



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

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO:JR323/21

In the matter between:

RUDOLPH ARNOUX, MARE

Applicant

And

First Respondent

**THE NATIONAL BARGAINING COUNCIL
FOR THE ROAD, FREIGHT AND LOGISTIC
INDUSTRY COUNCIL**

MARI HAYWOOD N.O.

Second Respondent

MMABATHO OLIVIA MOOEKETS N.O.

Third Respondent

**THE SHERIFF OF THE HIGH COURT,
BOKSBURG**

Fourth Respondent

Heard: 23 April 2026

Delivered: (This judgment was handed down electronically by emailing a copy to the parties. The judgment is deemed 28 August 2026 is deemed to be the date of delivery of this judgment).

JUDGMENT

MOGOLANE, AJ

Introduction

- [1] The Applicant brought an application to set aside writs of arrest issued as a result of a court order, granted by Coetzee AJ under Case number J 2203/19 on 21 August 2020. The application is premised on section 12 of the Constitution, the right not to be arbitrarily detained.
- [2] The Applicant contends that the writs for his arrest were issued in violation of his Constitutional rights, as a court of law did not decide on his committal but rather his opponent, the First Respondent, made this final determination.

Background

- [3] There had been several previous proceedings between the Applicant and the First Respondent. Before its liquidation, the Applicant was shareholder and sole director of Innovative Staff Holdings (Pty) Limited ("ISH"). The First Respondent's registered scope is the Road Freight Industry, as defined in its certificate of registration. The First Respondent's Main Collective Agreement (MCA) obliges all employers in the industry to register with the First Respondent and to render returns on a monthly basis. The First Respondent averred that the Applicant failed over many years to register with the First Respondent and to provide returns to the First Respondent in accordance with its MCA. Through the Order granted on 28 February 2020, entered into by agreement between the parties, the Applicant accepted the responsibility to ensure that all of the required documentation will be submitted to the First Respondent.
- [4] The matter thus has importance not only to the Applicant but also to all the affected employees. According to the information received during the demarcation dispute, there were more than 750 affected employees. In the absence of the required registration and returns, the Applicant has neither accounted for nor paid to the First Respondent

the amounts due in relation to the affected employees engaged in the Road Freight Industry as prescribed by the MCA.

- [5] The current dispute between the Parties mainly relates to the interpretation of the Order granted by Coetzee AJ on 21 August 2020,¹ and the constitutional implications thereof. The Order reads as follows:

- 1' *The Second Respondent is declared to be in contempt of a certified Arbitration award of the CCMA dated 19 September 2019 under Case number MB897/18.*
- 2' *The proceedings against the First Respondent is stayed in view of its liquidation.*
- 3' *The Second Respondent is sentenced to a period of imprisonment for 30 days.*
- 4' *The Sheriff of the Court is hereby authorized and ordered to take the Second Respondent into custody and hand him over to the South African Police Service and /or South African Correctional Services for imprisonment in terms of this Order;*
- 5' *The Orders in paragraphs 3 and 4 shall be suspended:*
 - 5.1' *In event the Second Respondent by 30th October 2020 fully complying with the Order of this Court of 28 February 2020 and producing proof to the Applicant by such date of such compliance;*
 - 5.2' *In the event of the Second Respondent by 30th October 2020 making arrangements to the satisfaction of the Applicant to comply with the Order of this court of 28 February 2020 and adhering to those arrangements.*
- 6' *The Applicant is granted leave to supplement its papers and approach this court for further relief in the event of the Award*

¹ Caselines 01137-01138

or this order not being fully complied with after execution or attempted execution of the Orders above.

7' *The Second Respondent is liable for cost of this application on a scale between attorneys and client including all costs of the Sheriff relating to this order.*

8' *In view of the final order the Rule nisi is confirmed to the extend incorporated in this order".Emphasis added.*

