



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

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026/208356

In the matter between:

KAMAL CAPE TOWN IRON AND STEEL CO (PTY) LTD

Applicant

and

SERKAN CAYDAVUL

First Respondent

ERAHIM KINYAS GURCU

Second Respondent

THE SHERIFF OF THE HIGH COURT

KUILS RIVIER SOUTH

Third Respondent

Heard: 10 September 2026

Delivered: 16 September 2026

JUDGMENT

BEKKER AJ

Nature of application

1. This is an urgent application brought by the Applicant seeking to interdict and restrain the Third Respondent Sheriff from proceeding with a sale in execution of property attached pursuant to a writ of execution being issued, resulting from a judgment handed down by this Court under case number JS619/23.
2. The Applicant seeks an urgent interim interdict pending the determination of an application brought by the Applicant on 25 August 2026, seeking to rescind the judgment and order of Daniels J under case number JS619/2023, delivered on 9 June 2025.
3. In accordance with the judgment handed down by Daniels J, the First and Second Respondents ("the employees") succeeded with a contractual claim for unpaid remuneration. As per paragraph 26 of that judgment, the Applicant was ordered to pay the employees the amounts of R1,676,426.76 and R4,020,376.32 respectively as outstanding remuneration for the period 26 May 2020 to 12 December 2023 (excluding the period from 17 November 2020 to 10 December 2021).
4. The application was opposed by the First and Second Respondent employees.

Timeline and Applicant's case:

5. Messrs. Gurcu and Cayduval are erstwhile employees of the Applicant. Mr. Cayduval was employed as a divisional manager and Mr. Gurcu as the Applicant's raw materials manager.
6. It is apparent that the Applicant is engaged in the metal and engineering industries.
7. As per the judgment of Daniels J, the respondent employees were placed on a lay-off at the end of March 2020 due to financial difficulties.
8. This was during the time of the Covid-19 pandemic where the Metal and Engineering Industries Bargaining Council's main collective agreement

provided for a maximum period of eight weeks' layoff. This period lapsed on 26 May 2020, and the employees did not agree to an extension thereof.

9. Despite no agreement, the employees' lay-off continued until they were notified of their dismissal for operational reasons, effective 12 December 2023.
10. In the meantime, the Applicant was placed under business rescue for the period November 2020 to December 2021. During this period, the employees were not required to work, but were remunerated.
11. It is for this period (excluding the period of business rescue) that the Respondent employees brought a claim in terms of s77(3) of the Basic Conditions of Employment Act.¹
12. Daniels J concluded that the Plaintiff had no defense on the substance of the claims, but forced the Respondent employees to come to court to vindicate their rights, thereby justifying a costs order against the Applicant as per the mentioned judgment.
13. The amounts ordered as per the judgment were payable within 30 days of the date thereof, failing which it will attract interest at the prescribed rate of interest.
14. Dissatisfied with the judgment of Daniels J, the Applicant did not comply. Instead, an entity by the name of Kamal Steel Tanzania ('Kamal Tanzania') claimed that it substituted Kamal Cape Town in the action resulting in the judgment by Daniels J, and that for this reason the judgment runs against Kamal Tanzania and not against the Applicant. As held in a later judgment by this Court referenced hereunder, there was no substitution, but merely a correction of the citation as requested by Kamal Cape Town.
15. Be that as it may, in paragraph 15 of the Applicant's founding affidavit for urgent relief the deponent clearly states that *"however, for purposes of this application, the Applicant accepts that the judgment and order run against itself ..."*.

