



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JS 295/2024

In the matter between:

**SOUTH AFRICAN MUNICIPAL WORKERS
UNION obo MAKHATINI AND 13 OTHERS**

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Respondent

Heard: 24 January 2025

Delivered: 31 January 2025

This judgment was handed down electronically by consent of the parties' representatives by circulation to them via email. The date for hand-down is deemed to be 31 January 2025.

JUDGMENT

PRINSLOO J

Background facts

[1] The individual applicants (Applicants) were employed by the Respondent and their services were terminated during August 2023. The context within which their dismissals followed was set out in a judgment (by Snyman AJ) on 18 September 2023, and I will set out a brief summary thereof.

[2] On 20 July 2023, the applicant trade union (SAMWU) sent a letter to the Respondent, requesting it to reconsider the decision not to honour the 2021 collective agreement relating to wages and conditions of employment. The Respondent however reiterated its position that it would seek exemption from the terms of the said collective agreement. The position adopted by the Respondent then prompted the employees to embark upon an unprotected work stoppage on 24 July 2023, which interrupted ordinary service delivery functions and resulted in the intimidation of other non-striking employees and members of the public. The Respondent disseminated a number of circulars or ultimatums to the striking employees, calling upon them to return to work and to desist from their unlawful behaviour and a final ultimatum was issued on 27 July 2023, calling upon them to resume their ordinary duties by 10:30 on 28 July 2023. The final ultimatum was not adhered to and on 28 July 2023, the Respondent approached the Labour Court for urgent relief. A rule *nisi* was issued on 28 July 2023 (by Mabaso AJ), with the return date on 13 September 2023. SAMWU anticipated the return date to 8 September 2023.

[3] The Respondent's case was that, notwithstanding the Court order that was issued on 28 July 2023, the strike action continued and SAMWU did very little to intervene and to bring the strike action to an end.

[4] The Court, after considering the affidavits filed, found that the employees indeed embarked upon unprotected strike action as of 24 July 2024 and that such strike action persisted, notwithstanding the Court order of 28 July 2023. The rule *nisi* was confirmed and SAMWU and its members were ordered to pay the costs.

[5] During August 2023, the Applicants received notices of intended dismissal from the Respondent and in the notice, it was *inter alia* recorded that:

‘You are further informed of the following:

2.1 A first ultimatum was sent to the striking employees on 24 July 2023 instructing them to return to work by 15h00 on the same day.

2.2. A second ultimatum was sent to the striking employees on 26 July 2023 reminding them that their conduct was unlawful.

2.3. A final ultimatum was issued on 27 July 2023 advising all striking employees to return to work and to execute or perform their normal day to day duties by no later than 10h30 on 26 July 2023 in accordance with their employment contracts.

2.4. Despite the above ultimatum, you have engaged in conduct which is a furtherance of an unprotected and unlawful strike.

2.5. The City on 28 July 2023, obtained an urgent court interdict prohibiting and restraining employees from performing any acts of destruction of the City of Tshwane’s property and any private property or performing acts of intimidation to any of the City’s employees and/or its patrons.

Your conduct as alluded in paragraph 1 of the above, is viewed as a furtherance of an unprotected strike and is direct violation of the court interdict.

You are herewith informed that your conduct to further the aim of an unprotected strike, is in breach of clause 18 of the Disciplinary Code and Protected Collective Agreement.

You are herewith provided with an opportunity to provide written reasons why the City should not terminate your services for the reasons outlined herein.

Your written response must be submitted to the following email address: [s\[...\]](#) / [l\[...\]](#), by no later than Friday, 25 August 2023 at 11h00.’

[6] SAMWU responded to the Respondent’s invitation to provide written reasons as to why the striking employees should not be dismissed. Instead of making representations on behalf of the employees, SAMWU took issue with the procedure adopted by the Respondent, and referred to the terms of the disciplinary code and insisted on strict compliance with the disciplinary procedure.

[7] During August 2023, the Applicants were dismissed and the gist of the letter of dismissal was recorded *inter alia* as:

‘As you know, on 2 August 2023, the City of Tshwane Metropolitan Municipality (“the City) issued you with a notice of intention to terminate your services. The purpose of the letter was to afford you the opportunity to provide reasons why your services should not be terminated for your failure or refusal to comply with a court order duly obtained by the City interdicting SAMWU and its members from engaging in an unprotected strike and further breaching the Disciplinary Procedures Collective Agreement.