- [6] The terms of the above Order dated 21 August are premised on an earlier Order dated 28 February 2020, entered into by agreement between the parties, which essentially provides for a postponement of the contempt proceedings against the Applicant, a return date for a *Rule Nisi*, an order for wasted costs occasioned by the postponement against the Applicant and the granting of leave for Condonation. The Applicant was ordered to file properly completed registration documents on behalf of ISH and submit all documentation required by the First Respondent, to the First Respondent as an employer in the Road Freight Industry, by no later than 13 March 2020.
- [7] Furthermore, in terms of the Order of 28 February 2020, the Applicant was also ordered to file the required monthly returns and subsequently all outstanding returns on behalf of the ISH with the First Respondent for January, February, March and May 2020, no later than the dates specified in the order being 20 March 2020, 20 April 2020 and 20 May 2020. The Applicant was also ordered to henceforth comply with the MCA in the Road Freight Industry and with all legal requirements regarding payment of levies and other fees, and submission of all relevant information and documents, as required by the First Respondent. Provided that the Applicant have complied fully and timeously with the terms of the order dated 28 February 2020, the

First Respondent would file a notice of withdrawal of the Application by 25 May 2020.² [Emphasis Added].

- [8] The due date for compliance with the order dated 21 August 2020 was 30 October 2020. According to the First Respondent, on 30 October 2020 the Applicant had not met the conditions stipulated in the Order. The Respondents advised the Applicant that he had not met the conditions of the Contempt Order; warning emails were sent to the Applicant's Attorneys. On 2 November 2020, the First Respondent's Attorneys confirmed to the Applicant's Attorneys that the Applicant took no steps to comply with the Contempt Order. The First Respondent's Attorneys subsequently had a Writ of Committal issued by the Court Registrar on 8 November 2020 and, on 21 December 2020, forwarded it to the Fourth Respondent for execution.³ There had been various unsuccessful attempts to execute this Writ of Committal.
- [9] Following the unsuccessful attempts to execute the writs, the Applicant brought an urgent application⁴ with costs to be reserved, premised as follows: Part A: that the enforcement and execution of paragraphs 3 and 4 of the Order granted by Coetzee AJ dated 21 August 2020 be suspended; that the First and Fourth Respondents be interdicted and restrained from taking any steps or further steps in execution of paragraphs 3 and 4 of the same Court Order. Further that, the Fourth Respondent be interdicted and restrained from executing the writs of arrest issued by the Registrar under case number J 2203/19 on 21 December 2020 or any other writ of arrest for failure to comply with paragraph 5 of the same Court Order.
- [10] Part B of the Applicant's Urgent Application sought an Order setting aside the writ of arrest dated 21 December 2020 and 8 November 2020 and declaring that the Applicant complied with the Court order granted

² Caselines 01139- 01140.

³ Caselines 004-3 para 8.12.

Caselines 01141- AM 3) 01143 (AM 4).

⁴ Caselines 009- 1; Caselines 009-6.

by Coetzee AJ dated 21 August 2020 under case J 2203/19, “*in so far as it was legally and factually possible and permissible for him to do so*”. Alternatively, the Applicant sought a variation of paragraph 5 of the same Order, to the effect that: the orders in paragraph 3 and 4 of the same Order are suspended and further that paragraph 5.1 and 5.2 of the same Order to be read to include the phrase “*in so far as it is legally and factually possible and permissible for him to do so and producing proof to the Applicant of such compliance*”.

- [11] This Court dismissed the urgent application. Subsequently, at the hearing held on the 23 April 2026 the Applicant confined issues for determination by this court in Part B to Prayers 5, 6 and 8 of the Amended Notice of Motion, seeking an Order setting aside the writs and/or further relief, and requesting that fourth Respondent be interdicted and restrained from executing the writ of arrest dated 21 December 2020 or any other writ of arrest issued for failure to comply with paragraph 5 of the same Court granted by Coetzee AJ.⁵
- [12] Counsel for the Applicant submitted that the Order granted by Coetzee AJ is conditional, coercive and unconstitutional, as no court made the determination of detention as entrenched in section 12(1) of the Constitution for the Applicant’s committal. Only a court of law can make the determination whether a person should be committed for contempt of court, as committing a person involves imprisonment (deprivation of their liberty). Furthermore, any detention of the Applicant has to be both substantively and procedurally fair.
- [13] The Applicant’s Counsel further contended that in the present case the determination of whether the suspensive conditions were met was not made by the Court and that once this Court accepts that only a court could make such determination after a fair procedure, that would be the end of the issues between the parties for the purposes of this application. Further issues relating to the question as to who made the

⁵Caselines 009-4

determination of the Applicant's committal, Applicant's substantive compliance and further constitutional breaches were only addressed by the Applicant out of the abundance of caution. Costs of opposition were also sought by the Applicant.

