



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JS 695/20

In the matter between:

NUMSA obo NEO CHAKE

Applicant

and

THE ENGEN JUNCTION cc t/a ENGEN JUNCTION

Respondent

Heard: 3 May 2024

Delivered: 6 November 2025

JUDGMENT

KUMALO, AJ

Introduction

- [1] In these proceedings, the respondent seeks rescission of the order granted by this Court (per Baloyi AJ) on 5 September 2023, which found the employee's dismissal, based on operational requirements, to be substantively unfair. The Court further ordered the employee's reinstatement. In addition, the respondent applies for condonation for the late filing of the rescission application. Both the rescission and condonation applications are opposed by the employee.

Background

- [2] The employee commenced employment on 24 May 2019 as a general worker. In April 2020, a national state of disaster was declared. Subsequently, on 26 June 2020, the employee was dismissed due to the employer's operational requirements. The employee referred a dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA), which remained unresolved as of 7 September 2020. On 3 November 2020, the employee instituted proceedings in this Court, alleging unfair dismissal.
- [3] On 18 May 2022, the employee applied for a default judgment. However, on 12 October 2022, the Court (per Nkutha-Nkontwana J) removed the application from the roll due to unsatisfactory service. On 11 May 2023, the employee served the statement of claim and supporting documents via email to a purported representative of the respondent. Thereafter, on 5 July 2023, the Registrar notified the parties of the hearing date for the default application. On 8 September 2023, in the absence of the respondent, the Court granted default judgment.

Condonation application

- [4] Rule 16A(2)(b) of the old Rules provides that an application for rescission, as contemplated in Rule 16A(1)(b), must be filed within 15 days of the applicant becoming aware of the order sought to be rescinded. In terms of Rule 12 of the same Rules, the Court has discretion to abridge any prescribed period upon application and demonstration of good cause. In determining whether good cause has been shown, the Court must exercise its discretion judiciously, taking into account relevant factors such as the degree of lateness, the explanation provided for the delay, the prospects of success on the merits, and the importance of the matter.¹ The consideration of good cause requires the Court to evaluate all relevant factors to ensure fairness in either granting or refusing condonation, in line with the proper administration

¹*Melane v Santam Insurance Co. Ltd* 1962 (4) SA 531 (A) at 532B – E.

of justice. In any given factual matrix, only some of the many possible factors may be material, depending on the circumstances of the case.²

- [5] The respondent contended that it became aware of the impugned order on 6 October 2023, when it was served upon it, and that the 15 days for filing the rescission application should be calculated from that date, making 27 October 2023 the deadline. The employee disputes this claim, arguing that the deadline was 11 October 2023. This, according to the employee, is because he tendered his services on 19 September 2023 following the default judgment, which the respondent refused. The employee further asserts that he was advised to liaise with Mr Lea Hardy, the respondent's purported representative, who confirmed that he was authorised to accept service on behalf of the respondent.
- [6] It is well-established that in motion proceedings, a final order will be granted in favour of the applicant if the facts alleged by the respondent, together with those admitted by the applicant, justify such relief. In the present matter, the respondent merely asserts, without substantiating, that Mr Hardy's involvement ended with the conclusion of the CCMA proceedings. However, the respondent fails to refute the employee's claim that, on 19 September 2023, its own staff referred the employee to Mr Hardy, who then confirmed his authority to accept service on behalf of the respondent.
- [7] Although the respondent contended that Mr Hardy was not engaged beyond the CCMA proceedings, it nonetheless consulted with him. Mr Hardy, in turn, indicated that he was under the misapprehension that the period for filing a rescission application was six weeks. This supports the employee's assertion that Mr Hardy presented himself as a representative of the respondent with authority to engage in matters related to this dispute. It is implausible that a person with no interest in the matter would concern himself with the rescission deadline unless he was acting as the respondent's agent. Accordingly, it must be accepted that Mr Hardy held himself out as such, and the employee's

² *Madinda v Minister of Safety and Security, Republic of South Africa* 2008 (4) SA 312 (SCA) at para 10.

version regarding when the respondent became aware of the order must prevail. On that basis, the rescission application was filed approximately 39 days late, whereas the old Rules allowed only 15 days for such an application. This delay is, therefore, inordinate.

