



IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: D1461/19

Not Reportable

In the matter between:

Department of Social Development

Applicant

and

NEHAWU obo D Maputle

Ist Respondent

Anna Marie Fourie N.O.

2nd Respondent

Public Health And Social Development

Sectoral Bargaining Council

3rd Respondent

Heard: 23rd April 2025

Delivered: 2nd October 2025

JUDGMENT

MM Govender AJ

INTRODUCTION

[1] This is an opposed application in which the Applicant seeks condonation of its non compliance with Section 145 (5) of the Labour Relations Act 66 of 1995 (as amended) (hereinafter referred to as “the LRA”). The Applicant also seeks an order reinstating its Review application which has lapsed due to non compliance with paragraph 11.2.7/ paragraph 16 .1 of the Labour Court’s Practice Manual (hereinafter referred to as “ the Practice Manual”).

The facts set out below do not purport to be a comprehensive summation of the facts and draws essentially on the agreed statement of facts.

In its Notice of Motion the applicant seeks the following relief :

- (i) Condonation of the late filing of its review application;
- (ii) Reviewing and setting aside the award issued by Public Health and Social; Development (PHSDS) Bargaining council Commissioner Anna Marie Fourie on 4th October 2019 under case number PSHS 1041-18/19;
- (iii) Pursuant to said order a further order remitting the matter back to the PHSDS Bargaining Council to be heard de novo before a commissioner other than commissioner Anna Marie Fourie;
- (iv) An order ordering those respondents who oppose the application to pay the costs thereof jointly and severally, the one paying the other to be absolved;
- (v) Granting the applicant such further relief or alternative relief as the Court deems appropriate.

BRIEF PRECIS (as discerned from the papers)

[2] The brief history of the matter is as follows :

- (i) The member of the First Respondent (the employee) Ms. Dibuo Martha Maputle and shall be referred to as the First Respondent for the

sake of brevity.

- (ii) The first respondent was employed by the applicant as an Assistant Director: Youth Development at the time that the Applicant advertised a vacancy for the position of Director: Youth Development.
- (iii) The first respondent applied for appointment to the position, was interviewed but was not appointed.
- (iv) Ms. Kathleen Diblelo Mahlatsi was appointed to the post on or about the 01st November 2018.
- (v) The First Respondent referred an unfair labour practice dispute to the PHSDC Bargaining Council. An arbitration award dated 4th October 2019 was subsequently issued in favour of the First Respondent.
- (vi) The Applicant was ordered to promote the First Respondent to the post of Director: Youth Development with retrospective effect.
- (vii) The review application was brought together with the condonation application on or about 10 December 2019.

RELEVANT LAW AND ANALYSIS

[3] The applicant is required to file its review application within six weeks

of receipt of the arbitration award from the CCMA. Said review was filed 13 days late. This is a minor delay and is condoned.

[4] The Labour Practice Manual stipulates strict time line requirements with regard to Review applications which are regarded to be

naturally urgent (Clause 11.2.7).

[5] In terms of 11.2.1 - read with Labour Court Rule 7A(6)- records must

be filed with 60 days of the date on which the Registrar issues its Rule 7A(5) notice informing the applicant that the record is available for collection.

[6] Clause 11.2.3 states that if the applicant fails to file the record within

the prescribed 60 days the application is deemed to be withdrawn unless consent has been sought from the respondent or a Judge grants an extension in chambers.

[7] Clause 11.2.7 goes on to stipulate further that an applicant is required to ensure that all necessary papers in the application are filed within 12 months from the date the application was launched. If said time limit is not met the application will be archived and regarded as lapsed unless good cause is shown for the removal from the archives.

[8] A review applicant is urgent by nature and must be attended to with

requisite regard for the strict time lines established in the Labour Practice Manual and Rules. This position has been consistently iterated in several judgements .

[9] The Labour Appeal Court in **E Tradex (Pty) Ltd T/A Global Trade Solution v Afzal Finch** ¹ said in referring to the Labour Practice Manual archiving rules and specifically to clause 16.3 “ Where a file

is placed in archives, it shall have the same consequences as to further conduct by any respondent party as to the matter being dismissed.

The judgement went on to state in referring to archiving that “ it must therefore follow that the archived case acquires a peculiar status which requires the delinquent party to justify why it should be reinstated and thereafter be entertained by a court in the wake of the lack of expeditious prosecution.”

[10] This is an emphatic enunciation of the importance and urgency of court processes and the associated time periods in relation to Review applications and any consequential reinstatement or revival application to retrieve a lapsed or archived review application.

