



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable
Case No: J1205/19

In the matter between:

**THE ASSOCIATION OF MINEWORKERS
AND CONSTRUCTION UNION**

First Applicant

MODISE, L AND 19 OTHERS

Second Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

AARON MOSHOSHO SEBAKO N.O.

Second Respondent

BIDVEST PROTEA COIN (PTY) LTD

Third Respondent

Heard: 18 June 2025

Delivered: 30 June 2025

JUDGMENT

LENNOX, AJIntroduction

[1] This is a conditional application brought by AMCU to reinstate a review application which Bidvest has argued is deemed to have been withdrawn in terms of the provisions of the Practice Manual of this Court, which was applicable at the time. This follows the Applicant having been granted the same relief on 9 November 2022 (the Reinstatement).

[2] For the reasons set out hereunder, the review application cannot be said to have been deemed to be withdrawn. It was argued by Ms Lancaster, who appeared for Bidvest, that should the Court be of this opinion, then no judgment was necessary. The Court takes a different view given what has transpired in the matter since the Reinstatement. This is a case where a delayed review application dating back to 2019 is still not determined. The Court will return to this hereunder.

The history of the matter prior to the Reinstatement

[3] The papers were filed within 12 months. Of that, there is no live dispute before the Court.

[4] The review application was launched in time on 13 May 2019. A supplementary affidavit was served on 18 November 2019. The answering affidavit was filed by Bidvest on 17 January 2020, with AMCU's replying affidavit filed on 20 January 2020.

[5] What appears is that a notice in terms of Rule 22B¹ was not filed until 31 March 2022, and that the record was filed outside the 60 day period.

[6] This formed the basis of the initial application for reinstatement, which was launched on 9 May 2022. The application was not opposed by Bidvest.

¹ GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.

[7] A second notice in terms of Rule 22B was filed on 27 June 2022.

[8] Although the cover of the court file records that my sister Phehane J records that the draft order marked “X” is made an order of court, the actual typed order simply provided that the reinstatement application was granted.

Events post the Reinstatement

[9] Following the Reinstatement and on 1 December 2022, AMCU states that Ms Sherlock, an attorney employed by its attorneys of record, wrote to Bidvest’s attorneys requesting that they file their heads of argument in order to have the matter set down. AMCU had already filed its heads of argument. This is not disputed.

[10] Bidvest filed its heads of argument on 19 December 2022. This is likewise not disputed.

[11] As of 19 December 2022, the matter was capable of being set -down for a hearing in respect of the main review application.

[12] Thereafter, AMCU states that the matter was taken to the set-down office at or about February 2023 and that its attorneys made enquiries on 24 and 25 July 2023 as to the status of the set-down and that the advice proffered was that the matter was still in the set-down office. It appears that further enquiries were addressed on 1, 9, 15 and 16 November 2023. Thereafter, a third notice in terms of Rule 22B was served on 20 November 2023.

[13] The previous notices were filed on 31 March 2022 and 27 June 2022, being before the relief granted on 9 November 2022. Bidvest argues in its answering affidavit that this is irrelevant to the present application.

[14] Ms Lancaster questioned whether the second notice in terms of Rule 22B was served in court. It was, as evidenced by the court stamp on the filed document in the court file. Ms Lancaster then correctly accepted that it had been.

[15] Section 11.2.7 of the erstwhile Practice Manual reads as follows:

‘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 Arguments) 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.’

[16] After the third Rule 22B notice was filed, Bidvest sought to bring an application in terms of Rule 11 to have the review application dismissed based on the fact that same is again deemed to have lapsed.

[17] AMCU has opposed that application and launched the present application in response thereto.

The opposition to the second reinstatement application

[18] Mr Britz, who deposed to the answering affidavit, stated that AMCU had not taken any steps to pursue the review application after the granting of the Reinstatement. This denial, repeated in paragraphs 13 and 14, is demonstrably incorrect. It is exacerbated by the next submission made in paragraph 16 that the first step taken after the granting of the Reinstatement was the filing of the notice in terms of Rule 22B on 20 November 2023. Deponents to affidavits must take care of what they state under oath and carefully consider the correctness thereof. Necessary concessions of fact must be made.

[19] Mr Britz further argued that anything done prior to the granting of the Reinstatement was irrelevant.

[20] The submissions made by Bidvest are, at best, opportunistic.

[21] In submitting that AMCU took no further steps to prosecute the review application after 9 November 2022, Bidvest is deliberately sidestepping facts which it has failed to dispute, namely that:

21.1 It filed its heads in response to a request by AMCU;

21.2 AMCU followed up with the Registrar's office once it had taken the file to the set-down office; and

21.3 AMCU filed the third notice in terms of Rule 22B on 20 November 2023, being approximately 11 months after the filing of the heads of argument on behalf of Bidvest or 11 days later than it contends it should have.

The consequence of a reinstatement

[22] The Registrar was informed that the matter was ready to be set-down on two occasions prior to Reinstatement.

[23] The question which then arises as to what is reinstated, and can a reinstatement include the steps taken whilst the reinstatement application was pending?