¹ 75 of 1997 (as amended) ('the BCEA')

16. The Applicant now alleges that Kamal Tanzania substituted Kamal Cape Town, but Kamal Cape Town (the current Applicant) unsuccessfully sought leave to appeal the judgment of Daniels J. Daniels J dismissed the application for leave to appeal, whereafter the Labour Appeal Court was petitioned, which petition met the same fate.
17. A further petition to the Constitutional Court was unsuccessful.
18. A Writ in Execution was then issued under case number JS619/23 and directed the Third Respondent Sheriff to attach and execute against the Applicant's property.
19. A sale in execution was scheduled for 22 July 2026. Undeterred, and as a result of what the Applicant calls 'Kamal Tanzania's application', the Applicant brought an urgent application to set aside the Writ of Execution on the basis that the incorrect party was cited on the writ (and according to the Applicant it should have been Kamal Tanzania) and, secondly, to stay the sale in execution pending a determination of Kamal Tanzania's application. On 1 August 2026, that application (brought by Kamal Tanzania) was equally dismissed.
20. The Applicant's goods remain so attached by the Sheriff. The Applicant then in mid-August 2026 decided that it would be prudent to subpoena the Respondent employees' bank statements for the period May 2020 to December 2023. Based on the contents thereof, it sought a rescission of the judgment by Daniels J on the basis that the two Respondent employees earned some or other form of income that may have been in the form of a salary and that the fact that the income was so earned and/or received, was not disclosed to the Labour Court in the action brought in terms of s77(3) of the BCEA,
21. This, the Applicant contends, may have or would have prompted the Court not to grant the relief eventually granted to the Respondent employees by Daniels J. The Applicant describes this as a matter where the Court should exercise its discretion to avoid a substantial and real injustice, or where an injustice may result. It relies on the common law ground of fraud in bringing the rescission application.

22. In summary, the Applicant is alleging that the judgment was obtained fraudulently by the Respondent employees and stands to be rescinded. It alleges that the party cannot benefit from misrepresenting material facts, which facts, had the Court been alive to it, would have resulted in the claim being dismissed.
23. It further describes the attack on the judgment as genuine and *bona fide*.

The Respondent employees' version:

24. Apart from taking issue with urgency, the employees' opposition centres around the Applicant's continuous attempts to avert complying with the terms of Daniels J's judgment and order. With leave to appeal having been refused, the Labour Appeal Court refused the petition on 24 March 2026 and the Constitutional Court followed suit on 29 May 2026.
25. Tlhotlhemaje J dismissed the application brought by Kamal Tanzania on 1 August 2026, with costs.
26. A pertinent matter raised is how the Applicant indeed gained access to the Respondent employees' bank statements for accounts held with FNB. The employees alleged in the answering affidavit that the bank statements were transmitted to the Applicant's Cape Town attorneys (Dev Maharaj Inc Attorneys) on 6 and 29 July 2026 respectively. The rescission application was brought on 25 August 2026 and the current application on 27 August 2026.
27. The employees maintained that they were at all times materially employed by the Applicant between the period May 2020 and December 2023 and during this whole period of time tendered their services.
28. The subpoena issued to FNB provides:

'Kindly inform the witness that he/she is herewith ordered to personally appear before the High Court, Johannesburg, on Monday the 22nd of June 2026 at 10:00 and to stay present until he is excused by the Court, in order to provide the information requested below regarding matters of which he has knowledge regarding the above application that is now pending in the above Honourable

Court, instituted by the Plaintiff against the Defendants in which proceedings the Plaintiff seek judgment of alleged outstanding salaries, whilst the Defendant was in business rescue.'

29. The Respondent employees pointed out that the subpoena may have been improperly obtained since as at June 2026 (being the date of issue of the subpoena) there was no pending application at all between the parties.
30. As to the merits of the allegation by the Applicant that the order was fraudulently obtained since the Respondent employees earned some form of income or salary during the relevant period, it was not denied that some form of income was derived by the employees. What remains is that it is undisputed that throughout the period between May 2020 until December 2023 they have tendered their services to the Applicant.

Reply:

31. In reply, the Applicant points to the Respondent employees' assertion in the answering affidavit that even if they have received income during the relevant period under review from other entities, this would not change the fact that the Respondent employees were contractually entitled to unpaid salaries from the Applicant over the very same period. This the Applicant describes as attempting a sale in execution of the Applicant's assets to satisfy '*debts obtained through fraud and deceit*'.
32. The Applicant advanced that it is for the court hearing the rescission application to decide on the different legal conclusions advanced by the parties.

