

Public Service salaries: PSA files its papers at Constitutional Court

Members are aware that public servants have not received their salary increases with effect from 1 April 2020. The PSA was left with no option but to approach the Labour Appeal Court to enforce Clause 3.3. of PSCBC Resolution 1/2018.

As previously reported, the judgement of the Labour Appeal Court was not in favour of the PSA. In a nutshell, the Court ruled that clause 3.3. of the Resolution is declared unlawful and in contravention of sections 213 and 215 of the Constitution of South Africa and Regulations 78 and 79 of the Public Service Regulations.

The PSA is of the view that the judgement hinges more on moral sense than law and facts. If Cabinet did not have a mandate to sign the Resolution, then why only declare clause 3.3 unlawful instead of the entire agreement that covers other conditions of service such as housing, which the employer implemented in 2020.

The PSA and its legal team have studied the judgement and subsequently decided to file an appeal application at the Constitutional Court. The PSA's motion and its Founding Affidavit were filed and served on all interested parties, and subsequently at the Constitutional Court on 29 January 2021. The Constitutional Court has acknowledged receipt of the PSA's application (*acknowledgement of the application from the Registrar of the Constitutional Court attached*) and allocated case number 29/21 to the matter. The PSA expects the State to oppose the application, which will result in the matter being set down for a hearing at the Constitutional Court.

In the interim, the PSA and other unions are busy consolidating salary demands for the 2021/22-financial year. Negotiations are expected to commence in February 2021 and should labour's salary demands not be met, members could be expected to embark on industrial action to force the employer to meet labour's demands.

Members will be informed of developments regarding the Constitutional Court case and salary negotiations.

GENERAL MANAGER

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)

CC CASE NO:

LAC CASE NO: J500/20

In the matter between:

PUBLIC SERVANTS ASSOCIATION First Applicant

NATIONAL PROFESSIONAL TEACHERS 2021 -01- 29

ORGANISATION OF SOUTH AFRICA CC-003 Second Applicant

HEALTH AND OTHER SERVICES PERSONNEL IN DIE GRONDWETLIKE HOF
SUID-AFRIKA

TRADE UNION OF SOUTH AFRICA Third Applicant

SOUTH AFRICAN TEACHERS UNION Fourth Applicant

NATIONAL TEACHERS UNION Fifth Applicant

and

**THE MINISTER OF PUBLIC SERVICE
AND ADMINISTRATION** First Respondent

THE MINISTER OF BASIC EDUCATION Second Respondent

**THE MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES** Third Respondent

THE MINISTER OF POLICE Fourth Respondent

**THE NATIONAL DIRECTOR
OF PUBLIC PROSECUTIONS** Fifth Respondent

THE MINISTER OF FINANCE Sixth Respondent

**THE DEPARTMENT OF PUBLIC SERVICE
AND ADMINISTRATION** Seventh Respondent

**THE PUBLIC SERVICE CO-ORDINATING
BARGAINING COUNCIL** Eighth Respondent



DEMOCRATIC NURSING ORGANISATION OF SOUTH AFRICA	Ninth Respondent
NATIONAL EDUCATION HEALTH AND ALLIED WORKERS UNION	Tenth Respondent
POLICE AND PRISONS CIVIL RIGHTS UNION	Eleventh Respondent
NATIONAL UNION OF PUBLIC SERVICE AND ALLIED WORKERS UNION	Twelfth Respondent
SOUTH AFRICAN POLICING UNION	Thirteenth Respondent
SOUTH AFRICAN DEMOCRATIC TEACHERS UNION	Fourteenth Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

BE PLEASED TO TAKE NOTICE that the first to fourth applicants hereby make application to this Honourable Court for an order in the following terms:

1. Granting the first to fourth applicants leave to appeal to this Court against the whole of the judgment and order handed down by the Labour Appeal Court on 15 December 2020 under case number J500/20;
2. Upholding the leave to appeal and setting aside the judgment and order of the Labour Appeal Court and replacing it with the following:

