



THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Not Reportable

Case no: D242/2024

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

First Respondent

R PADAYACHEE N.O.

Second Respondent

NEIL PERUMAL

Third Respondent

DEANO SINGH

Fourth Respondent

Heard: 08 July 2025

Delivered: 17 July 2025

Summary: The application to dismiss a review application as the employer, the applicant party, failed to pursue the review application as required by section 145 of the Labour Relations Act 66 of 1995 (LRA), the New Labour Court Rules and Labour Court Practice Manual – Delays and their effects are covered in the then Labour Court Practice Manual, which also governs the prosecution of review applications – The Labour Court lacks the authority to

consider the main review application in cases where the Practice Manual's deemed withdrawal provisions have taken effect – the review application is deemed withdrawn or lapsed until the court orders its reinstatement – As such, the court held that there was an unreasonable delay in the prosecution of the lapsed review application, which could not be condoned.

As such, the review application was dismissed with costs, costs to inclusive costs associated with the review application.

JUDGMENT

MPAHLWA, AJ

Introduction

[1] For ease of reference, the parties will be referred to, in this judgment, as they appear in the main review application.

[2] The Third and Fourth Respondents (collectively, the Respondents) move for an application to dismiss the review application filed under case number D242/2024, and furthermore, that the award is made an order of this court in terms of Section 158(1)(c) of the Labour Relations Act¹ (LRA).

[3] The application to dismiss the review application was filed on the 24th February 2025, currently stands unopposed by the Applicant. As such, it is an uncontested and unopposed matter.

[4] At the commencement of the hearing, Mr Ratshili, appearing for the Applicant, submitted that the Applicant party did not have any intention of opposing the current dismissal application, save to engage in settlement negotiations, which appear to have started and collapsed on the day of the hearing, being 8 July 2025. No reason

¹ Act 66 of 1995, as amended.

was proffered why such negotiation could not have commenced much earlier, and only at the door of the court ,at the hearing day.

[5] Given the absence of opposition in the matter, Mr Ratshili's submissions were limited to the collapsed settlement negotiation and the draft order, which had been proposed by the Respondents. Having said that, the matter has some checked history to it, which is necessary to set out below.

Material background facts

[6] The Applicant (in the main review application) is the Road Accident Fund, which is established as a juristic person in terms of Section 2 of the Road Accident Fund Act.² The Third Respondent (the deponent in the current application) is an adult male, employed by the Applicant (in the main application) as Claims Manager at the Applicant's Durban branch office. The Fourth Respondent is an adult male who is employed by the applicant (in the main application) as a Senior Manager: Claims, at the applicant's Durban Branch office.

[7] Both the Third and Fourth Respondents join issue (as the applicants) in the application to dismiss the review application brought in terms of Rule 11 of the Practice Manual.³ Since the present application was filed on the 24th February 2025, the New Rules of the Labour Court find application.

[8] It is common cause, or at the very least, undeniable, that the Respondents were the subject of a disciplinary procedure in 2022. This process ended on 14 September 2022 when the Respondents were found not guilty of the charges against them.

[9] The Applicant tried to undertake an internal review following the disciplinary process's conclusion, but the urgent court stopped them with the impact of a final

² Act 56 of 1996.

³ Rule 11 has been replaced by Rule 41 of the New Rules of the Labour Court, following the repeal of the Practice Manual on 17 July 2024.

remedy, prohibiting them from doing so. On 23 January 2023, a complete ruling on the case was rendered, still not in favour of the Applicant, employer party.

[10] In light of the aforementioned, the Applicant filed an application for leave to appeal against Lawrence AJ's entire 23 January 2023 ruling. On 12 July 2023, the application for leave to appeal was denied. The Applicant then filed a petition with the Labour Appeal Court, which was denied on 20 February 2024.

[11] In addition, the applicant continued to place the Respondents on suspension for all of these periods, despite the Respondents not being subjected to any disciplinary action or findings justifying their suspension.