[11] Parties (the applicant in particular) are therefore on ‘ notice’ to manage review applications with the requisite diligence .

[12] If they fail to do so they will face the onerous consequences of non compliance.

ANALYSIS

[13] The Registrars Rule 7A(5) notice was issued on 4th February 2020. The records were therefore required to be filed by 30th April 2020 in terms of Rule 7A(6).

[14] An examination of the filing stamp indicates that Volume 1 of the record was filed on 7th September 2020. Volume 2 of the record was filed on 11th September 2020.

[15] I note that the first respondent has argued that Volume 2 was

served

and filed on 8th August 2022. This might well be the day it was served

even though it had been filed earlier.

In the circumstances Volume 1 was 69 days late and Volume 2 was

74 days late.

[16] The applicant is also in breach of Rule 11.2.7. of the Labour Practice

Manual. In terms of this rule all the Review papers were required to

be filed within 12 months of the date on which the Review application was launched by the applicant.

[17] The Review application was launched on 10th December 2019. The

review papers were therefore required to be filed by 10th December

2021. Said papers were filed approximately 2 years late.

[18] A failure to meet the time periods stipulated in the Labour Practice Manual in either Rule 11.2.2 or Rule 11.2.7 will result in the archival

of the review application and may only be revived with a successful

reinstatement application.

[19] Both Rules have to be complied with.

[20] It is trite that a reinstatement application is akin to a condonation application.

[21] The factors - not purported to be a conclusive list - but generally considered are:

- (a) Length of the delay
- (b) Explanation for the delay
- (c) Prospects of success (in the main action)
- (d) Prejudice to the parties and
- (e) Interests of Justice

[22] For a considerable period the ' locus classicus' on condonations was the judgement in **Melane v Santam Insurance Company Ltd**

2

The word 'conspectus' used in the judgment has peppered many condonation rulings and judgements thereafter and perhaps rightly so . Courts are required to balance an overview of factors in applying

its discretion in determining its decision. An excellent explanation for

the delay may for instance counterbalance a lengthy delay.

[23] Our apex court in **Grootboom v NPA and another** ³ in referring to the judgement of Zondo J (as he was then) said that the standard for considering an application for condonation is the " Interests of justice" thereby emphasizing the over arching importance of the interests of justice.

Length of the delay

[24] Rule 11.2.3 of the LPM rules stipulates that the recordings must be filed within 60 days of the Registrars Rule 7 A (5) notice.

Volume 1 : 7th September 2020 / 69 days late

Volume 2 : 11th September 2020/ 74 days late

[25]. In relation to its compliance with the 12 month rule 11.2.7 the applicant is approximately two years late.

Explanation for the delay

[26] The applicant has not indicated its clear concession that its recordings were filed in breach of Rule 11.2.2 and 11.2.3 of the Practice Manual. In its Heads of Argument the applicant at point 4.1 suggests somewhat spuriously that it had met the requirements of the 60 day rule.

[27] The Registrars 7A(5) notice is dated 4th February 2020. The court stamp on Volume 1 of the recordings is 7th September 2020. The court stamp on Volume 2 of the recordings is 11th September 2020.

Days are defined in the Labour Practice Manual to exclude weekends and public holidays and excludes the first day but includes the last day.

Volume 1 was 69 days late.

Volume 2 was 74 days late

[28] In relation to compliance with rule 11.2.7 of the Practice Manual the applicant says at point 4.2 of its Heads of Argument that it has met the 12 month time period. This is not correct.

[29] In its Founding affidavit the applicant's attorneys says that its Counsel alerted it to the likely archival of the review application - and believed that the Registrar or Judge would in line with a practice directive inform that applicant that the matter had been set down.

Prospects of success (in the main action)

[30] At Clause 5 of its Heads of Argument the applicant indicates its prospects of success in the Review application as follows;

- (i) The arbitrator committed a gross irregularity in the conduct of the proceedings;
- (ii) the arbitrator committed misconduct in relation to her duties as an arbitrator;
- (iii) The arbitrator exceeded her powers;
- (iv) The arbitrator misconceived her mandate;
- (v) The arbitrator misunderstood the ULP onus or burden of proof

in

that she placed the onus on the applicant rather than on the respondent (Ms Maputle) and used the incorrect standard of proof;

[31] The applicant's averments in (i) to (iv) above is generic and unsubstantiated. Its response to point (v) is not convincing . It is trite that the employee carries the onus in a unfair labour practice dispute however this not a static onus .

[32] Once the employee has shown that an unfair act or omission has occurred the onus shifts to the employer to rebut the allegation. I accept that the arbitrator may well have used the words ' prima facie' to describe the initial onus borne by the first respondent.

