



(1) Reportable Yes	
(2) Of interest to other Judges: No	
(3) Revised	
TDM	01/09/2026
Signature	Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026-193255

In the matter between:

NALA LOCAL MUNICIPALITY

Applicant

and

THULO

First Respondent

THE SHERIFF OF BOTHAVILLE

Second Respondent

Heard: 25 August 2026

Delivered: 01 September 2026

This judgment was handed down electronically by consent of the parties' representatives by circulation to them via email. The date for hand-down is deemed to be 01 September 2026.

JUDGMENT

PRINSLOO, J

Introduction

- [1] This matter is a stark reminder of the famous quote, written by Benjamin Franklin in a 1789 letter, that "*In this world nothing can be said to be certain, except death and taxes.*"

- [2] The Applicant employs the First Respondent (Respondent), and after he referred an unfair labour practice dispute, relating to his suspension, to the South African Local Government Bargaining Council, an arbitration award was issued in his favour on 5 December 2025.
- [3] The presiding commissioner found that the Respondent's suspension was unfair, and the Applicant was ordered to pay him compensation equivalent to four months' remuneration, amounting to R 299 668.16. The Applicant did not challenge the outcome of the arbitration but instead complied with the award and requested a tax directive from the South African Revenue Service (SARS). On 29 December 2025, SARS issued a tax directive stating that R 122 863,88 is to be deducted from R 299 668,16. The Applicant paid the amount stated in the tax directive to SARS and paid the Respondent the remainder, being R 176 804.28, in January 2026.
- [4] The Respondent, however, insisted that the Applicant is still obliged to pay him the sum of R 122 863 in terms of the arbitration award, notwithstanding the tax directive and the fact that payment of the said amount had been made to SARS.
- [5] The Respondent subsequently caused a writ of execution to be issued and had instructed the Second Respondent (sheriff) to levy execution on the municipality's assets in order to recover the amount of R122 863.88 that was paid to SARS in terms of the obtained tax directive. The Applicant provided the sheriff with proof of payment to both the Respondent and SARS, indicating that the municipality has fully complied with the arbitration award.
- [6] The sheriff reported back to the Respondent on 7 May 2026 and informed him that the municipality has provided proof of payment, satisfying the writ of execution, which included the payment made to SARS. After the sheriff refused to execute the writ any further, the Respondent laid a formal complaint with the Sheriff's Board, which subsequently ordered the sheriff to execute the writ and to give effect to the Respondent's instructions.
- [7] On 6 August 2026, the sheriff addressed correspondence to the Applicant, stating that the Sheriff's Board had made findings against him and that he was

obliged to proceed with the execution of the writ by removing the Applicant's attached assets, unless the municipality would pay the amount of R122 863.88 into the sheriff's trust account by the close of business on 06 August 2026.

- [8] On 07 August 2026, the Applicant paid the amount of R122 863.88 into the trust account of the sheriff, insisting that it be held in trust, pending the finalisation of this application. On 7 August 2026, the Respondent's attorneys addressed a letter to the sheriff, demanding that the amount paid into his trust account be paid over to the attorney's trust account by no later than close of business on 10 August 2026.
- [9] The Applicant filed this urgent application on 12 August 2026.
- [10] Mr Feni, for the Respondent, insisted that the matter was not urgent and should be struck off the roll for lack of urgency. In my view, given the factual background and the sequence of events, there is no merit in the attack on urgency. This Court is satisfied that a case had been made out for urgency, and I exercised my discretion to hear the matter urgently.

The relief sought

- [11] In essence, the Applicant seeks declaratory relief to the effect that the municipality has discharged its liability towards the Respondent in terms of the arbitration award issued on 5 December 2025, and that payment in the amount of R122 863.88 made to SARS in terms of the tax directive served as partial payment and discharge of the municipality's liability towards him. Ultimately, the Applicant seeks the writ of execution issued at the instance of the Respondent, to enforce the arbitration award, to be set aside.

