



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR319/20

In the matter between:

JOHANNES ADRIAAN VAN NIEKERK

Applicant

and

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

First Respondent

NONHLAHLA DUBAZANE NO

Second Respondent

SIBANYE STILLWATER (DRIEFONTEIN)

Third Respondent

Heard: 25 September 2025

Delivered: 6 October 2025

JUDGMENT

HEIDEMAN, AJ

Introduction

- [1] This is an application to revive the review application brought by the applicant. The Applicant's review application is deemed to have been withdrawn in

terms of Item 11.2.3 read with Item 11.2.2 of the Practice Manual,¹ given that the Applicant failed to file the Record within 60 days of it having become available, and failed to make an application to the Judge President for an extension of time.

- [2] In the present proceedings, the Applicant seeks condonation for the late filing of the record and to have his review application revived.
- [3] At the hearing, the Applicant failed to appear. In the ordinary course, the proper order would be to strike the matter from the roll. The Third Respondent, however, requested that I make the extraordinary order of dismissing the Applicant's application. It is only this issue that now requires determination.

Non-appearance of the Applicant

- [4] Mr Kent, on behalf of the Third Respondent, submitted that it would be in the interests of justice that the Applicant's application be dismissed, given that this review application has been ongoing for many years and the Applicant himself has failed to take an interest in his own matter. This is already an application to revive a review application which has been deemed to be withdrawn, and it is prejudicial to the Third Respondent to allow the matter to linger before the courts. Mr Kent also submitted that the application has low prospects of success, given that there was a substantial delay in filing the Record.
- [5] The relevant timeframes are as follows:
 - 5.1 The review application was brought on or about 17 February 2020.
 - 5.2 On 4 March 2020, the Registrar of this court notified the Applicant that the Record was available.
 - 5.3 The Record ought to have been filed by 5 June 2020.

¹ Practice Manual of the Labour Court of South Africa, effective 2 April 2013, repealed with effect from July 2024.

- 5.4 The Record was filed on 18 August 2020 and served on the Third Respondent's attorneys via email on 21 August 2020 (although the Third Respondent's attorneys insisted that a hard copy be served).
- 5.5 The Third Respondent filed its answering affidavit on 25 November 2020.
- 5.6 The Applicant's Notice in terms of Rule 7A(8)² and replying affidavit were delivered on 4 March 2021.
- 5.7 This reinstatement application was delivered on 5 May 2021.
- [6] A more detailed timeline is given in the Third Respondent's opposing papers and need not be repeated here in full. Suffice it to say for present purposes that the Applicant has taken a lackadaisical approach to the timeframes imposed by the Rules of this court and has required prompting and insistence from the Third Respondent in order for this matter to be heard.
- [7] At the hearing, Mr Kent also handed up a Notice of Withdrawal as Attorneys of Record from the Applicant's erstwhile attorneys dated 19 September 2025, as well as correspondence from them. The correspondence indicates that the Applicant's erstwhile attorneys of record were withdrawing because they could not locate the Applicant in order to take instructions.
- [8] What is clear from this correspondence is that it seems unlikely that the Applicant himself has received the Notice of Set Down. It is also clear that the Applicant is now unrepresented.
- [9] What is not before this court is the Applicant's explanation for why he has been uncontactable by his attorneys. While it is not for this court to speculate, there remains the possibility that there could be a reasonable explanation for the Applicant's absence.

² GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.

Conclusion

[10] The frustrations of the Third Respondents in these proceedings are understandable. However, were this application to be dismissed, it would effectively preclude the Applicant from pursuing the review application at a future date without having had the opportunity to apply for condonation or explain his absence at the hearing of this application.

[11] While this application was brought in terms of the old Rules of the Court, the new Labour Court Rules provide an appropriate remedy for cases such as these. Rule 45(1) states as follows:

‘If a matter is struck off the roll because a party who initiated the proceedings was not present, the matter may not be re-enrolled without that party having provided the court with a satisfactory explanation, under oath or affirmation, for the failure to attend court.’

[12] This Rule strikes a balance between the competing interests described above: it provides peace of mind to the Respondents that they will not needlessly and repeatedly be dragged before this court by a nonchalant Applicant, whilst at the same time not closing the doors of justice to an Applicant who may have legitimate reasons for his non-appearance.

[13] In light of the above, the following order is made:

Order

1. The matter is struck off the roll.
2. The Applicant must provide this court with a satisfactory explanation for his non-appearance before court on 25 September 2025 by way of affidavit before the matter may be re-enrolled for hearing.

VJ Heideman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Instructed by:

For the Respondent: J Kent

Instructed by: Solomon Holmes Attorneys

LABOUR COURT