



THE LABOUR APPEAL COURT OF SOUTH AFRICA, DURBAN

Not Reportable

Case No: DA03/2024

In the matter between:

NATIONAL UNION OF METAL WORKERS

OF SOUTH AFRICA obo MEMBERS

Applicant

and

DEFY APPLIANCES (PTY) LTD

First Respondent

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION (CCMA)

Second Respondent

ANNEMARIE BREEDT N.O.

Third Respondent

Heard: 11 September 2025

Delivered: 04 November 2025

Coram: Mahalelo ADJP, Nkutha-Nkontwana JA et Basson AJA

JUDGMENT

MAHALELO, ADJP

Introduction

- [1] This is an appeal against the judgment and order of the Labour Court (per Govender AJ), which dismissed the Appellant's application for condonation for its failure to comply with the time limits prescribed in clause 11.2.3 of the Practice Manual of the Labour Court and, consequently, refused to reinstate its review application.
- [2] The central issue is whether the Labour Court misdirected itself in the exercise of its discretion by refusing condonation and reinstatement.

Background Facts

- [3] The factual matrix is largely common cause. The Appellant's members were dismissed by the First Respondent following a disciplinary process convened under the auspices of the Commission for Conciliation, Mediation and Arbitration (CCMA) in terms of section 188A of the Labour Relations Act¹ (the LRA). The arbitrator (Third Respondent) found the dismissals to be substantively and procedurally fair in an award dated 22 December 2020.
- [4] The Appellant launched a review application on 2 February 2021, within the statutory time frame. The Registrar of the Labour Court filed a notice in terms of rule 7A(5) of the Rules Regulating the Conduct of Proceedings in the Labour Court² on 18 March 2021. The Appellant's attorneys, upon engaging transcribers, discovered on 25 March 2021 that one of the CDs containing the arbitration record for 10 December 2020 was blank. A series of communications with the CCMA followed in an attempt to obtain a complete record.
- [5] The transcribed record (excluding the missing day) was received from the transcribers on 23 July 2021. The Appellant's attorneys only alerted the First Respondent's attorneys to the problem with the record on 29 July 2021, a date falling outside the 60-day period stipulated in clause 11.2.3 of the Practice Manual for filing the record.

¹ Act 66 of 1995, as amended.

² Now repealed and replaced by the Rules Regulating the Conduct of Proceedings of the Labour Court. GGN 50608. Effective 17 July 2024.

- [6] The First Respondent's attorneys, in a letter dated 4 August 2021, pointed out that the review application was deemed withdrawn due to non-compliance with clause 11.2.3. The Appellant then engaged an IT specialist, who successfully retrieved the audio of the missing day by 12 August 2021. The transcription, indexing, and pagination of the full record were completed by the Appellant's attorneys by the end of August 2021.
- [7] The process of having the record physically copied and bound was then beset by further delays. The first service provider returned the file after two weeks due to non-payment. A second service provider was engaged in late September 2021 but encountered delays attributed to load-shedding and the hospitalisation of its director. The final, bound record was only received in the second week of November 2021.
- [8] The Appellant filed its application for condonation and reinstatement of the review on 3 December 2021.

The judgment of the Court *a quo*

- [9] The Labour Court, in a detailed judgment, refused the application. Its reasoning can be summarised as follows:

9.1 The explanation for the delay from March to July 2021 was inadequate. The Appellant should have been more proactive and diligent in pursuing the complete record from the CCMA and in informing the other parties, as well as the Court of the difficulties.

9.2 The delays from August to November 2021, attributed to internal administrative issues, load-shedding, and the service provider's problems, were not sufficiently detailed or compelling. The court found the excuses to be "*flimsy and vague*".

9.3 The court held that the fact the record was filed within 12 months of the review launch (as per clause 11.2.7) was not a "redeeming factor" in the face of an unsatisfactory explanation for the specific breach of clause 11.2.3.

