



(1) Reportable: No
(2) Of interest to other Judges: No
(3) Revised

TDM

02/09/2026

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026-197084

In the matter between:

MR LC PRAC

Applicant

and

SOUTH AFRICAN NATIONAL SPACE AGENCY

Respondent

Heard: 26 August 2026

Delivered: 02 September 2026

This judgment was handed down electronically by consent of the parties, by circulation to them by email. The date for hand-down is deemed to be 02 September 2026.

JUDGMENT

PRINSLOO, J

Introduction

[1] On 18 August 2026, the Applicant approached this Court urgently for relief, pending the determination of his unfair discrimination dispute. He seeks an order to direct the Respondent to implement and maintain reasonable interim working arrangements that do not aggravate his medical condition and that are consistent with the recommendations of his treating practitioners. The Applicant also seeks an interdict to restrain the Respondent from requiring him

to undergo medical testing at its instance, unless it has provided a clear and properly motivated basis for such testing, from subjecting him to any workplace violence, incapacity or management referrals, formal investigations or disciplinary action that aggravates his medical condition and from engaging in conduct that constitutes harassment, coercion or victimisation linked to his medical condition.

- [2] The Respondent filed an opposing affidavit wherein the issue of urgency was disputed.
- [3] The first issue to be decided is whether the Applicants' case is urgent. In deciding the issue of urgency, it is prudent to set out the chronological sequence of events relevant to this application.

Material facts and relevant events

- [4] The Applicant has been employed as the Respondent's legal and compliance practitioner since June 2024, and he reports to the manager of the legal and compliance services section, Mr Michael Kabai. The Applicant had a mid-year performance review with Mr Kabai in November 2025, which triggered several subsequent developments, which I do not intend to set out in any detail.
- [5] Relevant for purposes of this judgment is that the Applicant's case is that the alleged conduct of Mr Kabai during the performance review meeting in November 2025 had a serious impact on his mental and physical health. He described his experience in detail in his founding affidavit.
- [6] On 25 January 2026, the Applicant was injured during his weekend sport activities, and he was booked off for a month to recover from two broken ribs. On the Applicant's own version, he welcomed the time off for his injury to heal, because he could use it to recover *'from the trauma I faced at the workplace.'* The Applicant also consulted a psychiatrist for assistance and on 2 March 2026, he was diagnosed with post-traumatic stress disorder (PTSD). The psychiatrist described his condition as a psychological injury at work because *'of the incident of aggression during my first performance review meeting.'* The psychiatrist booked the Applicant off for a month, being March 2026, and his condition was to be reviewed at a follow-up consultation. The Applicant submitted a leave application accordingly.

- [7] On 13 March 2026, the Applicant received a phone call from the Respondent's human resources division informing him that his sick leave and annual leave had been exhausted and that he would be placed on unpaid leave. The Respondent also requested a report from the Applicant's psychiatrist on his medical condition and required him to sign a consent form for an independent medical assessment. The Applicant agreed to arrange for the medical report as requested.
- [8] The Applicant consulted his psychiatrist on 17 March 2026 and informed his medical specialist about his leave issue. The psychiatrist subsequently declared that the Applicant could resume his normal duties on 19 March 2026, by working from home until his occupation-related stresses are addressed and resolved by the employer as per the employee wellness report (EWS).
- [9] The Applicant refused to sign the management referral form he was requested to sign, because *'it appears to me to be an incapacity management process, not independent medical testing.'* On 18 March 2026, the Applicant informed the Respondent that he planned to return to work on 19 March 2026 and he requested a remote working arrangement.
- [10] Initially, the Applicant was booked off for the entire month of March 2026, but after his leave days were exhausted, the psychiatrist confirmed that he could resume his normal duties on 19 March 2026. On 18 March 2026, the Respondent's Ms Madlolo wrote a letter to the Applicant's treating psychiatrist, requesting clarification regarding his medical report dated 17 March 2026. She also indicated that the Respondent required an independent medical assessment on the Applicant's fitness to resume work. On the same date, she informed the Applicant not to return to work or attend to any work matters until the aforesaid process was concluded.
- [11] The Applicant has not been back at work since 18 March 2026.
- [12] On 21 April 2026, the Applicant signed a consent form for an independent medical assessment, in order to proceed with his injury on duty claim, which the Applicant requested be reported and pursued in terms of the Compensation for Occupational Injuries and Diseases Act¹. The Applicant,

