



# Employment Law

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SOUTH AFRICA

- Labour Court reaffirms strict compliance with affidavit commissioning requirements



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# Employment Law

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## Labour Court reaffirms strict compliance with affidavit commissioning requirements

In *Nhlanhla Mdakane and Others v Kwadukuza Municipality and Others* (2026/040712) [2026] ZALCD 11 (2 March 2026), the Labour Court struck an urgent application from the roll due to fundamental procedural defects in the applicant's papers.

The judgment is a reminder that defective affidavits, particularly those not properly commissioned, strike at the heart of an application. Where a founding affidavit is invalid, the court is left with no evidentiary basis upon which to exercise its powers.



### Background

The applicants, Mr Nhlanhla Mdakane, Ms Pamela Mntaka, and Mr Thembela Nxumalo, were senior employees of the Kwadukuza Municipality who were placed on precautionary suspension on 17 February 2026.

They launched an urgent application seeking declaratory and interdictory relief, including orders that their suspensions were unlawful for non-compliance with Regulation 6 of the Local Government: Disciplinary Regulations for Senior Managers, 2010, as well as section 30 of the Local Government: Municipal Structures Act 117 of 1998, read with section 160 of the Constitution. They argued the matter was urgent because they were suffering ongoing harm from the suspensions.

They further sought to have their suspensions lifted and to be permitted to return to work, together with a rule nisi calling upon the respondents to show cause why the relief should not be made final.





The respondents opposed the application and raised two preliminary objections:

## **1. Invalid founding affidavit**

The respondents argued that the founding affidavit was invalid because it did not comply with Regulation 4 of the Regulations Governing the Administration of an Oath or Affirmation (GN R1258 of 21 July 1972) (Regulations). Although the Commissioner of Oaths had stamped the affidavit, he had not signed it, as the Regulations require. There were also discrepancies between the initials on the affidavit and the names of both the person making the statement and the Commissioner of Oaths.

These defects, the respondents argued, rendered the affidavit a nullity and incapable of founding a valid application.

The applicants attempted to cure this defect by filing an explanatory affidavit from the Commissioner of Oaths, who explained that he had commissioned the affidavit on 23 February 2026 but had mistakenly omitted to sign it, and that he later signed it on 26 February 2026 in the presence of the deponent. However, the annexure purportedly reflecting the corrected affidavit was not attached to the explanatory affidavit and was only filed after the replying affidavit.

This attempt to fix the problem raised further concerns about the reliability and timing of the commissioning process.

## **2. Defective notice of motion**

The respondents also objected to the the notice of motion, which sought costs as interim relief; a prayer that was not urgent in nature. It was contended that the inclusion of such relief was inconsistent with the principles governing urgent applications.



## The court's findings

The Labour Court held that the failure to comply with Regulation 4 had not been cured. It was emphasised that it is impermissible to retrospectively sign a founding affidavit without clearly recording that the correction was made on a later date, as this creates the misleading impression that the affidavit was properly commissioned on the original date.

The court also noted that the supposedly corrected affidavit was not part of the replying affidavit and appeared to have been witnessed by a different Commissioner of Oaths.

Importantly, the court pointed out that the Regulations require a specific sequence: the person making the statement must sign the affidavit in the presence of the Commissioner of Oaths. The applicants' explanation suggested that this sequence had been reversed, further undermining the validity of the affidavit. This departure went against the safeguards meant to ensure that sworn evidence is genuine.

Without a valid founding affidavit, the court held that there was no proper application before it. Relying on Labour Court Rules 35 and 38, the court confirmed that an application must be supported by a valid affidavit, otherwise it is fatally flawed. The court stressed that it cannot overlook non compliance when the very existence of an affidavit is in question.

Given this conclusion, the court found it unnecessary to decide on the proposed amendment to the notice of motion. No costs order was made, recognising the practical difficulties often associated with urgent cases.



## Practical consequences and lessons

This judgment demonstrates that problems with how an affidavit is witnessed go to the heart of an application and cannot be dismissed as mere technicalities. An unsigned affidavit is not an affidavit at all, and trying to fix such problems after the fact will not be accepted.

The court's reasoning makes clear that urgency does not excuse failure to follow basic procedural requirements. Lawyers, especially those acting as Commissioners of Oaths, have a heightened responsibility to ensure that affidavits are properly witnessed, commissioned and filed. Failing to do so may result in urgent applications being removed from the roll, regardless of the relief sought or how urgent the matter is claimed to be.

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