



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

NOT REPORTABLE

Case no: JR557/21

In the matter between:

GLORIA DE GITA

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

COMMISSIONER MICHAEL HOWITZ

Second Respondent

NATIONAL HEALTH LABORATORY SERVICES

Third Respondent

Heard: 18 February 2025

Delivered: 18 February 2025

Summary: Application for condonation for late filing of review application.
Application dismissed.

JUDGMENT

DANIELS J

Background

[1] The applicant was engaged as a Project Data Capturer by the third respondent (the “NHLS”) until her dismissal on 19 December 2019. The applicant was dismissed for refusing to follow lawful and reasonable instructions, and gross negligence. She challenged the fairness of her dismissal at the first respondent, the CCMA.

[2] The second respondent (the “commissioner”) found that the NHLS had proven that the applicant was not performing to expectations. The commissioner considered that the applicant had a final written warning, had been on training programmes, and had participated in performance improvement programmes until the NHLS decided that the matter should be handled as one related to misconduct.

[3] Based largely on his assessment that the NHLS should have handled the matter as one related to incapacity and that the applicant was not given adequate time to improve her performance, the commissioner issued an arbitration award in which he found that the applicant’s dismissal was unfair and awarded her the equivalent of three months remuneration (an amount of R87 909, 00) as compensation.

[4] After the applicant was paid compensation, she filed an application to review the award - because the commissioner refused to reinstate her.

[5] The arbitration award under review was issued on 21 October 2020. The review application was filed on 6 April 2021. The review application should have been filed within 6 weeks of the award being issued, namely 2 December 2020, but was instead filed more than three months late.

[6] The condonation application itself was filed on 17 November 2023. There is no explanation for this delay.

[7] The NHLS played no active role in the review proceedings, and instead filed a notice to abide the decision of the court.

[8] The applicant's explanation for the late filing of the condonation application is set out in the founding affidavit. During argument, the applicant attempted to provide further factual information, and detail, relevant to the condonation but was advised that this was not permissible.

[9] In her founding affidavit, the applicant explains the reasons for the delay as follows:

“REASONS FOR LATENESS

[29] At all relevant times, I intended to pursue this matter.

[30] At the time the CCMA award was issued, I was under the impression that I would return back to work, and I tried my very best to get the HR to take me back where after I tried to get legal representation as well. I do not have a legal background and lack the legal knowledge needed to pursue this matter entirely on my own.

[31] I submit that it was always my intention to pursue this dispute. The delay is not the result of any neglect or lack of interest on my part. I did my best to get the help I needed as quickly as possible. Due to financial constraints, I was at the mercy of the many pro bono legal clinics and brought the application as quickly as I could, given the circumstances.”

Legal principles and analysis

[10] Before considering the condonation application, it is necessary to set out the legal principles which govern such matters. They are conveniently summarised in *Grootboom v National Prosecuting Authority & another*¹ at paras 50 and 51 where Zondo J (as he then was) held:

¹ (2014) 35 ILJ 121 (CC)

[50] In this court the test for determining whether condonation should be granted or refused is the interests of justice. If it is in the interests of justice that condonation be granted, it will be granted. If it is not in the interests of justice to do so, it will not be granted. The factors that are taken into account in that enquiry include:

- (a) the length of the delay;
- (b) the explanation for, or cause for, the delay;
- (c) the prospects of success for the party seeking condonation;
- (d) the importance of the issue(s) that the matter raises;
- (e) the prejudice to the other party or parties; and
- (f) the effect of the delay on the administration of justice.

Although the existence of the prospects of success in favour of the party seeking condonation is not decisive, it is an important factor in favour of granting condonation.