¹ Act 130 of 1993.

however, persisted with his refusal to sign the managerial referral form, as was required by the Respondent, because his view is that it was a self-referral and not a managerial referral, and *'I refused to sign the managerial referral form on the basis that it contains untrue and unfair allegations against me.'*

- [13] On 27 May 2026, the Applicant enquired of the Respondent when he would be permitted to return to work, and on 2 June 2026, the Respondent replied. The Applicant submitted that the:

'Respondent was not scheduling the independent medical testing or assessment that Ms Madlodlo promised to schedule in her aforementioned email of the 21st of April 2026, neither were they keeping touch with me about my return date, nor were they providing me with any support to establish my well-being while knowing about my disorder or disability. From the 2nd of June 2026 email from Ms Madlodlo, another two painfully long months went by with no word from her on the independent medical testing or my return date.'

- [14] On 27 July 2026, the Applicant consulted his treating psychiatrist, who wrote another medical report to the Respondent, encouraging them to allow the Applicant to return to work, provided that he is assisted with the recommended reasonable accommodation. Ms Madlodlo responded to the Applicant on 29 July 2026, recording that he was unwilling to sign the management referral form, which is required for an independent medical assessment to indicate his fitness to return to work. Ms Madlodlo further indicated that the Respondent required an independent medical assessment to ensure workplace safety and manage any issues pertaining to the Applicant's fitness for work. He was once again asked to sign the form and return it to his employer so the process could be initiated.

- [15] The Applicant responded that he had consented to an independent medical assessment and signed the required form on 20 April 2026, and he explained that he was uncomfortable signing the managerial referral form. On 29 July 2026, he proposed that he and the Respondent's human resources should jointly consult Life Health to resolve the matter. The Respondent's position, as was communicated to the Applicant, is that the management referral form was required for an independent medical assessment to indicate his fitness to return to work, which the Applicant remained unwilling to sign. As an employer, the Respondent required an independent medical assessment to ensure

workplace safety and manage issues pertaining to the Applicant's fitness for work. He was once again requested to sign the form on 29 July 2026.

- [16] The Respondent subsequently informed the Applicant on 29 July 2026 that they had initiated an investigation into the Applicant's conduct in response to his complaints or concerns. The investigation pertained to his refusal to be subjected to an independent medical review, his allegations about bullying, sick leave and medical documentation and his experience and qualifications. The investigation was explained as a fact-finding procedure to gather relevant information and to determine the facts of the matter. The Applicant was informed of his right to reply to the allegations, attend an investigation, and share his version of events. The investigation was expected to be completed by 11 August 2026. Once it was concluded, the Applicant would be notified of the findings, and if it was found that there was a case to answer, the Applicant would be invited to attend a formal disciplinary inquiry.
- [17] On 31 July 2026, the Applicant responded to the aforesaid correspondence, and he proposed an amicable settlement of the dispute, rather than a formal investigation and disciplinary measures. He nonetheless provided his preliminary responses to the allegations. In the letter of 31 July 2026, the Applicant stated that he did not realise that his refusal to sign the managerial referral form would prevent the independent medical review. His refusal to sign was based on his own interpretation of the managerial referral form's intended purpose. He, however, agreed to sign the form for the independent medical review to be scheduled.
- [18] On 3 August 2026, the Applicant wrote a letter to the Respondent, indicating, *inter alia*, that he had revoked all consents he had provided, and that he had referred an unfair discrimination and harassment dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) under section 10 of the Employment Equity Act² (EEA). He proposed an amicable resolution of the dispute. The Applicant proposed that the Respondent should consider either ending or pending the attempts to compel him to undergo psychiatric medical testing under the guise of poor performance and workplace safety, the

² Act 55 of 1998, as amended.

