



**THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Case no: JA 130/24

In the matter between:

**MACDONALD'S TRANSPORT UPINGTON (PTY) LTD**

**Appellant**

and

**NATIONAL BARGAINING COUNCIL FOR THE ROAD**

**FRIEGHT AND LOGISTIC INDUSTRY**

**First Respondent**

**MOLATSI PHALA N.O.**

**Second Respondent**

**PAWUSA obo PEDRO KOOPMAN**

**Third Respondent**

**Heard: 21 August 2025**

**Delivered: 30 October 2025**

**Coram: Mahalelo ADJP, Van Niekerk JA et Chetty AJA**

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**JUDGMENT**

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**CHETTY, AJA**

- [1] The appellant instituted review proceedings in the Labour Court on 19 December 2019 against a decision of the second respondent, in his capacity as a commissioner with the first respondent. The relief sought by the applicant is for the arbitration award by the second respondent to be set aside and remitted *de novo* for determination by another Commissioner.
- [2] The facts of the matter are briefly that Mr Koopman, a member of the third respondent, was employed as a heavy-duty driver from November 2016 until his dismissal in February 2019. The events leading to his dismissal are briefly that whilst in the course of his employment on 13 December 2018, Mr Koopman drove his truck into a weighbridge. He did not report the incident as he was obliged to in terms of the appellant's policies. Instead, he went on leave on 19 December 2018 without reporting the matter to his superiors.
- [3] It is not in dispute that the matter was only reported to the appellant when Mr Koopman returned from his leave in January 2019. In February 2019 he received a notice to attend a disciplinary enquiry at which he was charged with negligence for failing to report damages that occurred on 13 December 2018.
- [4] After considering the evidence before him, the chairperson of the enquiry found Mr Koopman guilty of the charge against him. In arriving at the conclusion that he be summarily dismissed the chairperson took into account that Mr Koopman had been subject to a final written warning for a period of 12 months issued in November 2017 for gross negligence in the course of the driving of his motor vehicle.
- [5] Through his union, an unfair dismissal dispute was referred to the first respondent, the National Bargaining Council for the Road, Freight and Logistic Industry (NBCRFLI). After an unsuccessful attempt at conciliation, the matter was referred to arbitration, in which the dismissal of Mr Koopman was found to be unfair.
- [6] In essence, Mr Koopman contended that the rule which the employer relied on was not enforceable as it was not in writing. The commissioner rejected this defence as immaterial and found that the rule required an employee to

report an incident as soon as possible. Mr Koopman breached the rule in failing to report the matter, which was discovered on his return from leave. In so far as his dismissal, the arbitrator concluded that the employer erred in dismissing Mr Koopman in as much as he was not found guilty of gross negligence, but rather that his conduct was confined to failing to report an incident. The commissioner found that the current charge had no correlation to reckless or negligent driving, which gave rise to his previous disciplinary infraction and consequent final written warning. On this basis, the commissioner found the dismissal of Mr Koopman to be substantively unfair and ordered his re-employment without loss of benefits, requiring that he report for duty on 2 December 2019.

- [7] The appellant instituted a review in terms of section 145 of the Labour Relations Act<sup>1</sup> (the LRA) on 19 December 2019, followed by a supplementary affidavit on 5 February 2021. The application was opposed by Mr Koopman who filed an affidavit dated 8 March 2021. The appellant contends that the commissioner misconstrued the nature of the enquiry by failing to appreciate that the employee was charged and dismissed for negligence in not reporting the accident after it had occurred. In doing so, the appellant submits that the commissioner drew an artificial differentiation between the previous incident of gross negligence and that of the recent incident where Mr Koopman was charged for negligence arising from his failure to report an incident, as required in terms of company policy.
- [8] It is in this regard that the appellant maintains that the commissioner committed an irregularity in evaluating the evidence, both in relation to the charge and the sanction, in that no reasonable decision maker would come to the same decision in the circumstances. This, in a nutshell, constituted the grounds on which the appellant contends that the decision, dated 15 November 2019, to find the dismissal of Mr Koopman as substantively unfair, be reviewed and set aside.
- [9] Mr Koopman opposed the application on the grounds that he was not charged with gross negligence and that the commissioner was correct in concluding

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<sup>1</sup> Act. 66 of 1995, as amended.

that the appellant erred in categorising his conduct in December 2018 as the same for which he was issued a final written warning in November 2017.

