



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR2333/21

In the matter between:

DANIEL SEGAMI

Applicant

and

KUMBA IRON ORE (SHISEN MINE)

First Respondent

COMMISSIONER SHIRAZ MOHOMED OSMAN

Second Respondent

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

Third Respondent

Heard: 13 May 2025

Delivered: 21 May 2025

**Summary: Application to revive the review application and condone the late
filing of the record – application dismissed**

JUDGMENT

MARQUES, AJ

Introduction

[1] This is an application to reinstate the Applicant's review application (revival application) that was filed in terms of section 145 of the Labour Relations Act¹ (LRA) and an application for condonation for the late filing of the record.

[2] The applications are opposed by the First Respondent on the basis that, despite being in possession of the full record of proceedings on 20 July 2022 and being given numerous indulgences, the Applicant failed to deliver the full record of proceedings within the prescribed time.

Events leading to this application:

[3] The review application in this matter was served on 11 November 2019 and filed on 19 November 2021. The Applicant sought condonation for the late filing of the review application as the application was filed approximately one and a half months late.

[4] On 15 November 2021, the Third Respondent dispatched the record of proceedings and delivered the first Notice in terms of the then-Rule 7A(3)².

[5] On 1 December 2021, the Applicant's erstwhile attorneys uplifted the record of proceedings from the Labour Court.

[6] On 20 January 2022, the Applicant's erstwhile attorney served a transcript on the First Respondent's attorney and recorded that the record of proceedings is incomplete as the evidence of the Applicant's witness, Mr Cook, was missing.

¹ Act 66 of 1995, as amended.

² GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court (repealed, effective 17 July 2024).

[7] The Applicant contends that he made various attempts to obtain the record of proceedings from the Third Respondent in order to pursue the review application. However, these attempts were unsuccessful as, *inter alia*, the recordings dispatched by the Third Respondent were incomplete and the respective arbitration bundles were not included.

[8] The fact that the recordings were incomplete and that the respective arbitration bundles were not included is not in dispute.

[9] On 21 January 2022, the Applicant's erstwhile attorneys requested an extension from the Respondents to file the record of the arbitration proceedings as the record was incomplete and on 1 February 2022 requested an additional 60 court days to file the missing portion of the record of proceedings as it had still not been dispatched by the Third Respondent.

[10] On 14 February 2022, the Applicant's erstwhile attorneys withdrew as attorneys of record and on 18 February 2022, the First Respondent granted an indulgence to file the full record of proceedings by no later than 1 April 2022.

[11] On or about 30 March 2022, the Third Respondent advised the Applicant's attorneys that the Second Respondent was only able to locate the first day's recording and that a possible reconstruction for the second day's arbitration proceedings may need to take place.

[12] The record of proceedings was not delivered on 1 April 2022, and the Applicant's attorneys did not request a further indulgence at this stage.

[13] The matter was referred for reconstruction on or about 21 April 2022.

[14] The first reconstruction hearing, which was scheduled for 7 June 2022, was postponed on account of Mr Kubayi's, the senior legal advisor from Inlexso who represented the First Respondent in the arbitration proceedings, unavailability as he had another arbitration on the same day.

[15] On or about 20 July 2022, the parties attended a reconstruction hearing virtually and were informed on the day by the Second Respondent that a portion of the missing record had been located.

[16] The First Respondent contends that the Second Respondent provided both parties with a memory stick containing the reconstructed record of proceedings on 20 July 2022, whereafter the Applicant's attorneys requested an indulgence until 30 July 2023 to file the full record of proceedings, which indulgence was granted.

[17] On 29 July 2022, the Applicant requested yet another indulgence. In this regard, it appears to be common cause between the parties that the First Respondent granted the Applicant an indulgence until 20 August 2022 to file the full record of proceedings.

[18] On 18 August 2022, the Applicant's attorneys served an incomplete record of proceedings on the First Respondent's attorneys, as the bundles used during the arbitration proceedings were not included in the records that were filed.

[19] The First Respondent contends that the review application thus became formally deemed withdrawn on 21 August 2022 in accordance with clauses 11.2.2 read with 11.2.3 of the now since repealed Practice Manual.

