



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR968/23

In the matter between:

LAURETTE MNDEBELE

Applicant

and

DEPARTMENT OF HEALTH

First Respondent

**PUBLIC HEALTH AND SOCIAL
DEVELOPMENT SECTORAL
BARGAINING COUNCIL (PHSDSBC)**

Second Respondent

VICTOR MADULA NO

Third Respondent

Heard: 7 May 2025

Delivered: 13 August 2025

JUDGMENT

ENGELBRECHT, AJ

Introduction

[1] This is an application for review in terms of section 145 of the Labour Relations Act¹ (LRA). The applicant (Ms Mndebele) also seeks condonation for the late referral of the review to this Court.

[2] Ms Mndebele had been employed as the Assistant Director at Bethal Hospital in Mpumalanga. On 10 June 2021, Ms Mndebele was charged with (i) fraud, alternatively gross dishonesty; and (ii) assault, alternatively displaying disrespect or engaging in abusive or insolent behaviour:

2.1. The fraud/dishonesty charge was based on her authorising the promotion of an employee from level 2 to 4 without following the selection and recruitment process per departmental policy.

2.2. The assault charge was based on an allegation that she '*grabbed an umbrella and threatened to hit another employee*', and on another occasion, allegedly told that employee to '*watch her back*', called her names and threatened to hit her.

[3] Ms Mndebele pleaded not guilty.

[4] After a disciplinary hearing, Ms Mndebele was found guilty and dismissed. She appealed but was unsuccessful. She was dismissed on 2 March 2022.

[5] On 26 May 2022, Ms Mndebele referred an unfair dismissal dispute to the second respondent (PHSDSBC). Conciliation was unsuccessful, and proceeded to arbitration on 27 August 2022. Before the third respondent (the Commissioner), she raised no procedural unfairness. She also did not challenge the guilty verdict; only the sanction was challenged.

[6] In his Award, the Commissioner recorded that '*the applicant is not challenging the verdict (the finding of guilty)*. It is [common cause] that the [Health

¹ Act 66 of 1995, as amended.

Department] *withdrew charges 1 (Fraud) and Alternative to charge 2 (displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour). The appropriateness of the sanction of dismissal should be determined in relation to Gross Dishonesty and Assault or attempts or [threats] to assault another employee or a person on duty'.*

[7] The Award recorded the evidence of the CEO of Bethal Hospital on complaints from the community that Ms Mndebele received bribes to appoint persons at the hospital. Although another employee had captured the promotion on the system, it was Ms Mndebele who approved it. She could have stopped the promotion if she had followed the policies. Her evidence was that she understood that she had done wrong, but she asked that the second respondent (Health Department) give her another chance. The gravamen of Ms Mndebele's case was that the more junior employee had only been given a final written warning, and that she ought to have been favoured with the same treatment. However, the Commissioner concluded that item 3(4) of Schedule 8 of the LRA identifies gross dishonesty and physical assault as serious misconduct that is dismissible on a first offence. Accordingly, he found no reason to interfere with the sanction. In this regard, he also placed emphasis on Ms Mndebele's seniority, relying on the jurisprudence of the Labour Appeal Court (LAC) to conclude that the claim of inconsistency in discipline did not warrant interference with the outcome of the disciplinary proceedings. He issued the Award in favour of the Health Department.

[8] Ms Mndebele launched a review, and the Health Department filed a notice of intention to oppose. It did not file an answering affidavit.

The application for condonation

[9] Ms Mndebele's review is significantly out of time.

9.1. The Award is dated 27 August 2022, which was a Saturday. Ms Mndebele does not specify when she received the Award. In the absence of any complaint or indication that the Award was not received on its date, this Court will proceed on the assumption that it was received on the first business day after the 27th, that is, Monday, 29 August 2022.

9.2. Under section 145(1) of the LRA, any review had to be brought within six weeks of that date, namely by about 10 October 2022.

9.3. The notice of motion is dated 18 May 2023, and the founding affidavit was ostensibly deposed to on the same day. The stamp for receipt by the PHSDSBC reflects service only on 5 June 2023. The notice of motion does not record service details for the Health Department, but a stamp from the Health Department's legal services Chief Directorate on the first page of the notice bears the date 24 January 2024. Indeed, according to the return of service issued by the Sheriff, service was carried out on 24 January 2024.