The applicable legal prescripts:

- [12] The starting point is the relevant provisions of the Income Tax Act¹.
- [13] Section 1 of the Income Tax Act provides a wide definition for 'gross income'. In relation to any year or period of assessment, 'gross income' means the total

¹ Act 58 of 1962.

amount, in cash or otherwise, received by or accrued to or in favour of a person from a source within or deemed to be within the Republic, during such year or period of assessment, excluding receipts or accruals of a capital nature, but including, such amounts so received or accrued as described in section 1 of the Income Tax Act.

[14] The specific inclusions of “gross income” relevant for purposes of this judgment are the following selected paragraphs in the definition of gross income:

- ‘(c) any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered or any amount (other than an amount referred to in section 8 (1)), 8 B or 8C) received or accrued in respect of or by virtue of any employment or the holding of any office:

Provided that—

- (i) the provisions of this paragraph shall not apply in respect of any benefit or advantage in respect of which the provisions of paragraph (i) apply;
- (ii) any amount received by or accrued to or for the benefit of any person in respect of services rendered or to be rendered by any other person shall for the purposes of this definition be deemed to have been received by or to have accrued to the said other person; ...

- (d) any amount, (other than an amount contemplated in paragraph (a)) including any voluntary award, received or accrued-

- (i) in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment (or right or claim to be appointed) to any office or employment;

...

Provided that-

- (aa) the provisions of subparagraphs (i) and (ii) shall not apply to any lump sum award from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;
- (bb) any such amount which becomes payable in consequence of or following upon the death of any person shall be deemed to be an amount which accrued to such person immediately prior to his or her death;

...

- (f) any amount received or accrued in commutation of amounts due under any contract of employment or service;"

[15] Also relevant is the definition of 'remuneration' as set out in the Fourth Schedule to the Income Tax Act:

'remuneration' means any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including—

- (a) any amount referred to in paragraph (a), (c), (cA), (cB), (d), (e), (eA), (eD) or (f) of the definition of "gross income" in section 1 of this Act;..."

[16] Paragraph 2 of the Fourth Schedule to the Income Tax Act provides that every resident employer who pays or becomes liable to pay any amount by way of 'remuneration' to any employee shall, unless the Commissioner of SARS has granted authority to the contrary, deduct or withhold from that amount, by way of PAYE an amount to be determined by the Commissioner. Consequently, an employer is legally obligated to withhold PAYE from awards of the Commission for Conciliation, Mediation and Arbitration (CCMA) (which includes bargaining council awards) or Labour Court judgment amounts received by an employee in relation to an unfair labour practice or unfair dismissal.

- [17] SARS 'interpretation notes' are issued with the intention to provide guidelines to stakeholders on the interpretation and application of the provisions of the legislation administered by its Commissioner. SARS Interpretation Note 26 of 30 March 2004 has confirmed that CCMA awards (which include bargaining council awards) and Labour Court judgments will, in most cases, be taxed under the general definition of 'gross income' or under paragraphs (c), (d) or (f) of that definition.
- [18] The applied legal position is that CCMA (and bargaining council) awards and Labour Court judgments will be taxed either under the general definition of "gross income" in section 1 of the Income Tax Act or they may be specifically included under paragraph (d), paragraph (f) or, if applicable, paragraph (c) of this definition. They would constitute 'remuneration' as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act and the amount will be subject to the withholding of employee's tax.
- [19] If compensation is paid in a matter relating to an unfair labour practice, the tax administrative procedures must be followed and in doing so, an application for a tax directive must be completed and submitted by the employer for all amounts paid to an employee in respect of a CCMA award or Labour Court judgment. SARS will examine the facts of the case and the nature of the amounts awarded to determine if paragraph (c), (d) or (f) of 'gross income', as alluded to *supra*, may be applied to the award or judgment.
- [20] Generally, compensation for physical personal injuries is tax-free.
- [21] The Courts have considered the issue of employee tax, and in *Penny v 600 SA Holdings (Pty) Ltd*², the court dealt with an employer's PAYE obligations in respect of arbitration awards. The court confirmed that an employer has a statutory obligation under the Income Tax Act to deduct the required tax from any remuneration it pays to an employee. In terms of schedule 4 item 2(1) of the Income Tax Act, an employer who "*pays or becomes liable to pay any amount by way of remuneration to an employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from*