- [14] Counsel for the First Respondent contended that the Applicant's Constitutional challenge is a collateral attack on a valid Order. The Applicant's incarceration was already considered and pronounced upon under the oversight of the Court on 21 August 2020. Allowing the Applicant's incarceration was not arbitrary in nature, as the Court had already ordered such incarceration, having found the Applicant to be in Contempt. The Court suspended the Order granted on 21 August in order to allow the Applicant to comply with the terms of the Order or make alternative arrangements with the First Respondent for such compliance.
- [15] Furthermore, the First Respondent's Counsel submitted that the Applicant failed to comply with the Court Order dated 21 August 2020. The First Respondent's Attorneys subsequently had a Writ of Committal issued by the Court's Registrar on 8 November 2020 and 21 December 2020 and forwarded the same to the Fourth Respondent for execution. Furthermore, it was the First Respondent's contention that there was no need for the First Respondents to approach the Court for the second time prior to the writs being issued, as the Order dated 21 August allowed for the Applicant's imprisonment unless the Applicant fully complied with the terms of the same Order. Furthermore, prior to launching this constitutional challenge, the Applicant provided the First Respondents with various excuses for his non-compliance with the court order of 21st August 2020. According to the First Respondents, the Order dated 21 August 2020 is constitutionally valid. If the Applicant was of the view that there was a mistake or ambiguity in Coetzee AJ's Order, the Applicant could have appealed, varied and/or rescinded the same order.

Applicable Law

- [16] In consideration of the issues between the parties, this court had regard to the applicable law set out herein below. Section 38 of the Constitution provides that anyone acting in their own interest has a right to approach a competent court alleging infringement or threatened infringement of constitutional right and a court may grant appropriate relief including declaration of rights. It is also trite that everyone has a right to have a fair hearing prior to detention and to have any dispute resolved and determined by the Court.
- [17] Section 12(1)(a) and (b) of the Constitution provides that everyone has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause, and not to be detained without trial. It follows therefore that any deprivation of freedom must be substantively and procedurally fair. A fair process and acceptable reasons must follow any act of deprivation of freedom; such deprivation of freedom must also not be arbitrary and without just cause.⁶ Furthermore, the determination for committal to prison can only be made by a court of law.⁷ Similarly, only a court of law can impose and/or determine the manner in which conditions for committal are to be met.
- [18] The rights in the Constitution may only be limited by law of general Application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom and taking into the relevant factors, including (a) nature of the right (b) the importance and purpose of the limitation (c) the nature and extent of the limitation (d) the relation between the limitation and its purpose (e) less restrictive means to achieve the purpose.⁸ Any deprivation of liberty must be reasonable and acceptable, having due regard to dignity, equality and freedom of a person, the right to freedom

⁶ Makana Peoples Centre v Minister of Health and others 2023(5) 1 (CC)

⁷ In De Lange v Smuts and Others 1998(3) SA 785 (CC)- para 174

⁸ Section 36 Constitution

and security including the right not to be detained without trial, the right to be free from all forms of violence and not to be tortured in any way or to be treated or punished in a cruel, inhuman or degrading way.⁹ Everyone has inherent dignity and the right to have their dignity respected and protected.¹⁰ The Courts uphold the right to dignity as the Cornerstone of the Constitution.

- [19] All of the rights are also limited by the Rule of law, which requires legality. It is also trite that *“interpretation of court orders is subject to the same principle applicable to the interpretation of legislation, contracts and any other written instruments. The general principle is that interpretation is a unitary process, whereby the language used, the context in which certain provisions appear and surrounding circumstances leading to the creation of the document are all taken into consideration in deriving the meaning of a document. In this regard, a sensible interpretation ought to be preferred over an insensible or unbusinesslike one, or one that undermines the apparent purpose of the document”*.¹¹
- [20] The approach to be adopted when interpreting an Order or Judgment is first to read the whole Judgment or Order and to give effect to the ordinary literal meaning of words and language used in the judgment or Order.¹² Secondly, such interpretation must give effect to Court's intention in the order and judgment. Thirdly, the interpretation must be in accordance with the usual well known rules relating to interpretation of documents or legislation and have regard to the rule of law as well

⁹ Section 12 (1) (b)-(c)