After careful consideration of the representations made on your behalf by your trade union SAMWU, I was not persuaded with your explanation why you disregarded the court order and continued to participate in an unlawful and unprotected strike and in the circumstances, I have decided to terminate your services from your employment with the City from the date of receipt of this letter.

You have the right to declare a dispute with the South African Local Bargaining Council within a period of thirty (30) from the date of receipt of this letter regarding the termination of your services by the City.’

[8] SAMWU subsequently referred an unfair dismissal dispute on behalf of the Applicants to the South African Local Government Bargaining Council (SALGBC), indicating that the reason for dismissal was unknown.

[9] The dispute was conciliated on 30 October 2023 and a certificate of outcome was issued, indicating that the matter remained unresolved and may be referred to arbitration. The dispute was referred to arbitration and on 30 January 2024 at the commencement of the arbitration proceedings, the Respondent raised a jurisdictional point to the effect that the SALGBC did not have jurisdiction to arbitrate the dispute as the Applicants were dismissed for participating in an unprotected strike. The dispute had to be referred to the Labour Court for adjudication in terms of the provisions section 191(5)(b)(iii) of the Labour Relations Act¹ (LRA).

¹ Act 66 of 1995, as amended.

[10] SAMWU opposed the jurisdictional point and submitted that the SALGBC had jurisdiction to arbitrate the dispute because the reason for dismissal was unknown. The Applicants insisted that they did not know the reason for dismissal and that section 191(5)(a)(iii) of the LRA places a mandatory obligation on the SALGBC to arbitrate the dispute where the reason for dismissal was unknown. SAMWU further submitted that the Respondent's reliance on section 191(5)(b) of the LRA was misplaced as the election to refer an unfair dismissal dispute to the bargaining council or the Labour Court, lies only with the employee and not the employer.

[11] The presiding arbitrator (K Ramokgadi) issued a jurisdictional ruling on 11 March 2024 to the effect that the SALGBC lacked jurisdiction to arbitrate the dispute. The arbitrator recorded that the Applicants alleged not to know the reason for their dismissal, despite being in possession of the dismissal letter. It was recorded that if the Applicant's contention were to be entertained that they did not know the reason for dismissal, it is trite that the Respondent would then proffer the reason for dismissal and the Respondent had expressly indicated that it was strike-related.

[12] The Labour Appeal Court (LAC) in *Fidelity Cash Management Service v Commission for Conciliation, Mediation and Arbitration and others*² held that:

'It is an elementary principle of not only our labour law in this country but also of labour law in many other countries that the fairness or otherwise of the dismissal of an employee must be determined on the basis of the reasons for dismissal which the employer gave at the time of the dismissal.'

[13] The Applicant filed a statement of case with the Registrar of the Labour Court on 6 June 2024 together with an application for condonation for the late filing of the statement of case.

[14] The Respondent opposed the application for condonation.

The test for the grant of condonation

² [2007] ZALAC 12; (2008) 29 ILJ 964 (LAC) at para 32.

[15] The relevant legal principles to be applied in an application for condonation are well established.

[16] This Court has a discretion, which must be exercised judicially on a consideration of the facts of each case and in essence, it is a matter of fairness to both sides.³

[17] In *Melane v Sanlam Insurance Co Ltd*⁴, it was held that:

‘.... Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. ... What is needed is an objective conspectus of all the facts.’

[18] In this Court, however, the principles have 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.

[19] This Court has conventionally applied the approach that, in the absence of a satisfactory explanation for a delay, the applicant’s prospects of success are ordinarily irrelevant.⁵ This principle was confirmed in *National Education Health and Allied Workers Union on behalf of Mofokeng and Others v Charlotte Theron Children’s Home*⁶, where the LAC held that without a reasonable and acceptable explanation for a delay, the prospects of success are immaterial.

³ D Harms, ‘Civil Procedure in the Superior Court’, LexisNexis at B27.6.

⁴ 1962 (4) SA 531 (A) at 532 C - F.

⁵ See: *NUM v Council for Mineral Technology* [1998] ZALAC 22; [1999] 3 BLLR 209 (LAC) (*NUM*).

⁶ [2004] ZALAC 9; (2004) 25 ILJ 2195 (LAC) at para 23.