[12] The Respondents declared an unfair labour practice dispute against the Applicant as a result of their ongoing suspension.

[13] An arbitration ruling under case KNDB 1078-21 was given on 18 March 2024, concluding that the applicant had participated in unfair labour practices against the Respondents. The award mandated that their suspensions be lifted immediately. Additionally, within 48 hours of receiving the award, the Respondents were instructed to resume their jobs.

[14] The Applicant served the Respondents' attorneys of record with a review application on 5 May 2024. The six-week window for filing the review application appears to have ended on 29 April 2024, and thus, the review application was filed out of time.

[15] It is essential to note that the Applicant has not pursued or prosecuted the review application since it was filed, which is roughly a year from the date of the arbitration award, which was received on 18 March 2024. In addition, since the Respondents' suspension went into force on 22 November 2021, there has been an unreasonably long delay in resolving the matter.

[16] Presently before Court, to date, there is still no condonation sought for the late filing of the review application, nor is there any application to reinstate the review application.

[17] The Respondents filed this application on the grounds that the review application violated clauses new Labour Court Rules and make explicit reference to Rules 37(15), (16), and (17) of the Labour Court Rules⁴, respectively.

[18] Apart from the above, the applicant appears to:

18.1 Have failed to comply with the timeframes stipulated under section 145(1)(a) of the LRA.

18.2 Have failed to comply with section 145(5) of the LRA, which requires that the Applicant apply for a date for the matter to be heard within six months of delivery of the application.

18.3 Have failed to act in accordance with Rule 7A(6) (replaced with the new Rules of Labour Court, which bare reference to Rule 37(9) and Rule 37(14) respectively, which obliges the applicant to file the record within 60 days of the date upon which the applicant is advised by the Registrar that the record has been received).

[19] In the light of the above, the Respondents rely on Rule 11,⁵ to dismiss the review application, given the failure by the Applicant to take further steps to prosecute the matter within the reasonable timeframes provided for in terms of the Labour Court Rules and the Practice Manual.

The status of the review application

[20] At the commencement of the matter, this Court had inquired from the Respondent party what was the position, when the provisions of the Practice Manual had taken effect; thus, the review being deemed withdrawn or lapsed, did this Court have the jurisdiction to hear the main dismissal application.

⁴ GN 4775 of 2024: Rules Regulating the Conduct of the Proceedings of the Labour Court (effective 17 July 2024).

⁵ Now Rule 41 of the New Labour Court Rules.

[21] For the Respondents, Mr Seery submitted that the fact that the review application is deemed withdrawn does not oust the Court of the required jurisdiction to hear and decide an application to dismiss the review application. For the Applicant, Mr Ratshili agreed in this regard that the Court ought to entertain the application to dismiss the review application because it was clothed with the necessary jurisdiction. Mr Ratshili's only argument was that the Respondents could have utilised a much less expensive means to have the arbitration award made an order of court. Despite that submission, Mr Ratshili submitted that there was nothing stopping the Court from hearing the application to dismiss the review application and come to a decision. The closing submission by Mr Ratshili in this regard was that the application was left with the Court to decide on, and no further submissions were to be made.

[22] On a survey of the Respondents' papers, reliance is placed on the fact that the review application is deemed to have been withdrawn based on the provisions of clause 11.2.3 of the Practice Manual. During argument, reliance was placed on the provisions of Rules 37(15), (16) and (17) respectively of the New Rules of the Labour Court for the contention that the review application had lapsed. Most importantly, Rule 37(15) provides that:

'If the applicant fails to file a transcribed record within the prescribed period, the applicant will be deemed to have withdrawn the application, unless the applicant has during that period requested the respondent's consent for an extension of time and consent has been given. Any consent given must be expressed in writing and filed with the registrar. ⁶

[23] In other words, records must be filed in terms of 37(9),⁷ upon the registrar notifying the applicant that the record has been received. The applicant will be considered to have withdrawn the application if the record is not filed within the allotted time, unless they have asked for and received the respondent's agreement

⁶ Rule 37(15) of the Labour Court Rules.

