



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

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: 2026-180761

In the matter between:

DEPARTMENT OF CORRECTIONAL SERVICES

Applicant

and

MOFOKENG, PHEHELLO AARON

First Respondent

GENERAL PUBLIC SERVICE SECTORAL

BARGAINING COUNCIL

Second Respondent

ADV S C LETELE N.O.

Third Respondent

THE SHERIFF, PRETORIA CENTRAL

Fourth Respondent

Heard: 5 August 2026

Supplementary Heads of Argument: 14 August 2026

Delivered: This judgment was handed down electronically by circulation to the parties and their legal representatives by email; and publication on the Labour Court website and released to SAFLII. The date for hand-down is deemed to be 3 September 2026.

JUDGMENT

MOTSHEKGA, AJ

Introduction

- [1] The applicant, the Department of Correctional Services ('the DCS'), seeks on an urgent basis an order staying the enforcement of an arbitration award ('the award') issued on 4 October 2024 by the third respondent under the auspices of the second respondent, pending the final determination of a review application instituted under case number 2025-025125. In addition, the DCS seeks declaratory relief impugning the certification of the award, the writ of execution and the attachments effected, and an interdict restraining the fourth respondent, the Sheriff for the district of Pretoria Central ('the Sheriff') from proceeding with a sale in execution.
- [2] The first respondent, Phehello Aaron Mofokeng ('Mofokeng'), a former employee of the DCS who took early retirement with effect from 31 July 2024, opposes the application.
- [3] The following issues arise for determination. Firstly, whether this Court has jurisdiction to entertain the application, having regard to the status of the review application to which the security relates. Secondly, whether the application is urgent, and in particular whether the urgency is self-created. Thirdly, what section 145(7) of the Labour Relations Act¹ ('the LRA') requires of an employer, a question which speaks to the urgency of the application and to the effect of the security. Fourthly, whether the security furnished complies with section 145(7) read together with section 145(8)(b), and the date from which the suspension operates. Lastly, the relief sought by the DCS, and costs.

Background

- [4] On 17 October 2024, following a referral by Mofokeng for an unfair labour practice claim against the DCS, the third respondent found that DCS committed an unfair labour practice in terms of section 186(2)(a) of the LRA by failing to shortlist Mofokeng for five advertised Director posts in a recruitment process conducted in 2022. Compensation was awarded in the amount of R182, 086.00, being the equivalent of two months' remuneration.
- [5] Mofokeng caused the award to be certified in terms of section 143(3) of the LRA on 17 December 2024, and on 21 February 2025 the Sheriff attached movable property at the DCS's national head office.
- [6] The DCS instituted review proceedings against the award on 25 February 2025 without furnishing any security and no application was brought for exemption from, or reduction of, security.
- [7] On or about 19 July 2025 Mofokeng's attorneys served an answering affidavit in the review in which it was contended that the institution of the review did not suspend enforcement, and that security was required if the DCS wished to avoid it. The DCS conceded the point in its replying affidavit in the review application and undertook to furnish security. It did not do so, despite several follow-ups made on behalf of Mofokeng.
- [8] Nothing came of the attachment of 21 February 2025. The goods were not removed, no sale was advertised, and the DCS was not moved to furnish security.
- [9] On 10 March 2026 the Sheriff again attended at the DCS's premises and attached movable property. On 27 July 2026 the DCS received an advertisement of a sale in execution of 500 chairs and 50 computers, scheduled to take place on 6 August 2026.
- [10] The advertisement of the sale prompted the DCS into action because on 28 July 2026, it furnished security in the amount of R1,274,602.00, approached

this Court on 29 July 2026 for an urgent stay of the enforcement of the award, and separately filed an application for the retrieval of the review file and the reinstatement of the review application.

- [11] This Court heard the matter on 5 August 2026 and reserved its decision. On 6 August 2026 the Court issued a directive requiring supplementary heads of argument on the status of the review and its consequences for the jurisdiction of this Court to entertain the application, and directing that the sale not proceed pending a determination of that question. The parties having filed their supplementary heads as directed, it is to the jurisdictional issue that this Court first turns.