¹⁰ Section 10 Constitution

¹¹ *Graduate Institute of Financial Sciences (Pty) Ltd v Insurance Sector Education and Training Authority and Another* [2024] ZAGPJHC457 at para 33

¹² See *Volschenk v Volschenk* 1946 TPD 486 at 487-“The Cardinal rule of construction is that words must be given their ordinary, literal, grammatical meaning.” See also *Hulisani Viccel Sithangu v Capricon District Municipality* (593/2022) 2023 ZASCA 151 (14 November 2023) para 23. Zondi JA stated, “it is now settled, when interpreting a document including a court order, the point of departure should be the language in question, read in context while also having regard to the purpose of its provision and background.”

as the fundamental values entrenched in the Constitution.¹³In that case, Ackerman J stated:

*“Accordingly, judicial officers must prefer interpretations of legislation that fall within constitutional bounds over those that do not, provided that such an interpretation can be reasonably ascribed to the section.”*¹⁴

[21] When interpreting orders or judgments, the Court must secure a conclusion which is in line with the dictates of common sense and the interests of justice. The Court’s intention in any Order or judgment can be established from literal words used in the Order and the surrounding circumstances. The main reason for the grant of an order has to be established as well.

Evaluation and Interpretation

[22] It is Common cause that the terms of the Order dated 21 August 2020 are premised on the terms of the Order dated 28 February 2020. The terms of the Order dated 28 February 2020 were entered into by consent between the parties. It is trite that a consent Order remains legally binding between the Parties until it is set aside. In this regard, the Constitutional Court held that, *“Once a settlement agreement has been made an order of court, it is an order like any other. It will be interpreted like all court orders”*.¹⁵ An order or decision issued by a court binds all persons to whom and organs of the state to which it applies.¹⁶ In the present case, the aforementioned two Orders remain legally binding on the Parties. The two Orders must be read together in order to better understand the intention of the *court a quo*.

¹³Hulisani *Supra* f(n) 12 at para 23.

¹⁴*Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others; In re: Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others* [2000] ZACC 12; 2000 (10) BCLR 1079 (CC); 2001 (1) SA 545 (CC); 2000 (2) SACR 349 (CC) at para 23.

¹⁵ *Eke v Parsons* [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC).

¹⁶ Constitution Section 165(5).

- [23] The ordinary, literal meaning as well as the wording and language used at paragraphs 1, 3 and 4 of the Order granted by Coetzee AJ dated 21 August 2020 mean that, on 21 August 2020, the Applicant was found to be in Contempt of court and the Applicant was on the same day sentenced to 30 days' imprisonment for being in such Contempt. The Sheriff of the court was authorised and ordered in terms of the very same court order to take the Applicant into custody and hand him over to the South African Police and/ or South African Correctional Services for 30 days' imprisonment, unless on the occurrence of the two events mentioned in subsequent paragraphs 5.1' and 5.2 of the same Order.¹⁷
- [24] The language and wording used to at paragraph 4 of the same Order: "*hereby authorized*" and "*in terms of this order*", denotes that the Sherriff is so authorized to take the Applicant into custody and hand him over to the South African Police Service and /or South African Correctional Services for imprisonment in terms of the very order same Order dated 21 August 2020 granted by Coetzee AJ's under case number J2203/19 in other words, the authority to execute paragraph 3 and 4 is granted by the same Order.
- [25] Furthermore, by agreement between the Parties (in terms of the Order dated 28 February 2020), the Applicant undertook to file monthly returns and henceforth comply with MCA in the Road Freight Industry and comply with all the legal requirements regarding payment of levies and other fees, and submission of all relevant information and documents, "*as required*" by the First Respondent. Currently, there is no dispute between the parties regarding the constitutionality of the Order dated 28 February 2020 or any misunderstanding of the terms thereof. It is therefore clear that from the outset, the Applicant agreed to comply "*as required*" by the First Respondent.

