



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR1963/21

In the matter between:

SAKGENYA NTUNTU PETESEN MOTLOUTSI

Applicant

and

UNIVERSITY OF PRETORIA

First Respondent

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION ("CCMA")**

Second Respondent

JAMES NGOAKO MATSHEKGA N.O.

Third Respondent

Heard: 19 March 2025

Delivered: 10 April 2025

JUDGMENT

KIRSTEIN, AJ

Introduction

[1] The applicant seeks an order reinstating the main review application, which is deemed to be withdrawn, lapsed and archived in terms of the then-applicable Practice Manual of this Court¹ (Practice Manual). The applicant further seeks, in addition, that the late delivery of the main review application be condoned. The first respondent opposes both applications.

Background

[2] On 27 July 2021, the third respondent issued a dismissal ruling of a dispute referred by the applicant to the second respondent, where the following was ruled:

‘Applicant’s allege unfair dismissal dispute is dismissed as a result of the applicant’s decision not to participate in the arbitration proceedings after his application for recusal was declined and dismissed.’

[3] On 23 September 2021, the applicant filed a review application for an order that the dismissal ruling issued by the third respondent under case no: GATW4630/20 dated 27 July 2021, be reviewed and set aside. The review application was delivered outside the six weeks prescribed period in terms of section 145 of the Labour Relations Act² (LRA).

[4] The applicant failed to file the record of the arbitration proceedings in terms of clause 11.2.2 of the Practice Manual within 60 days of the date on which the applicant was advised by the Registrar of the Labour Court that the record had been received. The review application was deemed to have been withdrawn on 27 December 2021. The applicant failed to pursue the review application in terms of clause 11.2.7 of the Practice Manual, wherefore the review application was archived

¹ Practice Manual of the Labour Court of South Africa effective 1 April 2013 (repealed, effective 17 July 2024).

² Act 66 of 1995, as amended.

on 20 March 2022. The applicant served the reinstatement application on 21 April 2023.

Analysis

[5] The matter was set down for hearing on 19 March 2025 and only for the purposes of the reinstatement of the review application. The pleadings in the review application have not been closed. In the matter of *NUMSA obo Charles v DSV Solutions (Pty) Ltd and Another*³, the Labour Court indicated that if a condonation application is heard separately from the review application and the pleadings have not yet been closed in the review application, the parties are placed in an invidious position. I am in agreement with what has been stated in paragraph [33] of the judgment referred to *supra*:

‘In summary then in my view condonation applications should not generally be heard separately from review applications and furthermore the setting down of a condonation application before pleadings have closed in a review application and in particular before the record has been filed in the review application would, in any event, be premature.’

[6] The requirements for an application for reinstatement were addressed *inter alia* in *Samuels v Old Mutual Bank*⁴ (*Samuels*) wherein it was held that:

‘In essence, an application for the retrieval of a file from the archives is a form of an application for condonation for failure to comply with the court rules, time frames and directives. Showing good cause demands that the application be bona fide; that the applicant provide a reasonable explanation which covers the entire period of the default; and show that he/she has reasonable prospects of success in the main application, and lastly, that it is in the interest of justice to grant the order. It has to be noted that it is not a requirement that the applicant must deal fully with the merits of the dispute to establish reasonable prospects of success. It is sufficient to set out facts which, if

³ (PR118/20) [2021] ZALCPE 11 (22 October 2021) at subpara 32.2.

⁴ [2017] ZALAC 10; (2017) 38 ILJ 1790 (LAC) (*Samuels*) at para 17.

established, would result in his/her success. In the end, the decision to grant or refuse condonation is a discretion to be exercised by the court hearing the application which must be judiciously exercised.'

[7] In *Bidvest Protea Coin (Pty) Ltd and SATAWU and Others*⁵, it was held: 'From the above authorities, it is clear that the enquiry to be conducted is that which would [be] applied in an application for condonation, and that the period between the date of filing of a review application and the expiry of the 60-day period within which the record is to be filed, as well as events after that date, must be taken into account.'

[8] The above principle was followed in *City of Ekurhuleni Metropolitan Municipality v SA Local Government Bargaining Council and Others*⁶, where it was held that:

'In an application to reinstate a review deemed withdrawn, the applicant must demonstrate good cause. This is so in that such applications are akin to seeking condonation for the failure to comply with stipulated time-lines. When considering whether good cause has been demonstrated, the court exercises a discretion having taken account of *inter alia* the degree of lateness, the explanation therefor, the prospects of success and the importance of the case.'

