

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR 597/17

In the matter between:

JUDAS JABULANI GALA

First Applicant

and

DANIEL SEOPELA

First Respondent

DEPARTMENT OF AGRICULTURE

Second Respondent

**THE GENERAL PUBLIC SERVICE SECTOR
BARGAINING COUNCIL**

Third Respondent

**THE MEC: AGRICULTURE AND
RURAL DEVELOPMENT**

Fourth Respondent

Considered: In Chambers

Date delivered: 20 June 2025

JUDGMENT

MAHOSI, J

[1] The second respondent, the Department of Agriculture (“the Department”), brought an application for leave to appeal against the whole judgment handed down on 17 February 2022 in terms of which this Court ordered as follows:

- '1. The application to condone the late filing of the review application is granted.
2. The MEC of Agriculture and Rural Development: Limpopo Province is joined in the proceedings as a fourth respondent and all the papers exchanged in the matter must be served on him/her in terms of the Rules of this Court.
3. The arbitration award dated 09 August 2016, issued by the first respondent under the auspices of the General Public Service Sector Bargaining Council, under case number GPBC 2764-2015 is reviewed, set aside and substituted with the following order:
 - 3.1 The applicant qualifies for translation in terms of Resolution 1 of 2009.
 - 3.2 The second respondent is ordered to implement the translation within 30 days hereof.
4. There is no order as to costs.'

[2] Following the variation application of the above order by the Department, it became apparent that this Court there was an obvious error in the order. Resultantly, this Court issued a variation ruling in terms of which paragraph 3.1 of the order was hereby varied and replaced with the following paragraph:

'3.1 The applicant qualifies for translation in terms of Resolution 3 of 2009.'

[3] The Department filed this application on 04 March 2024, which was about two years out of the prescribed period. In its condonation application, the Department submitted that the period of delay started running from 09 February 2024 when it was provided with the variation order and therefore not excessive. It attributed its delay to the failure of the applicant's attorneys to email to it the variation order.

[4] The applicant opposed this application on the basis that the second respondent failed to provide any explanation for bringing this application two years after the judgment was handed down. He argued that the Department's submission that his attorneys should have forwarded them it with the variation order was opportunistic, as the variation order had no effect of changing the original judgment and order.

[5] Rule 30(2) of the Labour Court Rules provides that if leave to appeal has not been made at the time of judgment or order, an application for leave to appeal must be made and the grounds thereof must be furnished within 15 days of the date of the judgment or order against which leave to appeal is sought, except that the court may, on good cause shown, extend that period. The said provision vests this Court with the power to condone such late filing on good cause shown.

[6] The relevant legal principles to be applied in an application for condonation are well established. This Court is required to exercise discretion, having regard to *inter alia*, the extent of the delay and the explanation for that delay.¹ The Constitutional Court in the matter of *eThekweni Municipality v Ingonyama Trust*² stated as follows:

‘As stated earlier, two factors assume importance in determining whether condonation should be granted in this case. They are the explanation furnished for the delay and prospects of success. In a proper case these factors may tip the scale against the granting of condonation.’

[7] In the current matter, the Department’s attribution of its delay to the applicant’s failure to email the variation ruling and argument that the period of delay started running after receiving the variation ruling is without any merit as it was required, in terms of Rule 30, to file its application to appeal within 15 days of the date of the judgment. The two years delay is excessive and its explanation amounts to no explanation as it does not cover the entire period of the delay.

[8] Although the Department failed to make submission on the prospects of success in its condonation application, it based this application on the grounds that this Court erred in taking into account evidence which did not form part of the evidentiary material that was placed before the arbitrator, failing to find that no evidence was adduced during arbitration proceedings and, making factual findings unsupported by evidence.

¹ See: *Melane v Santam Insurance Ltd* 1962 (4) SA 531 (A).

² 2013 (3) BCLR 497 (CC) at para 28.

[9] Alternatively, the Department submitted that this Court erred in failing to take into account that the Resolution 3 of 2009 provides that qualification for translation is only applicable to those employees who were performing the functions of the post as at the 30 June 2009 and not thereafter; the possession of a particular degree or diploma is not relevant criterion for translation in terms of clause 13.1 of the Resolution 3 of 2009; and the question to be determined before translation takes place is whether the employee's current post at 30 June 2009 and the post to which the employee should be translated to, is appropriate or essentially the same.

[10] Further, the Department challenged the judgment on the basis that the Court erroneously failed to distinguish between a Senior Agricultural adviser and a Scientist, find that a performance agreement is relevant, and consider that the Resolution 3 of 2009 makes no provision for the translation of Senior Agricultural Advisors to the Scientists.

[11] The applicant, *inter alia*, denied that there was no agreement regarding the status of documents that served before the arbitrator and this Court or that there was any dispute on their authenticity. He submitted that this application was without any merit and prayed for its dismissal with costs on a punitive scale.

[12] Considering the submissions from both parties, this Court is not persuaded that there are reasonable prospects that the Labour Appeal Court could come to a different conclusion. As such, the condonation application cannot succeed.

[13] Accordingly, the following order is made:

Order

1. The condonation application is dismissed.
2. The application for leave to appeal is struck off the roll.
3. There is no order as to costs.

D. Mahosi
Judge of the Labour Court of South Africa