



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR1875/24

In the matter between:

DYPUSA obo MAHLALELA AARON AND 4 OTHERS Applicant

and

**COMMISSION FOR CONCILIATION MEDIATION
ARBITRATION**

First Respondent

AMOS MTHIMUNYE N.O

Second Respondent

GLS SUPPLY CHAIN EQUIPMENT (PTY) LTD

Third Respondent

Heard: 29 August 2025

Delivered: 08 September 2025

JUDGMENT

BALOYI, AJ

Introduction

[1] This matter made its way to the roll through a directive made by the learned Judge in chambers on 18 June 2025, which reads as follows

‘Matter to be enrolled on the unopposed roll for determination of the extension application.’

[2] The directive followed a series of events that took place within the confines of Rule 37(13) to Rule 37(17)¹. The applicant is a trade union acting on behalf of its members who are former employees of the third respondent.

[3] On realising that it would not be in a position to file the record within 60 days, the applicant’s attorneys wrote to the third respondent’s attorneys to request consent for an extension of the time period within which the record must be filed. The consent was refused. The applicant filed an application for extension for the Judge

¹ GN 4775 of 2024: Rules Regulating the Conduct of Proceedings of the Labour Court. Rule 37 provides that:

‘...

(13) The applicant must furnish the registrar and each of the other parties with a copy of the record or portion of the record, as the case may be, and a copy of the reasons filed by the person or body; provided that, should it transpire that the person or body upon whom a notice of motion is served in terms of subrule (2) has failed to deliver a complete record, the 60-day period contemplated in subrule (14) will commence running only once a complete record has been delivered.

(14) Transcribed records must be delivered within 60 days of the date on which the applicant is advised by the registrar that the record has been received.

(15) If the applicant fails to file a transcribed record within the prescribed period, the applicant will be deemed to have withdrawn the application, unless the applicant has during that period requested the respondent’s consent for an extension of time and consent has been given. Any consent given must be expressed in writing and filed with the registrar.

(16) 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. The application must be accompanied by proof of service on all other parties, and answering and replying affidavits may be filed within the time limits prescribed by rule 35.

(17) The Judge President will then allocate the file to a judge for a ruling, to be made in chambers, on any extension of time that the respondent should be afforded to file the record.’

President's consideration. The third respondent opposed the application. Now the matter serves before this Court as per the directive above.

Background

[4] The review application was filed on 17 November 2024. The Registrar informed the applicant that the record was available to be uplifted on 5 November 2024. The 60-day period, counting from 6 November 2024, expired on 5 March 2025. The applicant was facing financial difficulties and was unable to fund the transcription of the record. On 4 March 2025, the applicant requested an extension from the third respondent, and the third respondent's response, conveyed on 5 March 2025, was negative. The third respondent's reason for the refusal was mainly that the review application was meritless and frivolous.

[5] The applicant was, therefore, compelled to file this application on 29 April 2025. The applicant specifically requested an extension for filing the record until 30 August 2025 and also sought an extension to file the supplementary affidavit by 16 September 2025.

[6] When this application was heard on 29 August 2025, it was brought to the Court's attention that the applicant had filed the record on 12 August 2025.

[7] The third respondent, nonetheless, persisted with opposing the application and moved for dismissal of the review application with costs. Central to the third respondent's opposition is the contention that the review application is deemed to have been withdrawn by the applicant as the attempts to secure consent for extension were carried out after the expiry of 60 days. The applicant disputed this. The matter had to be stood down to enable the parties to conduct the counting, which commenced on 5 November 2024, when the Registrar invited the applicant to uplift the record. The third respondent submitted that it did not have sight of the Registrar's notice prior to its Counsel's appearance before the Court. The content of the notice was not placed in dispute.

[8] After the counting, it transpired that the consent was actually sought within

the 60 days. The third respondent nevertheless persisted with its view that the review is deemed to have been withdrawn, albeit for a different reason. When the 60-day period expired, the applicant had not filed the extension application, so argued the third respondent.

[9] The issue which this Court is called upon to determine shifted to whether the application for extension complies with the aforesaid part of the rules. If found not to be compliant, the review application will certainly be deemed withdrawn. If found to be compliant, the Court will proceed with the determination of the application for extension. The Court is also alive to the fact that pleadings are yet closed, and it would be premature to determine this matter as if it were a review Court.

Evaluation

[10] The third respondent's opposition is essentially calling upon the Court to interpret Rule 37(5). The rule clearly provides that the consent must be secured within the 60 days. The application before the Judge President becomes relevant only when the consent is refused. Rule 37(17) does not prescribe that the application must be filed within 60 days. It has to be accepted that the crafters of the rules had in mind that such an application should be filed within a reasonable time. The crafters of the rules have realistically foreseen the possibilities of the filing of extension applications outside the 60-day period based on varying circumstances of each case. It is not the third respondent's case that the application for extension was filed after an inordinate delay and that the applicant had not explained such delay.

[11] On this note, this Court finds the third respondent's opposition meritless and inducing technicalities that go against the intentions of the rules that review applications are to be dealt with expeditiously. The applicant's initiation of the extension process by sending a letter seeking consent from the third respondent certainly bears an interruptive effect on the running of the 60 days. The review application cannot be deemed withdrawn after the expiry of 60 days, while the extension process, either by consent or application before the Judge President, is still unfolding. In this matter, there is no need for the applicant to seek the reinstatement of the review application. With the record already filed at the time of

determination of this application, it will not be in the interest of justice to refuse the extension that was requested prior to its filing. Extension for the filing of the record and the supplementary affidavit should accordingly be granted.

Costs

[12] The third respondent stuck to the opposition of this application, despite being fully aware that the record had been filed. It can only be inferred that the third respondent intends to invoke all technical means to delay the hearing of the review application. This conduct should be discouraged. The Court acknowledges that the opposing party in the review application has a right not to consent to extension; however, if the opposing party unreasonably refuses the consent, the Court should not hesitate to visit the party in question with a cost order.

[13] This application was filed under the circumstances in which the applicant was facing financial difficulties to fund the record and disclosed its predicament to the third respondent. The third respondent elected not to apply its mind to the applicant's request and rushed to rely on the reason that bore no relevance to the applicant's request by stating that the review application is frivolous. This clearly demonstrates that the consent was unreasonably refused. This refusal does not advance the spirit of speedy resolution of the review application. In fact, it creates a bar to a fellow litigant's access to the Court. This is one case where the cost order is justifiable against the third respondent. The exceptional circumstances calling for the cost order against the third respondent are established.².

[14] In the premises, the following order is therefore made:

Order

1. The extension for the filing of the record post the expiry of 60 days is

²See: *Member of the Executive Council for Finance, KwaZulu-Natal & another v Dorkin NO & another* (2008) 29 ILJ 1707 (LAC) at para 19 and *Zungu v Premier of the Province of KwaZulu-Natal & others* (2018) 39 ILJ 523 (CC) at para 26.

granted.

2. The applicant is to file a notice in terms of Rule 37(20)(a) or 37(20)(b) by no later than 16 September 2025.

3. The third respondent to pay the cost of this application.

MM Baloyi

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant:	Adv C Mathonsi
Instructed by:	Khomola Attorneys
For the third respondent:	Adv N Wagemaker
Instructed by:	William Berry Attorneys