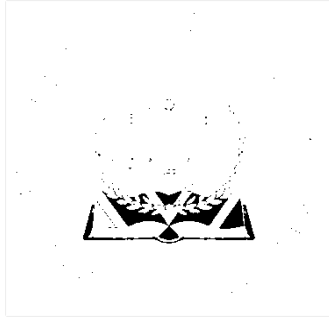




IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR2025/2018

In the matter between:

STEVEN HLONGWANE

Applicant

and

RED ALERT (PTY) LTD

First Respondent

CCMA JOHANNESBURG

Second Respondent

COMMISSIONER SAKI NGADA

Third Respondent

Heard: 30 July 2025

Delivered: 3 September 2025

JUDGMENT

SASS AJ

Introduction

[1] This is an application in terms of Rule 11 of the previous Rules of this Court (the previous Rules), launched on or about 25 June 2024 by the Applicant.

[2] The previous Rules were replaced by the current Rules of this Court on 17 July 2024 (the current Rules), with Rule 11 of the previous Rules being replaced by Rule 71 of the current Rules.

[3] There is no difference between the wording of Rule 11 of the previous Rules and Rule 71 of the current Rules. In any event, Rule 11 of the previous Rules along with the Practice Manual of the Labour Court, which was also replaced by the current Rules effective 17 July 2024, is applicable to this application as this application was launched prior to 17 July 2024.

[4] The Applicant seeks the following relief in his application, that:

- (1) the review application brought by the First Respondent under case number JR2025.2018 be dismissed; and
- (2) the arbitration award issued by the Third Respondent under case CCMA case reference number GAJB 4609-18 dated 29 March 2018 (the Arbitration Award) be made an order of court.

[5] The application is not opposed by the Respondents.

Relevant background facts

[6] On or about 29 March 2018, the Applicant obtained an arbitration award in his favour against the First Respondent (the Arbitration Award).

[7] On or about 26 September 2018, the First Respondent launched a review application to review and set aside the Arbitration Award.

[8] On or about 10 May 2019, the CCMA dispatched the record of the arbitration proceedings to which the Arbitration Award related (the Record) to this Court.

[9] On or about 14 May 2019, the First Respondent uplifted the Record from this Court.

[10] By 30 April 2024, when the Applicant had deposed to his founding affidavit in the Rule 11 application, the First Respondent had failed to transcribe the audio recordings of the arbitration proceedings before the CCMA and file the transcription and/or the Record (or the portions thereof which it sought to rely on for the purposes of its review application) at this Court.

[11] No further steps were taken by the First Respondent to prosecute its review application between 19 May 2019 (when it uplifted the Record from this Court) and the date on which the Applicant deposed to his founding affidavit in the Rule 11 application (on or about 30 April 2024) - a period of approximately 1 (one) week short of 5 (five) years.

[12] It does not appear that the First Respondent has taken any further steps to prosecute its review application between 30 April 2024 and 30 July 2025 (when this application was heard).

[13] In total, it appears that no steps have been taken by the First Respondent to prosecute its review application for more than 6 (six) years.

The jurisdiction of this Court to entertain an application for the dismissal of a deemed withdrawn or archived review application

[14] In its recent judgment in *City of Tshwane Metropolitan Municipality v South African Local Government Bargaining Council* (JA57/2024 reportable), delivered on 12 August 2025, the Labour Appeal Court considered what it referred to as “*the much-ruminated issue of whether the Labour Court has jurisdiction to entertain an application for the dismissal of a deemed withdrawn or archived review application*”

with reference to the following clauses of the now repealed Practice Manual¹ were the following – clauses 11.2.3, 11.2.7, 16.1 and 16.3.

[15] The Labour Appeal Court held that this Court does have jurisdiction to entertain an application for the dismissal of a deemed withdrawn or archived review application brought in terms of Rule 11 of the previous Rules, stating the following at paragraphs [23] and [24] of its judgment:

“[23] There is, however, nothing in Macsteel and E Tradex that impedes the Labour Court from entertaining a Rule 11 application to dismiss a lapsed review application. A lapsed review application is not dead as a doornail; hence, it can be revived on good cause, as correctly found in Aspen. Therefore, a respondent party that seeks, inter alia, irrefutable finality for purposes of execution or due to inordinate delay can avail itself of the Rule 11 application. To the extent that the Labour Court has jurisdiction to entertain an application for the reinstatement of the lapsed review application, that power extends, by implication, to the Rule 11 dismissal application.² However, caution must be exercised to prevent the proliferation of litigation and to avoid negating the paramount statutory mandate for a speedy and cost-effective resolution of labour disputes.