[10] Acting in furtherance of the review application, the appellant's attorneys uplifted the data discs comprising the proceedings in the NBCRFLI on 12 February 2020 to attend to the transcription of the record. This process was beset by problems with the transcription not being available timeously due to various factors, including the omission of various documents by the NBCRFLI. Eventually, the record was filed with the Registrar on 7 December 2020. At around this time the attorney entrusted with the handling of the matter on behalf of the appellant left the employ of the appellant's attorneys. The matter was then handed over to another attorney.

[11] As stated earlier, a supplementary affidavit was filed by the appellant in February 2021. By this time, in terms of the Practice Manual, the review application had lapsed in as much as clause 11.2.7 of the Manual which provides that:

'... An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not be archived or be removed from the archive.'

[12] Upon the appellant's attorneys attending on the office of the Registrar on 10 June 2021 in an attempt to enrol the matter for hearing, it was discovered that the application had been archived. At about the same time, the second attorney at the firm engaged by the appellant, left the practice by July 2021. At this stage, no one among the appellant's legal representatives was aware that the matter had in fact been archived, and on the contrary were awaiting a date for the set down of the matter.

- [13] On 11 August 2021 the Registrar issued a directive to the appellant's attorneys to file their Heads of Argument "*within 15 (fifteen) days of the receipt of the directive*". The directive further specified that failure to comply with the time periods contained in the directive would "*lead to the matter not being considered for a hearing*". A sensible interpretation of the directive is that failure to comply would cause the application to lapse. It follows that its resuscitation would only be allowed on good cause being shown.
- [14] Clause 11.6.2 of the Practice Manual, in apparent contrast to the Registrar's directive, provides that in relation to opposed applications (as was the case in the present matter) "*unless otherwise stated in the notice of set-down, the applicant must deliver heads of argument at least 15 days prior to the hearing*". The respondent, in terms of Clause 11.6.4 is required to deliver heads of argument seven days prior to the hearing of the matter. This clause concludes with a sentence, worded in a double-negative, that "*[F]ailure to file heads may not lead to the matter not being heard by the Court*".
- [15] The appellant's attorneys chose to disregard the Registrar's directive and instead preferred to rely on the provisions of Clause 11.6.2. requiring them to file their heads of argument 15 days prior to the date of hearing. The attorneys believed that non-compliance with the time period contained in the directive was not intentional nor wilful but was informed by prior practice in similar matters before this Court at the time.
- [16] Accordingly, the appellant's attorneys laboured under the mistaken but *bona fide* belief that no further steps were necessary on their part in order to have the matter heard on the opposed roll. This position persisted until May 2023, despite the attorneys assertion that the file had been regularly diarised in the intervening period of almost 22 months.
- [17] In May 2023, upon a new practitioner at the appellant's attorneys being assigned to the matter, was it discovered that the application had lapsed and the file was archived in accordance with Clause 16.1 of the Practice Manual. This clause provides that the Registrar '*will*' archive a file in circumstances where '*in the case of an application in terms of Rule 7 or Rule 7A, when a*

*period of six months has elapsed without any steps taken by the applicant from the date of filing the application, or the date of the last process filed”.*