'retaliatory investigations and threats of disciplinary action' pending the resolution of his dispute referred to the CCMA or the Labour Court.

- [19] The Respondent replied on 3 August 2026 to the effect that the investigation would proceed and that the outcome thereof would be communicated to the Applicant.
- [20] On 11 August 2026, the Applicant received an email from the Respondent's investigator, informing him that an online meeting had been requested for 14 August 2026 to discuss the allegations. The Applicant accepted the invitation, and he attended the investigation meeting from 9:15 am – 12:00 pm on 14 August 2026. He was questioned about the grievance he had reported against his manager and asked to submit copies of all his qualifications and consent to their verification. On 17 August 2026, the Applicant consented to the verification of his qualifications.
- [21] On 12 August 2026, the CCMA set the matter down for conciliation on 31 August 2026.
- [22] The Applicant brought this urgent application on 18 August 2026, which was enrolled for hearing on 26 August 2026. He explained that upon receipt of the correspondence from the Respondent about the investigation, his health collapsed and that he suffered a severe anxiety attack. He stated that, in this state of medical distress, he succumbed to pressure from the Respondent and on 31 July 2026, he had signed the managerial referral form and consented to the Respondent's requests *'in a bid to resolve the disputes and to end my trauma.'* He also requested an amicable resolution of the matter by calling for a mediation to be scheduled with his manager and he enclosed a grievance form. The Applicant stated that he believed that *'the Respondent decided to change their strategy from an incapacity related disciplinary action to a misconduct disciplinary action.'*

Applicable legal principles: Urgency

- [23] Rule 38 of the Rules for the Conduct of Proceedings in the Labour Court provides for urgent applications. An applicant who approaches the court on an urgent basis essentially seeks indulgence and preference. Central to a determination of whether a matter is urgent is whether the applicant has, in the

founding affidavit, set forth explicitly the circumstances which render the matter urgent, and why substantial relief cannot be attained at a hearing in due course. Thus, it is required of an applicant to adequately set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary³.

- [24] What would an applicant who seeks to make out a case of urgency then have to show? In *Mojaki v Ngaka Modiri Molema District Municipality and others*⁴ the court referred with approval to the following dictum from *East Rock Trading 7 (Pty) Ltd and another v Eagle Valley Granite (Pty) Ltd and others*⁵:

'An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.'

- [25] In all instances where urgency is alleged, the applicant must satisfy the court that indeed the application is urgent. In *Vermaak v Taung Local Municipality*⁶ this Court has held that:

'The consideration of the first requirement being why is the relief necessary today and not tomorrow, requires a court to be placed in a position where the court must appreciate that if it does not issue a relief as a matter of urgency, something is likely to happen. By way of an example if the court were not to issue an injunction, some unlawful act is likely to happen at a particular stage and at a particular date.'

- [26] The principles around urgency have been developed and considered by the courts, and on numerous occasions the courts have made it clear that self-created urgency is not to be entertained by an urgent Court.

³ *Transport and Allied Workers Union of SA vs Algoa Bus Company (Pty) Ltd* (2015) 36 ILJ 2148 (LC).

⁴ (2015) 36 ILJ 1331 (LC) at para 17.

⁵ [2011] ZAGPJHC 196 (23 September 2011) at para 6.

⁶ (JR315/13) [2013] ZALCJHB 43 (12 March 2013) at para 12.

[27] In considering the previous Rule 8⁷, the Court in *Jiba v Minister: Department of Justice and Constitutional Development and others*⁸ held that:

'Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self-created when seeking a deviation from the rules.'