[24] In the present case, no reinstatement application served before the Labour Court. Before us, counsel for the City of Tshwane confirmed that there was no intention to seek reinstatement of the lapsed review application. The Labour Court cannot, therefore, be faulted for upholding the Rule 11 dismissal application. It was, in my view, not only expedient but also fair in the circumstances.³

[16] There is nothing then that prevents this Court from considering Applicant’s Rule 11 application and dismissing the Third Respondent’s review application (if a proper case has been made out for doings so), even in circumstances where the review application is deemed to have been withdrawn.

¹ Practice Manual of the Labour Court of South Africa, effective, 1 April 2013. The Practice Manual has been repealed by the new Rules of the Labour Court that came into effect on 17 July 2024.

² See *Greater Taung Local Municipality v SA Local Government Bargaining Council and Others* (2023) 44 ILJ 761 (LAC) (*Greater Taung*) at para 16.

³ See *Groom v Daimler Fleet Management (Pty) Ltd* (2021) 42 ILJ 2179 (LAC) at para 45.

The dismissal of the review application

[17] This application relates to clause 11.2.3 (and clause 11.2.2) of the now repealed Practice Manual, which was applicable to this application at all material times.

[18] Clause 11.2.2 reads as follows: *“For the purposes of Rule 7A (6), records must be filed within 60 days of the date on which the applicant is advised by the registrar that the record has been received.”*

[19] Clause 11.2.3 reads as follows: *“If the applicant fails to file a record within the prescribed period⁴, 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. 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.”*

[20] The First Respondent has failed to comply with Clause 11.2.3 and its review application is deemed to have been withdrawn by it.

[21] There has also been a significant and undue delay on the part of the First Respondent in prosecuting the review application. It appears that it has taken no steps in this regard since May 2019 (more than six years ago). This is most certainly an undue delay, and the review application also stands to be dismissed on this ground. There has not been any substantive application by the First Respondent for reinstatement of the deemed withdrawn review application, and no condonation sought for the undue delay in filing the record.

[22] The need for expedition in the prosecution of employment law disputes and the speedy resolution of such disputes is trite. The record was due for filing many

⁴ Clause 11.2.2 provides: ‘For the purposes of Rule 7A(6), records must be filed within 60 days of the date on which the applicant is advised by the registrar that the record has been received’.

years ago (almost six years ago). This kind of delay can comfortably be described as grossly excessive, unreasonable, significant and unpalatable.

[23] It is also trite that the Practice Manual is not just some sort of guideline which litigating parties may or may not comply with at their leisure, but has binding force, just like the Labour Court Rules. The First Respondent was obliged to comply with it.

[24] For all the above reasons, the Applicant's Rule 11 application to dismiss the First Respondent's review application must succeed and it follows that the review application must be dismissed.

The Arbitration Award and whether it may be made an Order of Court in terms of this Rule 11 application

[25] The Applicant's founding affidavit in this Rule 11 application does not provide any factual or legal basis on which the Arbitration Award may be made an Order of Court.

[26] It does not appear that the Applicant has proceeded in terms of section 158(1)(c) of the Labour Relations Act No. 66 of 1995, as amended (the LRA), when seeking to have the Arbitration Award made an Order of Court.

[27] Moreover, as the review application is dismissed, there is no review application before this Court under this case number (JR2025/2018) and accordingly any application to have the Arbitration Award made an Order of Court under this case number cannot be heard by this Court under case number JR2025/2018.

[28] Should the Applicant wish to take steps to enforce the Arbitration Award, and in light of the above, he may either: (i) apply to the CCMA to have the Arbitration Award certified in terms of section 143 of the LRA; or (ii) institute a *de novo* application to have the Arbitration Award made an Order of Court in which he should set out a factual and legal basis for such relief, under a new case number which he will need to apply for.

[29] In light of the date of the Arbitration Award (29 March 2018), the Applicant may potentially encounter some difficulties in seeking to take steps to enforce the Arbitration Award due to the application of the legal concept of prescription and should seek appropriate legal advice in this regard.

Costs

[30] The application was not opposed, and a costs order is accordingly not appropriate in the circumstances notwithstanding the conduct of the First Respondent in relation to prosecuting its review application, which necessitated an application on this kind.

[31] In the circumstances, the Court makes the following order:

Order

[32] The Rule 11 application is granted and the First Respondent's review application is dismissed.

[33] The Arbitration Award is not made an Order of Court.

[34] No order is made as to costs.

M Sass

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: L Mphatlalazana of Mphatlalazana Attorneys

For the Respondents: No appearances.