² (2003) 24 ILJ 967 (LC).

that amount by way of employee's tax an amount which shall be determined as provided in paragraph 9, 10 and 12 ... whichever is applicable, in respect of liability for normal tax of that employee...".

- [22] In *Stevens v CSARS*³ the Supreme Court of Appeal (SCA) was called upon to determine whether an *ex gratia* payment made to the appellant fell within paragraph (c) of the definition of gross income in the Income Tax Act. The appellant was paid R38 250.00 by his employer, who took the view that the amount paid constituted gross income and was therefore taxable. The SCA found that the payment had been received by the appellant in respect of or by virtue of his employment and was therefore subject to the payment of income tax. The important factor was that the amount was received in respect of or by virtue of employment.
- [23] A similar conclusion was reached in *Al Sha Trading (Pty) Ltd v Neil Harrison*⁴, in which a settlement agreement was reached with the second respondent, under which the applicant, the former employer, was to pay the respondent, its former employee, a total of R241 000.00. Pursuant to a tax directive from SARS, the applicant deducted R96 400.00 from the payment to be made to the respondent and paid him the difference. The respondent caused a writ to be issued for that portion which had not been paid to him. Referring to *Stevens*, this court confirmed that the *ex gratia* payment paid in settlement of an employment dispute was taxable because:

‘...., there is an unbroken causal relationship between the employment on the one hand and the receipt on the other. There is a causal connection between the employment and the receipt, and the receipt is taxable.’

The parties' submissions

- [24] The Applicant's case is that it paid the arbitration award amount *in toto* – R 122 863 to SARS in terms of a tax directive and R 176 804 to the Applicant and that the municipality's liability in respect of the arbitration award has been

³ 2007 (2) SA 554 (SCA).

⁴ Unreported judgment under case no: J235/15 delivered on 22 May 2015 at para 11.

discharged. The Respondent has no further claim in terms of the arbitration award, and he is no longer entitled to execute the award.

- [25] The Applicant's case is that the Respondent was paid what is due to him and to SARS and that any further payment to the Respondent will amount to fruitless and wasteful expenditure. The Applicant submitted that if the Respondent is disputing the tax directive, his dispute is with SARS, and he must exercise the remedies available to him to challenge it.
- [26] The Respondent, on the other hand, persisted in instructing the sheriff to proceed with execution of the amount paid to SARS, insisting that he is entitled to the full amount awarded in the arbitration award. His case is that there was no reason for the Applicant to apply for a tax directive because this *'was compensation and not salary'* and that the amount due to him is not taxable. He stated further that *'what the municipality paid to SARS was a donation which it can claim back if it so wished'* and that the *'amount is not earnings which are subject to tax, this is compensation which is not subject to tax.'*
- [27] The Respondent disputed that this is a matter between him and SARS, as he insisted that he does not have a dispute with SARS, as *"SARS was not directed to pay me money. It is the applicant that decided to pay part of the money I am entitled to SARS (sic), therefore, it is the applicant that must approach SARS to recoup what it has paid. So, the dispute in this regard is between SARS and the applicant."*

Analysis

- [28] The municipality is statutorily obliged under the Income Tax Act to pay over to the Receiver of Revenue the tax (PAYE) on employees' earnings. The municipality is, by operation of law, appointed as an agent of SARS in respect of the payment of taxes owing to SARS for monies that the municipality is obliged to pay to its employees arising from the employment relationship. The Applicant explained that whenever the municipality has to comply with an award ordering payment of money, it seeks a directive from SARS as to whether any amounts are payable in respect of tax or other dues to SARS.