[20] The Applicant served his supplementary affidavit on 8 September 2022 in terms of Rule 7A(8) of the then-Labour Court Rules.

[21] On 10 October 2022, the Applicant served a notice of withdrawal of the Applicant's filing notice in terms of Rule 7A(6) and 7A(8) on the First Respondent and advised that the notice of withdrawal has been filed as they were waiting for the Third Respondent to dispatch a recording.

[22] On 11 November 2022, the First Respondent contends that the review application became archived in terms of clause 11.2.7 of the Practice Manual as 12 months had elapsed since the review application was instituted.

[23] On 14 November 2022, the Applicant's correspondent attorney attended at this Court and requested the notice in terms of Rule 7A(5) of the Labour Court Rules. The Court informed the Applicant's correspondent attorney that the records were ready for collection, which were uplifted on 14 November 2022. On the same day, the recordings were provided by the correspondent attorney to the Applicant's attorney of record via email correspondence.

[24] On 15 November 2022, the Applicant's attorney of record received a quote for the transcription of the uplifted records.

[25] The transcriptions were received by the Applicant's correspondent attorney on 19 December 2022, however, their offices were closed from 14 December 2022 to 4 January 2023.

[26] On 6 January 2023, the Applicant's attorney of record received an email from the Applicant's correspondent attorney containing the transcribed records.

[27] On 6 January 2023, when Mr Jacobs took over the file from Mr Vermaak, he noted that the final day of the arbitration proceedings had been omitted from the records that had been dispatched.

[28] Again, from 9 January 2023, Jacobs requested the Third Respondent to dispatch the entire record of the proceedings to the above Honourable Court as a matter of urgency. Various email correspondence ensued between the Applicant's representative and the Third Respondent, and on 31 January 2023, Jacobs informed the First Respondent's attorney of record of the delay in dispatching the record of proceedings in terms of Rule 7A(3) of the Labour Court Rules.

[29] The Applicant contends that a notice in terms of Rule 7A(5) of the Labour Court Rules was served on the Applicant's erstwhile attorneys of record on 3 February 2023 and not at the offices of the Applicant's attorneys of record. As such, the Applicant's attorneys of record did not receive this notice.

[30] The Applicant further contends that he was subsequently only informed that the full records were available on 27 February 2023, which records did not include the hard copy records of the arbitration bundles and that he only received the notice in terms of Rule 7A(5) on 5 April 2023. It is contended that this was the first time that the applicant received the full record of proceedings.

[31] On 4 May 2023, the First Respondent served a notice to archive in terms of clause 11.2.7 and 16.1 of the Practice Manual on the Applicant's attorneys.

[32] On 19 May 2023, the Applicant's attorneys served the notice in terms of Rule 7A(6) and the record of proceedings and addressed correspondence to the First Respondent's attorneys wherein they requested the First Respondent to withdraw the notice to archive in terms of clause 11.2.7 and 16.1 of the Practice Manual. In reply, the First Respondent's attorneys advised that the matter is deemed withdrawn and that the Applicant ought to bring a formal reinstatement application.

[33] On 31 May 2023, the Applicant's attorneys served the supplementary affidavit in terms of Rule 7A(8) on the First Respondent.

[34] On 14 September 2023, the Applicant delivered its reinstatement application.

Consideration and evaluation

[35] The First Respondent raised as a point *in limine* that the review application filed by the Applicant in this matter on or about 19 November 2021 had been filed outside the prescribed time period of six weeks and that the Applicant has not filed a comprehensive condonation application to explain the delay. As the First Respondent raised this issue, I took cognisance of the review application and the

submissions made therein regarding condonation for the late filing of the review application. The review application has been filed approximately one and a half months late, and the Applicant sets out the reasons for the delay.

[36] I have considered the merits of the application for condonation and, applying the applicable principles, I am satisfied that a proper case has been made out to condone the late filing of the Applicant's review application.

[37] I will deal with the essential principles of the late filing of the record hereinbelow.

[38] Item 11.2.2 of the Labour Court Practice Manual provides that:
'For the purpose of Rule 7A(6), records must be filed within 60 days of the date on which the Applicant is advised by the Registrar that the record has been received.'

