

# Employment Law

## ALERT

13 FEBRUARY 2023



INCORPORATING  
**KIETI LAW LLP, KENYA**

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#### Non-compliance with the Labour Court Rules and Practice Manual vs Access to Justice: A balancing exercise

In *Greater Taung Local Municipality v South African Local Government Bargaining Council and others* [2023] ZALAC 1 (16 January 2023), the employer sought to review an arbitration award but was out of time when filing the record of the arbitration proceedings.



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## Non-compliance with the Labour Court Rules and Practice Manual vs Access to Justice: A balancing exercise

*In Greater Taung Local Municipality v South African Local Government Bargaining Council and others [2023] ZALAC 1 (16 January 2023), the employer sought to review an arbitration award but was out of time when filing the record of the arbitration proceedings.*

The Labour Appeal Court (LAC) considered whether the Labour Court (LC) misdirected itself when making the arbitration award an order of court with the knowledge that that the employer intended to bring an application for the reinstatement of the application.

For context, the facts of the matter are that the employee was charged with “*gross insubordination and unbecoming behaviour*” for taking leave which was not authorised. The employer dismissed him after a guilty verdict. Aggrieved by his dismissal, he referred an unfair dismissal claim to the bargaining council which found in his favour and ordered that he be retrospectively reinstated.

The employer took the matter on review; however, it filed the record of proceedings outside the prescribed 60-day period stipulated in paragraph 11.2.2 of the Labour Court Practice Manual. The employee then proceeded to bring a Rule 11

application to dismiss the review application and an application in terms of section 158(1)(c) of the Labour Relations Act 66 of 1995, as amended (LRA) to make the arbitration award an order of court. The employer opposed the Rule 11 application but did not file its answering affidavit within the stipulated time period and also did not seek condonation. The employee objected to the late filing without condonation.

The LC did not condone the late filling of the employer’s answering affidavit and so the Rule 11 application was treated as unopposed. The LC further found that because the employer’s review application had been deemed withdrawn in terms of paragraph 11.2.3 of the practice manual, the only option left for the employer was to bring an application for the reinstatement of its review application.



## Non-compliance with the Labour Court Rules and Practice Manual vs Access to Justice: A balancing exercise

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With regard to the application to make the arbitration an order of court, the LC found in favour of the employee and made the arbitration award a court order. Aggrieved by the order of the LC, the employer sought leave to appeal to the LAC, which was granted.

### Before the LAC

The LAC noted that an arbitration award which is made an order of court is not reviewable but appealable because of its effect. The employer argued that the LC misdirected itself by making an arbitration award an order of court in terms of section 158(1)(c) of the LRA, where in the same judgment, it held the employer could have reinstated its review application if it desired to do so. It argued that both cannot operate simultaneously.

The LAC set out the requirements to seek an order in terms of section 158(1)(c) of the LRA, which is (a) *"the agreement or award is sufficiently clear to enable the defaulting party to know exactly what it should do to comply with it"* and (b) *"the defaulting party has failed to comply with the terms of the agreement or award"*. The LAC held that once these two requirements are met, the LC must exercise its discretion when making the order and in the process must take into account *"all relevant facts and circumstances" that are "necessary to satisfy the demands of law and fairness"*.

The LAC held that the LC failed to meet the demands of law and fairness by not considering the fact that the employer had the right to seek the reinstatement of its review application. Importantly, the LAC also held that the LC did not consider the effect that

the order would have on its ability to bring a review application. The LC set the decisions of the LC aside and gave directions for the further conduct of the matter.

In closing, the LAC established that once an arbitration award is made an order of court, it is not reviewable and by doing so the LC denied the employer the opportunity to reinstate the review application, especially after being fully aware that that is what the employer intended to do. This case speaks to the importance of observing the rules of the LC, read together with the provisions of the LRA, however, it is also important to note that the rules are designed to safeguard the right to a fair hearing and access to justice and not hinder an exercise of those rights.

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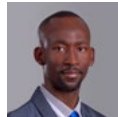
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