



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR 772/22

In the matter between:

RAOUL STEVENS

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

COMMISSIONER NZIWISISAI DANDDADZI N.O.

Second Respondent

ABSA BANK LIMITED

Third Respondent

Heard: 7 May 2025

Delivered: 28 May 2025

JUDGMENT

ASMALL, AJ

Introduction

[1] The applicant has filed a condonation application for the late filing of the review application.

[2] That the condonation ruling dated 6 March 2022 under Case Number **GAJB2544-22**, is reviewed and set aside.

[3] That the matter be remitted back to the first respondent for a determination on condonation *de novo* to be determined by a Commissioner other than the second respondent.

Applicant's Point in *Limine* (Invalid Answering Affidavit)

[4] The applicant has submitted a point in *limine* that the answering affidavit of the third respondent is defective in that it only states that the deponent has personal knowledge of the facts relevant to the application.

[5] Before I deal with the condonation application I must deal with this point in *limine* as it will determine my reliance on the submissions relating to the condonation submissions which I must consider in the answering affidavit.

[6] The applicant submits that the answering affidavit deposed to on the 23rd of August 2022 does not swear or affirm to the truthfulness and correctness of such statement, which then renders the answering affidavit to be defective. The applicant submits that the oath administered in the answering affidavit merely states "*the deponent having acknowledged that he knows and understands the contents of the affidavit ...*" indicates that the deponent states that she is an adult female and the oath administered, is to a male.

[7] The applicant submits that the oath administered does not comply with Regulation 2(1) of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963. The applicant submits that the failure by the Commissioner of Oaths to render the oath in terms of Regulation 2(1) renders the answering affidavit invalid and that the answering affidavit should be dismissed with costs.

[8] The third respondent submits that these submissions are devoid of any merits and the applicant has spent much time in pursuing this point in *limine* instead of complying with prescribed timelines to file their review application. It is a fact that this court has discretion to accept an affidavit in circumstances where there has been substantial compliance with the regulations and applicable legal framework.

[9] I find that the third respondent's answering affidavit is properly before the court and there has been substantial compliance with the relevant legislation governing affidavits.

[10] I find that there is no merit in the point in *limine* raised which is dismissed.

Test for Condonation

[11] 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 for condonation seeks an indulgence and bears the onus to show good cause.

[12] The approach that, in the absence of a satisfactory explanation for a delay, the applicant's prospects of success are ordinarily irrelevant, has been conventionally applied¹ and was confirmed in *National Education Health and Allied Workers Union on behalf of Mofokeng and others v Charlotte Theron Children's Home*² where the LAC held that without a reasonable and acceptable explanation for a delay the prospects of success are immaterial.

[13] In *Colett v Commission for Conciliation, Mediation and Arbitration and others*,³ the LAC 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.

[14] The onus is on the applicant seeking condonation to satisfy the court or tribunal that condonation should be granted. In employment disputes there is an

¹ See: *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC).

² (2004) 25 ILJ 2195 (LAC) at para 23.

³ [2014] ZALAC 1; [2014] 6 BLLR 523 (LAC).

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*⁴:

'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 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 backdrop of this fundamental principle in employment law.'

[15] The fundamental requirement of expedition is not to be ignored. In *Toyota SA Motors (Pty) Ltd v CCMA and others*⁵ the Constitutional Court emphasised that one of the fundamental purposes of the Labour Relations Act⁶ (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.

[16] 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 to 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. This was also confirmed in *Grootboom v National Prosecuting Authority and another*,⁷ where 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 reasonable prospects of success, condonation may be refused where the

⁴ (2015) 36 ILJ 232 (LC)

⁵ (2016) 37 ILJ 313 (CC).

⁶ Act 66 of 1995, as amended.

⁷ [2013] ZACC 37; (2014) 35 ILJ 121 (CC) at para 51.

delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party.'

[17] An applicant in an application for condonation bears the onus to satisfy the court or tribunal that condonation should be granted and it is incumbent upon such applicant to provide a full explanation for every period of the delay. The explanation for the delay must be both comprehensive and persuasive and should cover every period of the delay.