Jurisdiction

- [12] The stay is sought against the background of what the DCS itself contends is a lapsed review. It was on that footing that it filed, on 28 July 2026, an application for the retrieval of the review file, its reinstatement, and condonation for the late filing of the record.
- [13] It behoves a court to satisfy itself of its own jurisdiction, and it may raise the question *mero motu* (of its own accord). Section 145(7) read with section 145(8) of the LRA provides that the institution of review proceedings does not suspend the operation of an arbitration award unless security to the satisfaction of the Court is furnished. On a plain reading the subsection predicates the suspension upon the institution of review proceedings. That poses the question whether this Court would have jurisdiction to entertain enforcement proceedings where a review has been archived, the security furnished having no review to operate upon. The parties were accordingly directed to address the Court on the issue.
- [14] The issue of jurisdiction to entertain an application for a stay of enforcement where a review has been archived has been settled by the Labour Appeal Court in *Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union*

obo Tabata v Aspen Pharmacare Ltd,¹ as cited by the DCS in its supplementary heads of argument. The Labour Appeal Court in *Tabata* held that a review application which has been archived is not extinguished, that it continues to exist until reinstated or finally dismissed by order of court, and that where an application to reinstate is pending at the time enforcement is sought this Court is not precluded from determining an application concerning the enforcement of the award. Mofokeng takes the contrary view on the status of the review, and relies on *Umshwathi Local Municipality v Lunga and Others*² for the contention that the current Rules contain no mechanism by which a review lapses upon the mere expiry of twelve months, and that the review accordingly remains pending.

- [15] This Court expresses no view on the DCS's reinstatement application or on the status of its review. In the event that the review has lapsed, an application for its reinstatement is pending and *Tabata*, to which this Court is bound by, applies. If it has not lapsed, the review is before this Court and no difficulty arises. Either way, this Court is cloaked with the necessary jurisdiction to entertain the application before it. What follows is the question of the urgency of that application.

Urgency

- [16] The DCS submits that the application is urgent on the basis that its movable goods stand attached and a sale in execution was advertised for 6 August 2026. Those facts are common cause.
- [17] Mofokeng opposes the application for a stay on two grounds. Firstly, he contends that the urgency is self-created and relies for that submission on the DCS's failure to furnish security when it launched its review. Secondly, he contends that the security furnished on 28 July 2026 cannot cure the Department's prior default, nor suspend execution from any date preceding its furnishing.

¹ [2025] 11 BLLR 1136 (LAC).

² [2026] ZALCJHB 89 (19 March 2026).

- [18] The test for urgency was aptly crystallised by the decision of this Court in *O'Connor v LexisNexis (Pty) Ltd*³. The test, which this Court aligns with comprises two legs. The first being a determination on whether applicant will not obtain substantial redress in the normal course. The second being whether it would be in the interests of justice to have regard to other factors which might nonetheless preclude an urgent hearing, notwithstanding the absence of substantial redress in the normal course, among them self-created urgency, procedural prejudice to the respondent and prejudice to the administration of justice.
- [19] What an applicant must show under the first leg is that the delay occasioned by a hearing in the ordinary course would diminish the benefit of the relief sought that it would no longer amount to substantial redress. That leg is all-important. Once it is met, a court will be slow to refuse an urgent hearing unless the second leg discloses compelling reason to do so. To turn away a litigant who cannot obtain substantial redress is to deny it access to court, a right of cardinal importance whose limitation requires very powerful considerations before it can be reasonable and justifiable.⁴
- [20] Self-created urgency arises where an applicant has itself brought about the need for an urgent hearing by culpably delaying in approaching the court. Urgency is, however, self-created only where the delay has been such that, absent it, the applicant would have obtained substantial redress on the ordinary roll. A delay of some months may accordingly not qualify where substantial redress was in any event unavailable.⁷
- [21] In this particular matter, the first leg is undoubtedly satisfied. A sale in execution was advertised for the morning following the hearing. Once the goods were sold, the DCS would have lost possession of assets which it submits are indispensable to the performance of its statutory functions. Success in the review would sound in money alone and has no capacity to

³ (2024) 45 ILJ 1287 (LC) ('*O'Connor*') at paras 21 to 26.

⁴ *Chief Lesapo v North West Agricultural Bank and Another* 2000 (1) SA 409 (CC) at para 22, cited in *O'Connor* above n 3 at para 24.

undo the disruption occasioned by the sale of those assets. Furthermore, there is no relief in the ordinary course that could restore the *status quo ante*.