[28] In *National Union of Metalworkers of SA and Others v Bumatech Calcium Aluminates*⁹ the Court held that:

'Urgency must not be self-created by an applicant, as a consequence of the applicant not having brought the application at the first available opportunity. In other words, the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to court immediately, or risk failing on urgency. In *Collins t/a Waterkloof Farm v Bernickow NO & another* the court held that:

"if the applicants seeks this court to come to its assistance it must come to the court at the very first opportunity, it cannot stand back and do nothing and some days later seek the court's assistance as a matter of urgency." '

[29] In *Soobedar and another v Minister of International Relations and Cooperation and another*¹⁰ the Court restated the principles applicable to urgent applications and held that:

'The principles applicable to urgency are trite as can be gleaned from various decisions of this and other courts. An applicant that approaches the court on an urgent basis essentially seeks an indulgence, and to be afforded preference in order to prevent prejudice and harm that may materialise or persist, if the conduct complained of continues. Central to a determination of whether a matter is urgent is whether the applicant has in the founding

⁷ Repealed and replaced with the Rules Regulating the Conduct of the Proceedings of the Labour Court. Published 3 May 2024 (GN 50608). Effective 17 July 2024.

⁸ (2010) 31 ILJ 112 (LC) at para 18.

⁹ (2016) 37 ILJ 2862 (LC) at para 26.

¹⁰ (2021) 42 ILJ 1761 (LC) at paras 19 and 20.

affidavit set forth explicitly the circumstances which render the matter urgent, and the reason why substantial relief cannot be attained at a hearing in due course.

It is trite that urgent relief will not be granted in circumstances where it is apparent that the urgency claimed is self-created. Self-created urgency is apparent in circumstances where an applicant failed to bring the application at the first available opportunity. Thus, it is expected of litigants to react immediately to remedy or prevent harm and/or prejudice, rather than standing back and doing nothing until it is too late.'

[30] In *Sihlali and others v City of Tshwane Metropolitan Municipality and another*¹¹ (*Shihlali*) the Court dealt with an urgent application to interdict and restrain the city from taking further steps in recruiting, interviewing and appointing candidates to the advertised posts, pending the final determination of another dispute between the parties. The Court held that although it has the power to enforce the terms of employment contracts, it is not empowered to prevent the conclusion of private employment contracts, nor to interdict a process that might lead to the conclusion of an employment contract. It was held that:

'That being the case, how does advertising positions, as routinely done out of necessity, thwart their expectations is beyond me. There is what is termed self- created urgency. The situation herein is a classic case of such. By the time the advertisements arose, the applicants had a gripe already, which gripe they expressed in no uncertain terms to the mayor on 8 November 2016. The applicants should have, if there was any urgency, approached this court then. Why they did not do so, is not explained. Instead, what is apparent is that they sat back, took their time until they obtained a legal opinion after almost three months.'

Analysis

[31] Emanating from the provisions of Rule 38 and the principles set out in the authorities referred to, it is evident that urgency is not there for taking, and an applicant seeking urgent relief must adequately and in detail set out the reasons why the matter before the court should be treated with urgency.

¹¹ (2017) 38 ILJ 1692 (LC) at para 21.