⁷ New Labour Court Rules.

for an extension during that time.⁸ In the event that consent is denied, the applicant may request an extension from the Judge President in chambers by submitting a notice of motion accompanied by an affidavit. Proof of service on all other parties must be included with the application, and responding affidavits may be submitted within the time frames specified by Rule 35.⁹

[24] After that, the Judge President will assign the file to a judge for a chambers decision regarding any extension of time the respondent should be given to file the record. It is noteworthy that 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.

[25] Given the material background in the matter, the following is clear:

25.1 On 5 May 2024, the Applicant served a review application on the respondents' attorneys of record. This is after the expiry of the six-week period, within which to file the review application,¹⁰ which appears to have lapsed on 29 April 2024.

25.2 Since the filing of the review application, the applicant has taken no further steps in the furtherance and prosecution of the review application, a period which is approximately 12 months from the date of the arbitration award, which was received on 18 March 2024.

25.3 Presently before court, there is neither a condonation application for the late filing of the review application, nor is there any application to reinstate the review application.

[26] For this reason, this Court readily acknowledges that the review application violated Rules 37(15), 37(16), and 37(17) of the new Labour Court Rules, respectively. As a result, the review application can be considered withdrawn, and the deeming provisions have taken effect.

⁸ Rule 37(14) and 37(5) of the New Labour Court Rules.

⁹ Rule 37(16) of the New Labour Court Rules.

¹⁰ See Section 145 of LRA, *Mbatha v Lyster & Others* [2001] 4 BLLR 409 (LAC).

[27] The next question to consider is whether this Court has jurisdiction to hear the dismissal application.

Dismissal applications in terms of Rule 41

[28] In *Mthembu v Commission for Conciliation, Mediation & Arbitration & others*¹¹ (*Mthembu*), the court determined that, in order to expedite the resolution of labour disputes, a Rule 41(1)(a)(b) application should be allowed. The court held that a party bringing a Rule 41 application once it has been placed in a position to file an answering affidavit and raise the issue of non-compliance defeats the concept of expeditious resolution of disputes. As a result, the court decided that the opposing party cannot be expected to wait interminably after a matter is deemed withdrawn if the reviewing party does not submit an application to reinstate or request condonation for failing to comply with the deadlines for the matter's resuscitation. To avoid essentially leaving the opposing party in a review application at the discretion and whim of the reviewing party, the court believed that the only way to resolve the issue would be through a Rule 41 application.¹²

[29] Given the Labour Court's broad discretion in interpreting and applying the Practice Manual's provisions, the court in *Mthembu* concluded that nothing precludes the court from considering an application to dismiss a review application, even in situations where the review application is presumed to have been withdrawn.

[30] The Court further held that its opinion is supported by the Labour Court Rules' Rule 41(3), which states that a reviewing court may act in a way that it deems appropriate under the circumstances to accomplish the goals of the LRA while exercising its authority and carrying out its duties. In other words, a court may grant a Rule 41(1)(a) application to dismiss a review application in order to resolve a dispute as speedily as possible without having to wait for the reviewing party to take further steps to bring the matter to finality or to resurrect the matter after it has been deemed withdrawn due to non-compliance with the relevant timeframes.

¹¹ (2020) 41 ILJ 1168 (LC).

¹² Ibid at para 25, noting that Rule 11 was repealed and replaced with Rule 41 of the New Labour Court Rules.

[31] As a result, the court determined that the employer was not prohibited from acting right away to finalise the employee's review application, even though it was believed to have been withdrawn. Instead, the employer had the right to carry on with business as usual without worrying about whether the employee would ever pursue the review and resolve the issue. Therefore, the court decided that in order to expedite the resolution of labour disputes, the Rule 41 application should be granted in such situations.

