



LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR1397/2018

In the matter between:

IMPERIAL COLD LOGISTICS (PTY) LTD

Applicant

and

FRANCIS TJALE N.O.

First Respondent

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Second Respondent

FOOD AND ALLIANCE WORKERS UNION

Third Respondent

RUBEN BUDA

Fourth Respondent

Heard: 11 June 2025

Delivered: 13 August 2025

Summary: Reinstatement application – review application deemed withdrawn for lack of prosecution and late filing of the record – no jurisdiction to consider an application to dismiss the withdrawn review application – condonation principles considered –reinstatement application dismissed.

JUDGMENT

PHAKEDI, AJ

Introduction

[1] There are two applications before me, one is the reinstatement of the review application, which is deemed to be withdrawn in terms of the provisions of the then Practice Manual of the Labour Court¹ and the other is an application filed by the fourth respondent to dismiss the review application in terms of Rule 11 of the now-repealed Labour Court Rules².

[2] Both applications are opposed, and I opted to first deal with the reinstatement application on the basis that this Court does not have jurisdiction to dismiss the review application, which is deemed to be withdrawn until such application has been reinstated. The applicant in the reinstatement application is also seeking condonation for the late filing of the reconstructed record of arbitration.

Background facts

[3] The fourth respondent was employed by the applicant and dismissed on 13 September 2017. He then referred a dispute of unfair dismissal to the Commission for Conciliation, Mediation and Arbitration ('the CCMA'), and the first respondent found that his dismissal was unfair and ordered that he be reinstated on or before 11 June 2018.

[4] Not satisfied with the outcome of the arbitration proceedings, the applicant filed an application to review and set aside the arbitration award on 28 September 2018. The fourth respondent did not file any opposing papers despite having received the Rule 7A(8) notice on 24 July 2018. The applicant then applied for the

¹ Practice Manual of the Labour Court of South Africa (repealed, effective 2 17 July 2024).

² GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court (repealed, effective 17 July 2024).

review application to be heard on the unopposed motion roll on 10 December 2018. On or about 12 February 2019, the third and fourth respondents filed their notice of intention to oppose the review application but did not file any opposing affidavit.

[5] The fourth respondent then appointed MS Molebaloa Incorporated as his attorneys of record. On or about 5 July 2019, the fourth respondent's erstwhile attorneys indicated to the applicant's representatives that the transcribed record is incomplete in that the evidence of the employer's witness was not before the Court. Another letter was sent to the applicant's attorneys on or about 26 August 2019 requesting that the missing records be filed. On or about 6 September 2019, the fourth respondent's erstwhile attorneys again wrote to the applicant requesting to be furnished with the evidence of a certain Mr Chauke and another letter was sent on 30 September 2019 requesting outstanding records.

[6] Eventually, on 7 October 2019, the applicant responded and confirmed that the evidence of Mr Chauke was not available and undertook to write to the CCMA requesting a reconstruction hearing. The applicant, on the same day, sent a letter to the CCMA requesting a reconstruction of the record. A follow-up letter was sent on 9 December 2019 enquiring about the reconstruction date, and the matter was eventually set down on 17 July 2020. However, upon arrival at the CCMA, the hearing could not proceed because the CCMA offices were closed due to the COVID-19 pandemic.

[7] The matter eventually proceeded on 16 November 2020. The parties then agreed that the first respondent would read his notes into the record and allow the applicant to transcribe same to determine whether or not the notes are an accurate reflection of the missing portion of the record. However, the recording was never filed with the Registrar and on 11 February 2021, the applicant's erstwhile representative wrote to the Senior Commissioner requesting intervention to ensure that the records are filed with the Labour Court.

[8] On or about 8 March 2021, the fourth respondent's erstwhile attorneys wrote to the applicant requesting it to file and serve the outstanding record together with their notice in terms of Rule 7A(8). The applicant did not respond to the said letter

nor take any steps to ensure that the record was filed. The fourth respondent then appointed his current legal representatives on or about 20 August 2021. A lengthy period lapsed without the applicant taking steps to ensure that the review application is prosecuted and the matter gets finalised.

[9] No steps were taken by the applicant until the new attorney, Ms Moyo, took over the file on or during February 2023. Ms Moyo, upon perusal of the file, realised that the record was never received from the CCMA, and she filed an application to compel on 17 February 2023. On 20 February 2023, the CCMA released the record, and she subsequently filed a notice of withdrawal of application to compel on 1 March 2023.