The Applicant is obliged to comply with tax directives formally issued by SARS.

- [29] In *casu*, the Applicant, upon receipt of the arbitration award, applied for a tax directive from SARS and, once obtained, paid the amount as per the tax directive to SARS.
- [30] It is evident that there are two issues regarding the payment of compensation, as awarded in an arbitration award or court order, that require an expert ruling by SARS. First, whether any tax should be deducted from an award for compensation by the CCMA or Labour Court at all, having regard to the nature of such an award and second, if tax is to be deducted, the rate at which the award for compensation should be taxed.
- [31] These are issues that neither this Court, the CCMA, a bargaining council, nor an employer or employee is competent to determine. It must be determined by the appropriate expert forum, namely SARS, and, if disputed, be taken on appeal in terms of the provisions of the Income Tax Act.
- [32] A tax directive issued by SARS, after considering the aforesaid two factors, instructs the employer on the exact tax amount to deduct, and it is a final and binding determination that the employer must comply with. An employer must strictly comply with a valid tax directive issued by SARS and is not at liberty to change, ignore, or alter the tax rate of the deduction amount specified in the directive.
- [33] Considering the prevailing legal position, the Respondent's position is astonishing. It displays his and his legal representatives' lack of understanding of the provisions of the Income Tax Act. Their perseverance with steps to execute the amount paid to SARS in terms of a valid tax directive, lodging a formal complaint against the sheriff for refusing to execute in circumstances where the award was satisfied, and opposing this application on no grounds sound in law, is ill-advised and opportunistic.
- [34] It is unbelievable that the Respondent could, on legal advice of an attorney and advocate, state that the amount due to him is not taxable, that he has no

dispute with SARS, and that what the municipality paid to SARS was a 'donation', which the employer could simply claim back.

- [35] The Respondent also sought to introduce an ill-considered argument that compensation awarded in an arbitration award is compensation for personal injury and is therefore tax-free. The argument is absurd.
- [36] Compensation paid in terms of an arbitration award is subject to the deduction of employees' tax as a matter of law. The Applicant merely followed the peremptory provisions of the Income Tax Act in obtaining a tax directive before making payment to the Respondent, and, once obtained, the Respondent acted in accordance with it. The amount paid to SARS in terms of the tax directive, with the balance paid to the Respondent, constitutes full payment of the amount awarded in the arbitration award. The Respondent is not entitled to the full amount tax-free, nor to the amount deducted by the employer and paid over to SARS. If he disputes the correctness of the tax directive, he can exercise the remedies he has to object against it or appeal the tax directive.
- [37] To reiterate: whether tax is payable on a sum of money payable to an employee, and if so, the rate thereof, are issues to be decided by SARS. Once a tax directive is issued to indicate that an amount payable to an employee is taxable, the employer is obliged to comply and pay the tax to SARS.
- [38] In short: the Respondent is not entitled to the payment he seeks to recover by way of the writ of execution. The employer was obliged to deduct and pay over to SARS the amount of R122 863.88. It paid the balance in terms of the settlement agreement to the Respondent and the debt in respect of which the writ was obtained has been extinguished. It follows that the writ of execution must be set aside.
- [39] The attitude adopted by the Respondent and his legal representatives is lamentable. Their intention to proceed with execution forced an urgent application when same was not necessary.