Assessment:

33. The Respondent employees take the point that the rescission application was brought late. The Applicant takes issue with that contention. The Applicant's view is that it only accessed bank statements of the Respondent employees on 29 July 2026 and thereafter attempted to obtain information from '*Sweet Mart*', an entity that paid amounts to both Respondent employees during the relevant period and as per the bank statements.

34. Whether the rescission application is late or not, is neither here nor there. That may be ultimately for the Court hearing the rescission to determine. A rescission application must be brought within a reasonable period. What is of importance is whether the Applicant has made out a case for the stay of the enforcement of the order by Daniels J.
35. The requirements to succeed with interim relief are well settled. In *Setlogo v. Setlogo*² it was held that those requirements are:
- 35.1 A *prima facie* right;
 - 35.2 A well-grounded apprehension of irreparable harm if interim relief is not granted and the ultimate relief is eventually granted;
 - 35.3 The balance of convenience is in favour of the granting of the interim relief; and
 - 35.4 The absence of any other ordinary remedy.
36. To establish this *prima facie* right an applicant is required to provide *prima facie* proof of facts that establishes the existence of a right in terms of the substantive law. Further, it must be shown that a well-grounded apprehension of irreparable harm (if interim relief is not granted and it ultimately succeeds in establishing its right) is present.
37. With regards to the requirement of the balance of convenience, it is required that the prejudice to the Applicant if the interdict is refused must be weighed against the prejudice to the Respondent if it is granted.
38. Since the quest is for an interim interdict, the Applicant should satisfy all the requirements for an interim interdict as set out hereinabove.

² 1914 AD 221 at 227

39. With regards to a *prima facie* right, it may arise out of contract, delict or it may be founded in the common law or on some statute. This right need not be established on a balance of probabilities.³
40. In *Gois t/a Shakespeare's Pub v. Van Zyl & Others*⁴ the Court dealt with an application to stay the execution of a court order. It was confirmed that the '*the Court is not concerned with the merits of the underlying dispute – the sole inquiry is simply whether the causa is in dispute*'.⁵
41. In *Stoffberg N.O. v. Capital Harvest (Pty) Ltd*⁵ reference was made to *Shakespeare's Pub, supra*. It was held that it is for the Court to decide on the facts of each given case whether considerations of real and substantial justice are sufficiently engaged to warrant suspending the execution of a judgment, and, if they are, on what terms any suspension it might be persuaded to allow should be granted.
42. With regards to prospects of success (in the current rescission application) it was held in the matter of *Denel SOC Ltd v. NUMSA obo Petersen & Another*⁶ that:
- 'I still agree with *Gois* that in a stay, the merits play no role.'
43. In essence then, the Court will grant a stay of execution when the underlying *causa* is being disputed or no longer exists.
- 'As a general rule, courts acting in terms of this rule will suspend the execution of an order where real and substantial justice compels such action.'⁷
44. In *Dalrymple v. Riach & Others*⁸ it was confirmed that:

³ *Evander Goldmines & 1 Other v. AMCU obo S.D. Shabangu & 54 Others*, unreported judgment of the Labour Court, case no. 2026/160506, delivered by Prinsloo J on 23 July 2026 at paragraph 36

⁴ 2011(1) SA 148 LC at paragraph 37

⁵ 2021 JDR 1644 (WCC) at paragraph 26

⁶ 2022 43 IJ 2302 LC paragraph 4

⁷ *Van Rensburg & Another NNO v. Naidoo & Others NNO*, 2011(4) SA 149 (SCA) at paragraph 52

⁸ 2026 JOL 73621 (WCC) at paragraphs 18 to 19

‘The correct threshold is a possibility that the underlying *causa* may ultimately be removed, in which event irreparable harm will invariably result if the stay of execution is not granted.

