



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR726/22

In the matter between:

EHLANZENI TVET COLLEGE

Applicant

and

PSA ON BEHALF OF MAHLATSE LUCKY RAMOLEFE

First Respondent

EDUCATION LABOUR RELATIONS COUNCIL

Second Respondent

NTATE MABILO N.O.

Third Respondent

Heard: 21 November 2024

Delivered: 17 January 2025

JUDGMENT

ORR, AJ

Introduction

- [1] The application before me is one for the reinstatement of a review application. The review application in this matter was deemed to be withdrawn by virtue of the provisions of Clause 11.2.3 of the Practice

Manual¹, in that the record in the review application was not filed within 60 days of the Registrar advising that it was ready for collection. The first respondent (PSA) opposes the application although its affidavit opposing the application was filed out of time and it accordingly seeks condonation for that period. Also before me is an application by the PSA in terms of Rule 11 of the Labour Court Rules² for the dismissal of the review application. The Rule 11 application was delivered on 19 September 2022 before the record was delivered and before this application for reinstatement of the review was brought. The parties were *ad idem* that, in those circumstances the real issue for determination by the Court was the reinstatement application. Should that application be granted, the dismissal application would fall away. Conversely, should reinstatement be refused, the relief sought in the dismissal application would become academic.

Condonation application

- [2] This Court has long held that an application for reinstatement is akin to a condonation application.³ The principles applicable to condonation can therefore be set out briefly.
- [3] The general principles applicable to condonation are well established. Condonation is not there for the asking, nor are applications for condonation a mere formality.⁴ A party seeking condonation must make out a case for the indulgence sought and bears the onus to satisfy the court that condonation should be granted.
- [4] The court is required to exercise a discretion, having regard to the extent of the delay, the explanation proffered for that delay, the applicant's prospects of success, and the relative prejudice to the parties that would be occasioned by the application being granted or refused. Ordinarily,

¹ Practice Manual of the Labour Court of South Africa effective 1 April 2013 (repealed, 17 July 2024).

² GN 1665 of 1996: Rules for The Conduct of Proceedings in the Labour Court (repealed, 17 July 2024).

³ See: *Tadyn Trading CC t/a Tadyn Consulting Services v Steiner and others* [2016] ZALCJHB 42; (2014) 35 ILJ 1672 (LC).

⁴ See: *NUMSA and Another v Hillside Aluminium* [2005] ZALC 25; [2005] 6 BLLR 601 (LC); *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; [2014] 1 BLLR 1 (CC).

these factors are not individually decisive but are interrelated and must thus be weighed against one another. In this Court, that formulation which has its roots in *Melane v Santam Insurance Co Ltd*⁵ has long been qualified by the rule that where there is an inordinate delay that is not satisfactorily explained, the applicant's prospects of success are immaterial.⁶

- [5] The application for condonation must offer an explanation for the full length of the delay.⁷
- [6] Finally, if there is any delay in seeking condonation, this too must be adequately explained.⁸
- [7] The delay in this matter is significant. The record should have been filed by 10 August 2022. It was in fact only filed on 6 October 2022, a delay of almost two months. Some of the delay is explained by the fact that the record as originally provided to the applicant was defective. A corrected record was only provided by the transcribers on 31 August 2022.
- [8] The further period of delay is attributed to the fact that the applicant's attorney had to compare the previous defective record with the corrected record to ensure that all the defects had been remedied. This process took much longer than expected because of problems which the attorney had with her son at this time. He has bipolar disorder and has substance abuse issues. During August and September 2022, criminal proceedings were underway against him and he was prone to violent outbursts. Her son was eventually involuntarily institutionalised on 22 September. All of this meant that the checking of the record took much longer than might have been anticipated.
- [9] The application for reinstatement of the review was made within a few weeks of the record being filed.

⁵ 1962 (4) SA 531 (A).

⁶ See: *National Union of Mineworkers v Council for Mineral Technology* [1998] ZALAC 22; [1999] 3 BLLR 209 (LAC).

⁷ *eThekweni Municipality v Ingonyama Trust* [2013] ZACC 7; 2013 (5) BCLR 497 (CC).

⁸ *CWIU and Another v Ryan and Others* [2001] 3 BLLR 337 (LC); *Darries v Sheriff, Magistrate's Court Wynberg and Another* 1998 (3) SA 34 (SCA).

- [10] In opposing the application for reinstatement, the PSA's primary contention is that the applicant was obliged to seek an extension of the 60-day period in terms of Clause 11.2.3 of the Practice Manual. The applicant's failure to do so, according to the PSA, is fatal to the reinstatement application and it should be dismissed on this basis alone.
- [11] In order to assess the merits of this contention it is prudent to set out the first two sentences of Clause 11.2.3 in full: 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. If consent is refused, the applicant may, on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time.
- [12] Mr Venter, for the applicant, argued that properly considered, the Practice Manual provides that unless an extension is sought, the deemed withdrawal of the review occurs, requiring a reinstatement application. The clause does not make it obligatory to seek an extension and the failure to do so does not preclude an applicant from bringing a reinstatement application. I agree, it is the absence of the request for an extension that results in the automatic deemed withdrawal of the review.
- [13] In the alternative, the PSA opposed the application for reinstatement on the basis that the explanation tendered by the applicant was inadequate given the lengthy delay, that there were no prospects of success in the review and that Ramolefe, the PSA's member, would be unduly prejudiced if reinstatement was granted.
- [14] I have already found that the delay in this matter is significant. As far as the explanation goes, the conduct of the applicant's attorney can fairly be criticised. She should have sought an extension of the time period or briefed junior counsel to check the record. However, it must be borne in mind the enormous emotional distress that she must have been suffering at the time. As urged by Mr Venter, I accept that her conduct must be

assessed through the prism of this emotional distress. I, therefore, find that the delay has at least been sufficiently explained to the degree that I can have regard to the prospects of success in this matter.

[15] At this stage, no answering affidavit has been filed in the review application. The PSA took the view that, given the review was deemed to be withdrawn, they were not obliged to deliver an answering affidavit. I accept that this view is legally correct, but it means I only have the applicant's version before me in assessing the prospects of success in this matter. On that basis, I am of the view that the prospects of success favour the applicant.

[16] As far as prejudice is concerned, the applicant contends that they would suffer significant prejudice if the reinstatement were refused. They hold the view that Ramolefe was dishonest, not only about a previous criminal conviction but also about a previous dismissal. The refusal of reinstatement would bar them from challenging the arbitration award which found to the contrary, a challenge which I have already found has some merit. The PSA disputes that any prejudice would be suffered by the applicant if reinstatement were refused but does not raise any prejudice which would be suffered by Ramolefe if reinstatement were granted. In those circumstances, I find that the balance of prejudice favours the applicant.

[17] For all these reasons I am inclined to grant the reinstatement application. Neither party pressed for costs, correctly in my view. I accordingly make the following orders:

Order

1. The application for reinstatement of the review application is granted.
2. The first respondent's answering affidavit should be delivered within ten days of the receipt of this judgment.
3. There is no order as to costs.

C Orr

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv R Venter

Instructed by: Mnguni Attorneys

For the First Respondent: Adv A Burhali

Instructed by: Zwane Inc Attorneys

LABOUR COURT