



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J1831/16

In the matter between

SONWABILE GUGUSHE

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

COMMISSIONER JOSEPH THEE N.O.

Second Respondent

KLOOF GOLD MINES

Third Respondent

Heard: 30 April 2025

Delivered: 30 April 2025

Reasons: 9 May 2025 (This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing-down is deemed to be 10h00 on 9 May 2025.)

REASONS FOR ORDER

PHEHANE, J

Introduction

[1] On 30 April 2025, this Court handed down an order dismissing the applicant's application to reinstate his review application with costs.

[2] The reinstatement application was opposed.

[3] The brief reasons for the order appear below.

Background

[4] The applicant was dismissed from the employ of the third respondent in November 2015. The applicant subsequently launched an unfair dismissal dispute under the auspices of the first respondent, the Commission for Conciliation, Mediation and Arbitration (CCMA). In an arbitration award dated 15 June 2016, the second respondent dismissed the applicant's referral to the CCMA, having found that his dismissal was substantively fair.

[5] Dissatisfied with the decision by the second respondent, the applicant launched a review application in terms of section 145 of the Labour Relations Act¹ (LRA) in this Court on 9 September 2016, and out of time.² While no relief is sought in the notice of motion for condonation of the late filing of the review application, the applicant makes a terse averment in his founding affidavit in the review application that the delay was due to him being '*relaxed and waiting for a Court date*' after he gave his trade union instructions to launch the review application. I refer to this

¹ Act 66 of 1995, as amended.

² The review application was not launched within the statutorily prescribed period of six weeks as provided in section 145 of the LRA.

avermment later in this judgment as it turns on whether or not the applicant has prospects of success in his review application.

[6] After the CCMA filed its notice in terms of Rule 7A(2) and (3) of the now-repealed Rules of this Court³ on 13 September 2016, the applicant, at all times legally represented, served a record of the transcribed arbitration proceedings on the third respondent on 15 March 2017. The applicant did file the record with the Registrar of this Court as was contemplated in the former Rule 7A(6). Counsel for the applicant concedes that no Rule 7A(6) notice was filed by the applicant. No notice in terms of the former Rule 7A(5) was filed by the applicant. It, therefore, cannot be established if the record was filed on time.

[7] Be that as it may, as the chronology of events unfolds, on 5 April 2017 and on a further three occasions, the third respondent's attorney of record enquired from the applicant in correspondence as to when the applicant would deliver its notice in terms of the former Rule 7A (8). There was no reaction by the applicant to this correspondence.⁴ It bears mentioning that the third respondent avers that the transcribed record that was filed by the applicant is incomplete.

[8] Due to the applicant's failure to prosecute its review application, the third respondent approached the Registrar of this Court by way of a letter dated 9 February 2018, requesting that the review application be archived. In an order dated 16 November 2021, this Court archived the review application.

[9] As matters stood, due to the failure by the applicant to prosecute his review application and failure to take any further steps in his application since the filing of the Rule 7 A(2) and (3) notice, at the very least, his review application lapsed by operation of the law on 13 December 2016 in terms of the provisions of item 16 of the Former Practice Manual of this Court.⁵

³ GN 1665 in GG 17945 of October 1996 (repealed, 17 July 2024).

⁴ Answering affidavit at paras 21 and 22 on p 305.

⁵ Practice Manual of the Labour Court of South Africa (repealed, 17 July 2024). See: *E-Tradex (Pty) t/a Global Trade Solution v Finch and Others* (2022) 43 ILJ 2727 (LAC).

[10] The applicant avers that it only became aware of the Court order archiving the review application in April 2022, however, this reinstatement application was only launched on 7 October 2022, approximately 6 months later. No explanation is proffered for this delay.

Test to succeed in a condonation application

[11] It is well established that a revival application is akin to a condonation application. To succeed in the grant of condonation, an applicant must show good cause for the delay.⁶

[12] It is trite that an applicant for condonation must file an application as soon as they become aware that condonation is necessary⁷ and a full, accurate and detailed explanation must be provided for the entire period of delay.⁸

Delay, non-compliance with Rules and reasons therefore

[13] The applicant, legally represented, is the deponent to the founding affidavit in this application. He deposes to the affidavit in the third person and avers that after the record was served on the third respondent on 15 March 2017 and after the third respondent enquired from his attorney of record on 5 April 2017 about the delivery of the Rule 7A(8) notice, he could not be reached by his attorney. The applicant states that his attorney sent a letter to him dated 8 April 2017 to his last known address, and he did not reply to this letter. The applicant avers that he contacted his attorney in March 2020 to inform this attorney that he had relocated to the Eastern Cape and undertook to make himself available for consultation at the end of March 2020. He proceeds to explain in his affidavit that he had no electricity or cellular phone network coverage in this geographical location.