The sole inquiry being simply whether or not the *causa* is in dispute. In this regard, and to the extent that the bulk of the first respondent’s oral and written argument was dedicated to the merits of the rescission application, this approach is incorrect. It is legally unsustainable and therefore unhelpful to the first respondent’s defense’.

45. *In casu* it is so that the underlying *causa* of Daniels J’s order is disputed and should that rescission be successful (as brought on the common law ground of fraud), it would materially alter such *causa*.
46. The requirement of a *prima facie* right is indispensable for the granting of an order as sought. Where the *interim* relief is sought *pendente lite* (as *in casu*) the Applicant is required to furnish proof which, if uncontested and believed at trial, would establish his or her right.⁹
47. It is not immediately obvious whether the Applicant is attempting to frame the alleged fraudulent conduct by the Respondent employees as a breach of contract and whether the applicant then suffered any damages due to the alleged conduct by the Respondent employees, i.e. them receiving certain payments during the period of unpaid lay-off instituted by the Applicant.
48. The Applicant alleges that the First Respondent received what can be termed a salary a from June 2020 virtually every month until December 2023. The amount reflected on the bank statement ranged from R14,620.00 in 2020 to R18,700.00 per month during 2022.
49. In respect of the Second Respondent, the Applicant alleges that he received an income of between R12,500.00 an R15,202.00 per month virtually monthly until December 2023.

⁹ *City of Johannesburg Metropolitan Municipality v. Mphefo & Others*, Case No. J787-2024 delivered on 30 July 2024 at paragraph 19

50. Although on the one hand the Applicant apparently does not take issue with the fact that it is indeed indebted to the employees as per the judgment of Daniels J, but on the other hand alleges that due to certain payments received from what appears to be some form of employment by the Respondent employees from, *inter alia*, Sweet Mart, it maintains that Daniels J would not have issued the order that he did was he aware of this alleged fraudulent conduct.
51. Although there is nothing that serves before this Court that indicates that the employees were not at liberty to earn an income or at least attempt to earn an income whilst being on unpaid unilateral lay-off as instituted by the Applicant, this is not for this Court to decide in the current application.
52. I had regard to the Applicant's heads of argument in support of his application. It relies on a number of judgments in support of the common law ground of fraud in justifying the rescission application as brought. The applicant referenced *Mabuza v. Nedbank Ltd & Another*¹⁰ confirming that the Court has inherent jurisdiction in terms of the common law to set aside a judgment on the ground of fraud. It was confirmed in that judgment that a final judgment of a Court of law being *res judicata* is not to be lightly set aside. On the other hand it stands to reason that a judgment procured by fraud by one of the parties, whether by forgery, perjury or in any other way such as fraudulently withholding material documents, cannot be allowed to stand.
53. In the matter of *Imatu obo J Erasmus & ABJ Craukamp v. City of Johannesburg & Others*¹¹ the Labour Court had occasion to deal with a rescission application based on exactly this ground.
54. One of the four questions to be answered in order to succeed in a claim that a judgment be set aside on the ground of fraud, is that the Applicant needs to allege and prove that *'that it diverged to such an extent from the true facts that the Court would, if the true facts had been placed before it, had given a*

¹⁰ 2015(3) SA 369 GP

¹¹ 2017 38 ILJ 2775 LC

judgment other than that which it was induced by the incorrect evidence to give'.¹²

55. It was further confirmed that the parties seeking a rescission must be able to show that because of the fraud, the Court was misled to pronounce a judgment which, but for the fraud, it would not have issued. There has to be a *nexus* between the fraud and the judgment to be set aside.¹³
56. Importantly, it was further confirmed that fraud can consist not only in the willful making of incorrect statements, but also in the withholding of material information with a fraudulent intent. The mere circumstances that certain material facts were not disclosed, does not in itself establish that there has been willful concealment. A fraudulent intent must be affirmatively proved.¹⁴
57. Although one may at first glance express doubt as to whether the Applicant may ultimately be successful in its quest for rescission, the fact of the matter remains that the Court hearing the rescission may well rule in favour of the Applicant, thereby removing the *causa* on which the sale of execution is based. The Applicant has established a *prima facie* right. Although unfortunate for the employees, this is the law as it stands.
58. On the issues of irreparable harm, alternative remedy and balance of convenience, it is so that the employees may have stated during the trial process before Daniels J that they have not been employed or earned income during this period. As pointed out by the Respondent's representative, Mr. Ngobeni, the applicant has the alternative remedy available to it to institute a claim for damages against the employees should they be of the view that they have suffered any loss.
59. The Applicant may also have been well-served to approach Daniels J to vary his order taking into account the amounts allegedly so received by the employees from a third party. That wasn't done, but the fact remains that if the