[8] It is well-established that a party seeking condonation must provide a full, detailed, and accurate explanation for the delay. The explanation must include the cause of the delay and its effects, enabling the Court to properly assess the reasons advanced and determine the extent of the party's responsibility. This is essential for the Court to exercise its discretion fairly and in accordance with the interests of justice.³ The explanation for the delay must reasonably account for the entire period in question. In these proceedings, it has already been established that the respondent became aware of the impugned order on 19 September 2023. There is no evidence to suggest that Mr Hardy lacked the authority to receive service of the order. Consequently, the respondent has failed to explain 12 days of inaction, despite the old Rules allowing only 15 days to file a rescission application. This unexplained gap renders the explanation unreasonable from the outset and underscores the inordinate nature of the delay.

[9] More concerning is that, despite the respondent's purported awareness of the order on 6 October 2023, it relied on Mr Hardy's misrepresentation regarding the applicable time period and failed to promptly institute the rescission application. By that point, the deadline was imminent, and Mr Hardy must have known that he had received the order as early as 19 September 2023. Nevertheless, the respondent delayed a further 22 days before taking any steps, only consulting its attorneys on 10 November 2023. This conduct further compounds the delay and undermines the reasonableness of the explanation provided.

[10] It is evident that the respondent exceeded the 15 days prescribed by the old Rules. To compound matters, after receiving legal advice from its

³ See *Uitenhage Transitional Local Council v South African Revenue Service* 2004 (1) SA 292 (SCA) at para 6

correspondent attorneys on 20 November 2023, the respondent delayed a further nine days before filing the rescission application, despite the urgency of the situation. This additional delay further underscores the unreasonableness of the explanation provided. Overall, the degree of lateness is excessive, and the explanation offered is both unacceptable and unreasonable. In light of the inordinate delay and the absence of a satisfactory explanation, which effectively amounts to no explanation at all, little weight can be attached to the other relevant factors in the condonation inquiry.

- [11] It is accepted that the overarching consideration in a condonation application is whether the interests of justice warrant the granting of such relief. This requires a balanced assessment of all relevant factors, including the degree of lateness, the adequacy of the explanation, the prospects of success, and the importance of the matter. Ultimately, the Court must be satisfied that condonation would serve the proper administration of justice,⁴ and the determination of whether the interests of justice support the granting of condonation is not confined to the degree of lateness or the prospects of success. It also encompasses all other relevant factors, the significance of which depends on the specific circumstances of each case. The Court must adopt a holistic approach, weighing each factor in context to ensure that justice is served.⁵ In *Toyota SA Motors (Pty) Ltd v CCMA and Others*,⁶ the Court held that:

Time periods in the context of labour disputes are generally essential to bring about timely resolution of the disputes. The dispute resolution dispensation of the old Labour Relations Act was uncertain, costly, inefficient and ineffective. The new Labour Relations Act (LRA) introduced a new approach to the adjudication of labour disputes. This alternative process was intended to bring about the expeditious resolution of labour disputes which, by their nature, require speedy resolution. Any delay in the resolution of labour

⁴ See *Brummer v Gorfil Brothers Investments (Pty) Ltd* [2000] (2) SA 837 (CC) at 839F.

⁵ See *Grootboom v National Prosecuting Authority and Another* 2014 (2) SA 68 (CC) at para 22.

⁶ See *Toyota SA Motors (Pty) Ltd v CCMA and Others* [2015] ZACC 40; (2016) 37 ILJ 313 (CC); [2016] 3 BLLR 217 (CC); 2016 (3) BCLR 374 (CC) at para 1.

disputes undermines the primary object of the LRA. It is detrimental not only to the workers who may be without a source of income pending the resolution of the dispute but, ultimately, also to an employer who may have to reinstate workers after many years.

- [12] It follows that non-compliance with the time periods prescribed by the Rules must be assessed in light of the primary objectives of the LRA, particularly the expeditious resolution of labour disputes. Extensions of these periods should not undermine that purpose. In the present matter, the respondent's conduct was marked by delay and a lack of urgency. Accordingly, it cannot be said that granting condonation would serve the interests of justice.
- [13] The respondent contends that it would suffer extreme prejudice if denied the opportunity to present its case, and that the delay causes no prejudice to the employee. This argument is clearly self-serving, as it disregards the fact that the employee remains unemployed and has suffered financial hardship as a result. It also overlooks the employee's right to fair labour practices, as enshrined in the Constitution, which includes the right to the expeditious adjudication of disputes. The respondent's delay has deprived the employee of this right. Accordingly, the balance of convenience does not favour granting relief to the respondent.
- [14] Ordinarily, the inquiry into condonation would conclude at this point. However, in line with the approach adopted in this judgment, and in the interest of finality, the respondent's prospects of success will be considered within the context of the rescission application.