[20] In *NUM v Council for Mineral Technology*⁷, the LAC was very clear that in the absence of a reasonable explanation, considerations such as the prospects of success become irrelevant. It was said that:

‘The approach is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefore, the prospects of success and the importance of the case. These facts are interrelated: they are not individually decisive. What is needed is an objective conspectus of all the facts. A slight delay and a good explanation may help to compensate for prospects of success which are not strong. The importance of the issue and strong prospects of success may tend to compensate for a long delay. There is a further principle which is applied and that is that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused...’

[21] In *Colett v Commission for Conciliation, Mediation and Arbitration and Others*⁸, the LAC also confirmed that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial and without good prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused.

[22] The onus is on the applicant seeking condonation to satisfy the court that condonation should be granted. In employment disputes, there is an additional consideration which applies in determining whether the onus has been discharged, as was held in *National Union of Metalworkers of SA on behalf of Thilivali v Fry’s Metals (A Division of Zimco Group) and Others*⁹:

‘There is, however, an additional consideration which applies in employment disputes in determining whether an applicant for condonation has discharged this onus. This is the fundamental requirement of expedition. The

⁷ *NUM supra* at para 10.

⁸ [2014] ZALAC 1; (2014) 35 ILJ 1948 (LAC).

⁹ [2014] ZALCJHB 115; (2015) 36 ILJ 232 (LC) at para 25.

Constitutional Court has, as a matter of fundamental principle, confirmed that all employment law disputes must be expeditiously dealt with and any determination of the issue of good cause must always be conducted against the back drop of this fundamental principle in employment law.'

[23] The fundamental requirement of expedition is not to be ignored. In *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*¹⁰ (*Toyota SA*), the Constitutional Court emphasised that one of the fundamental purposes of the LRA was to establish a system for the quick adjudication of labour disputes. When it assesses the reasonableness of a delay, the court must not lose sight of this purpose.

[24] In summary: the Courts have endorsed the principle that where there is a delay with no reasonable, satisfactory and acceptable explanation for the delay, condonation may be refused without considering prospects of success and the grant condonation where the delay is not explained, may not serve the interests of justice. The expeditious resolution of labour disputes is a fundamental consideration.

[25] Condonation for delays in all labour law litigation is not simply there for the taking. The starting point is that an applicant in an application such as the present seeks an indulgence and bears the onus to show good cause.

[26] It is in this context that the application for condonation stands to be determined.

The degree of lateness

[27] The first aspect to be considered is the degree of lateness.

[28] Section 191(11)(a) of the LRA prescribes a 90-day period for referral of a dispute to the Labour Court for adjudication. The 90-day period is calculated from the date a commissioner has certified that the dispute remained unresolved.

¹⁰ [2015] ZACC 40; (2016) 37 ILJ 313 (CC).

[29] On 30 October 2023, the SALGBC issued a certificate of outcome to the effect that the matter remained unresolved. The Applicant's dispute relating to unfair dismissal for participation in an unprotected strike had to be referred within 90 days from 30 October 2023, thus it had to be filed by 28 January 2024. The statement of case was filed with this Court on 6 June 2024, clearly outside the prescribed 90-day period.

[30] The Applicant's dispute was referred four months or 93 Court days late.

[31] The delay is no doubt material given the context within which labour litigation takes place and the system that is designed to ensure the effective and expeditious resolution of labour disputes. This is even more so where the LRA provides for a period of 90 days to file a statement of case, which period is in itself generous and lengthy.

[32] The degree of lateness is excessive and material. The degree of lateness should however not be considered in isolation.

Explanation for the lateness

[33] A failure to comply with the generous period of 90 days, has to be explained and the reasonableness of the delay should be considered by having regard to the explanation for the delay.

[34] As the Applicants seek an indulgence from the Court and as they bear the onus to satisfy the Court that condonation should be granted, it is incumbent upon them to provide the Court with a full explanation for every period of the delay. It is not sufficient simply to list significant events that occurred during the period in question as that does not assist the Court properly in assessing the reasonableness of the explanation.¹¹

¹¹ See: *Independent Municipal & Allied Trade Union on behalf of Zungu v SA Local Governing Bargaining Council and Others* [2009] ZALC 137; (2010) 31 ILJ 1413 (LC).