[9] The applicant delivered the reinstatement application 13 months after the 60-day period expired in terms of clause 11.2.2 of the Practice Manual. The indication is that the transcribed record of the arbitration proceedings was delivered on 10 July 2023. The late delivery of the record must be regarded as excessive.

[10] In the founding affidavit deposed to by the applicant in the retrieval application, the applicant, to some extent, explained the difficulties that he had with his representatives after the dismissal ruling was received. The first respondent is correct that the applicant blames his erstwhile attorneys' representatives for not

⁵ Unreported judgment under case no: JR297/17 delivered 20 August 2020 at para 10.

⁶ (JR 1398/18) [2023] ZALCJHB 165 (30 May 2023) at para 5.

pursuing the review application as diligently and expeditiously as required. In *Govender and Others v Commission for Conciliation, Mediation and Arbitration and Others*⁷ (*Govender*), the Labour Appeal Court (LAC) stated the following:

'It is trite that there is a limit to which a litigant can escape the result of his attorney's lack of diligence, as was held in *Saloojee & another NNO v Minister of Community Development* 1965 (2) SA 135 (A) (*Saloojee*), however, it is equally true that the facts of a matter will dictate whether or not the actions (or inactions) of a litigant's representative can be imputed to the litigant.'

[11] The applicant demonstrated sufficient reason to place the blame of the delay in delivering the record and prosecution of the review application with his erstwhile representatives.

[12] The LAC in *Samuels*⁸ stated that a retrieval application is in the nature of a condonation application, and it is required to set out facts, if established, that would result in success.

[13] The review grounds raised by the applicant concern *inter alia* the failure to be given an opportunity to present his case at the arbitration. Having read the transcript of the arbitration proceedings, it is noted that the applicant sets out sufficient facts that would result in success. It is so that the applicant excused himself from the arbitration on the basis that he intended to review the ruling of the third respondent regarding the recusal application but never waived his right to pursue the unfair dismissal dispute. There were also issues with a transcription of an audio recording and other documents to be presented at the arbitration that would have caused, in all possibilities in any event, a postponement of the arbitration. A complete transcribed record has been delivered and should be sufficient to determine the main review application.

⁷ [2024] ZALAC 6; (2024) 45 ILJ 1197 (LAC) (*Govender*) para 69.

⁸ *Samuels supra*.

[14] The applicant acted to his own prejudice when he left the arbitration process on the basis that he wanted to pursue a review application. The applicant was indeed prejudiced by the dismissal ruling issued by the third respondent. The delay in the prosecution of the review application prejudiced the first respondent, but such a delay should be considered in determining a remedy if the applicant is allowed by the review court to present his case at an arbitration.

[15] In the case of *Grootboom v National Prosecuting Authority and Another*⁹, the Constitutional Court again emphasised that the various factors to be taken into consideration in a condonation application are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interest of justice. It is so that there is an excessive delay in the prosecution of the review application. The applicant, however, despite his erstwhile representative's failure to act expeditiously, managed to secure a complete transcribed record. The applicant did not waive his right to pursue his unfair dismissal dispute and would be severely prejudiced if a review court cannot consider the review ground that the applicant was, as alleged, not afforded an opportunity to present his case. In *Govender*¹⁰, the LAC stated the following:

'While it is often said that where a delay is significant and the explanation poor, the prospects of success do not play a significant role and if the delay is short but the explanation is unsatisfactory and reasonable prospects of success exist, condonation should be granted. This is a matter where the delay is significant and the explanation demonstrates nothing less than a failure by both the attorneys and the union to provide proper and adequate service to their clients and members and as such, the door cannot and will not be closed for a proper consideration of the merits of the appeal to determine whether condonation should or should not be granted.'

Conclusion

⁹ [2013] ZACC 37; [2014] 1 BLLR 1 (CC).

¹⁰ *Govender supra* at para 80.

[16] For all the reasons set out above, the conclusion is that the applicant has shown good cause why the main review application must be reinstated. The condonation application should be considered by the review court once pleadings in the review application have closed.

[17] Having taken into consideration the relevant facts and circumstances and having regard to the requirement of law and fairness, it would not be appropriate to make a costs order.

[18] In the premises, the following order is made:

Order

1. The application for the reinstatement of the main review application is granted.
2. There is no order as to costs.

P.H. Kirstein

Acting Judge of the Labour Court Of South Africa

Appearances:

For the Applicant: Mr M C Mathabathe

Instructed by Polokwane Justice Centre

For the First Respondent: Mr Anton Bekker

Instructed by Anton Bakker Inc. Attorneys