



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR410/20

In the matter between:

**DEPARTMENT OF SPORTS, ARTS, CULTURE
AND CULTURE AND RECREATION**

Applicant

and

TISETSO, MOTLOUNG

First Respondent

**GENERAL PUBLIC SERVICES SECTORAL
BARGAINING COUNCIL ("GPSSBC")**

Second Respondent

V MADULA N.O.

Third Respondent

Heard: 8 August 2024

Delivered: 8 August 2024

Reasons: 04 February 2025

REASONS FOR ORDER

PHEHANE, J

Introduction

[1] On 8 August 2024, this Court issued an order in the following terms:

- ‘1. The reinstatement application is dismissed.
2. The applicant is to pay the costs.’

[2] The brief reasons for the order follow below.

Discussion

[3] When this matter was heard, the pleadings in the reinstatement application, which was unopposed, were conspicuously missing from the Court file. The Court file contained only the pleadings in the review application, which had lapsed, and an application by the first respondent to dismiss both the review and reinstatement applications for lack of prosecution by the applicant (Department).

[4] Counsel for the Department, at the direction of the Court, handed up the pleadings in the reinstatement application which were filed in this Court on 8 March 2023. There is no index filed by the Department in the reinstatement application. The first respondents challenged the Department after receiving what it termed, ‘an irregular notice of enrolment’ by the Department in July 2023, as, according to the first respondent, the notice of enrolment sought to enrol an unopposed application, that is, the reinstatement application, together with a review application on the opposed roll in circumstances where the review application had lapsed by operation of the law. The first respondent also contended that the reinstatement application was not indexed and paginated and was accordingly not ripe for hearing.

[5] Ms. Mofokeng for the Department informed this Court that an index was filed but could not confirm *when* this was done. Ms. Mofokeng further submitted that the notice to enrol the reinstatement application was delivered in July 2023 and therefore, the reinstatement application had not lapsed.

[6] The review application dates back to 2020, and the dispute between the parties dates back several years, I determined therefore, for expedience, that the reinstatement application be heard.

[7] When the review application was launched, the now repealed Rules of this Court¹ as well as the Practice Manual² were in operation.

[8] Rule 7A of those Rules read with item 11.2 of the Practice Manual provided for the procedure in relation to the adjudication of review applications.

[9] An application to reinstate a review application is launched for failure to comply with item 11.2.7 of the Practice Manual, which read 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 be] archived or removed from the archive.’ (Emphasis added)

[10] By way of background, the review application was launched on 19 March 2020. The notice to file the record of the arbitration proceedings in terms of Rule 7A(6) was filed on 28 July 2020 as well as 2 September 2022. The notice in terms of Rule 7A(8)(a) and a supplementary affidavit were delivered on 7 August 2020. The answering affidavit was delivered on 2 October 2020. The Department states that the delay in failing to comply with item 11. 2.7 of the Practice Manual is due to the first respondent filing as answering affidavit late. However, no objection was filed by the Department in terms of item 11.4.2 of the Practice Manual,³ therefore the

¹ GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court (repealed, effective 17 July 2024).

² Practice Manual of the Labour Court of South Africa, effective 1 April 2013 (repealed, effective 17 July 2024).

³ 11.4.2 of the Practice Manual read:

Department's right to object to the late filing of the answering affidavit lapsed. In my view, blaming the first respondent for failing to comply with the provisions of item 11.2.7 of the Practice Manual is not a reasonable explanation for such non-compliance.

[11] The Department only filed its replying affidavit some five months after the answering affidavit was filed, that is, on 24 March 2021. Then, approximately one year and five months later, on 31 August 2022, the applicant filed its notice requesting the Registrar to enrol the review application for hearing. By this stage, the review application had lapsed by operation of the law.⁴ This is not disputed.

[12] Further reasons proffered by the Department for non-compliance with item 11.2.7 are due to the measures adopted by this Court during the COVID-19 pandemic. Further, the Department avers that it was waiting for the Registrar to enrol the matter for hearing – despite not having filed a notice of enrolment as was required by item 11.2.7.

[13] The Department incorrectly states that it filed all his papers within the 12-month period as provided in item 11.2.7 of the Practice Manual. This is incorrect as no notice was filed by the Department requesting the Registrar to enrol the review application for hearing in compliance with item 11.2.7 of the Practice Manual. In so far as the COVID-19 pandemic measures relate, during the period March 2021 when the replying affidavit was filed, up to August 2022, when the notice to enrol the review application was ultimately delivered, this Court was in operation and the COVID-19 measures did not bar the Department from filing a notice requesting the Registrar to enrol the review application for hearing.

[14] The reinstatement application was only launched in March 2023. There is no explanation for the delay between August 2022 to March 2023, a period of approximately seven months.

'Where the respondent or the applicant has filed its opposing or replying affidavits outside the time period set out in the rules, there is no need to apply for condonation for the late filling of such affidavits unless the party upon whom the affidavits are served files and serves a Notice of Objection to the late filing of the affidavits. The Notice of Objection must be served and filed within 10 days of the receipt of the affidavits after which time the right to object shall lapse.'

⁴ See: *E-Tradex (Pty) Ltd t/a Global Trade Solution v Finch and Others* [2022] ZALAC 106; (2022) 43 ILJ 2727 (LAC).

[15] It follows, therefore, that the entire period of delay is unaccounted for by the Department for its failure to comply with item 11.2.7 of the Practice Manual.

[16] In my view, the reasons proffered by the Department for the failure to comply with the provisions of the Practice Manual are unreasonable; this is compounded by the fact that the Department does not explain the full extent of the period of non-compliance. In the premises, the prospects of success are immaterial.⁵ In any event, the reinstatement application is silent in respect of the prospects of success in so far as condonation for the late filing of the review application is concerned.

[17] The Department was at all material times, represented by the Office of the State Attorney. The Rules and the provisions of the Practice Manual that were in operation at the time were binding on practitioners.⁶ Disregard for the provisions of the Practice Manual does not constitute good cause for non-compliance.⁷

[18] In view of the afore-going, the above order was made.

M. T. M. Pehane

Judge of the Labour Court of South Africa

⁵ See: *National Union of Mineworkers v Council for Mineral Technology* [1998] ZALAC 22; [1999] 3 BLLR 209 (LAC) at para 10.

⁶ *Macsteel Trading Wadeville v Francois van der Merwe N.O and Others* (JA67/2016) [2018] ZALAC 50; (2019) 40 ILJ 798 (LAC) at para 22.

⁷ See: *Brummer v Gorfil Brothers Investments (Pty) Ltd and Others* [2000] ZACC 3; 2000 (2) SA 837 (CC).