



LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR1437/24

In the matter between:

LIEPOLLO SELATILE

Applicant

and

**NATIONAL HOME BUILDERS REGISTRATION
COUNCIL**

First Respondent

COMMISSIONER LUCY TALANE

Second Respondent

**THE COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

Third Respondent

Heard: 26 February 2025

Delivered: 8 July 2025

JUDGMENT

MAFA-CHALI, AJ

Introduction

[1] This is an application brought by the Applicant, Liepollo Selatile, in terms of section 145 of the Labour Relations Act¹ (LRA) to review and set aside an arbitration award issued by the Second Respondent (the Commissioner) under the auspices of the Third Respondent, the Commission for Conciliation, Mediation and Arbitration (CCMA), under case number GAJB6592 24 issued on 8 August 2024.

[2] The arbitration award that is the subject of the review application pertains to an unfair dismissal dispute, which dispute was referred by the Applicant to the CCMA against the First Respondent, the National Home Builders Registration Council, in terms of section 186 of the LRA.

[3] The review application was lodged on 19 August 2024, and it is opposed by the First Respondent.

Background

[4] The Applicant was employed by the First Respondent as the legal officer in the contract management section since 1 March 2019. The applicant was charged with three allegations of misconduct for gross insubordination, absence without permission, misrepresentation and dishonesty. A disciplinary hearing was held on 4 November 2022.

[5] Following a disciplinary hearing, the applicant was found guilty of the three charges and was subsequently dismissed. The Applicant then referred an unfair dismissal dispute to the CCMA.

[6] The arbitration proceedings were held over several days in May, June, and July 2024. The Commissioner ruled that the dismissal of the Applicant was substantively and procedurally fair.

¹ Act No.66 of 1995, as amended.

Grounds of review

[7] The Applicant's grounds of review are essentially the failure of the Commissioner to evaluate the evidence presented to her by the parties during the arbitration proceedings; that the Commissioner ignored her evidence; and also failed to assess whether the sanction imposed by the First Respondent was correct.

[8] Another ground of review is that the Commissioner, in the analysis of her evidence, incorrectly referred to the offence of gross insubordination and not insubordination and also admitted hearsay evidence and as such, there was no rational connection between the decision taken and the evidence led, which a reasonable decision maker would have arrived at.

Records of proceedings

[9] The First Respondent filed the notice of intention to oppose the review application. The CCMA filed the record of proceedings on 2 September 2024 and on the same date, advised the parties that it had filed the records.

[10] On 2 September 2024, this Court issued a communication in terms of Rule 37(9) of the Labour Court Rules² to the Applicant that the records are ready to be uplifted.

[11] The First Respondent submitted further that the 60 days to deliver the transcribed record of the proceedings by the Applicant had lapsed, and the Applicant failed to transcribe the records and did not seek an indulgence or consent from the Respondent to file the records late, and therefore, the matter was deemed to have been withdrawn by the Applicant for failure to file the record of proceedings.

[12] The First Respondent further argued that the Applicant is a qualified attorney and she acknowledged that she knew about the Rules of this Court regarding the filing of records, but the Applicant insisted that she would not file the transcribed

² GN 4775 of 3 May 2024: Rules Regulating the Conduct of the Proceedings of the Labour Court (effective 17 July 2024)

records as requested, even though the First Respondent communicated with the Applicant several times in writing, by email, and in particular on 18 November 2024, to comply with the Court Rules to file the records.

[13] The Applicant filed the supplementary affidavit on 14 November 2024 despite having failed to file the records of proceedings, and also set down the matter on an unopposed roll.

[14] The Applicant submitted that she was not able to afford the costs of transcribing the records, which was approximately 300 pages and would cost R15 000.00, which she does not have due to her financial constraints. The Applicant indicated to the First Respondent that the Court may use the handwritten notes made by the Commissioner during the arbitration proceedings. She submitted that none of the parties would be prejudiced by the use of the notes, as the transcribed record is not available.