Costs

- [40] Insofar as costs are concerned, this Court has a broad discretion under section 162 of the LRA to make orders for costs in accordance with the requirements of the law and fairness.
- [41] In *Zungu v Premier of the Province of KwaZulu-Natal and Others*⁵, the Constitutional Court confirmed that the rule that costs follow the result does not apply in labour matters. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing those parties to bring to this Court (or oppose) cases that should not have been brought to Court (or opposed) in the first place.
- [42] This is a matter where this Court has to strike a balance.
- [43] Mr Malibe for the Applicant submitted that a cost order *de bonis propriis* is warranted. Mr Feni on the other hand submitted that the Applicant should be ordered to pay the costs, as there was no reason to approach this Court.
- [44] In my view, this is a case where a cost order is warranted and the Applicant is entitled to costs. This is more so as the Respondent sought legal assistance from his lawyers. He did not approach this Court as an unrepresented layperson, but he was assisted by lawyers. He was not responsible for the drafting of the papers, the formulation of the defense put up before this Court, or the preparation of the heads of argument - those are legal aspects he had left to his lawyers to attend to.
- [45] I deem it necessary to say something about heads of arguments.
- [46] In *Early Bird Farm (Pty) Ltd v Food and Allied Workers Union and others*⁶ the Labour Appeal Court held that:

‘In this appeal the respondents’ attorney was required to file heads of argument succinctly setting out the points to be argued at the hearing of the

⁵ (2018) 39 ILJ 523 (CC) at para 24.

⁶ (2004) 25 ILJ 2135 (LAC) at para 50 and 51.

appeal. A document purporting to be heads of argument was timeously filed on behalf of the respondents. However, it was of such poor quality that it can hardly be described as heads of argument. This court could not derive any assistance from that document nor was the attorney helpful to the court at the hearing of the appeal. Properly prepared heads of argument play an important role in the adjudication of a matter - especially in an appeal court. Useful heads of argument cannot be prepared unless the person preparing them has taken the trouble to study the record and has done such research on the legal issues raised by the matter or appeal as may be necessary. Where heads of argument are drawn without the necessary understanding of the facts or the evidence in the record and/or without doing the necessary research on the legal issues that arise in the appeal, such heads - and it is very easy to recognize this in heads of argument - are bound to be of no assistance to the court hearing the appeal. That kind of conduct on the part of a practitioner is unacceptable. A practitioner should not accept instructions or a brief in a matter if he does not have the time to do justice to a client's case. It is inexcusable for a practitioner to file heads of argument the contents of which bear no relation to the issues raised. In this case the document purporting to be heads of argument filed by the respondents' attorney was totally unacceptable.'

[47] In *Minister of Safety and Security v Mashego and others*⁷ it was held that:

'It is not acceptable that practitioners should merely send up heads which are not helpful, which do not cite authorities and which suggest hurriedness of preparation. Counsel draw heads for the purpose of assisting the court.'

[48] *In casu*, the heads of argument prepared by the Respondent's legal representatives were no more than a copy-and-paste of the affidavits filed, and they failed to set out legal points. It is clear that no effort was put in to substantiate the defense that the arbitration award was not taxable, and the heads of argument contained no legal argument supported by authority. As such, the heads of argument were of no assistance to this Court whatsoever. I invited Mr Feni to file supplementary heads of argument, specifically citing authorities to support his argument that the compensation awarded in the

⁷ (2003) 24 ILJ 1690 (LC) at para 11.

arbitration was not taxable. The supplementary heads of argument should have assisted this Court in focusing, analyzing and addressing the argument as to why the compensation awarded to the Respondent was not taxable. It dismally failed to do that.

- [49] Mr Feni submitted that he was unable to find any case law to support his argument, but instead he spent time and paper to refer this Court to *‘two articles from the internet which talk about how to navigate CCMA arbitration awards with regards to tax implications.’* What is shocking is that Mr Feni, as counsel, thinks it appropriate to submit as authority articles from the internet to support his argument and expect this Court to accept such, but far worse is the fact that Mr Feni did not even attempt to rework his ‘internet’ authorities into a format that would be acceptable as heads of argument filed by counsel. His heads of argument even included the portion of an article stating that *“let us help you protect your business and employees by getting it right the first time. Contact us at [if...](#) or visit www.hrtorque.co.za to find out more.”* I am at a loss for words at the shocking standard of argument presented by Mr Feni.
- [50] The opposition to this urgent application is a display of the Respondent’s legal representatives’ lack of understanding of the applicable legal principles and the conduct expected of legal practitioners practicing in this Court.
- [51] *In casu* it is evident that the Respondent’s attorneys persisted with execution, which caused this urgent application, and which was opposed without any reflection as to the provisions of the Income Tax Act, the applicable authorities and the possible prospects of success. One could reasonably accept that a practicing advocate or attorney assisting a paying client should at least consider the aforesaid when steps are taken in legal execution and in opposing an urgent application, which was necessitated by their conduct. In this instance, there was no regard for any of the aforesaid.
- [52] The way in which the execution was persisted with and in which the opposing papers in this urgent application were drafted is not merely an error of judgment. The Respondent’s legal representatives acted in a manner that constitutes a departure from their office by pursuing execution in