9.4 The court found it unnecessary to delve deeply into the prospects of success on review, concluding that the explanation for the delay was so poor that strong merits would not salvage the application. It nonetheless briefly assessed the grounds of review and found them unconvincing.

9.5 Overall, the court found that the Appellant had displayed a lack of urgency and that granting condonation would not be in the interests of justice.

Grounds of Appeal

[10] The Appellant contends that the court *a quo* erred by:

10.1 Adopting an overly strict and formalistic approach to the Practice Manual, failing to recognise its purpose of facilitating access to justice.

10.2 Failing to appreciate that the Appellant took all reasonable steps to obtain the record and that the delays were largely beyond its control.

10.3 Over-emphasising the absence of specific dates in the explanation for certain periods of delay.

10.4 Failing to properly consider that the record was filed and the matter was ripe for hearing within the 12-month period contemplated by the Practice Manual.

10.5 Failing to properly consider the Appellant's prospects of success on review.

10.6 Consequently, exercising its discretion wrongly and denying the Appellant its constitutional right of access to court.

The Legal Framework

[11] An application for reinstatement of a deemed withdrawn review application is a species of condonation application. The applicable principles are well-established.

- [12] Clause 11.2.3 of the Practice Manual states that if an applicant fails to file a record within 60 days, the application "*shall be deemed to have been withdrawn.*" This deeming provision is not merely directory; it creates a legal consequence. However, a court retains the discretion to condone non-compliance and reinstate the application.
- [13] The test for condonation involves the evaluation of a number of interrelated factors, including: The degree of lateness or non-compliance; the explanation for the delay; the prospects of success in the main case; the importance of the case; the respondent's interest in the finality of the matter; the convenience of the court; and the avoidance of unnecessary delays in the administration of justice.³
- [14] The Practice Manual is a crucial tool for ensuring the expeditious resolution of labour disputes, a fundamental statutory imperative. Its provisions "*call for flexibility in their application where this is required to promote their purpose,*" but this flexibility cannot undermine the need for compliance and discipline in litigation.⁴
- [15] As emphasised in *Overberg District Municipality v Independent Municipal and Allied Trade Union on behalf of Spangenberg and Others*⁵, a party seeking to revive a deemed withdrawn application must demonstrate that it has acted promptly in launching the reinstatement application and has taken *bona fide* steps to ensure the expeditious finalisation of the matter if reinstated.

Discussion

- [16] I turn to consider whether the court *a quo* misdirected itself.

The explanation for the delay

- [17] The Appellant's explanation covers several distinct periods:

³ See: *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C-F; *Grootboom v National Prosecuting Authority and another* [2014] 1 BLLR 1 (CC) at para 23.

⁴ See: *Macsteel Trading Wadeville v Van der Merwe N.O. and Others* (2019) 40 ILJ 798 (LAC) at para 15.

⁵ (2021) 42 ILJ 1283 (LC).

- 17.1 March to July 2021 (The "Blank CD" Period): The Appellant discovered the incomplete record on 25 March 2021. It wrote to the CCMA on that day, and again on 5 May and 28 May 2021. While it pursued the CCMA, it took no steps during this critical four-month period to bring the application to the attention of the Court or the First Respondent, nor did it seek an extension from the Court. This was a significant failure. A diligent litigant, faced with a persistent inability to secure a complete record from a state organ, would not wait four months before escalating the matter formally.
- 17.2 August 2021 (The IT Specialist): The engagement of the IT specialist was a positive step, but it only occurred after the First Respondent had pointed out the deemed withdrawal. This reinforces the impression of a reactive, rather than a proactive, approach.
- 17.3 August to November 2021 (The Record Compilation): The court *a quo* was critical of the lack of specific dates for when the file was sent to and returned from the first record company, and when it was sent to the second. While the absence of precise dates is not necessarily fatal, in the context of an already significant delay, a condonation applicant bears the onus to provide a full and candid account. Vague references to "*the latter part of September*" and "*the second week of November*" fall short of this standard. The reasons for the delay (load-shedding, hospitalisation) are not implausible, but without a more detailed timeline, the court *a quo* was entitled to find the explanation wanting.

