



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J1033/24

In the matter between:

EASYBRANCH (PTY) LTD

Appellant

and

SIBIYA, Z N.O.

First Respondent

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

Second Respondent

MOLEKOA, JOSEPH

Third Respondent

Heard: 30 July 2025

Delivered: 6 October 2025

JUDGMENT

SASS AJ

Introduction

- [1] This is an appeal in terms of section 10(8) of the Employment Equity Act No. 55 of 1998 (the EEA) against the Arbitration Award made by the Second Respondent under the auspices of the First Respondent that the Third Respondent was subjected to unfair discrimination on the grounds of sexual harassment (the Appeal).
- [2] The Appellant noted its appeal on or about 13 November 2024. In terms of Rule 66 of the Rules of this Court and having regard to the date on which the Arbitration Award was handed down and provided to the parties, the Appeal should have been noted on or before 30 October 2024.
- [3] The Appeal was therefore noted (i.e., filed) approximately 13 (thirteen) days late and the Appellant requires condonation in respect of the late filing of the Appeal. On or about 10 December 2024, the Appellant applied for condonation in respect of the late filing of its Notice of Appeal (the Condonation Application).
- [4] The Third Respondent was present in court when the matter was called on 30 July 2025. He indicated that he intended to oppose the Appeal and requested a postponement of the Appeal in order to obtain legal representation.
- [5] In light of the above, this Court is required to consider the following three issues:
- (1) firstly, the Appellant's Condonation Application;
 - (2) secondly, the Third Respondent's request for the postponement of the Appeal; and
 - (3) thirdly, if condonation is granted *ex tempore* and the request for a postponement is unsuccessful, the merits of the Appeal.
- [6] I address each of these issues below in turn. I deal with the Condonation Application first, as in the absence of condonation being granted, this Court lacks the necessary jurisdiction to consider the Appeal.

The Condonation Application

Applicable legal principles

- [7] The applicable legal principles are trite and the approach to be adopted by this Court is well settled. It is not necessary to burden this judgment with a repetition of the applicable law and authorities save to refer to the Constitutional Court decision in *Steenkamp and Others v Edcon Limited*¹ in which the Constitutional Court re-affirmed that granting condonation must be in the interests of justice and in which it referred with approval to its decision in *Grootboom v National Prosecuting Authority*²:

[36] *Granting condonation must be in the interests of justice. This Court in Grootboom set out the factors that must be considered in determining whether or not it is in the interests of justice to grant condonation:*

“[T]he standard for considering an application for condonation is the interests of justice. However, the concept ‘interests of justice’ is so elastic that it is not capable of precise definition. As the two cases demonstrate, it includes: the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success. It is crucial to reiterate that both Brummer and Van Wyk emphasise that the ultimate determination of what is in the interests of justice must reflect due regard to all the relevant factors, but it is not necessarily limited to those mentioned above. The particular circumstances of each case will determine which of these factors are relevant.

It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court’s indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court’s directions. Of great significance, the explanation must be reasonable enough to excuse the default.

¹ [2019] 11 BLLR 1189 (CC), specifically the Constitutional Court’s second judgment.

² 2014 (1) BCLR 65 (CC) at para 20.

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.”³

[37] *All factors should therefore be taken into account when assessing whether it is in the interests of justice to grant or refuse condonation.”*

- [8] The Constitutional Court had also already in *Brummer v Gorfil Brothers Investments (Pty) Ltd*⁴ pointed out that an application for condonation should be granted if it is in the interests of justice and refused if it is not. The interests of justice must be determined by reference to all relevant factors outlined in *Melane v Santam Insurance Co Ltd*⁵, including the nature of the relief sought, the nature and cause of any other defect in respect of which condonation is sought, and the effect of the delay on the administration of justice⁶.

³ Ibid at paras 22-3 and 51.

⁴ 2000 (2) SA 837 (CC).

⁵ 1962 (4) SA 531 (A)

⁶ Id fn 4 at para 3; See also *Ndlovu v S* 2017 (10) BCLR 1286 (CC) at paras 22 – 23; *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as amicus curiae)* 2008 (2) SA 472 (CC) at 477A-B; *SA Post Office Ltd v CCMA* [2012] 1 BLLR 30 (LAC) at para [23], where Waglay DJP (as he was then) stated that: ‘In my view, each condonation application must be decided on its own facts bearing in mind the general criteria. While the rules are there to be applied, they are not inflexible but the flexibility is directly linked to and apportioned in accordance with the interests of justice; prejudice; prospects of success; and finally, degree of delay and the explanation thereof. The issue

- [9] Significant with a determination of such applications is that condonation cannot be had for the mere asking, and that a party is required to make out a case entitling it to the court's indulgence by showing sufficient cause, and giving a full, detailed and accurate account of the causes of the delay⁷. In the end, the explanation must be reasonable enough to excuse the default⁸.