[39] Item 11.2.3 of the Labour Court Manual provides that:

'If an 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. The application must be accompanied by proof of service on all other parties, and answering and replying affidavits may be filed within the time limits prescribed by Rule 7. The Judge President will then allocate the file to a judge for a ruling, to be made in chambers, on any extension of time that the Respondent should be afforded to file the record.'

[40] Item 11.2.4 of the Labour Court Manual provides that:

'If the record of the proceedings under review has been lost, or if the recording of the proceedings is of such poor quality that the tapes are inaudible, the applicant may approach the Judge President for a direction on

the further conduct of the review application. The Judge President will allocate the file to a judge for a direction, which may include the remission of the matter to the person or body whose award or ruling is under review, or where practicable, a direction that the relevant parts of the record be reconstructed.’

[41] Item 11.2.7 of the Labour Court Manual provides that:

‘A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding heads of argument) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive.’

[42] There is a duty on an Applicant in a review application to expeditiously prosecute the review application.

[43] The Practice Manual of the Labour Court also manifests the requirement of an expeditious review application.

[44] This was emphasised in *Macsteel Trading Wadeville v Francois van der Merwe NO and Others*³, where the Labour Appeal Court (LAC) held that the underlying objective of the Practice Manual is the promotion of the statutory imperative of expeditious dispute resolution and that the Practice Manual is binding on the parties and this Court.

[45] The Court in *Mnguni v Volkswagen SA (Pty) Limited and Others*⁴ (*Mnguni*) held that:

‘[31] There is nothing in the Directives that compels a litigant to proceed on incomplete record. This much is abundantly clear from the clear and

³ (2019) 40 ILJ 798 (LAC).

⁴ [2022] JOL 54294 (LC) at paras 31 and 34.

concise language of clause 11.2.3. This clause offers a resort to an applicant who is confronting a threat of the 60 days running out before s/he has filed the record. To avert running afoul of clause 11.2 that applicant is entitled to seek consent for extension of the 60-day deadline from his/her opponent. If the opponent does not oblige then to approach the Judge President for such, pending the availability of the missing parts of the record.

...

[34] In the case of *Vuyani Kenneth Zono v Minister of Justice and Correctional Services and Others* referring to *Samuels*, Van Niekerk held that what was required was for the applicant to demonstrate that it acted promptly in launching the reinstatement application and that it took professional steps in a bona fide attempt to ensure the expeditious finalisation of the review if reinstatement is permitted.

[35] It appears that owing to the approach the applicant has taken, she has not seen it necessary to address herself to the status of the review application. The status of that application is that it died on 12 December 2019. The natural consequence is that all the steps that the applicant undertook subsequent to that date are null and void. The applicant has not addressed himself [sic] to that at all. This is a fatal flaw as the applicant cannot in those circumstances satisfy this Court that she has taken appropriate step to ensure the expeditious finalisation of the application for review. Also, it points to the failure to show cause as required by the Rules. Therefore, even if this Court were to be minded to grant the application for the reinstatement of the review, there will be no review application that is ready to be prosecuted. For it to be ready the applicant would first have to obtain condonation for the late filing of the record and rule 7A(8) notice. She has not sought such relief and there is no explanation for that failure.'

[46] From the documentation before me, there is an extremely long delay in the Applicant obtaining the complete record of proceedings from the Third and/or Second Respondents. The Applicant contends that he originally uplifted the record on 10 December 2021. Since that date, he has been struggling to obtain the complete record from the Second and Third Respondents. He has, however, taken

reasonable and diligent steps to obtain the complete record, which is evidenced by the chronology of events and the many annexures annexed to the affidavits.

[47] It is also common cause that in terms of the Practice Manual, the Applicant sought various extensions and indulgences from the First Respondent. The last indulgence was given until 20 August 2023. Accordingly, the period which requires condonation, if any, would be the period from 21 August 2022 until 19 May 2023. The delays occasioned during this period of delay has been explained by the Applicant.