- [22] What remains is whether, in the interests of justice, there are circumstances which nonetheless preclude an urgent hearing. Mofokeng submits that such circumstance exist on the basis that the DCS failed to furnish security when it launched its review. Advocate Naudé appearing for Mofokeng placed reliance on the decision of this Court in *Molaetsa wa Botshelo & Projects CC t/a Cre8Work v Mapaya and Others*⁵ for that proposition. The employer in *Molaetsa* had furnished no security at all, and applied five years after launching its review to be exempted from doing so, alternatively for a reduction, alternatively for a declaration that goods already attached would suffice. The Court declined to entertain that application urgently and struck the matter from the roll.
- [23] The facts in *Molaetsa* are distinguishable from those in the present matter. What was before the Court in *Molaetsa* was an application to be exempted from the requirement to furnish security in terms of section 145(8) of the LRA. The DCS seeks no exemption, and the discretion which that subsection confers upon this Court in determining whether to relieve an employer of the requirement does not arise. Significantly, no security had been furnished in *Molaetsa* at any stage such that the award remained operative throughout and execution against that employer was unimpeded, thus the Court in declining an urgent hearing left the parties where the statute had placed them, with the operation of the award extant.
- [24] In the present matter the DCS furnished security on 28 July 2026, which, for the reasons set out below, triggered the suspension of the operation of the award by operation of law, with no discretion of this Court required to sanction it. Put differently, an exemption application rests upon the discretionary powers of this Court, and those powers do not arise where security has been furnished. The suspension automatically takes effect, with no pronouncement from this Court.

⁵ [2025] ZALCJHB 299 (7 October 2025) ('*Molaetsa*') at paras 11, 13 and 14.

- [25] Mofokeng further offers *Molaetsa* as authority for the proposition that an employer which does not furnish security when it launches its review has thereby created its own urgency. To the extent that *Molaetsa* so holds, this Court respectfully differs.
- [26] Self-created urgency is concerned with delay in approaching the court. The enquiry is confined to the period between the event which first made it necessary to approach the court and the launching of the application. It is the immediate facts giving rise to the alleged urgency which fall under scrutiny. Whether an employer has furnished security in terms of section 145(7), and when it did so, has no bearing on whether it delayed in approaching the Court.
- [27] The DCS's goods were attached in February 2025 and again in March 2026, and it approached this Court on neither occasion. An attachment may itself found urgency, and litigants frequently approach this Court upon attachment rather than upon the advertisement of a sale. In practice an execution process follows various stages, depending on what is attached and on the instructions given to the Sheriff. In essence, an attachment is a precursor to a sale and signals a looming dispossession of the goods attached, though whether and when that dispossession will follow remains uncertain. It gives rise to an apprehension of harm. The advertisement of a sale however creates an apprehension of a different kind, imminent and real, being that which propelled the DCS to approach this Court on an urgent basis.
- [28] In the present matter the DCS approached this Court within two days of receiving the advertisement of the sale. The urgency of this application was accordingly not self-created, and the matter is dealt with as one of urgency.
- [29] Out of an abundance of caution, this Court retains a discretion to entertain a matter where the interests of justice so demand. Were this Court to decline a hearing on an urgent basis, it would permit a sale in execution of an award whose operation stands suspended, and would deny the DCS access to this Court in circumstances where no substantial redress is available. Those consequences are inimical to the scheme of section 145(7), which suspends the operation of the award by operation of law. This brings the Court to the

security provisions of the LRA and whether the security furnished on 28 July 2026 is satisfactory in terms of section 145(7) read together with section 145(8), and the period from which suspension of the operation of the award took effect.

What does section 145(7) and 145(8) of the LRA require of an employer?

- [30] Section 145(7) provides that 'the institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8)'. The provision states what the default position upon the institution of review proceedings is; the operation of the award is not suspended. The word 'unless' introduces the circumstance under which that default position is altered. Thus, the provision creates a condition to be met before the default position is disturbed. It imposes no independent obligation upon an employer. The obligation arises only where the employer seeks to avoid the operation of the award pending review. Absent the condition being met, the award can be enforced against the employer.
- [31] From the foregoing, it follows that the suspension takes effect upon the furnishing of security, whenever that occurs, and that steps taken in execution before that date were lawfully taken under the default position.
- [32] The security furnished by the DCS on 28 July 2026 stood in the sum of R1,274,602.00. Mofokeng objected to it, contending that the amount exceeds the compensation awarded and that the bond was never served upon him or upon his attorneys, he having learnt of it only when this application was served. The DCS states in its supplementary heads that the bond was replaced on 5 August 2026 by one in the amount of the compensation awarded. That further bond has not been placed before this Court and nothing turns on it, since a bond in the prescribed amount would in any event satisfy section 145(8).
- [33] The bond before this Court is that of 28 July 2026, to which Mofokeng's objections relate. The award being one of compensation, the security

contemplated by section 145(8) was R182,086.00, and the bond binds the DCS in a sum approximately seven times that amount.