- [18] The enormity of the problem arising from the attorney’s inaction became apparent. An application for the reinstatement of the review application was instituted on 24 August 2023. The application, which was unopposed, came before Mokhatla AJ on 6 December 2023, when it was dismissed. Reasons for the dismissal of the reinstatement application were delivered on 13 June 2024. The matter comes before this Court with leave of the court *a quo*.
- [19] The essence of the appellant’s ground for the reinstatement of the review application, as stated earlier, is that the appellant’s attorneys from June 2021 until or about May 2023 laboured under the mistaken impression (or a ‘misstep’ as they have described their conduct) that they would only file their heads of argument upon hearing from the Registrar that the matter had been enrolled for hearing. Despite the aberration on their part, there is nothing on the papers to gainsay their version that the appellant always had the intention to proceed with the matter.<sup>2</sup> Moreover, there is no conduct attributable to the appellant which points to it being responsible for the lapsing of the matter and its consequent archiving.
- [20] The Court *a quo* considered at some length the nature and force of directives issued by the Registrar, on the instructions of the Judge President. None of this was placed in issue by the appellant in the court *a quo*. I did not interpret the application for reinstatement to be dismissive in any way of the directive issued by the Registrar. Instead, the crux of the application was that the appellant’s attorneys were at pains to explain that their failure to comply with the directive was due to their mistaken reliance on prior practice in the Labour Court regarding the filing of heads, and reliance on the provisions of clause 11.6.2 of the Practice Manual.

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<sup>2</sup> The assertion by the appellant’s attorney is that since June 2021 they had ‘periodically followed up’ the allocation of a date with the Labour Court. There is however no documentary evidence to support this version.

- [21] The attorney stated unequivocally that she did not intentionally fail to pursue the review application and at all times believed that the matter would be set down by the Registrar, without anything more required from her. The court *a quo* found that the appellant's attorney '*simply and flagrantly*' disregarded the Practice Directive issued by the Registrar, and that her conduct was of "*wanton disregard*" to the court and Mr Koopman. It is unclear how this conclusion was reached in light of there being no evidence to the contrary to dispute the version of the appellant's attorney. Moreover, no intentional disregard for the directive appears anywhere in the record.
- [22] It did not assist the appellant in the least to suggest in the court *a quo* that Mr Koopman or his union could have brought the non-compliance to the attention of the appellant's attorney much earlier. The court *a quo* strongly rejected this assertion, holding that the appellant was *dominis litis* in the review application and any attempt to deflect blame from the appellant to Mr Koopman and his union was without foundation. In dismissing the application for reinstatement, the court *a quo* found that the explanation tendered by the appellant's attorney was unacceptable and that their disregard for the Practice Directives should not be countenanced.
- [23] The underlying objective of the Practice Manual is to promote the statutory objective of ensuring expeditious resolution of disputes.<sup>3</sup> It gives effect to the Rules of the Labour Court and the provisions of the LRA.<sup>4</sup> To that end, the argument posited on behalf of the appellant that the directive issued by the Registrar are "*mere administrative acts to assist in the management of cases*" and are not of equal status to an Order of court, is in my view without merit and fails to appreciate the essence of the *dicta* in *Samuels v Old Mutual Bank*<sup>5</sup> and *Macsteel*. Those cases are authority for the proposition that directives issued in accordance with the Practice Manual are binding on the parties and the Labour Court.

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<sup>3</sup> *Macsteel Trading Wadeville v Van der Merwe N.O and Others* (2019) 40 ILJ 798 (LAC) (*Macsteel*) at para 22.

<sup>4</sup> *Macsteel* Ibid.

<sup>5</sup> *Samuels v Old Mutual Bank* (2017) 38 ILJ 1790 (LAC).

[24] It follows therefor that where the time-limit imposed in Clause 11.6.2, or a directive from the Registrar is not complied with, the application will be archived and will be regarded as lapsed unless good cause is shown to the contrary.

[25] In *Samuels*<sup>6</sup> this Court observed that a party seeking to retrieve a file which has been archived must show good cause for its reinstatement—not unlike an application for condonation. The approach endorsed is the following:

‘In essence, an application for the retrieval of a file from the archives is a form of an application for condonation for failure to comply with the court rules, time frames and directives. Showing good cause demands that the application *be bona fide*; that the applicant provide a reasonable explanation which covers the entire period of the default; *and show that he/she has reasonable prospects of success in the main application*, and lastly, that it is in the interest of justice to grant the order. It has to be noted that it is not a requirement that the applicant must deal fully with the merits of the dispute to establish reasonable prospects of success. It is sufficient to set out facts which, if established, would result in his/her success. In the end, the decision to grant or refuse condonation is a discretion to be exercised by the court hearing the application which must be judiciously exercised.’ (My emphasis in italics; footnotes omitted.)

