



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J215/21

In the matter between:

LUNGUZA LILIAN AND 33 OTHERS

Applicants

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

BELINDA MAKGAKWE N.O.

Second Respondent

MCCAIN FOODS SA (PTY) LTD

Third Respondent

Heard: 20 May 2025

Delivered: 29 September 2025

Summary: Application for condonation for the late filing of review application.
No prospects of success, coupled with poor explanation for the delay. Application dismissed.

JUDGMENT

DANIELS JIntroduction

- [1] The applicant seeks condonation for the late filing of its review application, brought to review and set aside a ruling of the second respondent, a commissioner of the Commission for Conciliation, Mediation and Arbitration (the “CCMA”). The third respondent opposes the review application.
- [2] Strangely, the applicant filed two different review applications under the above case number. The first application was filed on 1 March 2021, and the second on 27 May 2021. Both applications were filed late, but the applicants have not sought condonation for the second application. Accordingly, the second application is not properly before the court and need not be considered. Accordingly, this judgment relates solely to the first review application.
- [3] The applicants submitted that the first application was withdrawn, but there is no notice of withdrawal before the court, and no such notice was served on the third respondent.
- [4] Unfortunately, the applicant’s papers were far from comprehensive or comprehensible.

Material facts

- [5] The third respondent is in the business of manufacturing a wide range of frozen food products at its plant in Springs. Its products include carrots, peas, sweetcorn, and green beans. These vegetables are seasonal, and each vegetable has their own season. The third respondent’s need for labour is dictated by the time of the harvest and the crop yield, harvested

by suppliers as well as the third respondent's own farms. The third respondent employs workers for each crop, as well as general workers, and it maintains a database of such workers. With each season, depending on its needs, the third respondent engages workers from its database for the applicable period in which labour is required.

[6] All the applicants were previously employed by the third respondent, and they were all engaged on fixed term contracts. They were notified of the termination of their contracts at different times. Many contracts were terminated on 31 January 2020, but others were terminated much earlier.

[7] The applicants referred a dispute concerning their alleged unfair dismissal, to conciliation, before the CCMA, on 24 August 2020. The referral was late, and they applied for condonation. The third respondent opposed the application for condonation. The second respondent (the "commissioner") issued her ruling on or about 1 October 2020 and dismissed the application.

[8] It is apparent from the ruling that:

8.1 The periods of delay applicable to each of the applicants varied depending on the dates when they were informed of the termination of their contracts. Some of the disputes were late by as much as two years. The shortest period of delay was approximately five months. The commissioner found that the periods of delay were excessive.

8.2 The applicants' explanation for the delay was that they had been incorrectly advised to refer two other disputes and had only been advised to refer a dispute about their dismissal when the Casual Workers Advice Office ("CWAO") became their representatives. However, in its answering affidavit, the third respondent alleged that the CWAO became the applicants' representative during January

2020, but no dispute was referred then. The applicants filed no replying affidavit. The commissioner found that the CWAO had been representing the applicants since January 2020 and, accordingly, the explanation for the delay was not compelling.

8.3 The applicants contended that they were required to report for duty on 20 July 2020 but were not recalled. The third respondent denied this and alleged that it was under no obligation to engage the applicants every season. The applicants filed no replying affidavit and put up no proof that they were required to report for duty on 20 July 2020. The commissioner accepted the third respondent's version noting there was no proof that the applicants were required to report for duty on 20 July 2020. In addition, the commissioner found that it was non sensical for the applicants to allege that they had all been required to report for duty on 20 July 2020 when some of the contracts had lapsed nearly two years earlier.

8.4 The applicants contended that the third respondent would suffer no prejudice if condonation was granted. The third respondent denied this and alleged that it would suffer prejudice because it would be forced to defend a dispute that has no prospects of success. The commissioner accepted that the third respondent would indeed suffer prejudice.

[9] The applicants allege that the condonation ruling, though dated 1 October 2020, only came to their attention towards the end of November 2020. The review application was filed on 1 March 2021.

Late filing of review application

- [10] The applicants contend that the review is approximately 93 days late. The third respondent denies this and states that the condonation ruling was sent to their representative, the CWAO, on 2 October 2020 and the review application should therefore have been filed by 13 November 2020. The applicants filed no replying affidavit disputing that the condonation ruling was sent to CWAO on 2 October 2020.
- [11] The reasons for the delay, as articulated by the applicants, is simply “...attributed to our ignorance as far as the labour laws dynamics are concerned....”
- [12] The applicants claim they have good prospects of success, as reflected in their founding affidavit in the condonation application in the CCMA. There, the prospects of success were explained as follows: “...workers have shown their ability to seek for an assistance, workers should have started working from the 24 July 2020 as sessional (sic) workers trying the best to arrange the meeting with the company but without any luck to receive feedback from the company.”