- [32] The reasons proffered for urgency must be considered with due consideration of the respondent's challenge to urgency. For any argument of urgency to be sustained, the applicant must have acted with due haste upon gaining knowledge of the respondent's prejudicial behaviour or actions, as it is trite that an applicant is not entitled to rely on a self-created urgency.
- [33] The Applicant submitted that the matter is urgent because he faces a real risk of serious harm to his health and thus to his life, arising from the Respondent's recent initiation of a formal investigation. His case is that the investigation is calculated to aggravate his medical condition and to find a reason to dismiss him, on account of his refusal to be subjected to incapacity hearings and unlawful medical testing.
- [34] The Applicant stated that the relief he seeks is necessary to protect him from *'severe psychological and physical distress, pending the final determination of the main dispute by the appropriate statutory dispute resolution forum.'* His case is that effective substantive relief cannot be obtained in due course through the ordinary processes because, unless this Court intervenes, there is a material risk of harm to his health and well-being.
- [35] The Respondent submitted that the Applicant failed to establish that this matter is urgent or that substantial redress cannot be obtained in due course. The Respondent's case is that the dispute dates to 17 March 2026, when the Applicant received a referral form requiring his consent to undergo an independent medical assessment to determine how the Respondent could support and accommodate him. The Respondent's concerns were not found to be based on an intention to discipline or victimise the Applicant but, arose from the medical information that was made available to it and the Applicant's prolonged absence from work. The Respondent submitted that it considered it necessary to establish, objectively and independently, whether the Applicant was fit to resume his duties and whether there were any restrictions or accommodation which ought to be considered or implemented.
- [36] The Applicant refused back then and he therefore knew, by no later than 17 March 2026, of the alleged conduct he now relies upon as constituting an urgent infringement of his rights. The Applicant was already advised on 18 March 2026 not to return to work, pending the completion of the said process.

The Applicant was requested to sign the relevant referral documentation for an independent assessment in April 2026. The Applicant subsequently signed the relevant managerial referral documentation at the end of July 2026, but shortly thereafter he had revoked the consent he had furnished.

- [37] The Respondent's case is that it was made clear that the independent assessment is not a punitive measure or a means to victimise or discriminate against the Applicant, but it is an objective employment-related assessment intended to establish the Applicant's fitness for duty and the measures reasonably required to facilitate his return to work.
- [38] The Applicant has been paid his full remuneration for the entire period that he had not been at work.
- [39] Applying the above principles relating to urgency to the facts of this matter, I cannot but find that the application cannot be entertained on an urgent basis as any urgency that may exist, is self-created. I say so for the following reasons:
- [40] The facts placed before me show that there has been an inordinate delay on the part of the Applicant in the bringing of this application, which is destructive of any consideration of urgency.
- [41] The Applicant has been aware since March or April 2026 that the Respondent required an independent medical assessment to be conducted, and on his own version, he consented to that. April 2026 was the very first opportunity for the Applicant to come to Court to seek its assistance in relation to the relief he now seeks, but he failed to do so. He also failed to provide an explanation as to why he did not approach this Court at the earliest and first opportunity to do so but, instead waited and did nothing since April 2026 to interdict an independent medical assessment process, which he was very well aware of and which he alleges before this Court, would prejudice him and constitute discrimination and victimisation. The applicable authorities referred to *supra* confirmed that an applicant cannot sit back and do nothing, only to later seek the court's assistance as a matter of urgency.
- [42] An applicant that is well aware of the harm he or she alleges to suffer, who takes no steps over a protracted period of time, and then launches an urgent

application, is likely to have his or her application struck from the urgent roll. Thus, to the extent that an applicant wishes its matter to be accorded urgency, in the same token it is expected of such an applicant to have acted with the same urgency that the matter deserves, failing which the invariable conclusion to be reached is that any urgency claimed is self-created.

[43] *In casu*, and apart from the medical assessment issue, the Applicant was aware, as of 29 July 2026, of the investigation he now seeks to interdict. He was invited to participate in the investigation on 11 August 2026, and he indeed participated on 14 August 2026, providing his response to the issues under investigation. In his own account, he actively participated in the investigation by answering phone calls, responding to emails, and answering questions during a three-hour-long investigation meeting on 14 August 2026. The horse has bolted with respect to the investigation by the time he filed this urgent application to interdict it.

[44] In *National Treasury and others v Opposition to Urban Tolling Alliance and others*¹² (*OUTA*), the Constitutional Court held that:

‘Under the *Setlogelo* test, the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm.’