circumstances where the arbitration award was satisfied and thereby causing the Applicant to approach this Court on an urgent basis. This Court's displeasure should be known to the legal representatives.

[53] This is an exceptional case where the Respondent's legal representatives acted in a reprehensible manner, not only towards their own client, but also towards the Applicant and this Court, with no regard to their duty as officers of the Court, and which would justify an order for costs *de bonis propriis*.

[54] In *SA Liquor Traders' Association and others v Chairperson, Gauteng Liquor Board and others*⁸ the Constitutional Court ordered costs *de bonis propriis* on a scale as between attorney and client and held that:

'An order of costs *de bonis propriis* is made against attorneys where a court is satisfied that there has been negligence in a serious degree which warrants an order of costs being made as a mark of the court's displeasure. An attorney is an officer of the court and owes a court an appropriate level of professionalism and courtesy.'

[55] In *Indwe Risk Services (Pty) Ltd v Van Zyl*⁹ the Court considered circumstances where a *de bonis propriis* cost order was warranted and held that:

I am also mindful of the fact that an order for costs *de bonis propriis* is only awarded in exceptional cases and usually where the court is of the view that the representative of a litigant has acted in a manner which constitutes a material departure from the responsibilities of his office. Such an order shall not be made where the legal representative has acted *bona fide* or where the representative merely made an error of judgment. However, where the court is of the view that there is a want of *bona fides* or where the representative had acted negligently or even unreasonably, the court will consider awarding costs against the representative. Because the representative acted in a manner which constitutes a departure from his office, the court will grant the order against the representative to indemnify the party against an account for

⁸ 2009 (1) SA 565 (CC) at para 54.

⁹ (2010) 31 ILJ 956 (LC) at para 39.

costs from his own representative. (See in general Erasmus *Superior Court Practice* at E12-27.) ‘

[56] I have already alluded to the Applicant's entitlement to costs. Neither the taxpayers of the municipality nor the Respondent should be burdened with costs, but the legal representatives should be ordered to pay the Applicant's costs *de bonis propriis*. I am guided by the principles set out by the Courts in making such an order, mindful that it is awarded only in exceptional cases.

[57] Qhali Attorneys Inc and Advocate Feni are afforded seven Court days within which to make submissions as to why a cost order *de bonis propriis* should not be confirmed. If no submissions are received within the prescribed time, the cost order will have final effect.

[58] In the premises, the following order is made:

Order

1. The matter is dealt with as one of urgency;
 2. The enforcement and execution of the arbitration award dated 5 December 2025 and issued under case number FSD072502 is set aside;
 3. The Applicant's costs are to be paid *de bonis propriis* by Qhali Attorneys Inc and Advocate Feni , jointly and severally, the one paying, the other to be absolved;
 4. The order for costs in paragraph 3 *supra* is provisional and Qhali Attorneys Inc and Advocate Feni are afforded seven Court days within which to make submissions as to why the provisional cost order should not be confirmed. If no submissions are received within the prescribed time, the cost order will have final effect.
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Connie Prinsloo

Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the Applicant : Advocate S Malibe

Instructed by : Finger Attorneys

For the First Respondent : Advocate Z Feni

Instructed by : Qhali Attorneys Inc

LABOUR COURT