¹² *Imatu*, paragraph 25

¹³ *Imatu* paragraph 26

¹⁴ *Imatu*, paragraph 27

sale in execution isn't sought to be halted by this application, the harm to be suffered by the Applicant is evident. Its goods will be sold in execution whilst there is a pending rescission application. Its business operations will come to a halt. The alternatives that may be available to the Applicant would be insufficient to avert or cure the imminent threat.

60. *In casu*, the Respondent employees were on a unilaterally imposed unpaid lay-off due to no fault of their own. Although they have tendered duty, those duties were not accepted and the Applicant steadfastly refused to pay them their remuneration. They will suffer prejudice should the stay be granted, but in the Court's assessment the prejudice to be suffered by the Applicant should the stay not be granted outweighs the prejudice to be suffered by the employees. The balance of convenience favours the Applicant.
61. The employees have an order in their favour and it would remain payable should the rescission not be successful. The Applicant has also indicated in the application that the goods so attached would remain attached by the Sheriff pending the rescission application. Any further prejudice to the employees may also be ameliorated by expediting the current rescission application, as per this Court's Rules. The Applicants aver that it seeks to bring the matter to a close. For this reason there would be no impediment in approaching the Judge President of the Labour Courts to request (with a relevant motivation) to expedite the adjudication of the pending rescission application.

Urgency:

62. Although reservations may have been expressed by the employees as to whether this matter is genuinely urgent, the Court is entertaining the matter on urgent basis, especially seen in the light of the fact that the writ of execution stands to be executed by the Sheriff. It thus exercises its discretion to dispose of the matter on an urgent basis.

Condonation:

63. The Respondent employees were afforded approximately five calendar days (and approximately three Court days) to serve and file its opposing affidavit. It

served and filed the opposing affidavit two days late on the employees' version and three days late on the Applicant's version.

64. The employees applied for condonation for the late filing of the answering affidavit. Although this was opposed by the Applicant, a reasonable explanation was furnished by the employees for the lateness.
65. The employees averred that since the rescission application incorporated their banking statements, they needed to verify with FNB whether they indeed furnished the Applicant with the relevant banking statements, and a letter to this effect was directed to FNB on 31 August 2026.
66. A response from FNB was only received in the afternoon of 1 September 2026 and that is when the employees' representative commenced with the drafting of the opposing affidavit.
67. Further, the employees aver that considering the history of the matter, it was important that the answering affidavit properly addresses the matters raised.
68. In its opposition to the condonation application, it stated that the employees would have gathered no new information from the response of FNB as received on 1 September 2026, since it only then confirmed the dates on which FNB delivered the banking statements to the Applicant's attorney.
69. The Applicant also took issue of the fact that it took roughly one day from the time that a draft answering affidavit was prepared (Thursday, 3 September 2026), but it was only served towards the end of the day on Friday, 4 September 2026. It also took issue with the number and length of the annexures to the answering affidavit, describing it as an abuse. The annexures (although lengthy) assisted the Court in providing the relevant background to this matter. There is no merit in this point raised by the Applicant.
70. I am satisfied that as proper explanation has been made out for the delay. The delay is not excessive and the interest of justice militates against refusing condonation. Condonation is thus granted for the late filing of the answering affidavit.