¹⁷ Caselines 01137- 01138 at para 1,3 and 4

- [26] Having regard to the circumstances surrounding the grant of this Order, it is clear that the First Respondent is well conversant with all the relevant information, necessary returns, documents and all the relevant legal requirements regarding registration, payment of levies and other fees required for compliance with the MCA. The First Respondent also averred that the returns envisaged in paragraphs 4.2 to 4.5 of the Order of 28 February 2020 are nothing more than a reflection of employee details and together with a mathematical calculation of benefits due to those employees.¹⁸ In this regard, the First Respondent is in fact in a better position to fully investigate compliance and to make compliance arrangements with the Applicant.
- [27] In a way, the Court relied on the First Respondent (as the Applicant in the *court a quo*) to satisfy itself regarding the accuracy and veracity of the information furnished by the Applicant. Similarly, all such arrangements had to be made to the satisfaction of the First Respondent and not the satisfaction of a court of Law. A court of law is established for administration of justice; it is not an administrative office responsible for investigating registration documents or process, monthly returns, collection of fees and levies or payments required by administrative bodies. From the outset, the Applicant consented through Order dated 28 February 2020 that the Applicant would furnish compliance “as required” by the First Respondent. It would be illogical and absurd to now expect any other form of compliance. There is therefore nothing untoward with the terms of the Order granted to the effect that full compliance be made as required by the First Respondent and to its satisfaction.
- [28] With regard to the issue of powers of Committal, the First Respondent did not dispute that powers of committal lie with the courts. The First Respondent however contends that the court *a quo* already made the final determination of the conditions for the Applicant’s committal,

¹⁸Caselines 004-5 para 9.6.

which conditions were suspended subject to the terms of paragraphs 5 of the same order. This Court is in agreement with both parties that only a court of law can make a determination for committal of persons to prison. In this regard, this Court aligns itself with the views expressed by the Constitutional Court ¹⁹ where Sachs J stated “...*only judicial officers should have the power to send people to prison.*” This Court is also of the view that the court a quo already made the determination for the Applicant’s committal as well as the conditions attached thereto, through the terms of paragraphs 1,3 and 4 of the Order dated 21st August 2020. In the same way, the conditions for committal were also determined by a court of law in terms of paragraph 5, 5.1 and 5.2 of the same Order.

- [29] The ordinary and literal meaning of the Order dated 21 August 2021 indicates that the court a quo ordered the Applicant’s committal having found the Applicant to be in contempt of court. The just cause for the Applicant’s committal Order was that the Applicant is in Contempt of court. There is therefore no violation of Section 12 of the Constitution at all, the right not to be deprived of freedom arbitrarily or without just cause. The contempt Order was justified in that the Applicant failed to comply with a previous Order. Through the Contempt finding, the Court’s intention was to vindicate the court’s honour. The Court in *E.K v P.K and Others* ²⁰ held that “*the object of Contempt proceedings is to impose a penalty that will vindicate the court’s honour, consequent upon disregard of its previous order as well as to compel performance in accordance with the previous Order*”. The Court cannot ignore lawlessness and /or injustice. In the circumstances, therefore, the Applicant’s right to freedom and security is limited by the rule of law which requires legality. As already indicated, this matter has importance not only to the Applicant but to a large number of affected employees. In the circumstances therefore, the limitation of the

¹⁹ In *De Lange v Smuts and Others*, *supra*, at para 174.

²⁰ *E.K v P.K and Others* [2023] ZAGPPHC 257 at para 21.

Applicant's rights by the *court aquo* was reasonable and justifiable having regard to the deeming Section 36 of the Constitution.

- [30] During oral submissions it became clear that the contentious issue between the parties was the interpretation of the next paragraph 5', 5.1 and 5.2 of the Order dated 21 August 2020. Once again, paragraph 5, 5.1 and 5.2 of the same Order must be read in light of the consent order dated 28 February 2020. Parties already agreed to this process of submitting compliance "*as required*" by the First Respondent. Therefore, the alternative Order to the effect that arrangements be made with the First Respondent is consistent with the consent Order dated 28 February 2020. In this regard, the terms of the Order dated 21 August 2020 are consistent with the terms of the Order dated 28 February 2020. In *Volschenk*, Malan J also stated the following "*If ...a rigid grammatical construction of the language employed leads to a result which is manifestly absurd, unjust, unreasonable, inconsistent with other provisions or repugnant to the general object, tenor or policy of a statute, the court will be justified in departing from the literal sense and in modifying or extending it in such a manner as will secure a conclusion which will eliminate such objection and give expression of the true intention of the legislature*".²¹
- [31] In the present case, there is also no justification for departing from the literal meaning of the terms of Order dated 21 August 2020 as the terms thereof are clear and unambiguous and consistent with the terms of the Order dated 28 February 2020. The Court's intention here was to afford the Applicant a further opportunity of complying with its earlier Order, which was subject to the Matter of the Contempt finding on the 21 August. The words "*fully complying*" as stated at paragraph 5.1 are also self explanatory, such words must be read within the meaning and context of the Order dated 28 February 2020. It was never the Court *a quo*'s intention that partial compliance would constitute full compliance

²¹*Volschenk Supra* at 487-487-8

as such interpretation would clearly undermine the apparent purpose of this Order.

