



EMPLOYMENT

Urgency misconceived: A cautionary note on process, principle and professional responsibility

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The decision in *Wheatley v Commission for Conciliation, Mediation & Arbitration & others* (2026) 47 ILJ 997 (LC) provides a pointed reminder of the limits of urgent litigation in the Labour Court, and of the professional obligations resting on legal representatives who invoke it. At its core, the judgment is less about the underlying dispute and more about the disciplined application of procedural principle — and the consequences of departing from it.

The applicant approached the Labour Court on an urgent basis following a ruling by a CCMA commissioner refusing legal representation at arbitration. The relief sought was wide-ranging: the setting aside of the ruling, an order permitting legal representation, the removal of the commissioner, a directive compelling the CCMA to investigate and report to the court, and the remission of the matter for a de novo hearing. But the court found the application to be fundamentally flawed. First, the relief sought was legally unsustainable. The Labour Court does not determine, at first instance, whether legal representation should be permitted in CCMA proceedings. That discretion is expressly conferred on the commissioner in terms of the CCMA Rules. An attempt to secure such an order directly from the court reflects a misunderstanding of the statutory framework.

Second, the application was procedurally defective. The applicant sought to review and set aside the commissioner's ruling without placing the record of proceedings before the court, notwithstanding the clear prospect of factual disputes. As the court emphasised, the absence of the record in such circumstances is not a mere technical irregularity, but a substantive impediment to the proper adjudication of the matter.

Third, the choice of remedies was misplaced. Instead of seeking to compel production of the record, the applicant pursued a declaratory order that its absence constituted a "gross irregularity". The court reiterated that a gross irregularity must arise in the conduct of the arbitration proceedings themselves, not in subsequent administrative processes. Similarly, the attempt to compel the CCMA to conduct an

investigation and report to the court was rejected on the basis that the CCMA, as an independent statutory body, must be afforded the opportunity to address complaints through its own internal mechanisms before judicial intervention is sought.

The application for the commissioner's recusal was equally untenable. No prior request for recusal had been made to the commissioner. More fundamentally, the Labour Court does not have jurisdiction to order the recusal or removal of a commissioner at first instance. Any challenge to a commissioner's refusal to recuse must arise within the context of a review.

Overlaying these deficiencies was the issue of urgency. The court found that any urgency was self-created. There had been a material delay in launching the application, coupled with an attempt to impose compressed timelines on the respondents — including an organ of state — without proper justification. The court reaffirmed that urgent proceedings are not to be used to circumvent ordinary processes or to place respondents at an unfair procedural disadvantage.

In the result, the court exercised its discretion to dismiss the application, rather than merely striking it from the roll, on the basis that it constituted an abuse of process.

The most significant aspect of the judgment, however, lies in the costs order. The court ordered that the applicant's attorney pay costs de bonis propriis. While such orders are reserved for exceptional circumstances, the court found that the conduct of the litigation demonstrated a marked degree of incompetence, gross negligence and recklessness, coupled with a failure to properly engage with the applicable rules and legal principles.

The judgment underscores an important professional principle: legal representatives are not passive conduits for their clients' instructions. They are required to exercise independent judgment and to ensure that proceedings are conducted in accordance with the law and the rules of court. Where this duty is disregarded, the consequences may extend beyond the client to the practitioner personally.



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