The applicable legal principles

[15] The purpose of the LRA is *inter alia* the effective resolution of labour disputes, and the processes introduced by the LRA are intended to bring about the expeditious resolution of labour disputes.³

[16] This Court has accepted that a review application is, by its nature, an urgent application and that it requires prosecution with diligence and urgency.⁴ This is supported by the Labour Court Rules, wherein an applicant, in motion proceedings, is required to ensure that all the necessary papers in the application are filed within six months of the date of the launch of the application and where this time limit is not complied with, the application will be archived. The detrimental implications of delays

³ *Commercial Workers Union of SA v Tao Ying Metal Industries and Others* 2009 (2) SA 204 (CC), where the Constitutional Court held at para 63 that: 'These disputes, by their very nature, require speedy resolution. Any delay in resolving a labour dispute could be detrimental not only to the workers who may be without a source of income pending the resolution of the dispute, but it may, in the long run, have a detrimental effect on an employer who may have to reinstate workers after a number of years.'

⁴ *Lehola v Nkadimeng N.O and others*, unreported judgment under case no: JR 1912/2012 delivered 26 January 2016.

are obvious, as the more time the review application takes, the more parties may be severely prejudiced due to the delays.

[17] The amendments to section 145 of the LRA, which took effect on 1 January 2015, are specifically aimed at expediting the prosecution of review applications and *inter alia* require that an applicant in a review must apply for a hearing date within six months of launching the review application. A review application requires urgent prosecution without undue delay.

Filing of the record

[18] Rule 37(13) of the Labour Court Rules provides that an applicant, in a review application, must furnish the Registrar and each of the other parties with a copy of the record or a portion of the record, as the case may be. An applicant must make available copies of such portions of the record as may be necessary for the purposes of the review.

[19] Rule 37(14) provides that transcribed records must be delivered within 60 days of the date on which an applicant is notified by the Registrar that the record has been received. Similar to clause 11.2.3 of the now-repealed Practice Manual, Rule 37(15) provides that, where an applicant has failed to file a transcribed record within the 60-day period, the applicant will be deemed to have withdrawn their application, unless the applicant:

‘(15) ...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.’

[20] Where the respondent refuses to give consent for the late filing of the record, subrules (16) to (18) provide as follows:

‘(16) If consent is refused, the applicant may, on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time. The application must be accompanied by proof of service on all other parties, and answering and replying affidavits may be filed within the time limits prescribed by Rule 35.

(17) The Judge President will then allocate the file to a judge for a ruling, to be made in chambers, on any extension of time that the respondent should be afforded to file the record.

(18) An application that is deemed to have been withdrawn may not be reinstated without an order of court, granted on application by the defaulting party, on good cause shown.'

[21] It is important to note that the Rules of this Court provide for the time frames within which the record should be filed. Subrules (15) – (18) set out the steps to be followed, as well as the consequences, should an Applicant fail to file the transcribed record within the prescribed period.

[22] Rules 37(15) – (18) should be interpreted to mean that there are three possibilities if the record is not filed within 60 days of the date on which the applicant is advised by the Registrar that the record has been received. The first scenario is the easy one, namely, for an applicant to request the respondent's consent for an extension of time to file the record. The second possible scenario arises only in the event that consent was sought by the applicant from the respondent, but such consent is refused. In such an event, an applicant may, on notice of motion to all the parties concerned, accompanied by an affidavit, apply to the Judge President for an extension of time. The third and last possible scenario arises when the Applicant in a review application fails to file the record within the prescribed 60-day period and also fails to obtain the respondent's or the Court's consent for the extension of time. In such a case, the review application is deemed to have been withdrawn. In the event that a review application is deemed withdrawn, it has specific legal consequences.

[23] In *Ralo v Transnet Port Terminals and others*⁵ (*Ralo*), the Court accepted the legal definition of 'deemed' as set out in the Namibian authority of *Municipal Council of the Municipality of Windhoek v Marianna Esau*⁶, where the Court held that the word 'deemed' is considered to have a conclusive effect. This Court concluded by stating the following:

⁵ [2015] 12 BLLR 1239 (LC) at para 10.