Rescission

- [15] The provisions of section 165(a) of the Labour Relations Act (LRA), read with Rule 16A(1)(a) of the old Labour Court Rules, empower the Court, either on application or of its own accord, to rescind an order that was erroneously sought or erroneously granted in the absence of the affected party. An order may be considered erroneously granted, for example, where the Court lacked

jurisdiction or competency to adjudicate the dispute.⁷ In terms of this ground for rescission, the applicant is not required to demonstrate good cause for the default. Instead, it needs only to establish that the order was erroneously sought or erroneously granted in its absence. The focus is therefore on the procedural correctness of the order, rather than the merits of the underlying dispute.⁸ It must be clearly demonstrated that, at the time the order was granted, a material fact existed which was not disclosed to the court. Moreover, it must be shown that, had the court been aware of this fact, it would not have granted the order.⁹

- [16] The respondent contended that the order in question was erroneously granted on the basis that neither the statement of claim nor the default application had been properly served on it. It was submitted that these documents were served on Mr Hardy, who lacked the requisite authority to accept service or act on behalf of the respondent. Furthermore, the respondent argued that the default application was procedurally irregular, as it failed to comply with clause 10.1.3 of the repealed Practice Manual of this Court. Specifically, the supporting affidavit was deposed to by a union official rather than the affected employee, as required.
- [17] The respondent's contentions are without merit. The first argument to be dismissed summarily is the alleged non-compliance with clause 10.1.3 of the repealed Practice Manual. This clause pertains to the consideration of default judgment applications in chambers, where parties are not allowed to lead oral evidence. In such instances, affidavits serve as the appropriate substitute for evidentiary purposes. In the present matter, there is no indication that the order was granted in chambers, and accordingly, the respondent's reliance on this clause is misplaced.
- [18] Rule 16 of the repealed Rules governed the adjudication of default judgment applications and required that the Registrar, upon notice to the applicant,

⁷ *F & J Electrical CC v MEWUSA obo E Mashatola and Other* [2015] ZACC 3; 2015 (4) BCLR 377 (CC); (2015) 36 ILJ 1189 (CC); [2015] 5 BLLR 453 (CC) at para 28 – 33.

⁸ *F & J Electrical CC v MEWUSA obo E Mashatola and Other* *ibid* at para 27.

⁹ See *Nyingwa v Moolman* NO 1993 (2) SA 508 (Tk).

enrol the matter for hearing before the court. This procedure was duly followed in the present case, as the application was placed before Baloyi AJ in open court. There are no further allegations suggesting that evidence was not adduced during the proceedings. Accordingly, the alleged non-compliance with clause 10.1.3 of the repealed Practice Manual does not render the judgment or order erroneously granted or sought.

- [19] In assessing whether proper service was effected, the employee's position is well-founded. Mr Hardy, an official of the employer's organisation, received the relevant court documents via email but failed to indicate that his mandate was limited solely to the facilitation process. At all material times, including the service of the statement of claim, the employee consistently served the employer through Mr Hardy. Notably, Mr Hardy acknowledged receipt of the documents by reading the emails and confirming telephonically that he had received them.
- [20] The respondent further contended that, on 4 July 2023, Mr Hardy informed the union official that he did not represent the respondent. However, Mr Hardy failed to notify the respondent that both the statement of claim and the default application had been served on him. The respondent also denied receiving the request for the enrolment of the default application, asserting that it was served on Mr Hardy and sent to an unverified address.
- [21] As mentioned, it is well established that a final order may be granted where the facts set out in the applicant's affidavits, which are admitted by the respondent, together with the respondent's own allegations, justify the granting of such an order. Additionally, where the respondent's denial of a fact alleged by the applicant fails to raise a real, genuine, or *bona fide* dispute of fact, the court is entitled to grant the relief sought.
- [22] In the present proceedings, the respondent adopted a strategy of denying knowledge of the court process and disputing Mr Hardy's authority to receive service on its behalf, notwithstanding his prior role as the respondent's representative in earlier proceedings. The employee, in the answering affidavit, refuted the claim that the respondent had not received the court

documents relating to the unfair dismissal claim. In support of this, the employee attached service affidavits confirming that the statement of claim and the default application were served on Mr Hardy. These affidavits further confirm that service was acknowledged telephonically.

