



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS 78/22

In the matter between:

**SOUTH AFRICAN CLOTHING AND TEXTILE
WORKERS UNION (SACTWU)**

1st Applicant

PHINEAS RAMAILA

2nd Applicant

HOPE NGOMA

3rd Applicant

FELIX CUMBANE

4th Applicant

and

HOUSE OF CLEANING (PTY) LTD

Respondent

Heard: 29 May 2025

Delivered: 26 June 2025

Summary: Condonation – Late filing of the Statement of Response – The Respondent's relying on the provisions of clause 16.3 is not a reasonable explanation for the delay. Condonation refused.

JUDGMENT: VARIATION

KRUGER, AJ

Variation in terms of Section 46 (1) (a)ii

[1] This is an opposed application for condonation.

[2] On 17 June 2025 I issued a judgment under case number JS 78 / 22. In the judgement under paragraph 1 of the order I mistakenly stated that condonation to file its answering affidavit is refused. It should have read condonation to file its statement of response is refused.

[3] In terms of Section 46 (1) (a) ii of the Labour Court Rules – The court may in addition to any other powers it may have – (a) of its own motion or on application of any party affected, rescind or vary any order or judgement (ii) in which there is an ambiguity or patent error or omission, but only to the extent of such ambiguity, error or omission.

[4] It is clear that the words answering affidavit is a patent error and it should have read statement of response. For that reason, the words answering affidavit is deleted and replaced by statement of response. The rest of the judgement stays the same as set out hereunder.

Introduction

[5] On 4 October 2021, the 2nd to 4th Applicants were dismissed for their participation in an unprotected strike.

[6] On 15 October 2021, the 1st Applicant referred the matter to the CCMA, and the conciliation took place on 2 November 2021.

[7] The Applicants then filed their statement of case on 9 February 2022. This was filed late, and the Applicants had to apply for condonation. The Applicants only enrolled the unopposed condonation application on 1 November 2022, and on 28

July 2023, the condonation was granted. The Applicants notified the Respondent of this on 31 July 2023.

[8] The Respondent failed to file its statement of response.

[9] On 28 August 2023, the Applicants applied for default judgment and the Registrar served the notice of set down on the parties on 20 September 2023.

[10] On 7 February, my sister Judge Phehane removed the default judgment from the roll and ordered that the Respondent must file their condonation application before 16 February 2023.

[11] On 29 January 2024, the Respondent filed their statement of response.

[12] On 20 February 2024, the Respondent filed the condonation application as well as an interlocutory application and of importance for this dispute is -

‘The application of Clause 16 of the erstwhile Practice Manual, therefore, the issue of jurisdiction.’

[13] On 21 October 2024, my brother Judge Tlhothalemaje made the following order:

‘a. The Respondent’s jurisdictional points raised under the now repealed Clause 16.1 of the Practice Manual of this Court is dismissed;

...

c. The Respondent’s application for condonation for the late filing of the statement of response, which is opposed, is moved to the opposed motion roll.’

Explanation for the delay

[14] In the condonation application as well as the heads of argument, the Respondent explained the reasons for the delay as follows:

11.1 The fact that the Applicants did not prosecute their condonation application meant that the referral is deemed to have been dismissed.¹

11.2 Therefore, the Respondent was entitled to treat the referral as being dismissed until the Court decides otherwise.

11.3 On 22 May 2024, my brother Judge Tlhothalemaje dismissed the jurisdictional point and so the argument goes, exercised his discretion as created for in Clause 1.2 of the Practice Manual.

11.4 The Respondent submitted that the statement of response was filed before the jurisdictional issue regarding Clause 16 of the Practice Manual was determined.

[15] In addition, the Respondent raised the following additional grounds:

12.1 The Applicant undertook to provide them with the condonation order but failed to do so;

12.2 Because of an administrative error, the Respondent's attorneys did not immediately act when they received the notice of set down on 20 September 2023.

Prospects of success

12.3 The Applicants were issued with ultimatums in relation to their refusal to work;

12.4 There was a proper process followed before the Applicants were dismissed;

12.5 Dismissal is an appropriate sanction for participation in an unprotected strike.

Prejudice

[16] Both parties were to blame for the lengthy delay.

[17] The Applicants opposed the application for condonation on the following grounds:

14.1 In terms of a court order dated 7 February 2024 the Respondent was ordered to file its condonation application on 16 February 2024. This was only

¹ Clause 16 of the Practice Manual.

filed on 20 February 2024, and the condonation application therefore did not comply with a court order.