[51] 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 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. As a general proposition the various factors are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice." (own emphasis)

[11] An important principle, emphasized in para. 51 of *Grootboom*, echoes the words of Holmes JA in *Melane v Santam Insurance Co. Ltd*² where the learned judge stated: "If there are no prospects of success there would be no point in granting condonation". Our courts have also stated that, where the

² 1962 (4) SA 531 (A) at 532

delay is excessive, and the explanation is so weak as to amount to no explanation at all, it is unnecessary to consider the prospects of success.³

[12] When dealing with an extensive delay, the explanation must be sufficiently full to enable the court to assess the motives of the applicant and the reasonableness of the explanation. In addition, the explanation should account for each period of the delay.⁴

[13] It is important to mention a further principle. Our courts have held that when an individual realises that he has not complied with a court rule or statutory time period, he should apply for condonation without delay.⁵ In this regard, in *Napier v Tsaperas*⁶ Grosskopf JA held: “*His inaction may also be relevant when he should have realised but did not, that he has not complied with a Rule.*” It goes without saying that the failure to apply for condonation with the necessary expedition undermines the other party’s interest in the finality of a judgment and creates unnecessary delays in the administration of justice.

[14] Finally, in employment disputes, there is a further requirement – that of expedition. One of the purposes of the Labour Relations Act No. 66 of 1995 is to ensure the expeditious resolution of employment law disputes.⁷ The issue of good cause must therefore be considered against this back drop.

Analysis of the condonation application

[15] It is clear that the period of the delay, more than three months, is substantial. The delay must be considered in light of the trite principles that dispute resolution in employment matters must be expeditious. Furthermore, it is trite that review applications are by their very nature urgent.

³ *Moila v Shai NO & others* (2007) 28 ILJ 1028 (LAC) at para 34

⁴ *NUMSA & another v Hillside Aluminium* [2005] 6 BLLR 601 (LC) at para 12

⁵ *Allround Tooling (Pty) Ltd v NUMSA & others* [1998] 8 BLLR 847 (LAC) at para 8

⁶ 1995 (2) SA 665 (A) at 671

⁷ *NUMSA on behalf of Thilivali v Fry’s Metals (Pty) Ltd (A Division of Zimco Group) and Others* (2015) 36 ILJ 232 (LC) at para 36

[16] The explanation is weak, and lacking in sufficient detail. Indeed, it is so sparse that it becomes impossible to determine the reasonableness of the explanation. For example, the applicant does not explain how she came to believe that she was reinstated, when the commissioner expressly stated, in paragraph 49 of the award, that he was “*not persuaded that the applicant should go back and work in the same section under the same conditions.*” The applicant does not explain when she came to realise that she was not reinstated, or how she came to that realisation. The applicant does not explain which legal clinics she approached for help, and when. The applicant does not explain how she came to be impoverished so soon after the NHLS paid her compensation.

[17] In my view, the explanation for the delay is so poor that it amounts to no explanation at all. In these circumstances, I need not consider the prospects of success. Nevertheless, for the sake of completeness, I do so below.

[18] In her condonation application, the applicant states that she has good prospects of success in the review application because the commissioner erred in failing to take into consideration that she required reinstatement. The award itself demonstrates that the commissioner did consider this. The commissioner recorded as much in para 11 of the award. In paras 47 – 49 of the award, the commissioner explains why reinstatement is not appropriate by reference to her disciplinary record and the deterioration of the trust relationship. On this basis alone, I cannot accept that the review has prospects of success.

[19] In the circumstances I do not consider it in the interests of justice to grant condonation given that the delay is lengthy, the explanation is non-existent, and there are little or no prospects of success. I accept that the review application, and the dismissal dispute itself, is of some importance to the applicant. But the dispute is also important to the third respondent, who must arrange its affairs to deal with the dispute and the potential impact on its operations. The prejudice to the third respondent, in having to wait several years for the finalisation of the dispute, is highly prejudicial. It cannot hardly be denied that lengthy, and

unnecessary, delays by parties undermine the effective and fair administration of justice.

Conclusion

[20] For the reasons set out above, the application for condonation is dismissed. There is no order as to costs.

Reynaud Daniels
Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Self

For the Third Respondent: None