- [32] As already indicated, the apparent purpose of the Order and the Court's intention was to give the Applicant an opportunity to fully comply with the court Order dated 28 February 2020 rather than to coerce the Applicant in any manner. The remarks of the Court ²² find application herein "*a sensible interpretation ought to be preferred over an insensible or unbusiness like one, or one that undermines the apparent purpose of the document*". Contrary to the submissions made by Counsel for the Applicant this meaning of interpretation by this court can be gathered from ordinary words and language used at paragraphs 5.1 and 5.2 of the same Order, which reads:

5' *The Orders in paragraphs 3 and 4 shall be suspended:*

"5.1' *In event the Second Respondent by 30th October 2020 fully complying with the Order of this Court of 28 February 2020 and producing proof to the Applicant by such date of such compliance:*

5.2' *In the event of the Second Respondent by 30th October 2020 making arrangements to the satisfaction of the Applicant to comply with the Order of this court of 28 February 2020 and adhering to those arrangements*" Emphasis Added.

- [33] It is therefore clear that the above terms of the Order dated 21 August 2020 are not coercive and unconstitutional as the Applicant is afforded a further opportunity of avoiding the full effect of paragraphs 3 and 4 by complying with the strict terms of the Order dated 28 February 2020. An arbitrary Order would not have afforded the Applicant this opportunity.

²² In Graduate Institute of Financial Sciences (Pty) Ltd v Insurance Sector Education and Training Authority and Another Supra at para 39

- [34] In terms of the same Order, during the period of suspension, the Applicant had to furnish the required information to the satisfaction of the First Respondent. The Applicant incorrectly refers to this element of leniency and/or less restrictive means as an unconstitutional process during which the First Respondent is allowed to “determine conditions” for committal. It is clear from paragraph 5 of the Order dated 21st August 2020 that the Court a quo already determined the conditions for the Applicant’s committal. All that the Applicant had to do was to satisfy the First Respondent with full compliance or compliance arrangements. The Court a quo was mindful of the Applicant’s inherent right to dignity and right to have his dignity respected and protected by allowing him a further opportunity to fully comply with the Order or to make alternative arrangements.
- [35] The Applicant also seems to be under an erroneous view that the Contempt Order is conditional.²³ Contrary to the Applicant’s assertion, the contempt finding is final and requires no further determination of the finding or conditions attached thereto. The Committal Order mentioned at paragraphs 4 and 3 were only suspended on the happening of the two events mentioned at paragraphs 5.1 and 5.2 thereof.
- [36] It is also noteworthy that the Court referred to the compliance date of “30 October 2020” twice in paragraphs 5.1’ and 5.2’ in amplification of the same date and to allow paragraphs 5.1’ and 5.2’ to operate in the alternative, meaning that in the event of paragraph 5.1’ being fulfilled, the terms stipulated in paragraph 5.2 become superfluous. Full compliance with paragraph 5.1 effectively nullified paragraph 5.2.
- [37] This Court is mindful of the *audi alterem partem* rule and conscious of the fact that decisions of the First Respondent are subject to judicial control. The Applicant was afforded a hearing by this Court and the

²³Caselines 011-2 para 5

Court a quo. There also appears to be no impropriety or *mala fides* on the part of the First Respondent in requesting the information sought from the Applicant. The Applicant averred that a fair procedure would undertake a proper enquiry into the fulfilment of the suspensive conditions. However, in his compliance Affidavit, the Applicant stated that he was unable to comply by 30 October 2020 since he struggled to gather all the information and even after requesting such information from previous employees, he was not supplied with such information.²⁴ He exhausted all reasonable measures in an attempt to comply with the Court's order dated 21 August 2020. It is therefore clear that on his own version, the Applicant was unable to fully comply with the Order dated 21 August 2020, on or before 30 October 2020. This concession is also in line with the information contained in the contested Writs.

