



THE LABOUR COURT OF SOUTH AFRICA JOHANNESBURG

Not reportable
Case No.: JR473/21

In the matter between:

KABELO MOTSAALORE

Applicant

and

TRANSNET BARGAINING COUNCIL

First Respondent

COMMISSIONER N.O. H KIRSTEIN

Second Respondent

TRANSNET ENGINEERING

Third Respondent

Heard: 19 November 2024

Delivered: 04 September 2025

JUDGEMENT

ORR, AJ

[1] The application before me is one for the reinstatement of a review application. The review application in this matter was deemed to be withdrawn by virtue of the provisions of clause 11.2.3 of the Practice Manual, in that the record in the review application was not filed within 60 days of the Registrar advising that it was ready for collection. The application for re-instatement is opposed by the third respondent, Transnet Engineering (Transnet).

[2] This Court has long held that an application for reinstatement is akin to a condonation application.¹ The principles applicable to condonation can therefore be set out briefly.

[3] The general principles applicable to condonation are well established. Condonation is not there for the asking, nor are applications for condonation a mere formality.² A party seeking condonation must make out a case for the indulgence sought and bears the onus to satisfy the court that condonation should be granted.

[4] The court is required to exercise a discretion, having regard to the extent of the delay, the explanation proffered for that delay, the applicant's prospects of success, and the relative prejudice to the parties that would be occasioned by the application being granted or refused. Ordinarily these factors are not individually decisive but are interrelated and must thus be weighed against one another. In this court, this formulation which has its roots in *Melane v Santam Insurance Co Ltd*³, has long been qualified by the rule that where there is an inordinate delay that is not satisfactorily explained, the applicant's prospects of success are immaterial.⁴

[5] The application for condonation must offer an explanation for the full length of the delay.⁵ Finally, if there is any delay in seeking condonation this too must be adequately explained.⁶

¹ See: *Tadyn Trading CC t/a Tadyn Consulting Services v Steiner and others* (2014) 35 ILJ 1672 (LC)

² See: *NUMSA and another v Hillside Aluminium* [2005] 6 BLLR 601 (LC); *Grootboom v National Prosecuting Authority and another* [2014] 1 BLLR 1 (CC).

³ 1962 (4) SA 531 (A).

⁴ See: *National Union of Mineworkers v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC).

⁵ See: *eThekweni Municipality v Ingonyama Trust* 2013 (5) BCLR 497 (CC).

⁶ See: *CWIU and another v Ryan and others* [2001] 3 BLLR 337 (LC) and *Darries v Sheriff, Magistrate's Court Wynberg and another* 1998 (3) SA 34 (SCA).

[6] The facts upon which this application must be determined are as follows and are all common cause:

- 6.1. On 30 March 2021 the applicant's review application was delivered. This was within the six week period provided for;
- 6.2. On 9 April 2021 the Registrar delivered a notice to the parties in terms of Rule 7A(2)(b) indicating that the record was available to be collected for transcription. This meant that, in terms of clause 11.2.2 of the Practice Manual the transcribed record needed to be filed by 7 July 2021.
- 6.3. The record was only filed on 30 July 2021;
- 6.4. The current application for reinstatement was only delivered on 4 February 2022.

[7] The original delay in filing the record was not inordinate being in the region of three weeks. It was nevertheless a significant delay which required a detailed, reasonable explanation. However, the explanation tendered effectively amounts to no explanation at all. The applicant explains that there were certain issues with the original transcript which needed to be resolved by the transcriber. No issue can be taken with the explanation so far as these sorts of problems crop up all the time. The corrected record was delivered to the applicant's attorneys by 6 July 2021. That is the sum total of the explanation.

[8] Given that the record had been delivered by 6 July there should have been no problem filing the record by 7 July in which case it would have been on time. No explanation whatsoever is tendered for why the record was only filed on 30 July. Nor is any explanation at all provided for the delay in six months in delivering the application for reinstatement, let alone an acceptable one.

[9] Given that no explanation is tendered for these delays, the prospects of success in this matter need not be considered. It must be noted that even so, the prospects of success are not addressed at all in the reinstatement application, not even by reference to the review application. However, having regard to the review application I do not find the prospects of success particularly compelling in any event.

[10] I accept that there will be prejudice to the applicant if condonation is refused. Transnet has not pleaded any specific prejudice if condonation is granted, other than their entitlement to the expeditious resolution of an unfair labour practice that arose in 2019. However, the applicant has already had his dispute ventilated in the Bargaining Council and the prejudice in those circumstances is not significant particularly given my view of the poor prospects of success.

[11] In all the circumstances the application for re-instatement of the review falls to be dismissed. Miss Chowan who appeared on behalf of Transnet argued vigorously for an order of costs. Although legitimate criticism can be made of the merits of this application the Constitutional Court has made it clear that poor merits of a matter are not, on their own, sufficient to grant a costs order.⁷

[12] In the premise the following order is made:

Order

1. The application to re-instate the review application is dismissed;
2. There is no order as to costs

C. Orr

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Sabelo Khanya from Ismail and Dahya attorneys
For the Third Respondent:	Adv A. Chowan
Instructed by:	Ntangula Inc Attorneys

⁷ See: *Union for Police Security and Corrections Organisation v South African Custodial Management (Pty) Limited and others* 2021 (11) BCLR 1249 (CC).