



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
CASE NO: JR616/19

In the matter between:

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Applicant

and

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

First Respondent

COMMISSIONER NTSHENGEDZENI MUNYAI N.O.

Second Respondent

**SOUTH AFRICAN MUNICIPAL WORKERS' UNION
OBO MOLOPE & OTHERS**

Third Respondent

Heard: In Chambers

Delivered: 3 November 2025

JUDGMENT

TSHISEVHE, AJ

Introduction

- [1] This is an application for the reinstatement of the review application that is deemed withdrawn in terms of the repealed Labour Court Practice Manual.¹
- [2] The application is opposed by the Third Respondent herein.
- [3] This application was brought as a result of the Applicant's failure to comply with the requirement that arbitration records should be served and filed within a period of 60 days after a notice in terms of Rule 7A(5) of the old Labour Court rules.
- [4] The arbitration record was served and filed seven days late.

Background

- [5] On 31 October 2018, the Second Respondent issued an arbitration award under case number PMD101704 and the said award was varied in terms of section 144(b) of the Labour Relations Act ("the LRA") on 6 March 2019.
- [6] The award was in favour of the Third Respondent herein, ordering the Applicant (Respondent) herein:
 - 6.1 to promote/upgrade the Applicants to level C1/C3 in accordance with the resolution dated 2 March 2016.
 - 6.2 Pay the Applicants amounts equivalent to the difference to what they were earning as Administrative Officers and what they were supposed to earn in accordance with the promotion/upgrade retrospective to 2 March 2016.
 - 6.3 The calculation of the amounts mentioned above should also include accrued interest at the legal rate of interest from 2 March 2016 to 30 October 2018.
 - 6.4 Such promotions/upgrades and the payment to be effected should be done by no later than 22 March 2019.
- [7] The Variation Ruling varied the arbitration award by inserting 2 paragraphs and

¹ Labour Court Practice directive dated 1 April 2013.

varying the order as follows:

7.1 "30 The Respondent, City of Tshwane Metropolitan Municipality,

Implement resolution 3 of the Mayoral Committee's approved Report dated 2 March 2016, in terms of whereof the Applicants should be designated as Revenue Consultants.

31 The Respondent Upgrades/Promotes the Applicants to the level C1/C3 in accordance with the aforementioned resolution retrospective to the date of resolution dated 2 March 2016.

33 The Respondent must pay the Applicants the amount of R4.71 million to be shared in accordance with the GPMC key salary scales of 1 July 2016 and 1 July 2017.

34 The Respondent must pay the accrued interest on the amount mentioned in paragraph (33) above, in accordance with the legal rate of interest from 2 March 2016 to the 30 October 2018.

35 The Respondent must implement such promotions/upgrades together with the amounts reflected in paragraphs (33 and by not later than 22 March 2019".

[8] Pursuant to the Applicant's failure to implement the award, the Third Respondent caused the award to be certified in terms of section 143(3) of the LRA by the CCMA on 8 April 2019.

[9] On 15 April 2019, the enforcement of the award was issued, and the attachment of the Applicant's movable property was effected.

- [10] The Applicant launched its review application on the same day, 15 April 2019, challenging an arbitration award of the Second Respondent.
- [11] A notice in terms of Rule 7A (5) was issued, and the record was collected on 2 May 2019. As a result, such a record ought to have been filed by 26 July 2019; however, it was filed by 7 August 2019.
- [12] On 2 May 2019, the First Respondent successfully launched an urgent application staying the execution of the award pending finalisation of the review application.
- [13] Thereafter, parties exchanged pleadings.
- [14] On 15 June 2023, Prinsloo J issued an order, amongst others, that the review application is deemed to have been withdrawn since the arbitration record was filed outside the 60 days.
- [15] The Third Respondent after realising that the review application is deemed to have been withdrawn, they launched contempt of Court proceedings and obtained an order on 29 August 2024, which order amongst others called upon the First Respondent to show cause why they should not be found guilty of contempt of Court for failing to comply with the certified arbitration award under case under case number PMD101704 issued on 31 October 2018 and varied on 6 March 2019.
- [16] The Rule nisi in the contempt of Court proceedings was served on the First Respondent on 25 September 2024.
- [17] On 21 October 2024, the First Respondent launched a reinstatement of review application.

