



IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

CASE NO: C295/22

In the matter between:

EDWARD ALOYS MKAMA

Applicant

And

**NATIONAL BARGAINING COUNCIL FOR THE
ROAD FREIGHT AND LOGISTICS INDUSTRY**

First Respondent

JOSEPH WILLIAMS N.O

Second Respondent

LIEBEN LOGISTICS (PTY) LTD

(Registration number: 1999/009191/07)

Third Respondent

Heard: 22 October 2025

Delivered: This judgment was handed down electronically by circulation to the Applicant and Third Respondent's Legal Representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing - down is deemed to be 15h00 on 28 October 2025.

JUDGMENT

LALLIE J

- [1] The applicant was employed by the third respondent as a driver. He was dismissed for misconduct on 2 June 2021. He referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (the CCMA) on 28 July 2021. The CCMA transferred the dispute to the first respondent (the bargaining council) because it fell under its jurisdiction. On 19 October 2021 the bargaining council issued a certificate of the non-resolution of the dispute. On 21 October 2021 the applicant referred to dispute to arbitration. On 7 December 2021 the bargaining council issued a ruling that it lacked jurisdiction to arbitrate the dispute owing to the applicant's omission to seek condonation for the late referral of his dispute. The applicant filed the condonation application which was opposed by the third respondent. In a ruling dated 4 March 2022 the condonation application was dismissed. With the assistance of his attorneys the applicant filed a statement of claim seeking an order reviewing and setting aside the condonation ruling and other relief.
- [2] The third respondent filed a response to the statement of claim in which it raised its irregularities. On 12 September 2022 the applicant filed a notice of withdrawal of the statement of claim. The following day he filed an application for condonation of the late filing of the review application. He also sought an order reviewing and setting the condonation ruling aside but omitted to add grounds for review. On 12 September 2022 the applicant filed an amended notice of application in terms of

section 145 of the Labour Relations Act¹ (the LRA) seeking, mainly, condonation of the late filing of the review application, condonation of any non-compliance with the rules and an order reviewing and setting aside the bargaining council ruling refusing his condonation application. The application was opposed by the third respondent which pointed out the irregular steps the applicant took in his attempt to prosecute his review application. The applicant's attorneys of record withdrew on 2 December 2022. On 7 September 2022 the applicant filed a replying affidavit and on 16 February 2024 he filed a notice in terms of rule 7A(8)(a) amending his notice of motion and supplementary affidavit. On 24 August 2024 the Legal Aid Board filed a notice in terms of rule 7A 8(b) and applied for condonation of its late filing. The third respondent opposed the application and noted that the applicant had filed a notice in terms of rule 7A (6) on 12 September which had not been served on it.

- [3] When this matter served before court the third respondent sought an order dismissing the review application. At the time the applicant launched his review application, Labour Court proceedings were regulated but the Labour Court Rules and the Practice Manual of the Labour Court of South Africa (the Practice Manual). Both have since been repealed but will be relied upon in the adjudication of this matter because of the date the application was launched. Both parties relied on and made reference to those prescripts. The third respondent submitted that the review application must be dismissed. The argument is based on the provisions of clause 11.2.3 of the Practice Manual which provided that a review application is

¹ Act 66 of 1995, as amended.

deemed withdraw when the applicant has failed to file the record within 60 days of being informed by the registrar of its availability. It was argued that as the review application has been deemed withdraw there is no review application before court. It was argued on behalf of the applicant that the review application should be removed from the roll and the applicant afforded an opportunity to apply for its reinstatement. The third respondent's counter argument was that the statement of claim was withdrawn and the founding affidavit accompanying the application for condonation of the late filing of the review application in which an order to review and set aside the bargaining council's condonation ruling is attached contains no ground for review. It was submitted that there was no review application before court and that all the interlocutory applications should be dismissed.

- [4] It is common cause that the applicant erroneously acted in terms of rule 6 in filing a statement of claim when seeking an order reviewing and setting aside the condonation ruling, instead of bringing it in terms of rule 7A. He later withdrew the statement of claim and filed an application for the condonation of the late filing of the review application. In the same application he sought an order reviewing and setting aside the bargaining council's condonation ruling. In the affidavit supporting his application the applicant was required to include the factual and legal grounds for the relief he sought. He omitted to set out factual and legal grounds in support of the order reviewing and setting aside the condonation ruling. The allegations he made address the relief of condonation of the late filing of the review application. The application is in effect a condonation application. In the absence of the review application on which it should have been predicted, there is no review application.
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Absent the review applications all the interlocutory application based on it cannot survive.

- [5] The third respondent sought a costs order against the applicant as its attorneys informed him of the defects shortly after the institution of these proceedings. They continued doing so as more irregular steps continued to be taken. It was argued that the applicant unreasonably pursued the review application in total disregard of the warning the third respondent's attorneys gave. The unreasonableness, in the third respondent's view justified a costs order against the applicant. It was argued on behalf of the applicant that the Legal Aid Board represented the applicant very late after a number of flaws had already been made. It was further submitted that the applicant is a man of straw.
- [6] I have considered the submissions made on behalf of both parties before me as well as the provisions of section 162 of the LRA. I accept the argument on behalf of the applicant that a number of law firms which represented him are responsible for the many errors in the prosecution of his review application. The applicant cannot be blamed for putting his trust in them. Granting a costs order against him will, in the circumstance, not be fair.
- [7] In the premises, the following order is made:
1. There is no valid review application before court.
 2. All the interlocutory applications based on the purported review application are dismissed.
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3. There is no order as costs.

A handwritten signature in black ink, appearing to be 'MZN Lallie', is written over a solid black rectangular redaction box.

MZN Lallie

Judge of the Labour Court of South Africa

LABOUR COURT

Appearances

For the Applicant: Advocate N. Mjiyako

Instructed by Legal Aid S.A

For the Respondent: Advocate W. P. Bekkers SC

Instructed by William Berry Attorneys