- [38] At the same time, the Applicant also averred in his compliance Affidavit that he complied in that he sent Registration documents, which were partly accepted and rejected by the First Respondents.²⁵ No averment is made by the Applicant that he fully complied as contemplated by the Order of 21 August 2020. Furthermore, the Applicant averred that he was precluded from making arrangements for compliance with the Court Order dated 28 February in circumstances where compliance was "*not legally and factually possible or permissible*" having regard to the liquidation.²⁶ The Applicant also submitted that he took all reasonable steps possible for him to attempt to comply with the Court's order dated 21 August 2020, he is unable to comply. According to the Applicant he also struggled to gather all of the information, and even after requesting such information from previous employees, he was not supplied with such."²⁷

²⁴ Caselines 002-171 para 25.

²⁵ Caselines 002-171 para 21.

²⁶ Index 1 April 2021 (Part 5) page 417 para 34.3.

²⁷ Caselines 002-171 para 25 and 26

[39] It has been five and a half years since the grant of the Order dated 21 August 2020, to date, no arrangements exist between the parties to fully comply with the Order of 21 August. The Applicant raised various challenges regarding his ability to comply with the Order dated 21 August 2020 as a result of the Liquidation of ISH which took place on the 19th August 2020 (prior to the grant of the Order of 21st August 2020). According to the Applicant, the fact that he may have documentation relating to Innovative staff does not mean it is “legally and factually possible and/or permissible” for him to comply with the Order. Applicant submitted that it has always been contended that an extensive audit was required of the employees because IHS was not only supplying employees to the transport industry but also other industries ²⁸

[40] During oral submissions made at the hearing held on the 23rd of April 2026, Counsel for the Applicant submitted that paragraph 6 of the Order obliged the First Respondent to approach the court for directions as to compliance with suspensive condition “prior to execution stage”. This court disagrees. If the court *a quo* intended to be approached prior to the execution stage, the Court would have stated such an option in clear and unequivocal terms. Instead of clearly stating the option of being approached prior to the execution stage, the court *a quo* opted to state the following:

6’ *“The Applicant is granted leave to supplement its papers and approach this court for further relief in the event of the Award or this order not being fully complied with after execution or attempted execution of the Orders above. Emphasis Added. Clearly, the words “prior to” or “before execution” are lacking in support of the Applicant’s proposition that paragraph 6 obliged the First Respondent to make such an approach before execution. This court is of the view that, it was not the intention of the court *a quo* that it should be approached again to give effect to its Orders at paragraphs 3 and 4 of prior to the*

²⁸ Index 1 April 2021 (Part 5) page 415 para 28

execution stage. If this was the court a quo's intention, it would have been stated in clear terms.

[41] The Applicant was also at liberty to approach the court since the last date of the grant of the Order. The Applicant could also have disclosed any compliance issues to the court at his earliest convenience prior to 30 October 2020 and not merely wait for the First Respondent to set the process of execution in motion. Again, if the Applicant was unsatisfied with the terms of the court a quo's Order, he could have applied for suitable remedies.

[42] Having considered all of the relevant facts of this case, the requirements of law, and in fairness to both parties, the following Order is made:

Order

1. The Applicant's Application to set aside the two writs of arrest dated 21 December 2020 and 8 November 2021 is dismissed.
2. The two writs of arrest issued by the Registrar on 21 December 2020 and 8 November 2020 under case number J2203/19 or any other writs of arrest issued for failure to comply with paragraph 5 of the court Order dated 21 August 2020 granted by Coetzee AJ under the same case number J 2203/19 stand, for execution.
3. The leave granted to the First Respondent in terms of paragraph 6 of the same Order granted by Coetzee AJ under case number J 2203/19 dated 21 August 2020, to supplement papers and approach the court for further relief, is re-enforced. The matter may be enrolled on the urgent roll due to the nature of its exigency.

4. Costs are reserved for the determination of any further relief as contemplated by paragraph 5 of the Order dated 21 August 2020 under case Number J2203/1.

E.M. Mogolane
Acting Judge of the Labour Court of South Africa

LABOUR COURT

APPEARANCES:

For the Applicants A. Katz SC with I. de Vos, and S. A. Karim
instructed by Cliff Dekker Hofmeyr Incorporated.

For the first Respondent W.J.Hutchinson,

instructed by Tricker Incorporated.

LABOUR COURT