[24] In argument, Ms Lancaster sought to forward an argument that the first two notices were an irregular step as the application was deemed to have lapsed. No notice of an irregular step was issued. It is trite that the former Rule 11 permitted the incorporation of the High Court rules when a situation is not provided for in the rules of this Court. As Bidvest was not opposing the first reinstatement application, this is not surprising.

[25] AMCU brought in a responsible manner the initial reinstatement application, and whilst the same was pending, sought to advance the review application. The Court have considered the content thereof, which is annexed to the founding affidavit in this application, and it appears that whilst the matter may have stalled at a point, steps were proactively taken to bring the main application back on course.

[26] Once the Reinstatement was granted, it must follow that all steps taken prior to the reinstatement application being granted are likewise revived, and that as a

consequence, upon the granting of the Reinstatement, it must be that a notice in terms of Rule 22B had been filed on two occasions. The steps taken prior to the reinstatement of the review application on 9 November 2022 are revived by the granting of the Reinstatement. One cannot elect which portions of the review application are revived; it is revived in its entirety. Consequently, it cannot be that the review application has lapsed as suggested in the Rule 11 application.

[27] Even where the Court is incorrect in its interpretation, an explanation has been given as to what took place after the Reinstatement. The explanation may not cover each and every month, but it does explain the conduct of the Applicant's attorneys in a manner which satisfies this Court that they acted diligently, and it would be appropriate to reinstate the review.

[28] This Court exists as a court of law and equity in terms of section 151(1) of the Labour Relations Act² (the LRA). It must also give effect to section 1(d)(iv) of the LRA which reads as follows:

'The purpose of this Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act, which are—

...

(d) to promote—

...

(iv) the effective resolution of labour disputes.'

[29] As this Court held in *Kolobe v Proxenos (Sophia's Restaurant)*³ the word "effective" should be equated with "speedy".

[30] In *Baderbop (Pty) Ltd & Another v National Bargaining Council & Others (Baderbop)*⁴ at 1211, my sister Pillay J held:

'...bound in terms of section 1(d)... to channel the dispute in a way that it avoids a spiralling of the dispute in an abyss of technicalities. In making the

² Act 66 of 1995, as amended.

³ [2000] 11 BLLR 1291 (LC); (2000) 21 ILJ 1130 (LC).

⁴ [2001] 11 BLLR 1209 (LC); (2001) 22 ILJ 2431 (LC).

order that I do, and without denying the parties such rights as they may have in law, the court prevails on the parties, including the Bargaining Council, to address the dispute effectively and substantively.'

[31] It is perhaps apt to repeat the sentiments expressed above. In argument, Ms Lancaster asked what Bidvest should have done when, on its version, a year passed with no action taken.

[32] If the sentiment of *Baderbop* was heeded, the answer is nothing. The matter was ready to be heard, and the irresistible inference one must draw is that Bidvest was snatching at a bargain. The simple fact is that the matter is and remains capable of being set down for hearing on the merits of the review application. The approach of Bidvest is to be regretted.

[33] This matter has unnecessarily descended into the abyss, which was forewarned in *Baderbop*. Instead of dealing with the matter, it persisted with the opposition to the reinstatement application and the finalisation of the review application is delayed as a result.

[34] Practitioners and parties with a right of appearance in this Court should be aware that overburdening the Court with applications which only seek to delay the finalisation of a dispute, and which do not advance in sensible way a party's right to enforce what rights they have is having an adverse effect on the administration of justice.

Conclusion

[35] The Court does not believe that an application to revive the review application was necessary, as steps had been taken before the Reinstatement which satisfied the requirement of the erstwhile Practice Manual.

[36] If the Court is incorrect in this conclusion, it would in any event grant the reinstatement application given the steps taken by the Applicant's attorneys in 2203 and the short delay of 11 days in filing the notice in terms of Rule 22B.

Costs

[37] This Court does not apply the principle that costs follow the result. That does not mean that costs may not be awarded.

[38] There was no basis for the application to be opposed. The Court also wishes to mark its displeasure at the statements made under oath that were demonstrably incorrect, as referred to *infra*.

[39] AMCU should not be saddled with the costs, and as such, it is appropriate that costs be granted to AMCU. That said, there is an ongoing relationship that will exist between an employer and a trade union, which should be taken into account.

[40] For this reason, costs will be limited to 50% of the costs party and party costs (and to the extent it may need to be recorded, including the costs of counsel) on the High Court scale C.

[41] Accordingly, the following Order is made:

Order

1. The application to reinstate the review application under this case number is unnecessary, and the matter is not deemed to have been withdrawn in terms of the Practice Manual applicable at the time;
2. The Registrar is to set the review application down together with the rule 11 application should same be persisted with;
3. The Third Respondent is to pay the Applicant's costs, subject to a limit of 50% of the costs party and party costs (and to the extent it may need to be recorded including the costs of counsel) on the High Court scale C.

M.A. Lennox

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mr A Cook

Instructed by:

LDA Inc

For the Third Respondent:

Ms S Lancaster

Instructed by:

Lancaster Kungoane Attorneys

LABOUR COURT