Legal principles

- [13] The applicable principles were summarised in *Grootboom v National Prosecuting Authority & another*¹ where Zondo J (as he then was) held:

“[50] In this court the test for determining whether condonation should be granted or refused is the interests of justice. If it is in the interests of justice that condonation be granted, it will be granted. If it is not in the interests of justice to do so, it will not be granted. The factors that are taken into account in that enquiry include:

¹ (2014) 35 ILJ 121 (CC) at paras [50] and [51]

- (a) the length of the delay;
- (b) the explanation for, or cause for, the delay;
- (c) the prospects of success for the party seeking condonation;
- (d) the importance of the issue(s) that the matter raises;
- (e) the prejudice to the other party or parties; and
- (f) the effect of the delay on the administration of justice.

Although the existence of the prospects of success in favour of the party seeking condonation is not decisive, it is an important factor in favour of granting condonation.

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

(own emphasis)

- [14] An important principle, emphasized in *Grootboom*, which echoes that in *Melane v Santam Insurance Co. Ltd*² where Holmes JA held: "*If there are no prospects of success there would be no point in granting condonation.*" Where the delay is excessive, the explanation is so weak as to amount to no explanation at all, and there is prejudice to the other party, it may not be necessary to consider prospects of success.³ When dealing with an extensive delay, the explanation must be sufficiently full

² 1962 (4) SA 531 (A) at 532

³ *Moila v Shai NO & others* (2007) 28 ILJ 1028 (LAC) at para [34]

to enable the court to assess the motives of the applicant and the reasonableness of the explanation. In addition, the explanation should account for each period of the delay.⁴

[15] In employment disputes, there is a further requirement – that of expedition⁵ given that one of the purposes of the LRA is to ensure the expeditious resolution of employment law disputes.

[16] In *Lekhesa: In re Ngwenya v Trustees for the time being of Sishen Iron Ore Company Community Development Trust and another*⁶ the LAC 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 or an application for condonation but are all considered to determine what is in the interests of justice.”

(own emphasis)

⁴ *NUMSA & another v Hillside Aluminium* [2005] 6 BLLR 601 (LC) at para [12]

⁵ *NUMSA on behalf of Thilivali v Fry’s Metals (Pty) Ltd (A Division of Zimco Group) and Others* (2015) 36 ILJ 232 (LC) at para [36]

⁶ [2024] 6 BLLR 585 (LAC); (2024) 45 ILJ 1220 (LAC) at para [14]

Standard of review of condonation rulings

- [17] It is established that determination of a condonation application involves the exercise of a so-called wide discretion or a discretion 'loosely so called.'⁷
- [18] In appeals against the exercise of a judicial discretion, our courts will interfere only where the discretion was not exercised judicially, the decision was biased, the decision was influenced by wrong principles, the decision was capricious or arbitrary, the decision was materially influenced by a misdirection to such a degree to justify the conclusion that the decisionmaker acted improperly or unreasonably.⁸
- [19] Reviews of condonation rulings cannot be assessed on a less stringent standard applicable to appeals.⁹ The court must therefore remain mindful of the narrow scope for interfering with the exercise of a discretion based on the multi factor test applicable to condonation applications.

Analysis of the condonation application

- [20] As mentioned, the founding papers are far from comprehensive. The delay is not minor or trivial. Despite this, as explained in paragraph 11 above, the explanation is so vague that, in my view, it amounts to no explanation at all.
- [21] The applicants are required to show that they have reasonable prospects of success in reviewing the condonation ruling of the second respondent. Instead, as reflected in paragraph 12, the applicants do not explain why the ruling was not made judicially, was biased, was influenced by wrong

⁷ *Nature's Choice Products (Pty) Ltd v Food and Allied Workers Union and others* (2014) 35 ILJ 1512 (LAC) at para [11]

⁸ *Mabaso v Law Society, Northern Provinces and another* 2005 (2) SA 117 (CC) at para 29

⁹ *Bosch v Seynhaeve NO* (159/2023); [2024] ZALCCT 25 (27 June 2024)

principles, capricious, or was materially influenced by a misdirection to such a degree to justify the conclusion that the decisionmaker acted improperly or unreasonably.

[22] On 8 March 2022, the applicants filed heads of argument in which they attempt to flesh out the grounds of review and their prospects of success. This is impermissible. The grounds of review must be pertinently set out in the applicant's founding and supplementary affidavits.¹⁰ The grounds of review may not be extended in the replying affidavit or in heads of argument.

[23] In the final analysis, on the papers, the period of the delay is not minor, the explanation is so vague as to be non-existent, and the prospects of success are non-existent. There is no need to consider further factors, which are barely addressed by the applicants in any event.

[24] In the result, the applicants have failed to satisfy the court that it is in the interests of justice to grant condonation for the late filing of the review application.

Costs

[25] I see no reason to depart from the normal approach in this court that costs do not follow the result. The twin requirements of law and fairness do not demand that the applicants be mulcted in costs.

Conclusion

[26] The application for condonation for the late filing of the review application, filed with this court on or about 1 March 2021, is dismissed.

¹⁰ *Communication Workers Union and others v SA Post Office Ltd and others* (2013) 34 ILJ 626 (LC) at paras 35 and 39

There is no order as to costs.

RN Daniels
Judge of the Labour Court of South Africa

Appearances:

For the Applicant
Union official

For the Third Respondent
Mr L Fraam-Arp
Fasken Attorneys