9.4. On the best version for Ms Mndebele, her papers were only prepared more than 37 weeks after the issue of the Award, which is over 31 weeks late. The evidence before this Court shows that the application was served on only one of the respondents after a further three weeks, and that the Health Department was not served with the application until a further eight months had passed.

[10] It is trite that this Court possesses broad judicial discretion to grant condonation if it is in the interests of justice to do so, primarily considering the following interconnected factors: the extent of lateness, the explanation for the delay, and the applicant's chances of success in the main dispute.² The Labour Courts have also, at various times, considered additional factors such as the relative prejudice to the parties if the application is granted or refused, the significance of the case, the respondent's interest in finality, court convenience, and the need to prevent unnecessary delays in administering justice.³

² *Steenkamp & Others v Edcon Ltd* (2019) 40 ILJ 1731 (CC) (*Steenkamp II CC*) at paras 29 and 36. See also *NEHAWU obo Mofokeng and Others v Charlotte Theron Children's Home* [2004] 10 BLLR 979 (LAC); *Mndebele & Others v Xstrata SA (Pty) Ltd t/a Xstrata Alloys (Rustenburg Plant)* (2016) 37 ILJ 2610 (LAC) at para 4; See also *Chetty v Baker McKenzie* (2022) 43 ILJ 1599 (LAC); *Mashishi v Mdladla NO & Others* (2018) 39 ILJ 1607 (LC) at para 7; *Matsha & Others v Public Health & Social Development Sectoral Bargaining Council & Others* (2019) 40 ILJ 2565 (LC); *Makuse v Commission for Conciliation, Mediation & Arbitration & Others* (2016) 37 ILJ 163 (LC) (*Makuse*); *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A).

³ *Ibid* and *National Education Health & Allied Workers Union on behalf of Leduc v National Research Foundation* (2017) 38 ILJ 430 (LC) at para 38 citing *Academic & Professional Staff Association v Pretorius NO & others* (2008) 29 ILJ 318 (LC) at paras 17-18.

[11] In light of the Constitutional requirement for the swift resolution of labour disputes, condonation is not simply granted upon request.⁴ An applicant bears a heavy burden to persuade a court that an indulgence should be granted.⁵ An applicant for condonation must take the decision-maker into its confidence and must place before it a comprehensive explanation for all of the delays in respect of which it seeks condonation. Where an applicant fails to do this, it '*does not deserve the indulgence*'.⁶

[12] Turning, then, to the explanation for the delay.

[13] In her affidavit, Ms Mndebele says that:

- 13.1. the Award was particularly difficult to understand, although she does not explain why;
- 13.2. after November 2022, she fell seriously ill, and her medical condition prevented her from challenging the unfairness of her dismissal; and
- 13.3. in '*mid-February*' (understood to be a reference to February 2023), she sought financial assistance and then consulted her legal representatives.

⁴ In *Makuse*, this Court held as follows:

'[4]Labour law litigation is unique in that it takes place within a system designed to ensure the effective (and thus expeditious) resolution of labour disputes — this being one of the primary objects of the LRA. The need for this, and the implications of delays, were explained as follows by Ngcobo J in *Commercial Workers Union of SA v Tao Ying Metal Industries & others* ... (2008) 29 ILJ 2461 (CC): "The LRA introduces a simple, quick, cheap and informal approach to the adjudication of labour disputes. This alternative process is intended to bring about the expeditious resolution of labour disputes. 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."

[5] It follows from this that condonation for delays in all labour law litigation is not simply there for the taking. ...'

See also *NUMSA & another v Hillside Aluminium* [2005] 6 BLLR 601(LC); *Grootboom v National Prosecuting Authority & another* (2014) 35 ILJ 121 (CC).

⁵ *Mashishi v Mdladla NO & Others* (2018) 39 ILJ 1607 (LC) at para 6.

⁶ *Competition Commission v Yara South Africa (Pty) Ltd and Others* 2012 (9) BCLR 923 (CC) at para 29.