Analysis of Reinstatement of Review Application

- [18] In most cases, litigants resort to review applications in order to frustrate the opponent, and in many of those instances, it will be employers who launch a review just to frustrate poor employees in cases where there are no merits.

- [19] The majority of those litigants file review applications and thereafter do not do anything in the matter until they are asked or put to terms by their opponent. Such conduct defeats the objectives of the LRA and should be frowned upon by the courts.
- [20] This Court is still being inundated with reinstatement of review applications as a result of a lack of diligent prosecution of review by litigants. Not only does this unnecessarily clog up the Court roll, but it also leaves a dispute which was always intended to be expeditiously resolved hanging in the air.
- [21] In order for the reinstatement application to succeed, there are certain requirements that should be satisfied by the Applicant.
- [22] It is trite that the reinstatement application is likened to a condonation application. Therefore, the principles relating to condonation would apply in determining whether the reinstatement application should be granted. The principles set out in *Samuels v Old Mutual Bank*² (*Samuels*) apply and the reinstatement application (i) should be made bona fide; (ii) should set out a reasonable explanation which covers the entire period of the delay; (iii) the applicant must have reasonable prospects of success in the main review application; and (iv) that it would be in the interests of justice to grant condonation.
- [23] This Court has a discretion to reinstate or dismiss an application for a reinstatement of a review application on account of an unreasonable delay in pursuing it, and in the exercise of its discretion, the Court ought to consider the factors set out in the *Samuels* Judgment *supra*.
- [24] It is common cause that the record was only filed some seven days late, which ordinarily may not be excessive, especially given the explanation.
- [25] However, as the *Samuels* judgment dictates, the Applicant should satisfy those requirements in order to have their review reinstated, failing which this Court will be left with no option but to refuse to grant such an application.

² [2017] 7 BLLR 681 (LAC).

[26] It is trite that a review application is urgent in nature and must be finalised as soon as possible.

[27] Clause 11.2.3 of the Practice Manual provides that:

‘If the applicant fails to file a record within the prescribed period, the applicant will be deemed to have withdrawn the application, unless the applicant has during that period requested the respondent’s consent for an extension of time and consent has been given. If consent is refused, the applicant may, on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time. The application must be accompanied by proof of service on all other parties, and answering and replying affidavits may be filed within the time limits prescribed by Rule 7. The Judge President will then allocate the file to a judge for a ruling, to be made in chambers, on any extension of time that the respondent should be afforded to file the record.’

[28] The reason behind clause 11.2.3 is simply to expedite a resolution of the dispute.

[29] In *Khumalo and Another v Member of the Executive Council for Education: KwaZulu-Natal*,³ Skweyiya J said:

‘... the importance of resolving labour disputes in good time is thus central to the LRA framework. ...’

[30] Further, Jafta J in *Aviation Union of SA and Another v SA Airways (Pty) Ltd and Others*⁴, held:

‘... Speedy resolution is a distinctive feature of adjudication in labour relations disputes. ...’

[31] In *National Education Health and Allied Workers Union v University of Cape Town and Others*⁵ Ngcobo J said:

³ (2014) 35 ILJ 613 (CC) at para 42.

⁴ (2011) 32 ILJ 2861 (CC) at para 76.

⁵ (2003) 24 ILJ 95 (CC) at para 31. See also *Billiton Aluminium SA Ltd t/a Hillside Aluminium v Khanyile and Others* (2010) 31 ILJ 273 (CC) at para 46; *Strategic Liquor Services v Mvumbi NO and Others* (2009) 30 ILJ 1526 (CC) at paras 12 – 13.

‘By their very nature labour disputes must be resolved expeditiously and be brought to finality so that the parties can organize their affairs accordingly. They affect our economy and labour peace. It is in the public interest that labour disputes be resolved speedily...’

[32] The speedy resolution of labour disputes has been a cornerstone of employment and labour law.