2.1. The failure by the first to fifth respondents to implement salary adjustments as contemplated in Clause 3.3 of Resolution 1 of 2018 of the Public Service Co-Ordinating Bargaining Council is in breach of the contracts of employment of the first to fourth applicants' members;

2.2. The first to fifth respondents are ordered to implement the salary adjustments, as contemplated in Clause 3.3 of Resolution 1 of 2018 of the Public Service Co-Ordinating Bargaining Council, to the contracts of employment of the first to fourth applicants' members, with effect from 1 April 2020;

2.3. Further or alternative relief as the Court deems just and equitable;

2.4. Costs against any party that opposes this application, such costs be paid jointly and severally.

TAKE NOTICE FURTHER that the affidavit of **LEON ANDRE GILBERT**, attached hereto, is filed in support of this application.

TAKE NOTICE FURTHER that any party may respond to this application in writing within 10 (ten) days from the date upon which this application is lodged, indicating whether or not the application for leave to appeal is being opposed, and if so, the grounds of such opposition.

TAKE NOTICE FURTHER that the first to fourth applicants will accept service of all notices and processes in these proceedings at the address of its attorneys set out below.

DATED AT SANDTON ON THIS THE 29th **OF JANUARY 2021.**



BOWMAN GILFILLAN INC.

First to Fourth Applicants'

Attorneys

11 Alice Lane

SANDTON

Tel: (011) 669 9602/25

Fax: (011) 669 9001

Ref: Helen Wilsenach/Nadine Mather/6113295

TO: THE REGISTRAR CONSTITUTIONAL COURT

Constitutional Hill
1 Hospital Street
Johannesburg
Fax: (011) 339 5098
E-mail: generaloffice@concourt.org.za

AND TO: NATIONAL TEACHERS UNION

Fifth Applicant
47 Biyela Street
Empangeni
Durban, Kwazulu-Natal
3880
Tel: (035) 772 1608
Fax: (035) 772 1651
E-mail: csbarnes@natu.org.za

AND TO: THE MINISTER OF PUBLIC SERVICE AND ADMINISTRATION

First Respondent
Batho Pele House
546 Edmond Street
Arcadia
Pretoria
0083
Tel: (012) 336 1063/1183
Fax: (012) 336 1809/10
E-mail: CCory@justice.gov.za /
cronje.cin@gmail.com

AND TO: THE MINISTER OF BASIC EDUCATION

Second Respondent
222 Struben Street
Pretoria
0001
Tel: (012) 357 3000
Fax: (012) 323 5989/5027
E-mail: CCory@justice.gov.za /
cronje.cin@gmail.com

**AND TO: THE MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Third Respondent
124 WF Cnr Nkomo Street & Sophie De Bruyn Streets
Poyntons Building (West Block)
Pretoria
0001
Tel: (012) 305 8874
Fax: (012) 406 4680
E-mail: CCory@justice.gov.za /
cronje.cin@gmail.com

AND TO: THE MINISTER OF POLICE

Fourth Respondent
231 Pretorious Street
756-7th floor
Wachthuis Building
Pretoria
0002
Tel: (012) 393 2800
Fax: (012) 393 2812
E-mail: CCory@justice.gov.za /

cronje.cin@gmail.com

AND TO: THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Fifth Respondent
VGM Building
123 Westlake Avenue
Weavind Park
Silverton
Pretoria
0084
Tel: (012) 845 6758
Fax: (012) 804 7335
E-mail: CCory@justice.gov.za /
cronje.cin@gmail.com

AND TO: THE MINISTER OF FINANCE

Sixth Respondent
40 Church Street
Old Reserve Bank Building, 2nd Floor
Pretoria
0001
Tel: (012) 323 8911
Fax: (012) 323 3262
E-mail: ZZenani@justice.gov.za /
Zingisa.Zenani@treasury.gov.za

**AND TO: THE DEPARTMENT OF PUBLIC
SERVICE AND ADMINISTRATION**

Seventh Respondent
Batho Pele House
546 Edmond Street
Arcadia
0083
Tel: (012) 336 1063/00
Fax: (012) 336 1809/10
E-mail: CCory@justice.gov.za /
cronje.cin@gmail.com