[32] Most significantly, the court in *Mthembu* also provided examples of behaviour that is unacceptable abuse of the legal system and incompatible with the prompt settlement of a dispute. This behaviour includes instances in which the reviewing party is aware of the Rule 41 application and does not take any action to oppose the application or indicate that they intend to pursue the review application, or in which the reviewing party has been informed of the opposing party's intention to oppose the review application and no further action was taken to prosecute or reinstate the review application after it was deemed withdrawn. In the present case, that is the precise position.

[33] In contrast, in *SA Police Union on behalf of Mnisi v Safety & Security Sectoral Bargaining Council & Others*¹³ (SAPU), quoted in *Mthembu*, the court had referred to a legal principle established and said:

'Once a case has been withdrawn, such a case is not justiciable in a court of law. The dismissal of a review that has been withdrawn no longer affects the interest of the parties. It has no practical effect to the parties, nor does it serve the interests of justice. A review application that is deemed to be withdrawn does not exist. Put differently, there is nothing before the court to be dismissed. This court will have no jurisdiction to dismiss a non-existent review application. A review application that is set down for a hearing after having been deemed withdrawn ought to be struck off the roll rather than being dismissed.'¹⁴

¹³ Unreported judgment under case no: JR 2597/2001 delivered on 19 August 2019.

¹⁴ Quoted with approval in *Mthembu* at para 11.

[34] The court in *SAPU* went further to suggest that a practical solution to the above administrative conundrum, which impacts the adjudication of these matters, is as follows:

'I fail to understand the practical effect of dismissing a withdrawn review. The approach taken by Van Niekerk J in *Ralo* was to strike such a review off the roll when it was enrolled despite having been deemed withdrawn. Such to me is a proper approach and it commands to certainty. In my view, the registrar must refuse to enroll [applications that are] deemed withdrawn until reinstated by a court. A system may have to be designed by the registrar to identify such matters. This would do the already congested roll a lot of good. As a corollary to that, the registrar must refuse to enroll rule 11 applications seeking to dismiss reviews that are deemed withdrawn.'¹⁵

[35] The above was confirmed in the matter of *Macsteel Trading Wadeville v Van Der Merwe No & others*¹⁶ (*MacSteel*).

[36] The position with respect to these dismissal applications has been unclear over time because of conflicting judgments handed down by this Court on this issue. The most recent of which is *NUMSA obo Mavuso v Mini Mega (Pty) Ltd t/a Rustenburg Engine Centre*¹⁷ (*Mavuso*).

[37] In *Mavuso*, the Court considered a request to reject a review application because the employer, the applicant party, had neglected to pursue it in accordance with section 145 of the LRA and the Practice Manual. The Court ruled that it lacked the authority to decide on a review application that was filed after the six-week limit and in which no application for a condonation was filed. In spite of the absence of jurisdiction and the provisions of the Practice Manual, the Court went one step further and decided that the employer's excessive delay in prosecuting the case warranted the dismissal of the review application under Rule 11, of the old Rules of the Labour Court.

¹⁵ Ibid at para 14.

¹⁶ (2019) 40 ILJ 798 (LAC) at para 25.

¹⁷ (JR 1288/13) [2022] ZALCJHB 180 (4 July 2022).

[38] That being the position, it is necessary to consider next the extent of the applicability of the Practice Manual.

Applying the Practice Manual

[39] Regarding the Practice Manual's applicability, the Court in *Mavuso* decided that it should be interpreted flexibly rather than strictly. The Court further concluded that judicial discretion over cases before the Labour Court was not rendered obsolete by the Practice Manual's publication.

[40] In relation to the deeming provisions of the Practice Manual, the Court further held that these are not to be interpreted to mean that the Court is barred from exercising its discretion to dismiss a review application that has clearly not been prosecuted diligently by the applicant. In concluding the matter, the Court held that the courts have the discretion, in appropriate circumstances, to determine a matter despite its withdrawal by the applicant party remaining intact. This Court agrees with the approach in *Mavuso*.