[18] In my view, the Labour Court's assessment of the explanation as unsatisfactory, flimsy in parts, and demonstrative of a lack of urgency, was a factual finding open to it on the papers. I find no misdirection in this regard.

The 12-Month Period and the "Ripe for Hearing" Argument

[19] The Appellant places heavy reliance on the fact that the record was filed and the matter was "ripe for hearing" within the 12-month period referred to in clause 11.2.7 of the Practice Manual (which provides for the archiving of inactive files). This argument is misconceived.

[20] Clause 11.2.3 creates a specific, peremptory obligation to file the record within 60 days. Its breach has the immediate consequence of a deemed withdrawal. Clause 11.2.7 deals with a separate, subsequent stage of inertia. The fact that a matter has not yet been archived under clause 11.2.7 does not nullify the deemed withdrawal under clause 11.2.3. The Labour Court correctly held that this was not a redeeming factor that could compensate for the failure to provide a satisfactory explanation for the initial and subsequent delays.

Prospects of Success

[21] The Appellant argues that the court *a quo* failed to properly consider its prospects of success. It is trite that where the delay is significant and the explanation poor, the prospects of success, even if good, are not necessarily decisive.⁶

[22] The Labour Court did, in fact, consider the appellant's prospects of success. It analysed the grounds of review – including the alleged reliance on hearsay evidence, the conflation of issues, and the refusal of a postponement – and found them unconvincing. The court's assessment, while succinct, cannot be said to be wrong. The arbitrator's findings were primarily factual and credibility-based, and the threshold for interference on review remains that set out in *Sidumo and another v Rustenburg Platinum Mines Ltd and others*⁷. On the papers, the Labour Court cannot be faulted in holding that the Appellant's grounds, as pleaded, do not seem to cross this high threshold.

[23] In any event, given the court's justified finding of an unsatisfactory explanation, its conclusion that the prospects were not so compelling as to warrant condonation was a rational exercise of its discretion.

The Exercise of Discretion and Access to Courts

[24] The Appellant's contention that its constitutional right of access to courts (section 34 of the Constitution for the Republic of South Africa, 1996) was infringed is without merit. The right of access is not an unqualified right to

⁶ See: *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC) at para 10.

⁷ [2007] 12 BLLR 1097 (CC).

ignore procedural rules. As stated in *Barkhuizen v Napier*⁸, the rules of court exist to facilitate an orderly and fair resolution of disputes. A litigant's failure to adhere to these rules, without an acceptable explanation, may legitimately result in their case not being heard. The Labour Court's application of the Practice Manual in this case was a lawful and necessary regulation of its process to ensure the expeditious resolution of disputes, which is itself a cornerstone of the LRA.

[25] I am not persuaded that the Labour Court exercised its discretion capriciously or upon a wrong principle. It carefully balanced the relevant factors and reached a conclusion that was reasonable and just in the circumstances. The Labour Court correctly concluded that the interests of justice favoured finality and efficiency over reinstating a review application marked by prolonged and unexplained delays.

Conclusion

[26] For all these reasons, the appeal cannot succeed.

Costs

[27] As to costs, considerations of fairness and the law are best served with a no order as to costs.

[28] In the result, the following order is made:

Order

1. The appeal is dismissed.
2. There is no order as to costs.

M B. Mahalelo

Acting Deputy Judge President of the Labour and Labour Appeal Courts

⁸ 2007 (5) SA 323 (CC).

Nkutha-Nkontwana JA et Basson AJA concurring

APPEARANCES:

APPELLANT: Adv D Pillay

Instructed by: Harkoo Brijlal & Reddy Attorneys

RESPONDENT: Mr Stanfield

Instructed by: Mcaciso Stanfield Inc