[48] Strangely, the notice of compliance in terms of Rule 7A(5) issued by the Registrar of the Labour Court appears to have only been issued for the first time on 3 February 2023. The Applicant contends that he did not receive this notice as it was served on his erstwhile attorneys, who withdrew as his attorneys of record on 14 February 2023. Due to the fact that the Applicant's erstwhile attorney withdrew as attorneys of record on 14 February 2023, it is quite understandable that this notice did not come to his attention.

[49] The Applicant also contended that upon collection of the records, on or about 27 February 2023, he was informed by this Court in person that the records were available for collection, which he uplifted on the same date. Upon collection of the records, he noticed that the records that were dispatched by the Third Respondent were still incomplete and omitted the hard copy records of the arbitration bundles.

[50] On 17 March 2023, the Applicant's attorneys of record formally instructed the Third Respondent to dispatch the outstanding hard copy records in terms of Rule 7A(3) of the Labour Court Rules, as same had been erroneously omitted from the previous record dispatched to the Labour Court.

[51] On 29 March 2023, the Third Respondent informed the Applicant's attorney of record that the hard copy records would be dispatched in terms of Rule 7A(3) of the Labour Court Rules on 30 March 2023.

[52] On or about 5 April 2023, the Labour Court issued a further notice in terms of Rule 7A(5) of the Labour Court Rules. On the same day, the Applicant attended at the Labour Court to uplift the record dispatched by the Third Respondent. The complete record of proceedings was served on the parties on 19 May 2023.

[53] In terms of item 11.2.2 of the Practice Manual, quoted above, records must be filed within 60 days of the date on which the Applicant is advised by the Registrar that the record has been received. It is evident that the calculation of the 60-day period, for the purposes of Rule 7A (6), is calculated from the date on which the applicant is advised by the Registrar by way of a Rule 7A (5) notice that the record has been received and must be collected.⁵ The last notice in terms of Rule 7A(5) was issued on 5 April 2023. Accordingly, there is an argument to be made that the Applicant's time period for filing the record of proceedings only commenced upon receipt of the last notice in terms of Rule 7A(5) issued by the Registrar on 5 April 2023. In this case, the 60-day period would only have expired on 5 July 2023. The Applicant filed the complete record of proceedings on 19 May 2023. This was within the prescribed 60-day period.

[54] The supplementary affidavit was thereafter filed on 31 May 2023. The supplementary affidavit was therefore filed within the requisite time periods subsequent to the Applicant filing the complete record of proceedings in terms of Rule 7A(6).

[55] In *Samuels v Old Mutual Bank*⁶, the Court 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

⁵ See: *South African Social Security Agency v Hartley and Others* (2023) 44 ILJ 1334 (LC) at para 84, see also *Ragophala v Commissioner for Conciliation, Mediation and Arbitration* (JR663/2019) [2024] ZALCJHB 30 (1 February 2024).

⁶ (2017) 38 ILJ 1790 (LAC) at para 17.

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 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.'

[56] It is evident from the timeline of this matter that the Applicant has taken reasonable steps to prosecute the matter and provided a reasonable and thorough explanation for the delay, which covers the entire period of the delay. It is evident that the Applicant had every intention to prosecute the review application.

[57] For these reasons, the Applicant's revival application must succeed.

Costs

[58] This Court has a discretion in terms of Section 162 of the LRA to order costs in accordance with the requirements of the law and fairness. Furthermore, in *Union for Police Security and Corrections Organisation v South African Custodial Management (Pty) Ltd and Others*⁷, the Constitutional Court has made it clear that costs should only be awarded by this Court in exceptional circumstances. In the present instance, there are no exceptional circumstances, and I am of the view that this is a matter that, in the interests of fairness and equity, does not warrant a cost order being made.

[59] In the premises, I make the following order.

Order

1. The late filing of the Applicant's review application is condoned.
2. The review application under case number JR2333/21 is reinstated.
3. There is no order as to costs.

⁷ 2021 (11) BCLR 1249 (CC) at para 40.

B Marques

Acting Judge of The Labour Court Of South Africa

Appearances:

For the Applicant:	Mr Jacques Brits, Higgs attorney
Instructed by:	Steenkamp Van Niekerk Inc.
For the Respondent:	Ms Lynsey Foot
Instructed by:	Cliffe Dekker Hofmeyer Inc.

LABOUR COURT