Assessment

[41] The Court determined in *Sishuba v National Commissioner of SAPS*¹⁸ that the following general strategy should be used in an application to dismiss, as follows:

‘The focal point in considering whether to grant the order barring the employer, in this case, from proceeding further with the review application is the issue of justice and fairness to both parties. The question that then arises is whether the interest in the administration of justice, in this instance, dictates that the employer be barred from proceeding further with the review application.’¹⁹

[42] In considering the application to dismiss the review application, two main issues must be considered and decided:

¹⁸ [2007] 10 BLLR 988 (LC).

¹⁹ Ibid at para 16.

42.1 Where there was an unreasonable delay, and if so

42.2 Whether the delay should be condoned.

[43] In relation to the first issue, in *Associated Institutions Pension Funds and Others v Van Zyl and Others*,²⁰ the court said

‘The reasonableness or unreasonableness of a delay is entirely dependent on the facts and circumstances of any particular case.... The investigation into the reasonableness of the delay has nothing to do with the Court’s discretion. It is an investigation into the facts of the matter in order to determine whether, in all the circumstances of that case, the delay was reasonable. Though this question does imply a value judgment it is not to be equated with the judicial discretion involved in the next question, if it arises, namely, whether a delay which has been found to be unreasonable, should be condoned...’²¹

Reason for the delay

[44] Turning to the present matter, this Court considers the following undisputed facts, which prove sufficient to decide the matter:

44.1 The Applicant filed the review application outside the statutory six-week period required to file the review application;

44.2 There is presently no condonation pending before this Honourable Court explaining the extent and the period of the delay in filing the review application;

44.3 Since the filing of the review application, the applicant has not taken any further steps in the furtherance and prosecution of the review application to date, which period is now close to 12 months from the date that the arbitration award was received on 18 March 2024.

44.4 The period between which the suspensions took place, being 22 November 2021 to the date of hearing of the present matter, being 8 July 2025, is indeed extremely excessive.

²⁰ 2005 (2) SA 302 (SCA).

²¹ Ibid at para 48. Quoted with approval in *Autopax Passenger Services (Pty) Ltd v Transnet Bargaining Council & others* [2007] 1 BLLR 39 (LC) at para 12.

44.5 The review application is deemed to have been withdrawn in terms of Rule 37(15) of the Labour Court Rules.

44.6 There is no application to reinstate the lapsed review application before the Court.

44.7 There is no opposition to the current dismissal application.

Length of delay

[45] Cumulatively, the length of delay is excessive in this matter and has been dealt with in detail above. There is virtually no explanation for the said delay.

Prospects of success

[46] The Applicant's prospects of success can be well gleaned from the founding affidavit in support of the dismissal application. It does appear that the merits of the matter have been litigated upon, leading to a refusal of leave to appeal and also a petition to the Labour Appeal Court being refused.

[47] The law does not require that prospects of success be excellent but reasonable.

[48] It is trite that a satisfactory explanation of the delay may compensate for the prospects of success, but the lack of an explanation in the current matter compounds the issue.

Prejudice

[49] It is trite that the Respondents stand to suffer prejudice should the current application is not granted. The suspensions of the Respondents cannot continue endlessly.

[50] Therefore, without any opposition to the current application, this Court is inclined to accept that the application to dismiss the review application is justified and reasonable in the prevailing circumstances.

The draft order

[51] As earlier indicated, the Respondents have presented a draft order, which slightly varied the relief sought in the notice of motion for the dismissal application, in that it prayed for :

51.1 The review application under case number D 242/2024 be dismissed.

51.2 The award dated 18 March 2024, as varied by the variation ruling dated 8 April 2024, be made an order of Court.

51.3 The Applicant is directed to pay costs hereof on an attorney and client scale, with such costs to include the costs associated with the review application.