**AND TO: THE PUBLIC SERVICE CO-ORDINATING
BARGAINING COUNCIL**

Eighth Respondent
Public Service
Co-ordinating Bargaining Council
Building B & D

260 Basden Avenue
Lyttleton
0176
Tel: (012) 644 8100
Fax: (012) 664 5834
E-mail: petuniab@pscbs.org.za /
frikkie@pscbs.org.za

**AND TO: DEMOCRATIC NURSING ORGANISATION
OF SOUTH AFRICA**

Ninth Respondent
605 Stanza Bopape Street
Pretoria
0001
Tel: (012) 343 2315
Fax: (012) 344 0750
E-mail: phillip@cth.co.za /
ntombi@cth.co.za

AND TO: NATIONAL EDUCATION HEALTH AND ALLIED WORKERS UNION

Tenth Respondent
NEHAWU House
56 Marshall Street
Marshalltown
Johannesburg
2000
Tel: (011) 833 2902 / (082) 455 2934
Fax: (011) 833 0757
E-mail: matome@mpmgroup.co.za /
mlungisi@mpmgroup.co.za

AND TO: POLICE AND PRISONS CIVIL RIGHTS UNION

Eleventh Respondent
1 Marie Road
Auckland Park
Johannesburg
2006
Tel: (011) 242 4600
Fax: (086) 625 3054
E-mail: phillip@cth.co.za /
ntombi@cth.co.za

**AND TO: NATIONAL UNION OF PUBLIC SERVICE
AND ALLIED WORKERS UNION**

Twelfth Respondent
Success Mataitsane House
814 Stanza Bopape Street
Eastwood
Pretoria
0083
Tel: (012) 342 1674
Fax (086) 667 8362
E-mail: generalsecretary@nupsaw.co.za /
smataitsane@nupsaw.co.za /
casemanagement@nupsaw.org.za

AND TO: SOUTH AFRICAN POLICING UNION

Thirteenth Respondent
85 Rauch Avenue
Georgeville
Pretoria
0184
Tel: (012) 940 2616
Fax: (086) 604 8996 / (012) 804 3017
E-mail: bridget@makhanyalaw.co.za /
admin@makhanyalaw.co.za

AND TO: SOUTH AFRICAN DEMOCRATIC TEACHERS UNION

Fourteenth Respondent
SADTU Village, Portion 74
Corner Dann Road & Loam Street
Glen Marais, ext 144
Kempton Park
1619
Tel: (011) 331 1444 / (011) 971 2000
Fax: (011) 331 1445
E-mail: phillip@cth.co.za /
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(HELD AT JOHANNESBURG)**

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LAC CASE NO: J500/20

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NATIONAL PROFESSIONAL TEACHERS

ORGANISATION OF SOUTH AFRICA	Second Applicant
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HEALTH AND OTHER SERVICES PERSONNEL

TRADE UNION OF SOUTH AFRICA	Third Applicant
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SOUTH AFRICAN TEACHERS UNION	Fourth Applicant
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NATIONAL TEACHERS UNION	Fifth Applicant
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and

THE MINISTER OF PUBLIC SERVICE AND ADMINISTRATION	First Respondent
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THE MINISTER OF BASIC EDUCATION	Second Respondent
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THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Third Respondent
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THE MINISTER OF POLICE	Fourth Respondent
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THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Fifth Respondent
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THE MINISTER OF FINANCE	Sixth Respondent
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THE DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION	Seventh Respondent
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THE PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL	Eighth Respondent
--	--------------------------

CA 29/21
Ninth Respondent

**DEMOCRATIC NURSING ORGANISATION
OF SOUTH AFRICA**

Ninth Respondent

**NATIONAL EDUCATION HEALTH
AND ALLIED WORKERS UNION**

Tenth Respondent

POLICE AND PRISONS CIVIL RIGHTS UNION

Eleventh Respondent

**NATIONAL UNION OF PUBLIC SERVICE
AND ALLIED WORKERS UNION**

Twelfth Respondent

SOUTH AFRICAN POLICING UNION

Thirteenth Respondent

**SOUTH AFRICAN DEMOCRATIC
TEACHERS UNION**

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DATED AT SANDTON ON THIS THE 29th **OF JANUARY 2021.**



BOWMAN GILFILLAN INC.