[10] On 26 April 2023, the applicant received the record from the transcribers but noticed that the record which was transcribed was the same record that it already had in its possession. The applicant then wrote to the CCMA on 3 May 2023 to inform them that an incorrect record had been filed, and the CCMA filed the record on 4 May 2023. The reconstructed record was filed on 24 May 2023.

[11] The fourth respondent is opposing the application on the basis that the applicant had delayed in prosecuting the review application. This is based on the fact that for a period between 16 September 2021 and 7 March 2022, the file could not be located at the Labour Court, and the Registrar only opened the duplicate file at the request of the fourth respondent on or during July 2022. The fourth respondent contends further that the record was reconstructed on 11 November 2020 but only transcribed and filed on 24 May 2023, not accompanied by any application for condonation. It contends further that the applicant did not render a plausible explanation and did not take the court into its confidence by providing a full account for the lengthy period of delay in filing the record.

[12] The fourth respondent, on 12 June 2023, then filed its application in terms of Rule 11 seeking to dismiss the review application on the basis that it is deemed to be withdrawn. The Rule 11 application then prompted the applicant to bring its reinstatement application together with the condonation application.

[13] In reply, the applicant reiterated that it had taken all the reasonable steps to prosecute the review application on time. This is evident from the fact that the review application, the record and the application for a hearing date were filed within six months from the date the application was filed. The delays were solely at the instance of the fourth respondent, who demanded to be furnished with the complete record but to date has not filed any opposing affidavit.

[14] In this matter, the applicant is seeking condonation for non-compliance with the Practice Manual and the Rules of the Labour Court. As such, the principles relating to condonation would apply in determining whether the reinstatement application should be granted.

Principles applicable in condonation applications

[15] It is trite that an application for condonation must be made as soon as the applicant party realizes that it has not complied with the prescribed time limits. What is required in that condonation application is a full, detailed and accurate account of the cause of the delay, the explanation thereof, prospects of success in the main application, prejudice on the other party and the courts and the interests of justice.

[16] The Labour Appeal Court (LAC) in *Govender and Others v Commission for Conciliation, Mediation and Arbitration and Others*³ confirmed that an application for reinstatement is by its very nature an application for condonation for non-compliance with the Court's Rules and held:

[57] A reinstatement application is, in essence, a condonation application and accordingly, the principles applicable to condonation apply. The factors relevant in the consideration of the grant or refusal of condonation include the degree of lateness, the explanation therefor, the prospects of success and the importance of the case. And in certain cases, the interest of justice may play a role.

[58] Added to the factors applicable to condonation applications is the consideration that employment disputes should be dealt with expeditiously as

³ [2024] 5 BLLR 453 (LAC).

a delay in the resolution of labour disputes undermines the object of the LRA and “any determination of the issue of good cause must always be considered against the *backdrop of this fundamental principle*” and further that review applications are by their nature, urgent and must be treated with a degree of diligence and promptness.’

[17] The LAC in *Samuels v Old Mutual Bank*⁴ held that the underlying objective of the Practice Manual is the promotion of the statutory imperative of expeditious dispute resolution. It enforces and gives effect to the Rules of the Labour Court and the provisions of the Labour Relations Act⁵ (LRA). Tlaetsi DJP (as he then was) stated that:

‘in essence, an application for the retrieval of a file from the archives is a form of an application for condonation for failure to comply with the Court Rules, timeframes and directives. Showing good cause demands that the application be *bona fide*; that the applicant provide a reasonable explanation which covers the entire period of the default; and show that he/she has reasonable prospects of success in the main application, and lastly, that it is in the interest of justice to grant the order.’⁶

[18] It is trite that in considering an application for condonation, the Labour Court exercises a discretion which must be exercised judicially, premised on all the relevant factors. The decision of the Labour Court may be set aside if it is found that the Labour Court, in exercising its discretionary powers, acted capriciously, upon wrong principles, in a biased manner, for insubstantial reasons, or committed a misdirection, or an irregularity or exercised its discretion improperly or unfairly.⁷

[19] In *Grootboom v National Prosecuting Authority and Another*,⁸ the Constitutional Court stated as follows:

‘The interests of justice must be determined with reference to all relevant factors. However, some of the factors may justifiably be left out of

⁴ [2017] 7 BLLR 681 (LAC) at paras 14 to 17.

⁵ Act 66 of 1995, as amended.

