

IN THE LABOUR COURT OF SOUTH AFRICA, HELD AT JOHANNESBURG

Not Reportable

Case No: JR2328/21

In the matter between:

MANARE MARTIN RAMAGOSHI

Applicant

and

DEPARTMENT OF HOME AFFAIRS

First Respondent

GENERAL PUBLIC SERVICE SECTOR BARGAINING COUNCIL **Second Respondent**

COMMISSIONER TEGOGO SONO N.O.

Third Respondent

Heard: 10 January 2024

Delivered: 12 February 2024

**Summary: Review application — time limit in terms of section 145(1) considered –
– review application out of time with no condonation application — Court has no
jurisdiction to entertain review application — Record not filed within 60 days and no
condonation application filed. Review application deemed to be withdrawn.**

JUDGMENT

VENTER AJ

Introduction

[1] The Applicant seeks to review and set aside an arbitration award issued by the Third Respondent (commissioner) on 03 August 2021 under the auspices of the Second

Respondent, the General Public Service Sector Bargaining Council. In his award, the commissioner found that the Applicant was fairly dismissed.

[2] The First Respondent opposed the review and raised the objection that the review was filed late, and condonation was not sought in the pleadings nor addressed after the failure to apply for condonation was raised.

[3] The First Respondent also submitted that the matter was deemed withdrawn due to the record being filed late.

[4] The Applicant submitted that the Respondent's notice of intention to oppose and answering affidavit were filed late.

Condonation

[5] A review application can only be considered properly brought once it was both served on the respondent parties and filed in Court.

[6] The time limit of six weeks, as contemplated by section 145(1) of the Labour Relations Act¹ (LRA), applies from when the Applicant received the award. It does not appear to be in dispute that the award was served on the parties on the date of the award, 03 August 2021. The six-week time limit is calculated based on the civil method of calculation, which includes the first day, excludes the last day, and includes weekends and public holidays. Applying this calculation method, the review application should have been submitted on or before 15 September 2021.

[7] It is unclear when the review was served on the Labour Court as it does not have the usual Labour Court stamp. The notice of motion and founding affidavit is dated 24 October 2021. The Labour Court received the application for a case number on 29 October 2021. Therefore, the review application could only have been filed on or after that date. It is not accompanied by a condonation application and is therefore not properly before this Court.

¹ Act 66 of 1995, as amended.

[8] From the Bar, the Applicant submitted that condonation was not required as the review application was filed on 28 September 2021, which is not the case.

[9] It was the contention of Counsel for the First Respondent that the condonation application was filed on 03 December 2021 and served on the First Respondent on 09 December 2021. This submission is more probable, although the pleadings and the documents in the Court file are silent on this.

[10] In correspondence from the First Respondent to the Applicant dated 24 November 2022, the First Respondent raised two preliminary issues with the Applicant:

10.1. That the review application was referred outside the prescribed time period of six weeks and is therefore not properly before this Court; and

10.2. In terms of Clause 11.2.3 of the Labour Court Practice Manual², a record of the arbitration proceedings must be filed within 60 days; failing to do so, the review application is deemed withdrawn.

[11] Despite this correspondence, the Applicant did not take heed. Instead, the Applicant's Counsel took issue that these preliminary matters were only raised after the pleadings closed.

[12] Where a review is filed late, this Court requires a condonation application to be considered and granted before the review can be heard.

[13] A condonation application must be brought on motion and supported by an affidavit. The requirements that must be addressed by an applicant in the supporting affidavit for condonation are trite. These requirements are the length of the delay, the explanation for the delay, the importance of the case (prejudice) and the prospects of success.³ These requirements are interrelated and must be holistically considered, with the proviso that the prospects of success may become irrelevant if there is no explanation for the delay.

[14] In dealing with an application for condonation, specifically when it came to the late filing of a review application, the Labour Appeal Court (LAC) in *A Hardrodt (SA) (Pty) Ltd v*

² Practice Manual of the Labour Court of South Africa, effective 2 April 2013.

³ *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C-E.