[35] The explanation for the delay has to be compelling, convincing and comprehensive and should cover every period of the delay. In the founding affidavit filed in support of the application for condonation, the Applicants provided the below as an explanation for the delay.

[36] The deponent to the founding affidavit in the condonation application, Mr Baloyi, a union official of SAMWU, explained that:

‘While I was engaged with other affairs of employees, my colleague, Emma Moloko informed me that she has already referred the matter to the Labour Court under case number JS 295/2024 which is a matter of SAMWU on behalf of Johannes Mahlangu and 44 others and same was filed and the Applicant employee is part of those employees. We all then attended a consultation with the Applicant’s current attorneys of record who advised that since these matters were referred to the bargaining council separately and there is a need to file condonation applications, it is prudent that condonation application be filed separately as well. The matter of S P Makhathini and others had a separate certificate of outcome and a jurisdictional ruling and it makes sense that these matters be dealt with separately. I was made aware that for this matter of S P Makhathini, it is important to account for the full period of the delay from 30 October 2023 when the certificate of outcome was issued stating that the matter remained unresolved.’

[37] Mr Baloyi further explained that he did not know that when the certificate of outcome was issued on 30 October 2023, the Respondent would object to the jurisdiction of the SALGBC.

[38] He also explained that the Applicant opposed the Respondent’s jurisdictional point because the notice of intention to terminate the Applicant’s employment made certain allegations which required evidence to be led in order to prove that indeed they were involved in an unprotected industrial action.

[39] I already alluded to the fact that the Applicant should provide a full explanation for every period of the delay. The Applicant has to explain the period between 28

January 2024, when the statement of case had to be filed, and 6 June 2024, when it was indeed filed.

[40] What had been presented to this Court is not an explanation but rather a vague statement of facts or reference to events, which had not been explained or put into context as to how it contributed to the delay. The 'explanation' tendered *in casu* is bereft of any substance and is wholly inadequate, there is no detailed account of or explanation as to material periods of the delay and this Court is in no position to understand or assess the reasonableness of the delay. The Applicant bears the onus to show that there is good reason for condonation to be granted but failed dismally in this regard.

[41] This is so for the following reasons: First, the deponent does not tell this Court which "*other affairs of employees*" he was engaged with or when this engagement was. Mr Baloyi stated that his colleague, Emma Moloko informed him that she had already referred the matter to the Labour Court under case number JS 295/2024, which is a matter of SAMWU on behalf of Johannes Mahlangu and 44 others and same was filed and the Applicant employee is part of those employees. This statement is factually incorrect and misleading. This is case number JS 295/2024, which involves Mr Makhathini and 13 others and this matter was only filed on 6 June 2024. The matter of SAMWU on behalf of Johannes Mahlangu and 44 others was filed on 24 April 2024, under case number JS 211/2024 and it does not include the Applicants under JS 295/2024.

[42] Second, Mr Baloyi explained that they all attended a consultation with the Applicant's current attorneys of record, who advised that there was a need to file condonation applications and as the matter of S P Makhathini and others had a separate certificate of outcome and a jurisdictional ruling, these matters should be dealt with separately. Once again, there is no detail to explain when the consultation with the attorneys took place and how this contributed to the delay in filing the statement of case.

[43] Third, Mr Baloyi explained that he did not know that when the certificate of outcome was issued on 30 October 2023, the Respondent would object to the jurisdiction of the SALGBC.

[44] Section 191(5) of the LRA provides that if a dispute remains unresolved after conciliation, the dispute must be referred to the Labour Court if the reason for dismissal is the employee's participation in a strike that does not comply with the provisions of Chapter IV. The LRA has been in place since 1995 and the provisions of section 195 are not new – on the contrary, it is by now trite that a dismissal for participation in unprotected strike action is to be adjudicated by the Labour Court. The Applicants are represented by SAMWU, a well-established and experienced trade union.

[45] The SALGBC never had jurisdiction to adjudicate a dispute about the fairness of a dismissal for participation in unprotected strike action. It is irrelevant and of no moment that Mr Baloyi did not know that, when the certificate of outcome was issued on 30 October 2023, the Respondent would object to the jurisdiction of the SALGBC. The SALGBC's lack of jurisdiction is obvious. In any event, Mr Baloyi failed to explain how his lack of knowledge that jurisdiction would be challenged contributed to the delay or caused SAMWU to file the statement of case late.

