



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR2035/21

In the matter between:

BIDVEST PROTEA COIN

Applicant

and

THAKGALANE JOHANNES MAAKE

First Respondent

MANDLENKOSI ZWANE N.O

Second Respondent

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

Third Respondent

Heard: 25 February 2025

Delivered: 23 June 2025

JUDGMENT

TSHISEVHE, AJ

Introduction

[1] The Applicant seeks firstly, to reinstate a review application that is deemed withdrawn and archived in terms of clause 16 of the now repealed Practice Manual of this Court. (Practice Manual)

[2] The First Respondent on the other hand launched an application in terms of rule 11 of the now repealed Rules for the Conduct of Proceedings in the Labour Court¹ (the rules) seeking the review application to be dismissed on account of its non-prosecution or inactivity for a period of more than six months after the last action.

[3] Pursuant to the rule 11 application, the Applicant filed a reinstatement of review application. Therefore, I deem it appropriate to deal with the reinstatement application and the Rule 11 application simultaneously since they are dispositive of the matter.

[4] For the sake of convenience, in all the interlocutory applications, the parties will be referred to as cited in the review application.

Material background facts

[5] The Applicant filed for a review application on 23 September 2021 seeking an order to review and set aside the arbitration award of the Second Respondent.

[6] That the Applicant submitted that on 23 January 2022, instructed her candidate attorney, Ms Faith Mashapha to serve and file a notice in terms of the Rule 7A(8)(b), which she was informed was done.

[7] The Applicant further submitted that she was heavily relying on her candidate attorneys because her partner was indisposed during January, February and March

¹¹ Repealed and replaced with the Rules regulating the conduct of proceedings of the Labour Court (GN50608). Published 3 May 2024, effective 17 July 2024.

2022, as a result, the candidate attorney were the one dealing with the matter. The illness of her partner caused a backlog in the office.

[8] In actual fact, the last action on the matter was on 10 January 2022 when the Applicant filed the arbitration record. That on 31 May 2022, she received a correspondent from the First Respondent indicating that they are still yet to receive a notice in terms of Rule 7A (8).

[9] The notice to abide was only served and filed on 22 December 2022, a period 11 months late.

[10] The Applicant submitted that it is only then that she requested the candidate attorney to check the file and ensure that the notice has been served. She was informed that all was in order.

[11] On 22 December 2022 she instructed Ms Mashapha to check in the court file if all were in order, only to find that the notice to abide was not there, neither was the index and pagination done. On 31 January 2023, the First Respondent attended to serve a rule 11 application which application was not accompanied by any affidavit.

[12] The Rule 11 application is not accompanied or supported by an affidavit as the rules dictates.

Application for reinstatement of a review application and a Rule 11 application

[13] I now deal with the application for reinstatement of the review application, which in essence, is an application for condonation for failure to comply with the rules of this Court and the Practice Manual. It is trite that the rules and the provisions of the Practice Manual are binding, as their architect is to ensure the efficient resolution of disputes, which is the ethos of the Labour Relations Act² (LRA).

² No. 66 of 1995, as amended.

[14] It is trite that the court has a discretion to grant an order to dismiss or reinstate a review application on account of an unreasonable delay in pursuing it. In the exercise of its discretion, the court ought to consider the following factors: the length of the delay; (b) the explanation for the delay; (c) the effect of the delay on the other party and the prejudice that that party will suffer should the claim not be dismissed, and; (d) prospects of success

[15] The application for the reinstatement of review was brought by the Applicant's attorneys herein and is unopposed.

Degree of lateness

[16] The Applicant's attorneys submitted that the notice in terms of rule 7A (8) (b) was filed 11 months late and such period is excessive but given the explanation proffered such delay is not unreasonable.

[17] The Applicant's attorneys argued that the delay was as a result of a candidate attorney who informed her that the notice has been filed whereas it was not.

Explanation for the delay

[18] The Applicant's attorneys' explanation for the delay is solely blamed on the candidate attorney.

[19] The Applicant's attorney submitted that she asked Ms Mashapha, the candidate attorney as to what happened and she informed her that she thought that the notice to abide was served and filed hence a request by the First Respondent for an extension to file an answering affidavit.

[20] as a result of Ms Mashapha's failure to do the work she was issued with a final written warning. She was informed that the notice to abide has been served and filed, but she did not verify if it was actually filed.