Submissions

- [10] The Appellant's submissions are set out in its affidavit in support of the Condonation Application.
- [11] The Third Respondent's submissions entailed a non-specific reliance on the Appellant's failure to comply with the Rules of this Court in relation to not filing the Notice of Appeal timeously. He also made reference to the Appellant not complying with its sexual harassment policy.

Analysis - Length of, and explanation for, the delay

- [12] The Appeal was filed approximately 13 (thirteen) days late. The blame for the late filing appears to fall at the door of the Appellant's legal representatives/labour law advisors.
- [13] Between 15 and 21 October 2024, the Appellant engaged with its labour law advisors in respect of challenging the Arbitration Award as it was not satisfied with its outcome. At this stage, the Appellant's legal representatives were of the view that the Arbitration Award should be challenged by way of a review application in terms of section 145 of the Labour Relations Act No. 66 of 1995, as amended (the LRA), which the Appellant had 6 (six) weeks to proceed with. The Appellant consulted with its legal representatives on 21 October 2024 to provide them with instructions in relation to challenging the Arbitration Award by way of a review application.
- [14] On or about 29 October 2024, the Appellant's legal representatives received the bundle of documents relied upon by the Appellant at the arbitration proceedings. Having had sight of these documents, and between 29 October and the week of 4 to 8 November 2024, the Appellant's legal representatives changed their view on whether to proceed with a review application and instead advised the Appellant to proceed with an appeal with terms of section 10 of the EEA.

of delay must be viewed in relation to the expedition with which the law expects the principal matter to be resolved'

⁷ *Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited* 2017 (6) SA 90 (SCA) at para 6.

⁸ See: *Ndlovu v S supra* at fn 6 at para 31.

[15] The Appellant's legal representatives finalised the notice of appeal during the week of 4 to 8 November 2024 and filed the notice of appeal during the following week, on 13 November 2025.

[16] In *Saloojee and Another NNO v Minister of Community Development*,⁹ Steyn CJ stated the following in relation to a lack of diligence on the part of an attorney and how a litigant that chose that attorney as its representative should not be absolved from the normal consequences of such a relationship, no matter what the consequences of the failure by the attorney are:

"I should point out, however, that it has not at any time been held that condonation will not in any circumstances be withheld if the blame lies with his attorney. There is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence, or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect on the observance of the Rules of this Court. Considerations ad misericordiam should not be allowed to become an invitation to laxity. In fact, this Court has lately been burdened with an undue increasing number of applications for condonation in which the failure to comply with the Rules of this Court was due to neglect on the part of the attorney. The attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of a failure to comply with a Rule of Court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the consequences of the failure are."

[17] In *Fibro Furnishers (Pty) Ltd v Registrar of Deeds, Bloemfontein and Others*,¹⁰ Hoexter JA also made reference to the "oft-repeated judicial warning that there is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence or the insufficiency of the explanation tendered."

[18] In *UTI South Africa v Pilusa and Others*¹¹ the applicant, through its former attorneys of record, failed to lodge the review application timeously and later sought condonation for the delay. The applicant blamed the negligence of its previous attorneys for the delay. However, this Court, relying on *Saloojee supra* stated that an applicant cannot solely rely on the tardiness or negligence of its legal representative in a condonation application to justify the delay, and condonation was refused on the basis

⁹ 1965 (2) SA 135 (A) at 141C - E.

¹⁰ 1985 (4) SA 773 (A) at 787GH.

¹¹ (JR1732/12) [2016] ZALCJHB 270 (21 July 2016) at paras 11 - 15 and 22 - 24.

that good cause was not shown to justify the granting of condonation. The applicant was held accountable for the lack of diligence on the part of its former attorneys of record.