[46] Fourth, Mr Baloyi explained that SAMWU opposed the Respondent's jurisdictional point because the notice of intention to terminate the Applicants' employment made certain allegations which required evidence to be led in order to prove that indeed they were involved in an unprotected industrial action. Once again, this statement is so vague that it is of no assistance to this Court to understand the reasons for the delay. Which allegations required evidence, what evidence was required and why or how did this cause the late filing of the statement of case?

[47] In any event, it is evident from the jurisdictional ruling of 11 March 2024 that the Applicant opposed the Respondent's jurisdictional point at the arbitration stage, not because there was a need to lead evidence, as alleged by Mr Baloyi, but because the Applicant persisted with its stance that the reason for dismissal was unknown. SAMWU's case in opposing the jurisdictional challenge was that section

191(5)(a)(iii) of the LRA places a mandatory obligation on the SALGBC to arbitrate the dispute where the reason for dismissal was unknown, that the Respondent's reliance on section 191(5)(b) of the LRA was misplaced and that the election to refer an unfair dismissal dispute to the bargaining council or the Labour Court, lies only with the employee and not the employer. Mr Baloyi's version before this Court as to the reasons for opposing the jurisdictional challenge is disingenuous and disconnected from the real reason for SAMWU's opposition.

[48] The attitude adopted by SAMWU was opportunistic and not in the interest of the members it represented. It was evident from the notice of intention to terminate employment, wherein the Applicants were invited to make submissions as to why their services should not be terminated for participation in an illegal and unprotected strike as well as the notice of termination that the Applicants' services were terminated because they participated in an unprotected strike and made no submissions as to why their services should not be terminated. The Applicant was well aware of the reason for dismissal and it was misleading and opportunistic to proceed on the basis that the reason for termination was not known. Mr Baloyi's explanation that the notice of intention to terminate the Applicant's employment made certain allegations which required evidence to be led is not substantiated or supported by the evidence placed before this Court.

[49] There is simply no explanation tendered for the period between 28 January 2024 when the statement of case had to be filed and 6 June 2024 when it was indeed filed. The 'explanation' tendered for the period of delay is bereft of any detail and lacks particularity. Material periods of the delay remained completely unexplained and the Applicant tendered no version as to what happened during those periods.

[50] The Applicants had to provide an explanation for every period of the delay to enable this Court to assess the reasonableness of the delay and the explanation for it. The Applicant dismally failed to do that and the explanation tendered is inadequate, sketchy, bereft of any substance and detail and far from compelling, convincing or comprehensive and does not place this Court in any position to understand the reasons for the delay.

[51] The Applicant failed to discharge the onus to show good cause why the indulgence they seek should be granted.

Prospects of success

[52] Having found that the delay is inordinate and the explanation tendered not compelling or adequate, it leaves the issue of prospects of success.

[53] In the authorities referred to *supra*, the Courts have endorsed the position that the failure to provide a reasonable and acceptable explanation for the delay renders prospects of success immaterial.

[54] *In casu* and in light of the said authorities and given the fact that the Applicant did not provide a comprehensive, compelling or convincing explanation for a material period of delay, the prospects of success are immaterial, and thus need not be considered.

Prejudice

[55] The Applicant submitted that the Respondent will not be prejudiced if the late filing of the statement of claim is condoned.

[56] On the other hand, the Applicants will be 'seriously prejudiced' should the late referral not be condoned as they were dismissed without being afforded an opportunity to be heard and this is a violation of their rights to a fair hearing.

[57] The Respondent disputed that it would not be prejudiced and submitted that it is likely to suffer prejudice as the dispute has become unnecessarily protracted and prolonged due to the Applicant's failure to refer the dispute to the Labour Court within 90 days after the certificate of outcome was issued.

[58] The result of the refusal to condone the late filing of the statement of case will be that the Applicant will be denied the opportunity to pursue this case before Court.