Costs:

71. As with the previous attempts made by the Applicant and its related company, the Applicant seeks to avoid the implementation of Daniels J's order. It has instituted an urgent application against the Respondents, which they were justified in opposing. The Respondent employees have a judgment in their favour and their attempts at executing it is historically hampered by the Applicant. The Respondent employees argued that the current application is, yet again, an attempt to avoid the execution of the Labour Court's order and that the application is vexatious.
72. The Applicant attempted to make much of the fact that the annexures to the answering affidavit filed by the employees were voluminous and is in abuse of process. As set out hereinabove, this Court does not share this view and the annexures indeed assisted the Court in properly assessing what served before it.
73. Since this Court has a wide discretion on the issue of costs, it exercises its discretion having regard to the principles of law and fairness by making no costs order.

Conclusion:

74. A stay of execution is indeed an extraordinary remedy, as held in *Nedbank Ltd v. Msomi & Others* (2026 ZAGPJHC 613 delivered on 5 June 2026:
- ‘A successful litigant is ordinarily entitled to the fruits of its judgment and the Court will not lightly interfere with that entitlement. A stay is therefore not granted merely because a judgment debtor wishes to delay execution or because further litigation is contemplated. Rather, the discretion is exercised where real and substantial justice require intervention.’
75. A rescission application is pending in this Court on the common law ground of fraud. It is for the Court hearing the rescission to deal with the merits of that matter, which may ultimately remove the underlying *causa*.

76. It is indeed unfortunate that the employees have been denied their relief due to the various applications brought by the Applicant and its related company, Kamal Tanzania. The Applicant was unsuccessful in all its attempts to avoid compliance with the judgment and order of Daniels J.
77. That being said, the Applicant has the right to institute a rescission application, as it did. It has established sufficient grounds for the order sought.
78. On 15 September 2026 I issued the following order:
1. *The application is heard as one of urgency in terms of Rule 58 of these Labour Court Rules and the forms and service provided for in the Rules are dispensed with;*
 2. *The late filing of the First and Second Respondents' Answering Affidavit is condoned;*
 3. *The Third Respondent (the Sheriff of the High Court (Kulis River South) is interdicted and restrained from proceeding with the sale of execution of the attached property of the Applicant as scheduled for Tuesday, 16 September 2026 pursuant to a writ of execution issued (as a consequence of the judgment and order of Daniels J dated 9 June 2025 under case nr JS 619 / 23), and the effect of the order is stayed pending the determination of the rescission application by this Court (as brought by the Applicant on 25 August 2026) seeking to rescind and set aside the judgment and order; and*
 4. *There is no order as to costs.*
79. It was indicated to the parties that the judgment would be handed down on 16 September 2026. In the order as granted on 15 September 2026, I omitted to include therein that the parties may jointly approach the Judge President of the Labour Court with a request (properly motivated) to expedite the adjudication of the rescission application. I include that order hereunder and vary the order granted on 15 September 2026 to that extent.

Order:

80. In the premises I make the following order:

1. The application is heard as one of urgency in terms of rule 38 of the Labour Court Rules and the forms and service provided for in the Rules are dispensed with;
2. The late filing of the First and Second Respondents' answering affidavit is condoned;
3. The Third Respondent (the Sheriff of the High Court (Kwazulu-Natal)) is interdicted and restrained from proceeding with the sale or execution of the attached property of the Applicant as scheduled for Tuesday, 16 September 2026 pursuant to a writ of execution issued (as a consequence of the judgment and order of Daniels J dated 9 June 2025 under case nr JS 619 / 23), and the effect of the order is stayed pending the determination of the rescission application by this Court (as brought by the Applicant on 25 August 2026) seeking to rescind and set aside the judgment and order; and
4. The parties are directed to jointly approach the Judge President of the Labour Courts jointly with a request (properly motivated) to expedite the adjudication of the rescission application, seeking to rescind the order under case nr JS 619 / 23; and
5. There is no order as to costs.

BEKKER AJ

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv M Naidoo

Instructed by: DMA Attorneys

For the First and Second Respondents: Mr. T Ngobeni of Ngobeni Attorneys