[21] On 22 December 2022, she had to ensure that the notice to abide was served and filed. The notice to abide was 11 months late which she agrees is excessive, however, due to the explanation proffered, such delay is reasonable.

[22] That the Applicant is not to be blamed for such delay and same was not deliberate.

Prospects of success in the review application

[23] The applicant argues that they have good prospects of success in the matter because the findings of the arbitrator are so unreasonable given the totality of evidence presented in that, the First Respondent committed acts of dishonesty.

[24] That Mr Maake, First Respondent failed to do his duties and he falsified posting sheets with the assistance of Mphahlele, her colleague.

[25] That the arbitrator got it wrong when he dealt with the pay query, in that there is nothing that prevented the First Respondent from taking the Workforce Manager data done by Mphahlele to Mr Bothma and explain the problem to him without falsifying records in support of the incorrect days posted.

[26] That the arbitrator ignored or failed to consider that the First Respondent was guilty for serious misconduct in that he failed to follow company policies and procedures as he failed to correlate the days claimed by Netshilindi with the OB books and posting sheets.

[27] That the arbitrator's finding that First Respondent was merely negligent in the exercise of his duties, constitute gross irregularity and misconduct respectively.

[28] That it was not the duty of the arbitrator to change or replace the charge that the Applicant formulated against the First Respondent and in doing so, he exceeded his powers.

[29] That arbitrator's finding that the First Respondent relied on the advice of Mphahlele for breaching the policies and procedures is wrong.

[30] That the issue of inconsistency was never raised by the First Respondent but by the Arbitrator without allowing parties to address him on same and it amounted to misconduct.

[31] That the arbitrator failed to consider the aspect of appropriateness of sanction, otherwise, he would have found that reinstatement was an inappropriate sanction.

Prejudice

[32] That the Applicant will be prejudiced should the application to reinstate the review application be refused. On the other hand the rule 11 application is not properly before Court as it is not supported by any affidavit and intend not to entertain same.

Analysis of reinstatement of review application

[33] In most cases litigants resort to review applications in order to frustrate the Respondents and in many of those instances, it will be employers who file for review just to frustrate a poor employee in cases where there are no merit.

[34] Majority of those litigants file review applications and thereafter do not do anything in the matter until they are asked or put to terms by their opponent. Such conduct defeat the objectives of the LRA and same should be frowned upon by the courts.

[35] This Court is still being inundated by re-instatement or revival of review applications as a result of a lack of diligent prosecution thereof by litigants.

[36] Not only does this unnecessarily clog up the Court roll, but it also leaves a dispute which was always intended to be expeditiously resolved, hanging in the air.

[37] In *Karan t/a Karan Beef Feedlot and Another v Randall*,³ it was held:

‘In summary: despite the fact that the rules of this court make no specific provision for an application to dismiss a claim on account of the delay in its prosecution, the court has a discretion to grant an order to dismiss a claim on account of an unreasonable delay in pursuing it. In the exercise of its discretion, the court ought to consider three factors:

- (a) the length of the delay;
- (b) the explanation for the delay; and
- (c) the effect of the delay on the other party and the prejudice that that party will suffer should the claim not be dismissed.’⁴

[38] This Court has a discretion to grant an order to dismiss a review application on account of an unreasonable delay in pursuing it and in the exercise of its discretion, the Court ought to consider the factors set out *supra*. The test to be applied is similar to that of condonation in which the applicant seeks an indulgence from the Court.

[39] In applying the *ratio* in *Melane*, the Court in *Academic and Professional Staff Association v Pretorius NO and Others*,⁵ summarised the principles for consideration as follows:

‘[17] The factors which the court takes into consideration in assessing whether or not to grant condonation are: (a) the degree of lateness or non-compliance with the prescribed time frame; (b) the explanation for the lateness or the failure to comply with time frame; (c) prospects of success or *bona fide* defence in the main case; (d) the importance of the case; (e) the respondent's interest in the finality of the judgment; (f) the convenience of the court; and (g) avoidance of unnecessary delay in the administration of justice.

...

[18] It is trite law that these factors are not individually decisive but are interrelated and must be weighed against each other. In weighing these

³ (2009) 30 ILJ 2937 (LC) at para 14.

⁴ See also: *Melane V Santam Insurance Co Ltd* 1962 (4) SA 531 (A).