⁶ LCA 25/2009, 12 March 2010.

‘...The plain and unambiguous wording of the practice manual is to the effect that the applicant must be regarded as having withdrawn the review application.’

[24] It is common cause that the Applicant did not file the record in this review application within the prescribed 60-day period, she did not request the Respondent for consent to an extension of time, nor was the Judge President of the Labour Court approached, and thus, the provisions of Rule 37(15) were triggered. The legal consequences of Rule 37(15) became applicable, and the review application is deemed to be withdrawn.

[25] In addition to the deemed withdrawal provisions contained in Rule 37, the Labour Court Rules make provision for the archiving of files where no further steps have been taken. The relevant portions of Rule 69(2) and (3) of the Labour Court Rules provide for the archiving of files as follows:

“(2) Subject to rule 7, the registrar must archive a file in the following circumstances:

(a) in the case of any motion proceeding, when a period of 6 months has elapsed without any steps taken by the applicant from the date of the filing of the application, or the date of the last process filed;

(b) in the case of referrals for adjudication, when a period of 6 months has elapsed from the date of delivery of the statement of claim without any steps taken by the referring party from the date on which the statement of claim was filed, or the date on which the last process was filed;

(c) when a party fails to comply with a direction issued by a judge within the stipulated time limit.

(3) The applicant or plaintiff, as the case may be, may file an application, on affidavit and on notice to all parties, to seek the retrieval of the file and the reinstatement of the proceedings.’ (Own emphasis)

[26] In *casu*, the Applicant has raised her financial constraints as the reasons for not filing the record and argued that the Court may use the Commissioner’s handwritten notes. There is no submission by the Applicant that the record is not available from the CCMA or that it has been found to be inaudible. It is trite that any

litigant who brings an application to Court should place before the Court all the relevant and material evidence in support of his or her case.

[27] The record is a part of the evidence on which the review application is based on, and without such a record, the other party will not be able file its answering affidavit and the Court is also not placed in the best position to determine properly the grounds of review based on the parties' pleadings and record at its disposal. The handwritten notes are short summaries made by the Commissioner of the evidence during the arbitration proceedings and are not reflective of the entirety of the evidence before the Commissioner verbatim. Hence, the legal requirement to file the record of the proceedings within a prescribed period.

[28] A litigant is not at liberty to choose for the Court what is suitable for it, but must abide and comply with the Rules of the Court. Litigation necessarily comes with costs, and an applicant who decides to litigate cannot expect the Court to bend the Rules of the Court to accommodate his or her financial constraints or situation. The Rules of the Court have been made to promote uniformity and practices in the procedures of the Court. It is therefore imperative that those who practice and litigate in the Court must follow its Rules. The Applicant as a legal person is reasonably expected to know these Court Rules and the legal consequences of failure to abide by them better, and not try and impose her own rules of the Court for her convenience.

[29] Under the circumstances, the Applicant is bound, with no exception, by the Court's Rules as a litigant and should have complied with the rule to file the record within the prescribed period and failing which, coupled with the failure to file a substantive reinstatement application in accordance with Rule 37(18)⁷, the legal consequences follow that the review application must be declared to be withdrawn.

Costs

⁷ See: *Macsteel Trading Wadeville v Van der Merwe NO & others* (2019) 40 ILJ 798 (LAC) at para 27.

[30] The last issue to be decided is the issue of costs. This Court has a wide discretion in respect of costs, considering the requirements of law and fairness. In *Zungu v Premier of the Province of KwaZulu-Natal and Others*⁸, the Constitutional Court confirmed that the rule that costs follow the result does not apply in labour matters. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing those parties to bring to this Court cases that should not have been brought to Court in the first place.

[31] In considering the law and fairness, no costs order will be made herein, as it cannot be said that either party was frivolously before this Court.

[32] In the premises, the following order is made:

Order

1. The review application is struck from the roll.
2. There is no order as to costs.

G Mafa-Chali

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Self-representing

For the First Respondent:

Neo Motshegare from DMS Incorporated

⁸ (2018) 39 ILJ 523 (CC) at para 24.