[34] Sections 145(7) and 145(8) of the LRA exist for the protection of the employee, and an excess in security can never be a defect. What section 145(7) requires is that security be furnished to the satisfaction of this Court, and this Court may be satisfied by more than the subsection prescribes. Section 145(8)(a) provides that security furnished in terms of section 145(7) in the case of an order for reinstatement or re-employment must be equivalent to 24 months' compensation and in the case of an order for compensation, the security must be equivalent to the compensatory amount awarded in terms of section 145(8)(b). To interpret the word 'equivalent' in either of the subsections as excluding anything in excess would mean that a bond exceeding an amount of 24 months' remuneration or the awarded figure by a single cent or rand fails to suspend the award, an absurdity the Legislature could surely not have intended. The question, rather, is whether the security furnished 'is to the satisfaction of the Court', and a bond of security in excess is bound to satisfy a Court as contemplated in section 145(7).

[35] Mofokeng further contends that the bond of security is defective and invalid for want of service upon him or upon his attorneys. That contention cannot be sustained. Section 145(7) does not make service upon the employee a condition of validity. Non-service may occasion practical inconvenience, in that enforcement already under way might have been halted had the employee been apprised of the security, but it certainly does not relate to the 'satisfaction' imposed by that provision which, properly understood within its protective ambit, denotes the sufficiency of the security with which the Court must be persuaded.

[36] This Court is accordingly satisfied within the meaning of section 145(7) with the security that was furnished on 28 July 2026. Concomitantly, the operation of the award was suspended from that date.

Relief sought

[37] The DCS sought an order staying execution, and declarations impugning the certification of the award, the writ and the sale. Those declarations cannot succeed, the steps in question having been lawfully taken for the reasons already given. As to the application for a stay of the execution of the award, such relief would be redundant, the suspension of the operation of the award having taken effect on 28 July 2026 by law and requiring no order of this Court. What is required is that the Sheriff, in whose hands enforcement now rests, be placed in a position to act in accordance with the findings of this Court, and a declaration that the operation of the award stands suspended serves that purpose. The maxim *qui potest plus, potest minus* (he who can do more can also do less) finds apt application in these circumstances: a court which may grant the greater relief may grant the lesser.⁶ An order in those terms accordingly falls within the prayer for further and alternative relief.

Costs

[38] Costs in this Court do not follow the result. Section 162 of the LRA requires that an order be made according to the requirements of the law and fairness,⁷ and regard may be had to the conduct of the parties in proceeding with the matter before this Court.

[39] There is nothing frivolous or vexatious in the conduct of either party in these proceedings and a cost order is not warranted.

[40] In the circumstances, the following order is made:

Order

1. The forms and service provided for in the Rules of this Court are dispensed with and the application is dealt with as one of urgency.
2. It is declared that the operation of the arbitration award issued under case number GPBC1984/2023 on 4 October 2024, and which is the subject of the review application instituted under case number 2025-

⁶ See, for an application of the maxim, *National Union of Metalworkers of South Africa and Others v Ntlokose* (2024) 45 ILJ 495 (LAC) at para 33.

⁷ *Zungu v Premier of the Province of KwaZulu-Natal and Others* (2018) 39 ILJ 523 (CC) at para 24.

025125, has been automatically suspended by operation of law with effect from 28 July 2026, and remains suspended until that review application is finally determined.

3. The fourth respondent is interdicted from taking any step to enforce or execute the award until the review application referred to in paragraph 2 above is finally determined.
4. The application for an order declaring the certification of the award, the writ of execution and the sale in execution unlawful, void or of no force and effect, and setting aside the certification and the writ, is dismissed.
5. No order as to costs.

M J Motshekga

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv K O Moodley

Instructed by: The State Attorney, Pretoria

For the First Respondent: Adv C P Naudé

Instructed by: Isaac Teke Mothibe Attorneys Incorporated