⁵ (2008) 29 ILJ 318 (LC) at paras 17 - 18.

factors for instance, a good explanation for the lateness may assist the applicant in compensating for weak prospects of success. Similarly, strong prospects of success may compensate the inadequate explanation and long delay.’⁶

[40] The applicant must show good cause for non-compliance with the Rules and Practice Manual. The question of prejudice does not arise if good cause cannot be shown.

[41] The explanation for the delay must be sufficiently detailed covering the entire period of the delay. A reckless or intentional disregard of the rules will not be condoned and neither will a lack of *bona fides*.⁷

[42] In *casu*, the Applicant blames the conduct of their candidate attorney whom they accuse of not doing her work whereas she informed them that she indeed served and filed the notice in terms of rule 7A(8) (b).

[43] The applicant must explain the cause of the delay which led to the review application lapsing.⁸

[44] Astonishingly, the Applicant argues that they attended to the matter without delay and the delay was not deliberate or wilful on the part of the Applicant as it is attributed to the candidate attorney. The Applicant forgets that the attorneys have been appointed by them and they cannot blame anyone when they are dilatory.

[45] It is therefore difficult to agree that the delay was not wilful if not deliberate because the Applicant by its own admission submitted that the First Respondent sent her a reminder on 31 May 2022 indicating that they have not yet received a notice in terms of rule 7A(8).

⁶ See also: *Minister of Public Works and Infrastructure v GPSSBC and Others* [2024] JOL 65513 (LC) (*Minister of Public Works*).

⁷ See also: *Floorworx Africa (Pty)Ltd v Mazars (Gauteng) Inc and others* (87546/2018) [2023] ZAGPPHC 498 (23 June 2023).

⁸ See: *Overberg District Municipality v Independent Municipal and Allied Trade Union on behalf of Spangenberg and others* (2021) 42 ILJ 1283 (LC).

[46] If indeed they were serious about speedy prosecution of the review application, the attorney was supposed to go to court or at least ask for a proof of service to the First Respondent to show that everything was in order, however, they decided to trust a candidate attorney where they had to wait until 22 December 2022 in order to serve and file the notice.

[47] A delay for a period of eleven months is way excessive and such explanation is not convincing at all.

[48] The Applicant's lengthy argument that they have good prospects of success in the review application is marred with paucity.

[49] A *bona fide* defence and good prospects of success are not sufficient in the absence of a reasonable and acceptable explanation for the default.⁹

[50] As stated above, in weighing condonation factors for instance, a good explanation for the lateness may assist the applicant in compensating for weak prospects of success. Similarly, strong prospects of success may compensate the inadequate explanation and long delay.¹⁰

[51] In *Samuels v Old Mutual Bank*,¹¹ (*Samuels*) the Labour Appeal Court (LAC) held that an application for retrieving an archived matter is inseparable from an application to condone non-compliance with the provisions of the practice manual:

'[17] 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

⁹ See: *Colett v Commission for Conciliation, Mediation and Arbitration* [2014] 6 BLLR 523 (LAC).

¹⁰ *Minister of Public Works* (Id fn 7).

¹¹ (2017) 38 ILJ 1790 (LAC).

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.’

Is it in the Interest of justice to reinstate the review application?

[52] The Constitutional Court in the case of *Brummer v Gorfil Brothers Investments (Pty) Ltd and others*¹² held that condonation should be granted if it is in the interests of justice. This is determined by reference to the above factors including the nature of the relief sought, the nature and extent of the delay, the nature and cause of any other defect, the effect on the administration of justice, prejudice, and reasonableness of the applicant’s explanation for the delay or defect.

Clauses 16.1 of the Practice Manual

[53] Clause 16.1 of the Practice Manual which provides that:

‘A review applications will be deemed to be withdrawn or archived in the event that: a period of six months has elapsed without any steps taken by the applicant from the date of filing the application, or the date of the last process filed.’

[54] The Applicant by its own admission, did not take any steps in the review application for a period of eleven months.

[55] This Court has on numerous occasions accentuated that litigants must always ensure that the time periods recorded in the LRA, the Rules and the Practice Manual are complied with because failure to do so may lead to the court refusing to hear a review application which potentially had good prospects of success.

[56] In a case where the Court find that the Applicant in a review application failed to prosecute a review application within the required time frames as envisaged in the

¹² 2000 (2) SA 837 (CC).

rules and practice manual, and in absence of seeking condonation for the delay, the review court lacks jurisdiction to determine the review application.