- [19] The Honourable Justice Nicholson AJA stated the following in the *Superb Meat Supplies CC v Maritz*:¹²

“In this court and the Supreme Court of Appeal there have been frequently repeated judicial warnings that there is a limit beyond which a litigant cannot escape the results of his attorney’s lack of diligence or the insufficiency of the explanation tendered. It has never been the law that invariably a litigant will be excused if the blame lies with the attorney. To hold otherwise might have a disastrous effect upon the observance of the rules of this court and set a dangerous precedent. It would invite and encourage laxity on the part of practitioners.”

- [20] There are thus limits beyond which a party cannot rely on their legal representative’s lack of diligence (i.e., carelessness) or negligence when they are innocent themselves insofar as an explanation is provided for any delay or non-compliance with time periods. Any delay resulting from carelessness or inattention by legal representatives in relation to, for example, a ‘technical issue’ pertaining to whether to proceed with a matter as a review or an appeal, may not always constitute a compelling reason for the granting of condonation, even if the client is not culpable.

- [21] The limits beyond which the Appellant cannot rely on its legal representatives’ lack of diligence or negligence when they are themselves innocent insofar as an explanation is provided for any delay or non-compliance with time periods, has not been exceeded *in casu*. The conduct of the Appellant and its legal representatives indicate that the Appellant intended at all material times to challenge the Arbitration Award and attended to that challenge properly and timeously, without undue delay. The notice of appeal was filed well within the time period allowed for a review application. oppose/defend the matter. The Appellant also applied for condonation expeditiously.

- [22] In *Saloojee supra*, Steyn CJ made it clear that it has not at any time been held that condonation will not in any circumstances be withheld if the blame lies with the attorney. There is no such blanket rule. The degree of any possible carelessness or oversight, whether amounting to negligence or not, by the Appellant’s legal representatives, is not extreme unlike the degree of negligence by the attorneys in *Saloojee supra*.

¹² (2004) 25 ILJ 96 (LAC) at 100H.

- [23] It is accepted that where the delay is excessive and the explanation is unreasonable and unacceptable, the Court may refuse condonation without considering the prospects of success⁹.
- [24] The delay of thirteen days is not excessive or lengthy though and the explanation provided by the Appellant is reasonable and acceptable. The Appellant's legal representatives at least acted expeditiously in – (i) filing the notice of appeal once they become aware of the possibility of an appeal to this Court in terms of section 10(8) of the EEA; and (ii) applying for condonation in relation to the late filing of the notice of appeal.
- [25] As such, the prospects of success need to be considered along with any other relevant factors.

Analysis – Prospects of Success

- [26] In *Gaoshubelwe and Others v Pieman's Pantry (Pty) Ltd*¹³ it was held that a consideration of prospects of success merely implies a determination of the likelihood or chance of success when the main case is heard. A similar approach was followed in *Seatlholo and others v Entertainment Logistics Service (A division of Gallo Africa Ltd)*¹⁴, where it was held that the test is whether the applicants would succeed in the main action if the facts pleaded by them in their condonation application were established at trial.
- [27] Equally so, the prospects of success do not entail an applicant having to prove on a balance of probabilities that he or she would succeed when the merits of the case are heard¹⁵.
- [28] It cannot be said that the Appellant does not enjoy reasonable or at least some prospects of success. If the facts pleaded by the Appellant are established when the appeal is considered, then the Appellant would succeed with the Appeal.
- [29] It is not necessary for the Appellant to prove that it will succeed when the merits of the matter are considered. It is only necessary to provide a basis

¹³ 2009 30 ILJ 347 (LC) at para 27.

¹⁴ (2011) 32 ILJ 2206 (LC) para 24.

¹⁵ See: *Production Institute of South Africa (Pty) Ltd v CCMA and others* (2011) 32 ILJ 1712 (LC) at para 12; See also: *SA Democratic Teachers Union v Commission for Conciliation, Mediation and Arbitration and others* (2007) 28 ILJ 1124 (LC) at para 38, where it was held that: 'A commissioner in considering prospects of success does not have to pronounce on the merits of the case. All that the commissioner needs to do is to investigate whether on the averments made by the applicant there is a prima facie case, that there is a chance of succeeding when the main case is heard. In other words, to establish whether there is a reasonable prospect of success on the merits, it suffices if an applicant can show a prima facie case through setting out averments which, if established at the proceedings of the main case, would entitle the applicant to some relief. The applicant need not deal fully with the merits of the case'.

to establish that he has a reasonable chance of succeeding when the matter is heard. The Appellant has done so.

