This distinction is of importance to these proceedings, in relation to the first respondent's objection to Mr Lehabe's evidence as hearsay and will be dealt with later in this judgment. On this account, the taxing master exercised no independent function at the second taxation and signed what was placed before him.

[6] Mr Lehabe denies allegations of a settlement of the second taxation 'in the strongest possible terms'. He states the second taxation was formal and opposed, and the applicant filed a detailed list of objections before the hearing of the second taxation. According to Mr Lehabe, his mandate from the State Attorney was to oppose the bill, not to settle it and he states any meetings before the hearing were only to identify disputed items, not to negotiate a settlement.

[7] After the allocatur of the second taxation was issued, it surfaced that the items already taxed in the first taxation again appeared in the bill of costs presented at the second taxation. The State Attorney then instructed Lehabe Attorneys to review the complete taxation process for double billing. On that review, Lehabe Attorneys identified items 252, 253, 256, 257, 258, 330 and 331 of the bill taxed at the second taxation as apparent duplicates of items 1 to 6 of the taxed bill at the first taxation ('disputed items').

[8] Mr Lehabé explains in his affidavit that, at the time of the second taxation, his firm was not asked, and did not undertake, to compare the bill taxed at the second taxation against the bill already settled at the first. He states that a taxation does not ordinarily call for that kind of comparison and that none was done at the time. The first respondent denies that any item was duplicated. That remains a dispute.

[9] The State Attorney raised the duplication of the fees, dealt with below, with Mr Seeletso's firm, in an attempt to resolve the matter without litigation. On 22 June 2026, Mr Seeletso's firm rejected the complaint and enclosed the warrant of execution. The applicant approached this Court urgently shortly thereafter.

[10] I must decide whether the matter is urgent, whether the deponent had authority to bring the application, what to make of the criticism of the confirmatory affidavit of Mr Lehabé and whether the applicant has met the requirements for an interim interdict. If I find in the applicant's favour, I must decide to what extent my order will affect the first respondent's warrant.

Urgency

[11] Rule 6(12)(b) requires an applicant to set out the circumstances that lay the basis for urgency and why it cannot get substantial redress in due course. The first respondent's counsel, relying *inter alia* on *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*¹, argues that the applicant has not met this test. The main point taken on urgency is that the State Liability Act² ('State Liability Act')

¹ *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2011] ZAGPJHC 196.

² State Liability Act 20 of 1957.

must first run its course before any attachment can be effected. On this argument, the threat is neither immediate nor final.

[12] I do not accept this for the following reason. Section 3 of the State Liability Act sets out steps that precede attachment in execution and sale. Mandatory compliance with these steps does not mean the applicant has no right worth protecting until those steps are exhausted. Once the warrant is served and the statutory steps are complete, the second respondent may attach and sell the applicant's assets. If the applicant is correct, that part of the debt is already paid and harm caused becomes irreversible once the process runs its course. A statutory delay before harm occurs does not remove the harm, it only postpones it.

[13] The chronology of the facts shows the urgency is not self-created. The applicant moved promptly once Lehabe Attorneys identified the duplication. It raised the matter with Mr Seeletso's firm before litigating, in an attempt to resolve it. *East Rock Trading*³ itself holds that a delay caused by an attempt to settle a matter should not count against urgency and that delay is not, on its own, a ground that diminishes the urgency of a matter. The applicant launched this application shortly after Mr Seeletso's firm rejected that attempt on 22 June 2026. That rejection, not the earlier discovery of the dispute, triggered the urgency. I find that the applicant has established urgency and as a result, this point in limine fails.

Locus standi of the deponent

[14] In her opposing affidavit, the first respondent advances that the deponent to the applicant's founding affidavit, Job Sello Maabela ('Mr Maabela'), had no

³ *Idem*, *East Rock Trading* para 3.

authority to bring this application because no written delegation was attached. The manner of challenging such authority had been decided in *Eskom v Soweto City Council*⁴ 1992 (2) SA 703(W) at 705C-J and confirmed by the Supreme Court of Appeal in *Ganes and Another v Telecom Namibia Ltd*⁵, wherein it sets out how that challenge must be raised. Uniform Rule 7(1) allows a respondent who disputes authority to give notice within ten days of becoming aware of the apparent lack of such authority to require proof of authority. This issue is aptly dealt with by Petersen J in the judgment of this Division in *Mahikeng Local Municipality v Clayton Virgil Harrison*⁶ as follows:

‘In this Division the legal position is clear. Any challenge to the authority of a Municipal Manager to launch an application on behalf of a municipality must be brought by way of Rule 7(1). The respondent has not challenged the authority of the Municipal Manger by way of Rule 7(1) and the point in limine on locus standi must accordingly fail.’

