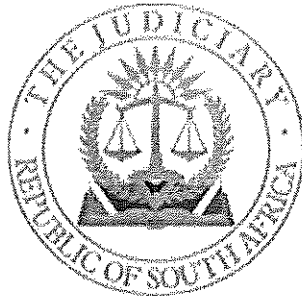




Not reportable

THE LABOUR COURT OF SOUTH AFRICA,

HELD AT CAPE TOWN

Case no: C544/2022

In the matter between:

RADASNI MUNSAMI

Plaintiff

and

**BRITISH AMERICAN TABACCO SA
(PTY) LTD**

Defendant

Date of Hearing: 10 September 2025

Date of Judgment: 22 September 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 22 September 2025.

Summary: (Condonation for late delivery of Statement of Response – delay not excessive – reasonable explanation provided – prima facie prospects of success in main action – condonation granted).

JUDGMENT

LESLIE AJ

- [1] This is an opposed application in which the defendant seeks condonation for the late delivery of its Statement of Response in the main action under the above case number.
- [2] The decision whether to grant condonation or not involves the exercise of a discretion having regard to all relevant factors, ultimately aimed at identifying which outcome would best serve the interests of justice. It typically requires the court to weigh up a number of factors, including the degree of lateness, the explanation for the delay, the applicant's prospects of success in the main application and the importance of the case.¹

The degree of lateness

- [3] The plaintiff's Statement of Case was delivered on 8 December 2022. Primarily due to the festive season, the defendant's attorneys requested an indulgence to deliver the Statement of Response by 16 January 2023. This was granted. A second indulgence was sought and granted until 23 January 2023.

¹ The principles set out in *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) have been endorsed and developed over many years, including by the Constitutional Court in *Grootboom v National Prosecuting Authority* 2014 (2) SA 68 (CC).

- [4] On 25 January 2023, the defendant's attorneys requested a further indulgence to deliver the Statement of Response by 13 February 2023. This request was refused by the plaintiff.
- [5] The Statement of Response was ultimately served on the plaintiff on 17 February 2023. This was 19 court days after 23 January 2023 (the date of the extended indulgence).
- [6] It is common cause that the delay is not excessive.

The explanation for the delay

- [7] The explanation advanced by the defendant for the delay is that, in light of some of the averments made in the Statement of Case — specifically pertaining to a tender process in Zambia - it was necessary to obtain instructions from certain people situated in Zambia and the United Kingdom.
- [8] The defendant's attorney states that consultations took place on 23 and 25 January 2023, after which the third indulgence from the plaintiff was sought (and refused). The draft Statement of Response contained various comments and further information that was required. It had to be checked by employees situated in Zambia and the United Kingdom before it could be filed. It was finalised on 17 February 2023 and served on the plaintiff on that day.
- [9] In her answering affidavit, the plaintiff essentially denies that it was necessary to consult with employees outside South Africa. She asserts that the defendant ought to have been fully aware of the Zambian tender fraud issue, since a full investigation had been done and *"some of the South African directors were also involved."*
- [10] It may well be the case that employees in South Africa were privy to some of the information pertaining to the tender fraud allegations made in the Statement of Case. Ultimately, however, the plaintiff does not have personal knowledge of the persons with whom the defendant's attorneys deemed it necessary to consult in drafting the Statement of Response. The averments made in the answering papers are not sufficient to give rise to a genuine dispute of fact in motion proceedings. There is no proper basis on which to reject the defendant's version on affidavit. In my view, the

defendant's attorneys cannot be faulted for seeking instructions from persons with direct knowledge of the events in question.

[11] In short, the defendant has put up an acceptable explanation for the delay.

The defendant's prospects of success

[12] It is trite that, in assessing a litigant's prospects of success, discursiveness is to be discouraged.² Having regard to the pleadings:

12.1 It is common cause that the plaintiff was dismissed pursuant to a retrenchment process conducted under section 189A of the Labour Relations Act 66 of 1995 ("the LRA"). Part of the plaintiff's claim is that her dismissal was procedurally unfair, on a number of grounds. Section 189A(18) provides that the Labour Court may not adjudicate a dispute about the procedural fairness of a dismissal based on the employer's operational requirements in any dispute referred to it in terms of section 191(5)(b)(ii). *Prima facie* it appears that the defendant has reasonable grounds for defending the plaintiff's claim of procedural unfairness.

12.2 Moreover, the defendant has pleaded that the plaintiff's retrenchment was based on its genuine operational requirements and that alternatives were considered, to no avail. I refrain from expressing any firm view on these points at this stage. Suffice it to say that the defendant has at least laid out a *prima facie* defence to the plaintiff's claim of substantive unfairness, in the sense that, if established at trial after all the evidence has been led, its defence would succeed.

[13] Overall, the defendant has shown that it would have some reasonable prospects of success in defending the main action if it were to proceed to trial.

The importance of the case, prejudice and the interests of justice

² *Melane* (supra) at 532C-G.

- [14] In *Bosch v Seynhaeve NO*³ this court, per Lagrange J, held (after reviewing several of the more recent authorities of the LAC and the Constitutional Court regarding condonation) that:

“... questions of prejudice and the effect on the administration of justice are also factors that should also be considered. The nature of the relief sought is also a factor bearing consideration. For example, in an application for condonation for the late filing of a petition for leave to appeal to the Labour Appeal Court against a labour court judgement reviewing an arbitration award might warrant much greater attention being paid to the prospects of success, given that the underlying dispute has already been considered by two independent adjudicators, albeit in different types of proceedings. By contrast, an application for condonation for a late referral of an unfair dismissal dispute to a bargaining council concerns a dispute which has never been canvassed in any form by a completely independent adjudicator and accordingly the aggrieved party has not yet had the opportunity to exercise that right. It must also be borne in mind that the referral is the gateway for an employee to exercise their constitutional right to fair labour practices as provided for by the Labour Relations Act, 66 of 1995 (‘the LRA’) in an independent forum of first instance. Closing that avenue means the employee is deprived of any hearing of their unfair dismissal claim.

- [15] In the present matter, if condonation is refused the prejudice to the defendant is severe. It would be deprived of presenting its defence to the unfair dismissal claim in the Labour Court – the court of first instance. On the other hand, there is no comparable prejudice to the plaintiff as a result of the 19-day delay for which condonation is sought.

- [16] Overall, on a conspectus of the relevant factors in my view it would be serve the interests of justice to grant condonation for the late delivery of the Statement of Response.

- [17] The plaintiff, quite correctly in my view, did not press for a costs order.

³ (159/2023) [2024] ZALCCT 25 (27 June 2024) para 16.

[18] In the premises, the following order is made:

Order

- [1] The late delivery of the defendant's Statement of Response is condoned.
- [2] There is no order as to costs.



Leslie AJ
Acting Judge of the Labour Court of South Africa

Representatives –

For the defendant:
For the plaintiff:

L Moosa, Cliffe Dekker Hofmeyr Inc
In person

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