[45] In *OUTA*, the Constitutional Court made it clear that an interdict is meant to prevent future conduct. This principle has also been confirmed in *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*¹³, where the Constitutional Court held that:

‘In granting an interdict, the court must exercise its discretion judicially upon a consideration of all the facts and circumstances. An interdict is “not a remedy for the past invasion of rights: it is concerned with the present and future”. The past invasion should be addressed by an action for damages. An interdict is appropriate only when future injury is feared.’

¹² 2012 (6) SA 223 (CC) at para 50.

¹³ 2023 (1) SA 353 (CC) at para 48.

- [46] Put differently: an interdict is appropriate only when future injury is feared. This means that when the wrongful act giving rise to the injury has already occurred, either it must be of a continuing nature or there must be a reasonable apprehension that it will be repeated.¹⁴ If the injury is one that 'occurred once and for all and is finished and done with', then the applicant should allege facts justifying a reasonable apprehension that the harm is likely to be repeated.¹⁵
- [47] *In casu*, the Applicant seeks an order to interdict and restrain the Respondent from conducting an investigation, which had already been conducted and of which there is no likelihood that it would be repeated. The reality is that it would serve no purpose to interdict an investigation that has already happened – as the Constitutional Court has confirmed: an interdict is not a remedy for the past invasion of rights.
- [48] This application is a prime example of self-created urgency. It took months to bring this application, and the Applicant offered no explanation as to why he did not institute urgent legal proceedings immediately after becoming aware of the issues, or why he did not bring an application at the very first opportunity.
- [49] It is not sufficient for a party when approaching a court on an urgent basis to adopt the approach that it is of right entitled to preferential treatment failing which it would suffer prejudice in the event that its urgent application is not granted. A party needs to demonstrate that it had also, in asserting its rights, acted diligently and with the urgency that the matter it seeks to pursue requires. The Applicant failed dismally in this regard.
- [50] In essence, the Applicant waited too long to bring this application and by the time he had approached this Court for relief, it became a matter of self-created urgency. Even if there is urgency, such urgency is self-created. This Court does not entertain self-created urgency and for this reason alone, the application falls to be struck from the roll.
- [51] The Applicant must set forth explicitly the circumstances which render the matter urgent, which he failed to do. He must also set out the reason why

¹⁴ A C Cilliers, C Loots *et al*, *Herbstein & Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa* 5th ed, Juta, at p 1465.

¹⁵ *Performing Right Society Ltd v Berman and Another* 1966 (2) SA 355 (R) at 357 – 358.

substantial relief cannot be attained at a hearing in due course. This is the second aspect where the Applicant has difficulty.

- [52] The Applicant elected to invoke the statutory dispute resolution mechanism under the EEA and referred his dispute to the CCMA on 3 August 2026. By 12 August 2026 the CCMA had already accepted the referral and enrolled the matter for conciliation on 31 August 2026. This indicates that the Applicant is not facing an indefinite or inordinate delay in obtaining redress through the prescribed statutory process.
- [53] The Applicant filed this urgent application more than two weeks after he had referred his dispute to the CCMA and after he had obtained a date for conciliation. He provided no explanation as to why he could not wait for the outcome of the imminent conciliation process, alternatively why the process he elected to institute would not afford him substantial redress.
- [54] The Applicant cannot create urgency by approaching this Court days before the statutory process he initiated has been set down for conciliation, without clearly demonstrating that waiting for the scheduled conciliation date would result in harm which cannot be adequately addressed through the ordinary statutory remedies available to him.

Costs

- [55] The last issue to be decided is costs. This Court has wide discretion in respect of costs, having regard to the requirements of law and fairness. Mr Dzimba for the Respondent did not seek a cost order against the Applicant, and correctly so. I can see no reason to award costs in this matter.
- [56] In the premises, the following order is made:

Order

1. The application is struck off the roll for lack of urgency;
2. There is no order as to costs.

C. Prinsloo

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

In person

For the Respondent:

Advocate Q M Dzimba

Instructed by:

Enderstein Mulumbete Inc Attorneys

LABOUR COURT