[15] No Rule 7(1) notice was delivered by the first respondent. The point is raised only in the answering affidavit. Absent a Rule 7 challenge, this point in limine fails.

The confirmatory affidavit

[16] The first respondent criticises Mr Lehabe’s confirmatory affidavit because he was not present at the second taxation. The first respondent’s counsel relies on *Masako v Masako* and *Von Abo v President of the Republic of South Africa*⁷ for the proposition that a deponent without personal knowledge, who does not disclose his source, carries no weight. The first respondent’s counsel also points

⁴ *Eskom v Soweto City Council* 1992 (2) SA 703(W) at 705C-J.

⁵ *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA).

⁶ *Mahikeng Local Municipality v Harrison* [2021] ZANWHC 87 para 19.

⁷ *Masako v Masako* (724/2020) [2021] ZASCA 168, 2022 (3) SA 403 (SCA) para 26, and *Von Abo v President of the Republic of South Africa* (CCT 67/08) [2009] ZACC 15, 2009 (5) SA 345 (CC)

out that no confirmatory affidavit was filed by the representative of Lehabé Attorneys who attended the second taxation.

[17] That criticism is well made for anything Mr Lehabé purports to confirm about events at the second taxation itself and I disregard his affidavit to that extent, and the same goes for his later reply insofar as it describes the circumstances surrounding the second taxation. The application, however, does not fail on this point. The duplication of the fees does not depend on events that took place at the second taxation. It rests on Mr Lehabé's own review of his firm's file and on a documentary comparison between the two bills emanating from the first and second taxations. Mr Lehabé's evidence on what resulted from his assessment of these bills is not hearsay and needs no confirmation from a witness present at either taxation.

The requirements for an interim interdict

[18] The requirements are a *prima facie* right, though open to doubt, a well-grounded apprehension of irreparable harm, a balance of convenience favouring relief, and no other satisfactory remedy.⁸

[19] The applicant relies on two grounds. Duplication of items already taxed and paid at the first taxation and excessive counsel's fees. The duplication ground is present in items 252, 253, 256, 257 and 258, and the excessive counsel's fees ground is present in 330 and 331 of the bill of costs of the second taxation.

[20] Taxation fixes costs so execution can be levied, and stops a party paying an excessive amount.⁹ Once signed, an allocatur is *functus officio*. The taxing

⁸ See *Setlogelo v Setlogelo* 1914 AD 221 and *Webster v Mitchell* 1948 (1) SA 1186 (W).

⁹ *Mouton v Martine* 1968 (4) SA 738 (T) at 742A-B

master cannot retax, amend, or supplement it.¹⁰ An item already taxed and paid at the first taxation cannot be charged again at the second for the same work. The first respondent does not dispute this principle. Her answer is factual, as she denies that any item was charged twice. I have already found that this remains a dispute, not resolved on the evidence before me and that I need not resolve it for the inquiry into the existence of a *prima facie* right, given Mr Lehave's comparison of the two bills.

[21] I am, furthermore, not enjoined to decide whether the second taxation proceeded by agreement or was formally opposed. An interim interdict needs only a *prima facie* right, open to doubt. A court need not resolve a dispute of fact at that stage. The current focus is narrower: whether the first taxation occurred and if items already taxed were included in the bill taxed later. The first issue is undisputed. Mr Lehave's evidence supports the second issue, which I accept for the reasons previously stated.

[22] Rule 48(1) allows review only of items objected to or disallowed *mero motu* at the taxation in question. It reads:

'Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed *mero motu* by the taxing master, may within 15 days after the allocatur by notice require the taxing master to state a case for the decision of a judge.'