[57] In the event that a review application is deemed withdrawn, it has specific legal consequences. In *Ralo v Transnet Port Terminals and others*¹³ (*Ralo*), the Court accepted the legal definition of ‘deemed’ as set out in the Namibian authority of *Municipal Council of the Municipality of Windhoek v Marianna Esau*,¹⁴ where the Court held that the word ‘deemed’ is considered to have a conclusive effect. This Court concluded by stating the following:

“...The plain and unambiguous wording of the Practice Manual is to the effect that the Applicant must be regarded as having withdrawn the review application.”

[58] The above provisions received attention in *Macsteel Trading Wadeville v Francois van der Merwe N.O and Others*,¹⁵ (*Macsteel*) and flowing from that decision, it can be accepted that;

58.1 These provisions are binding on this Court and the parties;

58.2 Where the time limits are not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not be archived or be removed from the archives;

58.3 Where undue delay in prosecuting the review application is raised in the answering affidavit of the review application, and since that application had in effect lapsed and been archived, this Court would lack jurisdiction to determine the issue of the undue delay raised there. In these circumstances, a party complaining of undue delay would have been required to bring a separate Rule 11 application for the review application to be dismissed or struck from the roll on the grounds of the other party’s undue delay in prosecuting it.

[59] *In casu*, the Applicant exercised the right afforded to it upon the lapsing of the review application, by indeed bringing the reinstatement of review application. On the

¹³*Ralo v Transnet Port Terminals and Others* [2015] 12 BLLR 1239 (LC) (*Ralo*); *Tadyn Trading CC t/a Tadyn Consulting Services v Steiner and others* (2014) 35 ILJ 1672 (LC); *Samuels* (Id fn 12).

¹⁴ *Municipal Council of the Municipality of Windhoek v Marianna Esau* LCA 25/2009, 2 March 2010.

¹⁵ (2019) 40 ILJ 798 (LAC).

face of this application, the applicant only had one choice to revive the review application, and that is to show good cause in order to resurrect it.

[60] It is equally trite that, when it comes to the dismissal of the review application based on the Applicant's alleged failure to take steps in the review application for a period of six months, the Applicant should demonstrate that the inactivity was wilful or deliberate.

[61] This is evident from the attitude adopted by the Court as far back as 2006 when the Court in *Bezuidenhout v Johnston NO and Others*¹⁶ held that:

'If applicant parties have unduly delayed prosecuting their applications, and fail to provide acceptable reasons for the delays, the ultimate penalty of dismissing such applications should be used in appropriate cases. This will hopefully help creating a culture of compliance and ensure that disputes are expeditiously dealt with'.

[62] The First Respondent must demonstrate that they also played an equal role in order to ensure that the matter is speedily resolved instead of just sitting by idle doing nothing bidding time for the Applicant's failure.

[63] It is important to state that the First Respondent herein played its role when he sent a letter to the Applicant indicating that they are still yet to receive the notice to abide as early as 31 May 2022.

[64] It is the Applicant who seemed not yearning for finality in pursuing the review since they did nothing until 22 December 2022 and the grounds averred therein are simply egregious to say the least.

Speedy resolution of dispute

¹⁶ (2006) 27 ILJ 2337 (LC) at paras 31 to 32.

[65] It is trite that a review application is urgent in nature and must be finalised as soon as possible. In *Food and Allied Workers Union on behalf of Gaoshubelwe v Pieman's Pantry (Pty) Ltd*,¹⁷ the Court said the following:

"Our courts have, on occasion, pronounced on the importance of labour disputes to be conducted with expedition. For example, in *National Research Foundation* the Labour Court held:

It is now trite that there exists a particular requirement of expedition where it comes to the prosecution of employment law disputes..."

[66] In the matter of *Steenkamp v Edcon Limited*¹⁸ in a unanimous judgment (under the heading "Broader object of the LRA"), the Constitutional Court placed emphasis on the fact that the expeditious resolution of labour disputes is one of the primary objects of the LRA. This had important consequences, described in more detail in paragraphs 39 to 41 of the judgment, commencing with the proposition that "*time periods in the context of labour disputes are generally essential to bring about timely resolution of the disputes*".

[67] The further points made by the Court include that labour disputes by their nature require speedy resolution, and that any delay in the resolution of labour disputes undermines the primary object of the LRA.