[18] In *Independent Municipal & Allied Trade Union on behalf of Zungu v SA Local Government Bargaining Council and others*,⁸ the principle was confirmed that it is not sufficient simply to list significant events that occurred during the period in question as that does not assist the court (or a tribunal) properly to assess the reasonableness of the explanation.

The Condonation Application

[19] On 13 November 2021 the applicant was found guilty and was dismissed for serious misconduct in the form of gross negligence and dereliction of duty.

[20] On or about 7 February 2022, the applicant referred an unfair dismissal dispute to the first respondent.

[21] On 6th March 2022 the second respondent issued a condonation ruling which found that the unfair dismissal dispute was referred approximately 85 (eighty-five) days outside of the prescribed timelines and the condonation application was dismissed.

[22] The review application was filed on 21 June 2022 and it is common cause that the application is filed 98 (ninety eight) days late.

[23] The review application was supposed to have been filed on the 20th of April 2022 within the (6) six-week prescribed period. The applicant's explanation for the delay commences from the 7th of February 2022 which is not relevant for

⁸ (2010) 31 ILJ 1413 (LC) at para 13.

consideration of the condonation application for the late filing of the review application.

[24] The relevant explanation is from the date of receipt of the condonation ruling from the second respondent which is the 6th of March 2022. The applicant concedes that he received the condonation ruling on 9 March 2022 and forwarded it to a Ashley Petersen (Petersen) on the 20th of March 2022. Petersen is the legal advisor of LexCorp, an underwriting Management Agent.

[25] The applicant submits that he requested advise from Petersen on taking further steps. The applicant explained the delay between the 9th March and 20th of March 2022 in that he did not forward the condonation ruling sooner because he approached the CCMA directly and requested advise on how to proceed further. He was informed that he should approach the Labour Court directly. He then googled how to approach the Labour Court and what steps he had to take but the information was confusing and therefore he started communicating with LexCorp for advise. The applicant did not receive a response from Petersen and on the 4th of April 2022 he forwarded an email to follow up and requested her assistance in approaching the Labour Court. On the 20th of April 2022 the applicant sent an email to Petersen with the documents that he received from the Labour Court which he required assistance in completing.

[26] The applicant also states that he did not know where the Labour Court was and he had to find out the address and procedure. Peterson later admitted that she was unaware of the Labour Court processes and the prescribed timelines. Peterson then contacted the applicant on the 21st of April and they went through the documents and at this stage the applicant did not inform Petersen that he required an attorney to assist him.

[27] On the 29th of April 2022, which has now passed the 6 (six) week prescribed timeline to file the review, the applicant was informed by Petersen that his documents must be served on the respondents, that this document and the application is not covered by his policy and that Santam will have the discretion to approve or reject a claim on the merits. It is common cause at this point that the applicant was at all time communicating with his legal insurer and not his legal representative.

[28] On the 3rd of May 2022 the applicant sent an e-mail to Petersen informing her that he required a proper legal person to get in touch with him and to look at his case. Between 4th and 19th April 2022, the applicant underwent a cosmetic procedure which required a downtime of seven days. This contributed to the delay in going to the Labour Court because he had to run personal errands and waited for a convenient time to do so with one trip to the Johannesburg CBD.

[29] Peterson then submitted a claim form on the applicant's behalf to Santam who approved the claim and the current attorneys of record were appointed. The applicant further submits that the legal manager at Lex Corp Miss Melissa Pillay in (Pillay) proceeded to investigate the matter on the 3rd of May 2022 and established that the next step was to approach the Labour Court for a review application and that the applicant was out of time.

[30] The applicant submits that the claim forms should have been submitted on the 20th of March 2022 and if it was submitted timeously then his application would not have been late. Santam then instructed the applicant's attorneys of record to obtain a legal opinion from counsel on the 19th of May 2022. Counsel submitted the legal opinion on 29 May 2022. Counsel was instructed to draft the review application on Friday, 3rd of June 2022.