[59] The notion that litigants will be denied access to a court to ventilate their case cannot be examined within a paradigm that ignores the interests of the adversary, nor of the ordinary dynamics of litigation, more especially, because the reality is that litigation is a process in which adversaries make choices. If the consequences of choices that are made, or the consequences of inaction and tardiness are that opportunities to pursue the matter are forfeited, it does follow that there is a failure of justice. The litigation system affords litigants a process within which they must navigate their own routes and it is no failure of justice if their journey culminates in a dead end.¹²

[60] *In casu*, there are 14 employees before Court, seeking retrospective reinstatement from their dates of dismissal in 2023, as per their statement of case. The Practice Manual¹³ previously provided and Rule 24 of the Labour Court Rules¹⁴ now expressly provides that where the issue in dispute concerns the dismissal of 10 or more employees who seek reinstatement and a notice of intention to defend is filed, it must be brought to the attention of the Judge President, who may then appoint a Judge immediately to undertake the case management of the file, to ensure an expeditious hearing. This is to allow for hearing on an expedited basis where the matter involves a large number of applicants and where the relief sought is reinstatement, as the consequences and prejudice, if such a matter is only dealt with years later and reinstatement is ordered, are severe and obvious.

[61] The delay is even more prejudicial considering that Rule 24 provides for an expeditious hearing when a large number of applicants seek reinstatement. *In casu*, the Applicants were dismissed in August 2023 and in January 2025, this matter is not one step closer to finality.

[62] The Constitutional Court, in the opening paragraph of *Toyota SA*¹⁵, held that:

¹² See: *Edcon Ltd v Steenkamp and Others* [2017] ZALAC 81; (2018) 39 ILJ 531 (LAC) at para 34.

¹³ Practice Manual of the Labour Court of South Africa (repealed).

¹⁴ GN 4775 of 2024: Rules Regulating the Conduct of the Proceedings of the Labour Court.

¹⁵ *Toyota supra* para 1.

‘Time periods in the context of labour disputes are generally essential to bring about timely resolution of the disputes. The dispute-resolution dispensation of the old Labour Relations Act was uncertain, costly, inefficient and ineffective. The new Labour Relations Act (LRA) introduced a new approach to the adjudication of labour disputes. This alternative process was intended to bring about the expeditious resolution of labour disputes which, by their nature, require speedy resolution. Any delay in the resolution of labour disputes undermines the primary object of the LRA. It is detrimental not only to the workers who may be without a source of income pending the resolution of the dispute but, ultimately, also to an employer who may have to reinstate workers after many years.’

[63] This Court has a discretion, which must be exercised judicially on a consideration of the facts of each case and in essence, it is a matter of fairness to both sides. While the refusal to condone the late filing of the statement of case will have the result that the Applicant will be denied the opportunity to pursue their case before this Court, the Respondent’s prejudice outweighs the Applicant’s prejudice.

[64] Most importantly, I have to endorse the aim of the LRA, namely to resolve labour disputes speedily and without delay. Granting condonation in a case like this would not be in the interest of justice as it would undermine the statutory purpose of expeditious dispute resolution.

[65] In *Grootboom v National Prosecuting Authority and Another*¹⁶, the Constitutional Court has held that:

‘The interests of justice must be determined with reference to all relevant factors. However, some of the factors may justifiably be left out of consideration in certain circumstances. For example, where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of

¹⁶ [2013] ZACC 37; (2014) 35 ILJ 121 (CC) at para 51.

reasonable prospects of success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party.'

[66] On an objective conspectus of all the facts, the Applicant's application for condonation falls hopelessly short of the mark. The Applicant did not discharge the onus to show good cause and to provide an acceptable and plausible explanation for the delay. For the above reasons, it will not be in the interests of justice that the application for condonation be granted.

Costs

[67] The last issue to be decided is the issue of costs.

[68] In so far as costs are concerned, this Court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of law and fairness.

[69] Mr Mavuso for the Respondent submitted that the cost should follow the result as this application is an abuse of process. Mr Nkobyane for the Applicant left the issue of cost in the hands of this Court.

[70] Although this is a case where a cost order will not be inappropriate, I am of the view the interest of justice will be best served by making no order as to costs.

[71] This is a case where SAMWU has a lot to answer to the Applicants about how the dispute was dealt with, the opportunistic and disingenuous approach adopted by the trade union and the far-from-ideal result it yielded for the dismissed individuals.

[72] In the premises, I make the following order:

Order

1. The application for condonation for the late filing of the Applicant's statement of case is dismissed;
2. There is no order as to costs.

Connie Prinsloo
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Mr Nkobyane from Phakedi Attorneys Inc
For the Respondent:	Mr B Mavuso from Lawtons Inc Attorneys