



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR430/18

In the matter between:

MEC FOR PUBLIC WORKS: NORTH WEST PROVINCE

First Applicant

MINISTER OF PUBLIC SERVICE AND ADMINISTRATION

Second Applicant

and

**PUBLIC SERVICE COORDINATING
BARGAINING COUNCIL**

First Respondent

COMMISSIONER ANNELIE BEVAN NO

Second Respondent

MOGWERA HK

Third Respondent

Heard: 4 February 2025

Delivered: 4 February 2025

Summary: Application for reinstatement of a review application. Application dismissed.

JUDGMENT

DANIELS J

Introduction

- [1] The applicant sought to review and set aside an arbitration award issued by the third respondent on 18 December 2017. It launched the review application on 12 March 2018.

Non-compliance with Practice Manual

- [2] Unfortunately the applicant failed to comply with clause 11.2.7 of the Labour Court Practice Manual in two respects:

2.1 First, the applicant failed to file all the necessary paper within 12 months of launching the review application. Instead, it only filed a notice in terms of Rule 7A(8) on 22 September 2020. This was substantially outside the prescribed period, which required all the necessary papers to be filed by no later than 12 March 2019.

2.2 Second, the applicant failed to request a date for the enrolment of the matter within 12 months. The applicant only requested the enrolment of the matter on 20 October 2020, once again well outside the prescribed period.

Application to reinstate the review application

- [3] In its application to reinstate the matter, the applicant offers no explanation at all for its failure to comply with clause 11.2.7 of the Practice Manual. Instead, the applicant suggests that it complied with the Practice Manual, and any delays were the fault of the Registrar. It offers no explanation at all for why it failed to file all the necessary papers within 12 months, or for why it failed to request the enrolment within 12 months.
- [4] The matter was enrolled for hearing before Mabaso AJ on 17 November 2020. On that date the learned acting judge found that there was non-compliance with clause 11.2.7 of the Practice Manual, and struck the matter from the roll. On 27 August 2024, almost four years later, the applicant brought an application to reinstate the matter on the roll. There is no explanation for the delay in bringing the application to reinstate.
- [5] The application states that it has prospects of success and it will succeed in the review, if the review application is reinstated. Unfortunately, in the founding affidavit, no basis is laid for the submission. It is a bald allegation.

Submissions and analysis

- [6] The applicant stated that the explanation for the delay may be inadequate, but this was compensated by the importance of the matter, the prospects of success, and the interests of justice. The applicant referred to the matter of *City of Johannesburg and others v IMATU and others* (2017) 38 ILJ 2695 (LAC) as authority for the proposition that, where the explanation for the delay is inadequate, the importance of the matter and the prospects of success must nevertheless be considered. That matter did not deal with an application to reinstate a review

application. Furthermore, the judgment is no authority for the proposition that prospects of success and the importance of the matter must be considered where there is no explanation at all for a lengthy delay, as is the case here. It is necessary to consider the following authorities:

- 6.1 In *Samuels v Old Mutual Bank*¹ the applicant sought to have the review application reinstated. The LAC held that the reinstatement of a review application is essentially a condonation application in which the applicant must show good cause for their non-compliance with the Practice Manual. This requires applicant to demonstrate that it has a reasonable explanation for the default, it has a reasonable prospect of success, and it would be in the interests of justice to grant the order.
- 6.2 In *Grootboom v The National Prosecuting Authority and Another*² the Constitutional Court held that the standard for considering an application for condonation is the interest of justice. It found that the concept of interest of justice is so elastic that it is not capable of precise definition. Nevertheless it does include the nature of the relief sought, the extent and cause of the delay, the effects of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issues raised, and the prospects of success.
- 6.3 In *NUM v Council for Mineral Technology*³, the LAC considered a condonation application and held that in the absence of a reasonable explanation, considerations such as the prospects of success become irrelevant. It said that:

¹ (2017) 38 ILJ 1790 (LAC)

² (2014) 35 ILJ 121 (CC) at para 22

³ *NUM supra* at para 10.

'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...' (own emphasis)

- [7] In this matter, the applicant has not provided *any explanation at all* for the default, let alone a reasonable explanation for the default. This is not a situation where the explanation is weak or poor. There is simply no explanation for the default.
- [8] Furthermore, the applicant has not established any prospects of success. It is inadequate for the applicant to simply state that it has reasonable prospects of success. The applicant must set out allegations which, if established, demonstrate a reasonable prospect of success. Instead, once again, the applicant sets out no allegations which demonstrate a reasonable prospect of success.
- [9] It is trite that review applications are urgent by their very nature, and it is incumbent on the parties to treat them as such. The applicant failed to treat the review application as urgent, and it failed to comply with the Practice Manual. The applicant thereafter treated the application to reinstate as a *fait accompli*. Not only did the applicant fail to bring the

application timeously, but it also failed to establish the grounds required to reinstate the review.

Conclusion

[10] In the circumstances, I find that the applicant has failed to demonstrate good cause for the reinstatement of the review application. The application is therefore dismissed. There is no order as to costs.

Reynaud Daniels
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Adv S Dlali

Instructed by State Attorney

For the Third Respondent

Adv LJ Corns

Otto Krauser Inc