[31] The applicant submits that's this matter is of extreme importance for the fair administration of justice and it's a matter of important legal principle. The applicant submits that the third respondent will not be prejudiced if condonation is granted and that the bullying that is experienced by so many other employees of the employee of the third respondent must be exposed.

[32] On the prospects of success the applicant submits that the matter be referred to conciliation and arbitration at the CCMA so that the voices of the employees are heard and that the bullying tactics of managers must be exposed.

[33] The applicant's averments to the working environment has no bearing on this application and was not the reason for his dismissal.

[34] The applicant in his application for condonation to the CCMA, approached the Legal Advice Centre in mid-January 2022 which indicates that he knows how to access legal advice.

[35] The third respondent submits that the applicant places the delay mainly on LexCorp and that his explanation is unsatisfactory. On the applicant's own version he was advised by the CCMA to approach the Labour Court and that he conducted google research on the Labour Court. Instead of following up on this advise, he delays the application by communicating with LexCorp.

[36] The applicant's submission that his alleged medical procedure prohibited him from filing his review application timeously, is without merit. The third respondent submits that the applicant's submissions on prospects of success are entirely without merit and if the dispute was of importance the review application would have been filed timeously the third respondent submits that the allegations of bullying in the work environment are unsubstantiated and have no bearing on the late referral of the review and the late filing of the referral of the unfair dismissal dispute.

[37] It is trite that the law for condonation application is very clear and strict. The party requesting condonation must show good cause and explain every period of the delay as this Court has a duty to deal with Labour law disputes expeditiously.

[38] The reasons of explanation for the delay from the applicant is unsustainable and without good cause. The applicant does not take accountability for his lack of action in filing the review timeously.

[39] This review is brought in terms of section 158 (1)(g) of the Labour Relations Act and the pleaded case on condonation refers to the prescribed 6 (six) week period in terms of section 145 of the Labour Relations Act. Whilst section 158(1)(g) does not specify a time limit within which a review application must be brought, the Labour Appeal Court has held that the application must be brought within a reasonable time, and has equated this with the 6 week limit in section 145. Any review application brought under section 158(1)(g), filed later than 6 weeks after the impugned decision was served on the applicant, must be accompanied by a condonation application which the applicant has complied with.

[40] There is no date on when the applicant's attorney came on record and why they did not bring the application timeously. The legal representative was aware of the urgency of the matter and yet there was a further delay in filing the review application.

[41] The internal procedures of LexCorp and Santam has no bearing on this review. It took a period from 3 May 2022 to 8 June 2022, to consult with counsel, draft the papers and file the review after all the parties involved were aware that the application is late.

[42] The applicant had various opportunities to bring the application timeously but failed to do so.

[43] The prospects of success reasons advanced by the applicant are unsubstantiated and not applicable to the condonation application.

[44] The authorities are clear that the explanation for the delay has to be compelling, convincing, comprehensive and should cover every period of the delay. The applicant has failed to provide such an explanation.

[45] The explanation for the condonation application is without merits.

Costs

[46] This Court has a broad discretion in terms of Section 162 of the LRA to make orders for costs according to the requirements of the law and fairness.

[47] In *Zungu v Premier of the Province of KwaZulu Natal and Others*⁹, the Constitutional Court confirmed that the rule that costs follow the result does not apply in Labour matters. The Court should strike a fair balance between discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing parties to bring to Court (or oppose) cases that should not have been brought to Court (or opposed) in the first place.

⁹ (2018) 39 ILJ 523 (CC) at para 24.

[48] This is a matter where the interests of justice will be served by making an order as to costs.

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

Order

1. The condonation application for the late filing of the review application is dismissed with costs.

Asmall, AJ

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Adv N Rambachan-Naidoo

Instructed by:

AJ Venter & Associates

For the Third Respondent:

Attorney T. Maruapula

Instructed by:

Cliffe Decker Hofmeyer Inc.