[33] Some employers tend to frustrate workers through unnecessary litigation, and same should be frowned upon by the courts.

[34] The above general principle is then given practical application in clause 11.2.7 of the repealed Practice Manual. This is evident from the following dictum in *Samuels*, where the Court said, with specific reference to the Practice manual:

‘... Its purpose is, inter alia, to provide access to justice by all those whom the Labour Court serves; promote uniformity and/or consistency in practice and procedure and set guidelines on standards of conduct expected of those who practise and litigate in the Labour Court. Its objective is to improve the quality of the court’s service to the public, and promote the statutory imperative of expeditious dispute resolution. ...’

[35] Clause 11.2.7 reads:

‘A review application is by its nature an urgent application. 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 argument) 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 to be archived or be removed from the archive.’

[36] This Court has on numerous occasions stressed that litigants must always ensure that the time periods recorded in the LRA, the Rules and the repealed Practice Manual are complied with because failure to do so may result in a

court refusing to hear a review application which potentially had good prospects of success.

[37] In a case where the court finds that an applicant in a review application failed to prosecute their review application within the required period of time as envisaged in the Rules and Practice Manual, and in the absence of seeking condonation for the delay, the review court lacks jurisdiction to determine the review application.

[38] The above provisions received attention in *Macsteel Trading Wadeville v Francois van der Merwe N.O. and Others*⁶ (*Macsteel*), and flowing from that decision, it can be accepted that:

38.1 'These provisions are binding on this Court and the parties.

38.2 Where the time limits are 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 removed from the archives.

38.3 Where undue delay in prosecuting the review application is raised in the answering affidavit in the review application, and since that application had in effect lapsed and been archived, this Court would lack jurisdiction to determine the issue of the undue delay raised there. In these circumstances, a party complaining of undue delay would have been required to bring a separate Rule 11 application for the review application to be dismissed or struck from the roll on the grounds of the other party's undue delay in prosecuting it.'

[39] The Third Respondent, in opposing the application, raised several factors such as lack of reasonable explanation, lack of *bona fides*, lack of prospect of success and interest of justice.

[40] The Third Respondent argued that the averment by the Applicant that they do not know why and/or how there was a delay in the prosecution of the review fatally destroys their application as they are required to proffer a reasonable explanation.

⁶ *Macsteel supra*.

- [41] The Third Respondent further argues that the Applicant only brought the review application just to frustrate them, as they are aware that their case is meritless and they are not interested in having the matter finalised because they only acted when prompted by them.
- [42] The Third Respondent supported its argument on the fact that a request for a trial date was made long after a period of more than three years, whereas the rules or practice manual requires that, within a period of 12 months, a Registrar must be informed that the application is ready for trial.
- [43] Upon a glance at Clause 11.2.7, it is apparent that this clause imposes an obligation on the applicant to ensure that all the necessary papers in the application are filed within 12 months of the date of the launch of the application (excluding heads of argument), and the Registrar is informed in writing that the application is ready to be set down for hearing. Where this time limit is not complied with, the application will be archived and regarded as lapsed unless good cause is shown why the application should not be archived or removed from the archive.
- [44] The amendments to section 145 of the LRA, which took effect on 1 January 2015, are specifically aimed at expediting the prosecution of review applications and *inter alia*, require that an applicant on review must apply for a hearing date within six months of launching the review application.
- [45] This is evident from the attitude adopted by the Court as far back as 2006, when the Court in *Bezuidenhout v Johnston NO and Others*⁷ held that:
- ‘If applicant parties have unduly delayed prosecuting their applications, and fail to provide acceptable reasons for the delays, the ultimate penalty of dismissing such applications should be used in appropriate cases. This will hopefully help creating a culture of compliance and ensure that disputes are expeditiously dealt with.’
- [46] *In casu*, the Applicant only acted when prompted by the Third Respondent’s next step.

⁷ (2006) 27 ILJ 2337 (LC) at paras 31.