⁶ Ibid fn 4 at para 17.

⁷ *Coates Brothers Ltd v Shanker and Others* (2003) 24 ILJ 2284 (LAC) at para 5.

⁸ (2014) 35 ILJ 121 (CC) at para 51.

consideration in certain circumstances. For example, where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of reasonable prospects of success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party. As a general proposition the various factors are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice.'

Evaluation and analysis

[20] The review application was filed within the prescribed period of six weeks on 12 July 2018. The applicant blames both the CCMA and the fourth respondent for delays in prosecuting its application. The CCMA is blamed for its failure to file the reconstructed record on time, and the fourth respondent is blamed for indicating that the record was incomplete and opposing the review application outside the prescribed time periods when the matter had already been referred to the set down office for allocation of a hearing date on the unopposed motion roll.

[21] It is common cause that it was discovered by the fourth respondent that the record of arbitration filed by the applicant is incomplete. The parties then took steps to ensure that missing parts of the record are reconstructed. The reconstruction hearing took place on 16 November 2020, but the recording was never received from the CCMA. The applicant only took steps to ensure that the reconstruction record is filed on or about 17 February 2023 by filing an application to compel. The period of delay from 16 November 2020 to 24 May 2023 is two years and seven months, and it is too excessive.

[22] The applicant knew as far back as 16 November 2020 that it was required to file the reconstructed record within the prescribed timeframes. This is evident from the fact that the applicant had already been requested by the fourth respondent's erstwhile legal representatives to file the reconstructed record on 8 March 2021 but

did not respond to such a request. No explanation is provided for the applicant's failure to take steps to compel the CCMA to release the reconstruction record at the earliest available opportunity.

[23] The applicant contends that its application was compliant until the fourth respondent's belated opposition. Despite this contention, the applicant concedes that the review application is deemed to be withdrawn in terms of the provisions of item 11.2.7 of the Practice Manual, which provides that:

'A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding heads of argument) and the registrar is informed in writing that the application is ready for allocation for hearing. 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.'

[24] The applicant contends further that there is no rule compelling it to file the complete record of arbitration, but it had a duty to file only portions of the record which are relevant for the determination of the review application. This is supported by item 11.2.6, which provides as follows:

'Parties are reminded that Rule 7A (5) requires an applicant in a review application to copy and deliver only those portions of a record that are necessary for the purposes of the review. The filing of unnecessary portions of a record is a factor that may be taken into account for the purposes of any order of costs.'

[25] In order to condone the applicant's delay and non-compliance with the prescribed timeframes, the Court has to be convinced that the explanation is reasonable and acceptable. The Applicant has failed to provide a full, detailed and accurate account for the full period of delays in filing the reconstructed record from 16 November 2020, when the reconstruction hearing took place. The explanation provided only begins from 2023 when Ms Moyo took over the file, and this is insufficient and unreasonably insufficient. I am not convinced that the applicant has

fulfilled its onus to show good cause and demonstrated that it is entitled to the relief sought. In *Van Wyk v Unitas Hospital and Another*⁹, the Constitutional Court held that:

‘An applicant for condonation must give a full explanation for the delay. In addition, the explanation must cover the entire period of delay. And, what is more, the explanation given must be reasonable.’

[26] The onus of showing the existence of good cause in a condonation application rests with the applicant, and this essentially entails satisfying the two well-established requirements, namely: (a) providing a satisfactory explanation for the delay; and (b) showing the prospect of success in the main case. The applicant bears the burden of showing good cause. A mere allegation of good cause will not be sufficient to assist the Court in exercising its discretion whether to grant condonation or not. In other words, as stated in *Standard General Insurance Co Ltd v Eversafe (Pty) Ltd and Others*¹⁰, the applicant must “at least, furnish an explanation of his default sufficiently full to enable the court to understand how it really came about and to assess his conduct and motives... Where there has been a long delay, the court should require the party in default to satisfy the court that the relief sought should be granted”.¹¹

[27] In respect of prospects of success, the applicant submits that it has good prospects of success in that the Commissioner misconstrued the nature of the enquiry and the concept of inconsistency in that the applicant was charged with the misconduct of gross negligence and gross dishonesty as opposed to the other two employees, whose conduct did not involve dishonesty. The fourth respondent, in response, submitted that the applicant does not have reasonable prospects of success in the review application in that it had failed to show that the arbitration award was unreasonable. Even if I were to agree with the applicant that it has strong prospects of success in the review application, I would be prevented from doing so due to the fact that the applicant’s inordinate delay in filing the reconstructed record is not satisfactorily explained.