[14] It is noteworthy that, on the applicant's own version, he only contacted his attorney of record regarding his review application three years after the record was

⁶ *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A).

⁷ See: *Rennie v Kamby Farms (Pty) Ltd* 1989 (2) SA 124 (A) at 129G.

⁸ See: *Ntsele v Commission for Conciliation, Mediation and Arbitration* [2017] ZALCJHB 161 at para 9.

served on the third respondent. No detailed explanation is provided for this entire period of delay, as in incumbent on an applicant in a condonation application to provide to the Court, as it seeks the indulgence of the Court to grant condonation for the delay. By this date, the review application had long lapsed by operation of the law.

[15] The applicant further explains, rather conveniently, that due to the national lockdown measures that were implemented in South Africa in reaction to the COVID-19 pandemic, he could not consult with his attorney. In April 2022, two years later, he applied for a job and had been blacklisted. Consequently, he instructed his attorney to proceed with the review application. It was at this point that his attorney of record discovered that his review application had been archived.

[16] The extent of the delay is five years. This is egregious. The applicant further delayed by six months to launch this present application, and he has failed to explain this period of delay. It is trite that an applicant is to apply for condonation as soon as they become aware that condonation must be sought.

[17] The applicant's explanation for the delay and non-compliance with the Rules and provisions and Practice Manual that were applicable at the time is terse, hollow and unconvincing. The entire period of delay is unexplained.

[18] The failure to provide a detailed, accurate and sound explanation for the entire period of delay and for the non-compliance with the Rules is fatal to the reinstatement application.

[19] The applicant did not progress his review application, as, on his own version, he failed to remain in contact with his legal representative to give instructions to progress his application. As submitted by Counsel for the third respondent, the applicant abandoned his review application, and the real reason the applicant contacted his attorney in April 2022 is due to him not being able to successfully obtain employment.

[20] In my view, the explanation proffered by the applicant for the delay is unsound and unsatisfactory.

Prospects of success

[21] Condonation for the late filing of the review application is the first hurdle that the applicant must overcome in the main application, the review application. As stated above, the applicant provides a terse explanation in his founding affidavit in the review application for the late filing of that application. The applicant has not made any averment whatsoever in this application in relation to the prospects of success in relation to condonation for the late filing of the review application. In the circumstances, the applicant has not established that he has prospects of success in the main application. In any event, in view of the extensive period of delay and without a reasonable explanation for the delay, the prospects are immaterial.⁹

Prejudice

[22] The ethos of the LRA is that disputes must be resolved expeditiously.

[23] This is an applicant who delayed to approach this Court timely for relief to review and set aside the arbitration award for the reason that he was '*relaxed and waiting for a Court date*'. This is also an applicant who abandoned his review application for five years in circumstances where he was dismissed, now, ten years ago. In addition, an incomplete record has been delivered to the third respondent, and this would mean reconstructing a record in proceedings that sat ten years ago. The prejudice to the respondent, who was entitled, given the lapse of time and no reaction to its correspondence in 2017 for the applicant to progress its review application, to hold the view that the applicant had abandoned its case, is greater should this application be granted.

[24] If there was a case that offends against the principle of expeditious dispute resolution, it is this case, as the applicant relaxed and did nothing until he realised he

⁹ See: *National Union of Mineworkers v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC).

was unable to regain entry into the mining industry for work on account of the misconduct he had committed at the third respondent. The COVID-19 pandemic lockdown restrictions are a convenient excuse that is unconvincing. During the two years after the first national lockdown was declared, business and the economy opened up, and the applicant chose to abandon his review application.

[25] There is thus no merit to this reinstatement application. No replying affidavit is filed contesting the allegations as contained in the answering affidavit.

[26] This application is hopeless and woeful as it does not meet the well-established requirements to succeed in the grant of condonation. This application ought not to have seen the light of day.

Costs

[27] The conduct of the applicant in pursuing this hopeless reinstatement application without merit is conduct that warrants an order for the payment of costs. The third respondent has incurred costs in defending a hopeless application where hollow reasons are presented for failing to comply with the Rules of this Court and failing to timely progress a review application.

[28] It is for the aforesaid reasons that the above order was made.

M. T. M. Phehane
Judge of the Labour Court of South Africa