[47] Clause 16.1:

‘16.1 In spite of any other provision in this manual, the Registrar will archive a file in the following circumstances:

- 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;
- In the case of referrals in terms of Rule 6, when a period of six months has elapsed from the date of delivery of a statement of case without any steps taken by the referring party from the date on which the statement of claim was filed, or the date on which the last process was filed; and
- When a party fails to comply with a direction issued by a Judge within the stipulated time limit.’

[48] On the face of this application, I agree with the Third Respondent herein that the application is already archived through clauses 11.2.7 and clause 16.1 of the repealed Practice Manual as the Applicant did not do anything since the ruling regarding 11.2.3 relating to the issue of failing to timeously file the record.

[49] The applicant's last action in the matter was on 28 August 2019, when they filed their supplementary affidavit. At this period, horses were already bolted.

[50] The request to set the matter down was then made after more than a period of 24 months after the answering affidavit was filed. The Applicant contends that the Third Respondent also caused the delay because they filed their answering affidavit after several months; however, they do not state if they objected to such a late filing.

[51] What the Applicants further aver is that the Third Respondent did not object to the late filing of records. I should say that there is no such requirement in our law where Respondents are expected to object to the late filing of a record.

- [52] The Applicant's submissions are not convincing in all material respects.
- [53] The Third Respondent further argued that the Applicant's case has no reasonable prospect of success.
- [54] I am persuaded that the Applicant's case lacks a reasonable prospect of success in that the Second Respondent's award seemed to have been arrived at sagaciously, more so considering all the material evidence before him.
- [55] It is correct that the length of delay in filing the records is not unreasonably long, however, the Applicant has several hurdles, such as Clauses 11.2.7 as well as the reasonable prospects of success.
- [56] It is my firm view that the Applicant lost interest in the matter in that they never acted unless prompted by the Third Respondent.
- [57] Just to mention a few examples, served the records after being asked to do so by the Third Respondent, and applied for reinstatement of review after contempt proceedings.
- [58] Another factor to be considered is the effect of the delay on the Third Respondent and the prejudice they suffer.
- [59] The Third Respondents are suffering enormously as a result of the delay by the Applicants herein, whereas on the other hand, the Applicants suffer nothing, if there is any prejudice, they would have prosecuted the matter speedily.
- [60] The Third Respondent obtained an arbitration award in their favour in terms of which they were awarded compensation and promotion or upgrade.
- [61] I am not convinced that the Applicant has shown good cause that the review application be reinstated, including considering their chances when it comes to the prospects of success in the review application, which does not compensate for the period of delay or vice versa.

- [62] Just like the Third Respondent, I equally doubt that the Applicant was *bona fide* in their explanation, as they said nothing in their lengthy affidavit or what caused the delay for a period of seven days.
- [63] The only plausible conclusion is that the delay in the prosecution of review was caused by loss of interest.
- [64] In essence, an application for the reinstatement of a review application 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.
- [65] I am equally alive to the fact 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.
- [66] The Third Respondent should be given some apriority where the Applicant lost interest in the finalisation of the dispute, as the only plausible conclusion that one can come to is that the Applicant intends to cause frustration to the Third Respondent.
- [67] Based on the above, the application for the reinstatement of the review application cannot succeed as it is not in the interest of justice.

Costs

- [68] I have had regard to the requirements of law and fairness, including the Constitutional Court judgment of *Zungu v Premier of the Province of KwaZulu-*

*Natal and Others*⁸ in considering costs, I am of the view that costs should only be awarded where it is warranted, like *in casu*.

[69] I am of the view that a cost order is warranted in this matter. The Applicant is flogging a dead horse as their application was not dialectic.

[70] In the premises, I make the following orders:

Order

1. The application for the reinstatement of the review application is hereby refused.
2. The Applicant is ordered to pay costs.

N Tshisevhe

Acting Judge of the Labour Court of South Africa

⁸ *Zungu v Premier of the Province of KwaZulu-Natal and Others* (CCT136/17) [2018] ZACC 1; (2018) 39 ILJ 523 (CC); [2018] 4 BLLR 323 (CC); 2018 (6) BCLR 686 (CC)

Appearances

For the Applicant: Mahumani Incorporated

For the Third Respondent: Tati Attorneys

LABOUR COURT