[68] This is evident from the following *dictum* in *Samuels*,¹⁹ where the Court said, with specific reference to the Practice Manual:

'... Its purpose is, inter alia, to provide access to justice by all those whom the Labour Court serves; promote uniformity and/or consistency in practice and procedure and set guidelines on standards of conduct expected of those who practise and litigate in the Labour Court. Its objective is to improve the quality of the court's service to the public, and promote the statutory imperative of expeditious dispute resolution. ...'

¹⁷ *Food and Allied Workers Union on behalf of Gaoshubelwe v Pieman's Pantry (Pty) Ltd* (2018) 39 ILJ 1213 (CC) at para 187.

¹⁸ *Steenkamp v Edcon Limited* [2019] 11 BLLR 1189 (CC) at para 38.

¹⁹ (Id fn 12) at para 14. See also *Macsteel* (Id fn 16) at paras 21 – 22

[69] The Court also expressly gave support to that portion of the judgment in *Myathaza* (referred to in paragraph [40]) to the effect that “*employment disputes by their very nature are urgent matters which require speedy resolution*”.

[70] The Constitutional Court has unanimously endorsed the approach of the Labour Courts in these matters, which expressly contemplates what may be described as a more restrictive approach to the granting of condonation because of the vital importance of expeditious dispute resolution in the dispute resolution system established by the LRA.

[71] In *Khumalo and Another v Member of the Executive Council for Education: KwaZulu-Natal*,²⁰ Skweyiya J said:

‘... the importance of resolving labour disputes in good time is thus central to the LRA framework.’.

[72] Further, Jafta J in *Aviation Union of SA and Another v SA Airways (Pty) Ltd and Others*²¹, held:

‘... Speedy resolution is a distinctive feature of adjudication in labour relations disputes ...’.

[73] Finally, in *National Education Health and Allied Workers Union v University of Cape Town and Others*²² Ngcobo J said:

‘By their very nature labour disputes must be resolved expeditiously and be brought to finality so that the parties can organize their affairs accordingly. They affect our economy and labour peace. It is in the public interest that labour disputes be resolved speedily...’

[74] The Applicant was just dilatory or as it does not seem like they are alive to the fact that speedy resolution of labour disputes has been a cornerstone of employment and labour law.

²⁰ (2014) 35 ILJ 613 (CC) at para 42.

²¹ (2011) 32 ILJ 2861 (CC) at para 76.

²² (2003) 24 ILJ 95 (CC) at para 31. See also *Billiton Aluminium SA Ltd t/a Hillside Aluminium v Khanyile and Others* (2010) 31 ILJ 273 (CC) at para 46; *Strategic Liquor Services v Mvumbi NO and Others* (2009) 30 ILJ 1526 (CC) at paras 12 – 13.

Conduct of legal representatives

[75] As stated above, the Applicant's attorney blames the conduct of their candidate attorney whom they accuse of not doing her work whereas she informed them that she indeed served and filed the notice in terms of rule 7A(8) (b).

[76] The conduct of the candidate attorney cannot be blamed separately to that of her employer since the candidate attorney is still under the guidance of the practicing attorney.

[77] The work of the candidate attorney should at all material times be inspected or carried out with close supervision and failure to do so by the practising attorney is gross negligence since such candidate is not proficient enough to work independently.

[78] The Applicant's attorney in this matter neglected the file into the hands of a candidate attorney under her guidance and such attorney was chosen by the Applicant herein. In this regard, the Applicant cannot therefore escape the results of its attorney's lack of diligence.

[79] In *Saloojee and Another NNO v Minister of Community Development*,²³ Steyn CJ stated the following in relation to a lack of diligence on the part of an attorney and how a litigant that chose that attorney as its representative should not be absolved from the normal consequences of such a relationship, no matter what the consequences of the failure by the attorney are:

"I should point out, however, that it has not at any time been held that condonation will not in any circumstances be withheld if the blame lies with his attorney. There is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence, or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect on the observance of the Rules of this Court. Considerations ad misericordiam should not be

²³ *Saloojee and Another NNO v Minister of Community Development* 1965 (2) SA 135 (A) at 141C - E.

allowed to become an invitation to laxity. In fact, this Court has lately been burdened with an undue increasing number of applications for condonation in which the failure to comply with the Rules of this Court was due to neglect on the part of the attorney. The attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of a failure to comply with a Rule of Court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the consequences of the failure are.”