⁹ 2008 (4) BCLR 442 (CC) at para 22.

¹⁰ 2000 (3) SA 87 (W).

¹¹ *Aspen Holdings Pty Ltd and Another v Phelane and Another (Aspen Holdings)* [2025] 4 BLLR 409 (LAC) at para 14.

[28] The Constitutional Court in *CUSA v Tao Ying Metal Industries & others*¹², dealt with the effect of delays in labour disputes and stated:

‘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.’

[29] The applicant submitted further that the fourth respondent will not be prejudiced if the review application is reinstated, as he will still have a chance to argue the matter on the merits. However, should reinstatement not be granted, the applicant will be prejudiced in that it has no other recourse against an unreasonable arbitration award but to have same reviewed and set aside.

[30] The LAC restated the above-mentioned condonation principles in *SACCAWU obo Letsoalo and Another v Commission for Conciliation, Mediation and Arbitration and Others*¹³ where it was held that:

[18] It is well accepted that condonation cannot be had for the mere asking but a plea for the court’s indulgence to excuse the non-compliance with the prerequisite time limits in terms of the prescripts on sufficient cause shown. The yardstick is the interest of justice which entails a consideration of all the relevant factors, including the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success. Ultimately, the particular circumstances of each case will determine which of these factors are relevant.

¹² [2009] 1 BLLR 1 (CC) at para 63.

¹³ (JA 155/23) [2025] ZALAC 12 (30 January 2025).

[19] Added to the general principles, in *Steenkamp and Others v Edcon Ltd*, the Constitutional Court endorsed the Labour Law-specific factors and considerations which are premised on one of the primary objects of the LRA to have labour disputes resolved expeditiously. Since labour disputes are inherently urgent, the LRA imposes strict time limits within which various applications and referrals must be launched to give effect to the primary object of the LRA. As a result, and pertinent to the case at hand, condonation in a case of disputes over individual dismissals will not readily be granted unless, inter alia, the explanation for non-compliance is compelling...

[31] The LAC in *Lekhesa: In re Ngwenya v Trustees for the Time being of Sishen Iron Ore Co Community Development Trust and another*¹⁴, it was stated:

‘The grant of condonation involves the exercise of a discretion, with a decision to condone a party’s non-compliance with the rules of the court or directions constituting an indulgence granted by the court. Such an application should be granted if, having regard to the particular circumstances of the matter, it is in the interests of justice to do so, and refused if it is not. To reach a decision, regard is to be had to factors including the nature of the relief sought, the extent and cause of the delay, the reasonableness of the explanation for the delay, the importance of the issue to be raised, issues of prejudice and the prospects of success. As a general proposition, the factors to be considered are not individually decisive of an application for condonation but are all considered to determine what is in the interests of justice.’

[32] The Constitutional Court in *Booi v Amathole District Municipality and Others*¹⁵, stressed that condonation is not merely there for the taking. The Court confirmed that condonation should be granted if it is in the interests of justice to do so, which has to be determined by reference to all relevant factors including the nature of the relief sought, the extent and cause of the delay, the effect on the administration of justice, prejudice and the reasonableness of the explanation for the delay.

¹⁴ (2024) 45 ILJ 1220 (LAC) at para 14.

¹⁵ [2022] 1 BLLR 1 (CC) at para 27.

[33] In this matter, I am not convinced that it is in the interests of justice to condone the late filing of the record and reinstate the review application due to the applicant's failure to demonstrate good cause as prescribed in item 11.2.7 of the Practice Manual of the Labour Court.

Legal costs

[34] Section 151(1) of the LRA provides that the Labour Court is established as a Court of law and equity. It then follows that to award costs against litigants who are exercising their constitutionally entrenched rights to fair labour practices will defeat the primary purpose of the LRA.

[35] With regard to costs, based on the discretion afforded in terms of section 162 of the LRA and considerations of fairness and equity, I have concluded that this is a matter in which there should be no order as to costs. In the result, the following order is made:

Order

1. The application to reinstate the review application is dismissed.
2. The application for condonation for the late filing of the record is refused.
3. There is no order as to costs.

G C Phakedi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: T Moyo of Snyman Attorneys

For the Respondent: Adv A Sibanda

Instructed by: Mudenda Inc Attorneys