[26] Applying the above *dicta*, it is evident that no consideration was given by the court *a quo* to whether the appellant had reasonable prospects of success in the main application. As stated earlier, the court *a quo* cannot be faulted for its analysis of the application of the Practice Manual and its interpretation of the Labour Court Rules in regard to the archiving of files, consequent upon non-compliance with the time periods. That constitutes only part of the inquiry as to whether good cause exists.

[27] The Constitutional Court in *Grootboom v National Prosecuting Authority and Another*<sup>7</sup> said the following with regard to the ‘*interests of justice*’ segment in the consideration of whether condonation should be granted:

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<sup>6</sup> Ibid para 17.

[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.’ (Footnote omitted.)

[28] While the delay in bringing the application for condonation of almost 22 months from the date when the appellant was called upon by the Registrar to file its heads of argument, was excessive, the attorney provided an explanation for the delay, premised on the apparent conflict between the Registrar’s directive and the Practice Manual. The appellant’s attorney’s conduct was the cause of the delay—the appellant had no role in it.<sup>8</sup> Even if the period of delay is excessive, I am of the view that the court *a quo* ought to have still considered the prospects of success, which it failed to. This constituted an irregularity.

[29] I accordingly turn to consider the remaining legs of the inquiry—whether the appellant has reasonable prospects of success on the merits and whether it would be in the interests of justice to condone its non-compliance

[30] As stated earlier, the appellant contends that the commissioner committed an irregularity by failing to appreciate that Mr Koopman had been issued with a

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<sup>7</sup> *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC).

<sup>8</sup> It is trite that there is a limit to which a litigant can escape the consequences of his or her attorney’s lack of diligence. See *Saloojee and Another, NNO v Minister of Community Development* 1965 (2) SA 135 (A). It is equally true that the facts of a matter will dictate whether or not the actions or failure thereof by an attorney can be imputed to the litigant.

final written warning for gross negligence in November 2017. The offence for which he was found guilty in February 2019 was also for negligence, *albeit* for failing to report damage to company property when he was under a duty to do so. The chairperson of the disciplinary enquiry took into account the earlier final written warning and determined that Mr Koopman should be dismissed.

- [31] The appellant argues that this was a case of progressive discipline and that the dismissal of Mr Koopman, who did not deny his conduct, was fair and justified in the circumstances. Both charges arose out of the negligent conduct on the part of Mr Koopman.
- [32] I must emphasise that this Court is not seized with the determination of the merits of the dismissal. We are required to simply express our view as to whether there is a likelihood of success that the decision of the commissioner is one that a reasonable decision-maker could not possibly reach, having regard to the facts on which the appellant has relied.
- [33] I am satisfied that there is a reasonable possibility that another court may come to a different conclusion to the commissioner as the commissioner appears to have drawn an artificial distinction between the two charges, both of which have their genesis in acts of negligence by the employee.
- [34] In light of the totality of the circumstances arising from the non-compliance with the directive of the Registrar, the appellant's attorney's honest misinterpretation of the force and effect of the directive and consequences attendant upon their non-compliance, we are satisfied that the interests of justice will be better served by a full ventilation of merits of the matter in the court *a quo*. In my view, the appellant has satisfied the threshold to revive the lapsed review application and to set aside its archiving.
- [35] In the result, the following order is made:

#### Order

1. The judgment and order of the Labour Court dated 6 December 2023 is set aside.
2. The appellant's review application under JR2231/19 be and is hereby reinstated.
3. The Registrar of the Labour Courts is directed to enrol the review application.
4. No order as to costs.

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Chetty AJA

Mahalelo ADJP et Van Niekerk JA concurring

APPEARANCES:

APPELLANT:

S Lancaster of Lancaster Kungoane Attorneys, Centurion

LABOUR APPEAL COURT