[23] Rule 48 is not the only route open to the applicant. A party who pays money in the mistaken belief that it is due may recover it by *inter alia* the *condictio indebiti* to the extent the recipient was enriched at the payer's expense without

¹⁰ *Grindlays International Finance (Rhodesia) v Ballam* 1985 (2) SA 636 (W) at 647D-E.

legal cause. I mention that any remark relating to the specific route mentioned herein is *obiter* at most.

Irreparable harm, balance of convenience and alternative remedy

[24] The applicant advances that its assets exposed to attachment are vehicles used for patient transport and mobile clinics, computers running patient record systems, and equipment used in medical procedures. Attaching and removing these assets would immediately disrupt essential public healthcare services. A sale at public auction would give permanency to that disruption. No monetary award afterwards could restore the service lost in the meantime and a review succeeding months or a year later would be academic, since the harm to the public would already be done and could not be undone. The sale would cause harm no later award could undo. I accept that this harm is real, but it must be measured against the right actually established, not the whole warrant.

[25] For the disputed items on the bill of costs, the balance favours a stay. The prejudice to the first respondent is a delay in payment of an amount that, on a *prima facie* basis, is not properly owed. The prejudice to the applicant and the public, if execution proceeds, is real and not easily reversed. For the rest of the warrant, no case for a stay has been made. The first respondent is entitled to the ordinary consequences of a taxed and unchallenged debt.

[26] No other satisfactory remedy exists for the disputed items. A custodian of public funds should not have to pay a claim it has good reason to regard as duplicated, then sue to recover it. That would itself be fruitless and wasteful expenditure, apart from the delay and cost of further litigation to recover money that should never have been paid. An interim interdict, confined to the disputed

items, is the only way to preserve the position pending a final decision on whether they are owed.

Scope of the relief

[27] Prayer 2 seeks a stay of the whole warrant. That is wider than the evidence before me supports. An interdict should not be wider than the right it protects. I have found a *prima facie* right only for the duplicated items. It would not be just to stay execution of an amount the applicant has shown no basis to dispute. A narrower order, confined to the disputed items, should be granted.

[28] The founding papers identify the disputed items by number but do not total their rand value. I will not attempt that computation on affidavit alone. The order identifies the items by number, by reference to the bill taxed at the second taxation, forming part of the allocatur of 8 May 2026. Their value for execution can be ascertained from that document.

[29] I have not prescribed the form of the proceedings the applicant must bring. That is for the applicant to decide and the first respondent to meet on the merits. I require only that some such proceedings be brought within the period stated in the order, failing which the stay lapses.

Costs

[30] There is no reason to deviate from the normal order, in interim applications, that the costs of this application be determined by the Court hearing the proceedings to be instituted by the applicant. Insofar as the costs of this application are concerned, I am enjoined to address the number of counsel that represented the first respondent. The first respondent employed two counsel to

oppose this application. The relief opposed was an ordinary interdict, without unusual volume or complexity. The employment of two counsel was not warranted, and I limit the costs recoverable to those of one counsel, regardless of the outcome of the proceedings still to be brought.

Order

[31] In the result, I make the following order:

- 1 The applicant's non-compliance with the forms and service in the Uniform Rules of Court is condoned. This application is heard as one of urgency under Rule 6(12).
- 2 The warrant of execution issued by the Registrar of this Court on 22 June 2026, under the above case number, is stayed as to items 252, 253, 256, 257, 258, 330 and 331 of the bill of costs taxed at the second taxation, forming part of the allocatur of 8 May 2026 ('the disputed items').
- 3 This order takes effect immediately. The stay in paragraph 2 subsists pending final resolution of the proceedings referred to in paragraph 5.
- 4 Save as provided in paragraph 2, the second respondent may proceed with execution of the warrant for the balance of the amount reflected in it.
- 5 The applicant must institute proceedings to establish that the disputed items are not due and payable, whether by review, action, or otherwise, within 30 (thirty) court days of this order. Failing this, the stay in paragraph 2 lapses and the second respondent may execute the warrant in full.

6 The costs of this application are costs in the proceedings referred to in paragraph 5, limited to the costs of one counsel.



M WESSELS

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

Appearances

For the applicant: Adv B Riley

Instructed by: State Attorneys

Mmabatho

For the first respondent: Adv X Nyoka, with Adv JK Vuza

Instructed by: TL Seeletso Attorneys, Mmabatho