*Behardien and Others*⁴ referred with approval to the judgment in *Queenstown Fuel Distributors CC v Labuschagne NO and others*⁵ and said:

‘The principles laid down in that case included, firstly, that there must be good cause for condonation in the sense that the reasons tendered for the delay had to be convincing. In other words, the excuse for non-compliance with the six-week time period had to be compelling. Secondly, the court held that the prospects of success of the appellant in the proceedings would need to be strong. The court qualified this by stipulating that the exclusion of the appellant's case had to be very serious, ie of the kind that resulted in a miscarriage of justice.’

[15] The general principles applicable to deciding applications for condonation apply even more stringently when it comes to review applications.

[16] The first difficulty the applicant has is that she did not make a proper application for condonation in the first place. The notice of motion does not contain a prayer in which she asks for condonation to be granted. The Respondents are thus not alerted in the notice of motion to the fact that the applicant would be seeking condonation and that the Respondents would be entitled to oppose such relief, which is required by Rule 7 of the Labour Court Rules⁶, in terms of which any application for condonation must be brought. In the absence of this, it would not be proper for this Court to decide the issue of condonation.

[17] In *Booyesen Bore Drilling (Pty) Ltd v National Union of Mineworkers and Others*⁷ the Court said:

‘Insofar as the application for condonation is concerned, this could only be entertained by the Labour Court on notice to the appellant. The notice was necessary in the light of the wording of the application for condonation and the failure by the respondents to comply with rule 7(e) of the rules that regulate proceedings in the Labour Court or to call upon the appellants to file their opposition, if any, to the application within a given time ...’

⁴ (2002) 23 ILJ 1229 (LAC) at para 4.

⁵ (2000) 21 ILJ 166 (LAC).

⁶ GN 1665 of 1996 Rules for the Conduct of Proceedings in the Labour Court.

⁷ (2011) 32 ILJ 2075 (LAC) at para 13.

[18] Counsel for the Applicant persisted that the review application was not filed out of time despite the apparent dates on their own application for a court date, notice of motion and answering affidavit. She lamented that the First Respondent only raised the preliminary issue after pleadings had closed. This complaint, although unwarranted as it is incumbent on the Applicant to ensure compliance with the six-week timeframe and condonation requirements, does not cure the lateness of the review application. No explanation for any late filing was offered, nor was the prejudice addressed, and therefore attending to the prospects of success is unnecessary.⁸

[19] In conclusion, the Applicant's review application has been brought out of time without a proper application for condonation.

Late filing of record

[20] The Second Respondent dispatched the record on 11 March 2022. The Applicant served and filed the transcript of the record on 09 June 2022.

[21] The Practice Manual clauses 11:2.2 and 3 read:

'11.2.2. For purposes of Rule 7A(6), records must be filed within 60 days of the date on which the applicant is advised by the registrar that the record has been received.

11.2.3. If the applicant fails to file a record within the prescribed period, the applicant will be deemed to have withdrawn the application, unless the applicant has during that period requested the respondent's consent for an extension of time and consent has been given.'

[22] The Applicant filed the record late. No condonation application was submitted for this late submission, and the First Respondent did not consent to the late filing.

[23] The Practice Manual provides that the review application is deemed withdrawn if the record is filed outside the 60 days.

Late filing of the notice to oppose and answering affidavit

⁸ *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC) at para 10.

[24] As the application is deemed withdrawn and is fatally flawed in the absence of a condonation application for the late filing of the review, it is not necessary to address the late filing of the notice to oppose and answering affidavit.

Costs

[25] Although the review application was doomed from the start, it is not a matter where a cost order is appropriate. This case reflects a tardy approach to litigation from both parties. All pleadings were filed late and did not address the preliminary issues raised before the Court.

Order

1. The Court does not have jurisdiction to entertain the review application, and the application is struck from the roll.
2. The review application is, in any event, deemed to have been withdrawn.
3. There is no order as to costs.

T Venter

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Ms Angelinah Boshego of Boshego Attorneys

On behalf of the Respondent: Ms Mercy Mashiane

Instructed by: the State Attorney