[80] In *Fibro Furnishers (Pty) Ltd v Registrar of Deeds, Bloemfontein and others*,²⁴ Hoexter JA also made reference to the:

“... oft-repeated judicial warning that there is a limit beyond which a litigant cannot escape the results of his attorney’s lack of diligence or the insufficiency of the explanation tendered.”

[81] In *UTI South Africa v Pilusa and Others*²⁵ the applicant, through its former attorneys of record, failed to lodge the review application timeously and later sought condonation for the delay. The applicant blamed the negligence of its previous attorneys for the delay. However, this Court, relying on *Saloojee supra* stated that an applicant cannot solely rely on the tardiness or negligence of its legal representative in a condonation application to justify the delay, and condonation was refused on the basis that good cause was not shown to justify the granting of condonation.

[82] The Honourable Justice Nicholson AJA stated the following in the *Superb Meat Supplies CC v Maritz*:²⁶

“In this court and the Supreme Court of Appeal there have been frequently repeated judicial warnings that there is a limit beyond which a litigant cannot escape the results of his attorney’s lack of diligence of the insufficiency of the explanation tendered. It has never been the law that invariably a litigant will be excused if the blame lies with the attorney. To hold otherwise might have a disastrous effect upon the observance of the rules of this court and set a

²⁴ *Fibro Furnishers (Pty) Ltd v Registrar of Deeds, Bloemfontein and others* 1985 (4) SA 773 (A) at 787GH.

²⁵ (JR1732/12) [2016] ZALCJHB 270 (21 July 2016) at paras 11 - 15 and 22 - 24.

²⁶ (2004) 25 ILJ 96 (LAC) at 100H.

dangerous precedent. It would invite and encourage laxity on the part of practitioners.”

[83] This principle was enunciated in the *PPWAWU and Others v AF Dreyer and Co (Pty) Ltd*,²⁷ where the court held that:

“employees are not entitled to rely on the tardiness of their representative. Although the delay was caused by the negligence of the representative, there are limits to which applicants can rely on such negligence even when they are personally innocent of any tardiness.”

[84] There are therefore limits beyond which a party cannot rely on their legal representative’s lack of diligence or negligence when they are themselves innocent insofar as an explanation is provided for any delay or non-compliance with time periods.

[85] Based on the above, the Applicant should shoulder the blame for the tardiness of its legal representatives since its their legal representative of choice.

[86] It seems to me that the review was launched in order to obfuscate the First Respondent. Nothing proffered could justify the ignorance of the First Respondent’s letter of 31 May 2022 where they indicated that they have not yet received the notice in terms of Rule 7A 8.

[87] Furthermore, as per the Applicant’s submission, a delay for a period of eleven months is way excessive as a result of tardiness of the Attorneys coupled with the unconvincing explanation.

[88] It is very much surprising that the Applicant now claims that the delay was not wilful. The Applicant’s attorneys were just not interested in the prosecution of the review to say the least.

²⁷ *PPWAWU and Others v AF Dreyer and Co (Pty) Ltd* [1997] 9 BLLR 1141 (LAC).

[89] I wish to indicate that in this matter, both the explanation for delay and prospects of success are weak.

[90] I am not convinced that the Applicant has shown good cause that the review application be reinstated, moreso considering the poor explanation and prospects of success which are not convincing at all as they do not compensate for the period of delay.

[91] Based on the above, the application for the reinstatement of the review application stands to fail.

Costs

[92] The Constitutional Court (CC) in *Zungu v Premier of the Province of KwaZulu-Natal and Others*²⁸ reiterated that the general principle that costs follow the result does not apply in employment matters.

[93] I therefore had regard to the requirements of law and fairness in considering costs and am of the view that costs should only be awarded where it is warranted, and a cost order is not warranted in this matter.

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

Order

1. The Application for the reinstatement of the review application is hereby refused.
2. The Rule 11 application is hereby struck off the roll.
3. The review application is deemed withdrawn and archived.
4. No costs order is made.

N. Tshisevhe

Acting Judge of the Labour Court of South Africa

²⁸ *Zungu v Premier of the Province of KwaZulu-Natal and Others*²⁸ 2018 (6) BCLR 686 (CC).

Appearances:

For the Applicant: Ms Lancaster of Lancaster and Kungoane Attorneys

For the First Respondent: Mr TJ Maake (In person)

LABOUR COURT