First to Fourth Applicants'

Attorneys

11 Alice Lane

SANDTON

Tel: (011) 669 9602/25

Fax: (011) 669 9001

Ref: Helen Wilsenach/Nadine Mather/61 13295

TO: THE REGISTRAR CONSTITUTIONAL COURT

Constitutional Hill

1 Hospital Street

Johannesburg

Fax: (011) 339 5098

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AND TO: NATIONAL TEACHERS UNION

Fifth Applicant

47 Biyela Street

Empangeni

Durban, Kwazulu-Natal

3880

Tel: (035) 772 1608

Fax: (035) 772 1651

E-mail: csbarnes@natu.org.za

AND TO: THE MINISTER OF PUBLIC SERVICE AND ADMINISTRATION

First Respondent
Batho Pele House
546 Edmond Street
Arcadia
Pretoria
0083
Tel: (012) 336 1063/1183
Fax: (012) 336 1809/10
E-mail: CCory@justice.gov.za /
cronje.cin@gmail.com

AND TO: THE MINISTER OF BASIC EDUCATION

Second Respondent
222 Struben Street
Pretoria
0001
Tel: (012) 357 3000
Fax: (012) 323 5989/5027
E-mail: CCory@justice.gov.za /
cronje.cin@gmail.com

**AND TO: THE MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Third Respondent
124 WF Cnr Nkomo Street & Sophie De Bruyn Streets
Poyntons Building (West Block)
Pretoria
0001
Tel: (012) 305 8874
Fax: (012) 406 4680
E-mail: CCory@justice.gov.za /
cronje.cin@gmail.com

AND TO: THE MINISTER OF POLICE

Fourth Respondent
231 Pretorius Street
756-7th floor
Wachthuis Building
Pretoria
0002
Tel: (012) 393 2800
Fax: (012) 393 2812
E-mail: CCory@justice.gov.za /

cronje.cin@gmail.com

AND TO: THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

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VGM Building
123 Westlake Avenue
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Silverton
Pretoria
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**AND TO: DEMOCRATIC NURSING ORGANISATION
OF SOUTH AFRICA**

Ninth Respondent
605 Stanza Bopape Street
Pretoria
0001
Tel: (012) 343 2315
Fax: (012) 344 0750
E-mail: phillip@cth.co.za /
ntombi@cth.co.za

AND TO: NATIONAL EDUCATION HEALTH AND ALLIED WORKERS UNION

Tenth Respondent
NEHAWU House
56 Marshall Street
Marshalltown
Johannesburg
2000
Tel: (011) 833 2902 / (082) 455 2934
Fax: (011) 833 0757
E-mail: matome@mpmgroup.co.za /
mlungisi@mpmgroup.co.za

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1 Marie Road
Auckland Park
Johannesburg
2006
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casemanagement@nupsaw.org.za

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85 Rauch Avenue
Georgeville
Pretoria
0184
Tel: (012) 940 2616
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admin@makhanyalaw.co.za

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TRADE UNION OF SOUTH AFRICA

Third Applicant

SOUTH AFRICAN TEACHERS UNION

Fourth Applicant

NATIONAL TEACHERS UNION

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and

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First Respondent

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CORRECTIONAL SERVICES**

Third Respondent

THE MINISTER OF POLICE

Fourth Respondent

**THE NATIONAL DIRECTOR
OF PUBLIC PROSECUTIONS**

Fifth Respondent

THE MINISTER OF FINANCE

Sixth Respondent

**THE DEPARTMENT OF PUBLIC SERVICE
AND ADMINISTRATION**

Seventh Respondent

THE PUBLIC SERVICE CO-ORDINATING

