



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR 945/24

In the matter between:

MANDLA CHILOANE

Applicant

and

**THE COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

First Respondent

ELIAS LEKGWATHI NO

Second Respondent

ESKOM ARNOT POWER STATION

Third Respondent

MR NTULI

Fourth Respondent

Heard: 30 April 2025

Delivered: 6 August 2025

JUDGMENT

DANDADZI, AJIntroduction

[1] This matter was scheduled before me for an unopposed condonation application for the late filing of a review application.

[2] The Applicant, who was legally represented, launched a condonation and review application on 18 July 2024, following the issuing of an arbitration award by the CCMA on 1 February 2023, some 17 months after the award was issued.

Condonation

[3] The requirements that must be satisfied to succeed in an application for condonation are well-known. An applicant in a condonation application must set out the degree of the delay and show good cause for the delay; further, the applicant must deal with the prospects of success on the merits and prejudice to the respondent.¹ It is trite that condonation is not for the mere asking. An applicant for condonation seeks an indulgence from the Court and is to show sufficient cause to succeed in the grant of condonation by the Court.

[4] The condonation and review applications were filed outside the six-week period within which a matter must be filed before the Labour Court, making the application approximately 16 months late in bringing the review application.

[5] The Applicant attributes the delay in filing the review application to his trade union, the National Union of Mineworkers (NUM), which he contends he had instructed to file the review. He alleges that the union misled him into believing that a review application had, in fact, been instituted before this Court, when in truth, no such application had been filed.

¹ See: *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A).

[6] The Applicant contends that he only followed up with the union on the status of his review application in January 2024, approximately 11 months after the arbitration award was issued. He was advised that the trade union's contract with the firm of attorneys it had been using had expired, and that another firm needed to be engaged to take the matter forward.

[7] The condonation application failed to set out any reasons why the Applicant believed he had prospects of success, nor did the Applicant's legal representative advance any such grounds before me.

[8] It was further submitted that it was in the interests of justice that condonation be granted because it was not the Applicant's fault that the review had been filed late.

[9] While submissions were made in respect of the review application itself, I will first deal with the condonation application. Should condonation be granted, I will then consider the submissions relating to the review application.

[10] It is trite that a condonation application must be filed without undue delay and/or as soon as an applicant becomes aware of the need to do so. This principle was reaffirmed by the Labour Appeal Court in *Allround Tooling (Pty) Ltd v NUMSA and Others*.² The condonation application was brought well out of time, and the Applicant blames his trade union for the delay. However, annexures show that as early as March 2023, email correspondence from the trade union indicated no appetite to bring a review application, stating there were minimal grounds and that the Applicant had been advised prior to arbitration that his case was unlikely to succeed.

[11] Following this engagement between March and April 2023, the Applicant made no further follow-up until November 2023, when a trade union official advised him that the matter '*should be sitting at the Labour Court*'. Without a definitive answer, the Applicant took no further steps to enquire about the status of his review

² [1998] 8 BLLR 847 (LAC) at para [8].

application. In my view, the Applicant was complacent in prosecuting his review application, particularly in relying on the trade union's word without obtaining confirmation of the review application or the relevant case number, and his failure to articulate the reasons for such a prolonged period of delay is fatal to his condonation application. A party seeking condonation must set out all the facts and circumstances of the delay and, most importantly, must provide a satisfactory explanation for each period of the delay. Where the reasons proffered lack detail and no account is made for each period of the delay, the explanation amounts to no explanation.³

[12] No effort was made to address me on the Applicant's prospects of success. It was simply submitted that it would be in the interests of justice to grant condonation, as the late filing of the review application was not the Applicant's fault. I have already expressed my views regarding the extent of the delay and the Applicant's complacency in bringing the matter before this Court. In the absence of submissions on prospects of success and without a valid explanation for the delay, condonation cannot be granted. The condonation application is therefore dismissed.

[13] As there is no basis for granting condonation, I need not canvass the grounds for review in this judgment.

[14] In view of the afore-going, the following order is made:

Order

1. The condonation application is dismissed.
2. There is no order as to costs.

N. L. Dandadzi

Acting Judge of the Labour Court of South Africa

Appearances:

³ *Ntsele v Commission for Conciliation, Mediation and Arbitration* (JR1459/15) [2017] ZALCJHB 161 (16 May 2017) at para [9].

For the Applicant:

Mr C.E Kgapane for Kgapane Attorneys

LABOUR COURT