Prejudice to the parties

[33] The applicant alleges that the first respondent will not suffer any 'demonstrable or conceivable' prejudice. The respondent however reminds this court convincingly of severe prejudice in that she has been denied the benefit of the remuneration and relief granted in the arbitration award for a period of approximately five

years.

Interests of Justice

[34] The applicants averment is that it is in the interests of justice to allow

the ventilation of the issues. However given the ongoing prejudice suffered by the respondent it cannot be in the interests of justice to indulge the tardiness of the applicant to the detriment of the first respondent.

[35] The applicant has not dealt definitively with its failure to comply with

Clause 11.2.2 and 11.2.3 of the Practice Manual. Its response is circuitious and vague.

[36] The applicant also seems to conflate the distinct time line stipulations

of clause 11.2.3 and 11.2.7.

[37] In its papers the applicant raised issue with the alleged failure of the first respondent to file its answering affidavit on time but did not explain the impact that said 'alleged' failure had on its own failure to meet its time line obligations.

[38] The respondent disputes said breach but more significantly said issue is not significant to the applicant's non compliance with Clause 11.2.7.

[39] The conduct of the applicant is a study of consistent disregard of the

rules of this court.

[40] The applicant seemed to have responded and contacted the

Registrar only when the applicant sought an order to certify and enforce the arbitration award.

[41] The applicant filed its Review late. It did so only it would seem after the Sheriff served execution proceedings on the applicant .

The

applicant then responded with an application to stay the enforcement of the award.

[42] The applicant is in significant breach of clause 11.2.2 the ' 60 day rule' without proper explanation for its delay save to suggest that its internal processes work slowly. By its own admission the applicant was alerted into action by its Counsel .

[43] The applicant breached 11.2.7 again without proper explanation for its delay of approximately 2 years.

Clause 11.2.7 is clear and instructive . The applicant is required to have ' its whole house in order ' within the 12 month period.

[44] Given the significant delay the applicant has failed to provide a convincing explanation for said delay.

[45] The undue and unwarranted delay is prejudicial to the first respondent. It is noted that the arbitration award in favour of the first respondent was Issued on 4th October 2019.

[46] The first respondent has suffered an immense degree of prejudice and was entitled to a speedy determination of this matter.

[47] The applicant has also failed to provide a proper enunciation of its prospective merits. Its representations are vague.

Poor merits can sometimes in itself halt the enquiry

[48]. This principle was affirmed in **Colett v CCMA** ⁴ and others in which the LAC held:

There are overwhelming precedents in this Court, The SCA and the Constitutional Court that where there is a flagrant or gross failure to comply with the rules of Court Condonation may be refused without considering the prospects of success.

[49] It follows therefore that the reinstatement application cannot succeed.

[50] This court notes the effective date 17th July 2024 of the Labour Appeal Court judgment in **Gololo v Limpopo Department Economic Development Enviroment and Tourism and Others** ⁵ with regard to application of the new rules relating to the Registrars archiving notice.

COSTS

[51] *Costs are dealt with in S162 of the LRA*

... when deciding whether or not to order the payment of costs the Labour Court may take into account –

...(b) the conduct of the parties –

(i) In proceeding with or defending the matter before the Court and

(ii) during the proceedings before the Court.

(3) The Labour Court may order costs against the party to the dispute or against any person who represented that party in those proceedings before the Court

[52] The applicant referred to the Constitutional Court decision in **Zungu**

v Premier of the Province of KZN and Others ⁶ in which Zondo JP explained the Labour Courts position on costs.

“The rule of practice that costs follow the result does not govern the making of costs orders in this court. The relevant statutory provision is to the effect that orders of costs in this court are to be made in accordance with law and fairness...”.

[53] In this matter the persistent - and consistent - substandard management of this application by the applicant suggests that it is fair to award the respondent costs.

ORDER

(a) The late referral of this review application is condoned.

(b) The Reinstatement application is refused with Costs.

MM Govender

Acting Judge of the Labour Court of South Africa

Appearances

Applicant : Adv BS Mene SC and Adv AIB Lechwano
Instructed by the State Attorneys office Bloemfontein.

1st Respondent : Mr M Maraka NEHAWU

-
1. 2022 (43) ILJ LAC
 2. 1962 (4) SA531 (A) 532 C-E
 3. 2014 35 ILJ 121 CC
 4. 2014 ZALAC 1
 5. JA80/2024 [2025] ZALAC 30
 6. 2018 ZACC 1

LABOUR COURT

LABOUR COURT