[52] Mr Ratshili had confirmed receipt of the draft order, submitted that:

52.1 Prayer 1 (as indicated at 51.1 above) is left to the court to decide upon.

52.2 The Applicant (in the main review application) has no issue with prayer 2 (as indicated at 51.2 above) being granted.

52.3 Prayer 3 should be granted on ordinary Scale A, as there was no justification for a punitive cost order, because the Respondents could have used less expensive means to certify the arbitration award and carry it into execution.

Conclusion

[53] In circumstances such as in this case, where the applicant was notified of the current application to dismiss the review application and no intention to oppose the current application was ever filed, but a mere attempt to commence and end settlement negotiations at the door of the court.

[54] Furthermore, no steps were taken either to prosecute the review application or to reinstate the review after it was deemed to have been withdrawn. Worse, in circumstances where the applicant was aware of the current Rule 41(1)(a) application to dismiss the review application but took no steps in either opposing this application or taking any steps that indicate any intention that there was still an

interest in pursuing the review application. Therefore, for all intents and purposes, it cannot be concluded that any such conduct on the part of the applicant contributes in any meaningful way towards the expeditious resolution of the dispute. It is the considered view of this Court that such conduct is the antithesis of the very objectives of the LRA. It constitutes an abuse of the Court's process and cannot, for whatever reason, be countenanced.

[55] Inasmuch as the applicant is entitled to have its case finally determined by this Court, this Court cannot come to the applicant's assistance if it has practically done nothing to pursue the matter. The fact that the review application was deemed withdrawn does not imply that the Respondents are precluded from taking steps to bring it to finality. The Respondents are entitled to continue with their affairs, without having to wonder when the applicant will ever take any steps in prosecuting the review application and bring the matter to finality. The applicant's review application has been plagued by delays from the moment it was launched. No efforts whatsoever have been made to prosecute it to finality. In these circumstances, the interests of expeditious resolution of disputes in line with the primary objectives of the LRA dictate that the Rule 41 application be granted.

Costs

[56] This Court has considered the requirements of law and fairness, and it is of the view that a costs order, given the circumstances of this case and the conclusions reached above, dictates that costs on Scale A are justified, since all parties have been out of pocket due to the current litigation. This Court is mindful of the fact that any delay in the resolution of a labour dispute undermines the very objectives of the LRA, and may furthermore be detrimental to the parties, which may not have a source of income pending the resolution of the matter. However, one must also balance that the Respondents cannot sit and wait for years, and take no further steps to bring the matter to finality. Mr Ratshili's argument to the effect that there were other recourses available to the Respondents, which they could have utilised, once they were aware that the Applicant was not taking any steps to bring the review application to finality, but waited for a protracted period of time, rings true. This court is equally alive to the fact that:

56.1 The applicant's review application has been plagued by delays from the moment it was launched.

56.2 No efforts whatsoever have been made to prosecute it to finality. The LRA dictates that the Rule 11 application be granted.

56.3 It is the considered view of this Court that such conduct of the Applicant is the antithesis of the very objectives of the LRA.

56.4 It constitutes an abuse of the Court's process and cannot, for whatever reason, be countenanced.

[57] In the result, this Court orders that:

Order

1. The application to review and set aside the arbitration award issued by the second respondent under case number D242/2024 is dismissed on the grounds of lack of timeous prosecution.
2. That the award 18 March 2024, as varied by the Variation Ruling dated 8 April 2024, is hereby made an order of court in terms of Section 158(1)(c) of the Labour Relations Act 66 of 1995.
3. The Applicant (in the main review application) is directed to pay costs of this dismissal application on Scale A, such costs associated with the review application under case number: D 242/2024.

MX MPAHLWA

M Mpahlwa

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant:

Instructed by:

Mr Ratshili

Mpoyana Ledwaba Inc

For the Third and Fourth Respondent:

Instructed by:

Mr Seery

Jay Reddy Attorneys