14.2 The statement of case was due after the Applicants informed the Respondent that the condonation was granted on 31 July 2023. The delay is therefore from 14 August 2023 until 29 January 2024.

14.3 The delay of five months was excessive.

14.4 The Respondent's reliance on clause 16 of the Practice Manual is misplaced. They knew that the Applicants had taken steps to finalise the matter.

Prospects of success

[18] The Applicants denied that they participated in an unprotected strike.

15.1 The Respondent was not consistent.

15.2 The dismissals were procedurally and substantially unfair.

Applicable legal principles

[19] In *Melane v Santam insurance Co Ltd*²:

'Among the facts usually relevant, are the degree of lateness, the explanation therefore, the prospects of success and the importance of the case. Ordinarily these facts are interrelated, they are not individually decisive for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there will be no point in granting condonation.'

[20] Judge Murphy AJ explained good cause at paragraph 12 in *NUMSA & another v Hillside Aluminium*³ that:

'Condonation is not there simply for the asking. Applications for condonation are not a mere formality. The onus rests on the applicant to satisfy the court of the existence of good cause and this requires a full, acceptable and ultimately reasonable explanation.'

² 1962 (4) SA 531 (A).

³ (2005) 6 BLLR 601 (LC); [2005] JOL 14268 (LC).

[21] With regard to prejudice it was said as follows in *Liberty Life Association of Africa v Kachelhoffer NO & others*⁴:

‘The enquiry into whether prejudice is present or not entails comparing the present position of the other parties involved with what it would have been had proceedings been instituted within a reasonable time.’

Relevant legislation

[22] Rule 6(3) of the Rules for the Conduct of Proceedings in the Labour Court:

‘(c) A response must be delivered within 10 days of the date on which the statement of claim is delivered.’

Analysis

[23] This matter had an unfortunate history of events and delays. At first the Applicants failed to refer this matter timeously to the Court then they failed to prosecute the matter. The first part of this delay from 21 October 2021 until 31 July 2023 had nothing to do with the Respondent.

[24] One would have expected the Respondent to know that when the condonation application was heard and the condonation was granted that they had to file their statement of response. Yet they did not do so and waited until 29 January 2024 some five months later before they filed it.

[25] It is difficult to understand why the court would grant condonation if the matter was dismissed as per the Respondents argument. Clearly at the time that condonation was granted the learned Judge was well aware of the Practice Manual and elected at that stage already to exercise her discretion to allow for this matter to continue.

[26] It is the Respondent’s right to pursue the matter and despite the fact that my brother Judge Tlhotlhemaje in my view correctly found that the Respondent’s reliance on Clause 16.1 of the Practice Manual is misplaced the test in this instance

⁴ (2001) 22 ILJ 2243 (C).

is different. At this stage the question is if this could count as a reasonable explanation for the delay.

[27] It is common cause that the statement of response was filed before 20 February 2024 when the Respondent brought this interlocutory application. The period that needs to be explained is the period between 14 August 2023 until 29 January 2024. The Respondent explained in paragraph 6.29 that –

‘Moreover, by this time the Respondent already adopted the stance that the Applicant’s referral is deemed to have been dismissed.’

[28] If this was the case one would have expected the Respondent to have acted on the letter from the Applicants dated 31 July 2023 where it was clearly stated that:

‘On 28 July 2023, the condonation for the late filing of our client’s statement of case was granted by the Honourable Court ex tempore.

We have not yet received your client’s statement of response. We attached hereto our client’s statement of case for your convenience.’

[29] On the simple reading of this letter the Respondent should have realised by now that the court has granted condonation and that they (the Respondent) are responsible for the next step. This could be by either filing their statement of response or to bring an application to rescind the order condoning the late filing of the statement of case. Yet at its own peril the Respondent did nothing for a period of 5 months.

[30] One can understand that the attorneys might have made an administrative error when they did not act on the notice of set down, but the fact still is that as from 31 July 2023, they should have known that despite Clause 16 of the Practice Manual that there is a court order condoning the late referral and the effect of this was that the Court had decided to use its discretion to reinstate the matter. In other words, if the matter was not reinstated condonation would not have been granted.

[31] The explanation for the delay must therefore fail and for that reason condonation is refused.

Costs

[32] Costs should be considered against the requirements of the law and fairness. The requirement of law has been interpreted to mean that the costs would follow the result.

[33] In the premises the following order is made:

Order

1. Condonation for the Respondent to file its statement of response is refused with costs on a party and party scale.

W. Kruger

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

M Sonikson

Instructed by:

Hafegee Roskam Savage INC Attorneys

For the Respondent:

WP Scholtz

Instructed by:

Scholtz Attorneys