[14] A number of observations are apposite:

14.1. First, Ms Mdebele provides no explanation of what happened during the period between the end of August 2022 and November 2022, when she allegedly fell seriously ill. Notably, the six weeks within which the review was to be launched had well passed by November 2022.

14.2. Second, she supports her inability to pursue the review by referencing a letter from a medical practitioner. According to the letter, she suffered a minor stroke and was diagnosed with depressive disorder. The doctor states that both her *'uncontrolled complicated hypertension and depression'* have *coincided with 'the loss of her job and resulting unemployment'*, but no specific dates of diagnosis are provided in the letter dated 5 April 2023. As of 5 April 2023, Ms Mdebele was said to be *'clinically stable'*.

14.3. Third, on Ms Mdebele's version, she had secured financial support for her effort to review the Award and had consulted legal representatives. No explanation whatsoever is provided for the fact that it took from mid-February to beyond the middle of May, yet another three months, to prepare her review and condonation application. The absence of an explanation is particularly problematic given that the whole affidavit (including the first page, which contains only the header and identification of the deponent) is a mere six pages long.

14.4. Fourth, there is not before this Court any supplementary affidavit that explains the delay between the completion of the papers and the late service on the respondents.

[15] In the circumstances, this Court is faced with an instance where there has been significant delay and an abject failure to explain the delay at the required level of detail.

[16] When it comes to prospects of success, Ms Mdebele does not fare much better. She simply satisfies herself with saying that *'there are prospects of success'*. That is not enough, because the burden in seeking review is high:

16.1. Redding AJ usefully summarised the role of the Court in reviews in *Telkom SA SOC Limited v Commission for Conciliation, Mediation and Arbitration and Others*⁷ (Telkom SA):

‘The main question is whether the arbitrator's finding that the sanction of dismissal was too severe and therefore unfair is so unreasonable that a reasonable arbitrator could not reach that result on the evidence before him or her. This is a not an insubstantial hurdle.’⁸ (Emphasis added)

16.2. Regarding reasonableness, the LAC in *National Bargaining Council for the Road Freight and Logistics Industry v Deyssel NO and Others*,⁹ referencing the review test established in *Sidumo and another v Rustenburg Platinum Mines Ltd and others*,¹⁰ as discussed in the commentary thereon,¹¹ observed:

‘The ‘threshold of reasonableness’ established by the judgment recognises that in relation to the penalty of dismissal, value choices may differ in relation to the same factual matrix but nonetheless fall within a range of decisions to which a reasonable decision maker could come. The metaphor of an elastic band has been usefully employed to illustrate the applicable threshold – the function of the review court is to determine the point to which the elastic of reasonableness can stretch without snapping.’ (Emphasis added)

[17] Ms Mndebele has not cleared the hurdle. The Award is not unreasonable. The founding affidavit does not explain why it is unreasonable. Indeed, the affidavit appears to be incomplete, and no grounds for review are evident from what was presented to this Court. A review of the record also does not suggest that there is any unreasonableness of the kind that would warrant interference on review.

[18] No other factor that would warrant the granting of condonation in the circumstances presents itself.

⁷ [2021] JOL 55280 (LC).

⁸ *Ibid* at para 12.

⁹ (2025) 46 ILJ 1679 (LAC) at para 31.

¹⁰ [2007] 12 BLLR 1097 (CC).

¹¹ A Myburgh ‘Reasonableness Review – the Quest for Consistency’ (2024) 45 ILJ 1377 at 1379.

[19] In the circumstances, the condonation application must be refused.

Conclusion

[20] In the absence of a proper case for condonation, the application must fail, and the review falls to be dismissed. Since the Health Department did not participate in the litigation, other than to file a notice of intention to oppose, I make no order as to costs.

[21] In the circumstances, I make the following order

Order

1. The application for condonation is dismissed.
2. The application for the review and setting aside of the arbitration award issued under case number PSHC1033-21/22 on or about 27 August 2022 is dismissed.
3. There is no order as to costs.

M Engelbrecht

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant:	Itumeleng D Masako
Instructed by:	Edgar Rangata Attorneys
For the respondents:	No appearance