Analysis – Importance of the case and prejudice

- [30] The matter does appear to be of extreme importance to the Appellant. It clearly at all material times intended to challenge the Arbitration Award, whether by way of a review or an appeal.
- [31] The late filing of the notice of appeal also does not materially delay the final resolution of the Appeal particularly in light of the delay that has been caused by the Third Respondent's failure to obtain legal representation by 30 July 2025 and his need for the postponement of the Appeal to a later when he had received service of the Appeal on or about 13 November 2024 and service of the condonation application on or about 4 December 2024.
- [32] There cannot conceivably be any material prejudice to the Third Respondent if condonation is granted (as the Third Respondent himself is seek the postponement of the Appeal), and even if there is some prejudice to him, the Third Respondent can be fully compensated for any delay in this matter by way of an appropriate interest and cost award should the Appeal not be successful.
- [33] The Appellant's prejudice if condonation is not granted, namely that its Appeal against the Arbitration Award would not be adjudicated, outweighs any possible prejudice that the Third Respondent may suffer if condonation is granted.
- [34] If one has regard to the nature of the relief sought and the effect of the delay on the administration of justice, it cannot be said that the granting of condonation would not be in the interests of justice.
- [35] I am satisfied that the Appellant has shown that it has reasonable prospects of success and that the granting of condonation would not materially prejudice the Third Respondent or prejudice him more than the Appellant would be prejudiced if condonation was not granted.
- [36] In all the circumstances, I am satisfied that the Appellant has established that it is in the interest of justice that condonation be granted, that there is good cause for the granting of condonation, and that a proper case has been made out for condonation.

The Third Respondent's request for a postponement

- [37] The Third Respondent sought a postponement of the Appeal in order to obtain legal representation and file papers opposing the Appeal. He indicated that he had previously approached the SASLAW *Pro Bono* office as well as Legal Aid for assistance but was unsuccessful in obtaining assistance. In relation to his attempt to obtain assistance from the SASLAW *Pro Bono* office, he indicated that it refused to assist him as his matter involved the SASLAW President's law firm.
- [38] The Appellant submitted that it would not be in the interests of justice to allow the Third Respondent a postponement as it would serve no purpose as the Third Respondent had 'knocked on all doors already' and was unable to obtain legal representation, that the processes of this Court were not so inaccessible for the Third Respondent that he would require legal representation to set out his thoughts in respect of opposing the Appeal, and that the Third Respondent was aware of the Appeal for some time and had not obtained legal representation during that period.
- [39] It is trite that the granting of an application for postponement is not a right, but an indulgence granted by this Court in the exercise of a judicial discretion. It is also trite that an application for a postponement must be *bona fide* and not used simply as a technical manoeuvre for the purpose of obtaining an unfair advantage over the opposing party.
- [40] In considering an application for a postponement, the Court must also weigh up the balance of convenience or inconvenience to both parties – i.e., the prejudice which will be caused by a postponement to the party opposing the postponement against the prejudice which will be caused to the party seeking the postponement if the application is not granted.
- [41] In exercising this judicial discretion, I am of the view that the request for a postponement is *bona fide* and is not a tactical manoeuvre by the Third Respondent to obtain an unfair advantage over the Appellant.
- [42] As the Appeal could not proceed on 30 July 2025, unless this Court provided an *ex tempore* judgment in the Condonation Application (and granted the Appellant such condonation), which this Court was not willing to do in the circumstances, the matter had to be postponed in any event. The earliest available date to which the matter could be postponed was 14

October 2025. A postponement of the matter to that date would provide the Third Respondent with a sufficient opportunity to obtain legal representation and file his papers opposing the Appeal.

The Appeal

[43] The merits of the Appeal will not be considered at this time in light of the postponement of the matter.

Costs

[44] Taking into account all of the relevant facts and circumstances and having regard to for the requirements of law and fairness, I do not consider it appropriate to make a costs order and I exercise my discretion as to costs accordingly.

[45] In the circumstances, the Court makes the following order:

Order

[46] The late filing of the Notice of Appeal is condoned.

[47] The Appeal is postponed to 14 October 2025.

[48] The parties are to comply with the remaining provisions of Rule 66 prior to the hearing of the Appeal on 14 October 2025 to the extent that such provisions have not been complied with yet.

[49] No order is made as to costs.

M Sass

Acting Judge of the Labour
Court of South Africa

Appearances

For the Appellant: Dr R Orton (Snyman Attorneys).

For the Third Respondent: The Third Respondent appeared in person.

LABOUR COURT