- [23] Despite the aforementioned facts, the respondent continued to deny knowledge of the claim, relying solely on the assertion that Mr Hardy lacked the mandate to act on its behalf. However, there is no explanation, either from the respondent or Mr Hardy, who filed a confirmatory affidavit, as to why he failed to forward the court documents to the respondent. This omission is particularly concerning given the prior and ongoing relationship between Mr Hardy and the respondent, as evidenced by his attendance at the initial consultation regarding the institution of the rescission application. At the very least, professional courtesy would have warranted the transmission of the documents.
- [24] It is insufficient for the respondent and Mr Hardy to merely assert that the latter lacked the requisite mandate, without providing any indication of steps taken to communicate this limitation to the employee. Given the failed conciliation process, the respondent ought to have anticipated that the employee would escalate the dispute, and that service could reasonably be effected on its representative, namely the employer's organisation. On the balance of probabilities, Mr Hardy acted on behalf of the respondent at all material times and failed to discharge his responsibilities as its representative. The assertion of a lack of mandate appears to be an afterthought, aimed at concealing non-compliance. Consequently, the explanation advanced by the respondent, that it lacked awareness of the proceedings, is implausible. It follows that the order was not erroneously granted, as the respondent, through Mr Hardy, was aware of the claim and failed to take steps to defend it.
- [25] To further compound the respondent's position, the facts set out in the employee's answering affidavit do not indicate that Mr Hardy ever disavowed acting on behalf of the respondent, nor did he communicate any lack of mandate when contacted to confirm service. On the face of it, Mr Hardy received the statement of claim, the default application, and the request for

enrolment in a manner consistent with someone authorised to act on behalf of the respondent. His conduct throughout the process reflected that of a representative, and the employee reasonably relied on this apparent authority to effect service of the court documents.

[26] In fact, it appears that both Mr Hardy and the respondent only repudiated the existence of a mandate during the period in which they were legally represented. Notably, Mr Hardy was the first individual to consult with the attorneys of record for the purpose of instituting the rescission application. Taken as a whole, the evidence does not support the assertion that Mr Hardy was not acting as a representative of the respondent at all material times. Moreover, as indicated in the condonation application, Mr Hardy operated under a misapprehension regarding the applicable procedural deadlines. This further reinforces the conclusion that the claim of a lack of mandate is a post hoc justification aimed at excusing Mr Hardy's failure to act diligently. Accordingly, there is no basis to conclude that, had the Court been aware of these allegations, it would have declined to grant the order.

[27] Lastly, the respondent has failed to establish good cause for its default. The concept of good cause requires that a party seeking rescission must provide a reasonable and acceptable explanation for the default and must also demonstrate the existence of a *bona fide* defence to the main claim, which carries some prospect of success. In this instance, the respondent has not satisfied either requirement.¹⁰ A failure to satisfy either the requirement of providing a reasonable explanation for the default or demonstrating a *bona fide* defence with prospects of success may result in the rescission application being refused.¹¹

[28] As previously stated, the respondent failed to provide a reasonable explanation for its failure to oppose the statement of claim. The account offered is unconvincing, inadequate, and lacks *bona fides*. It is unsatisfactory

¹⁰ See *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A).

¹¹ See *Government of the Republic of Zimbabwe v Fick* [2013] ZACC 22; 2013 (5) SA 325 (CC); 2013 (10) BCLR 1103 (CC) (Fick) at para 85, referred to in *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others* [2021] ZACC 28; 2021 (11) BCLR 1263 (CC).

and unreasonable in the context of the procedural obligations placed upon litigants. A failure to satisfy these requirements undermines the basis for rescission and may result in the application being refused. The Supreme Court of Appeal's decision in *Trans-Africa Insurance Co. Ltd v Maluleka*¹² is apt:

“...technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their merits.”

[29] Clearly, in the present proceedings, the respondent's non-compliance with the prescribed time periods cannot be characterised as a mere procedural oversight. Rather, it directly undermines the employee's right to a cost-effective and expeditious resolution of the dispute, which is central to the objectives of the Labour Relations Act. Moreover, condoning such non-compliance does not advance the inexpensive determination of the dispute on its merits, particularly as the respondent has yet to file a substantive defence to the claim. This failure is likely to result in increased costs for the employee. Accordingly, the respondent has not provided a *bona fide*, reasonable, and acceptable explanation for its default.

[30] Additionally, the respondent has failed to provide any averments indicating when Mr Hardy's mandate was terminated or reinstated. This information is crucial, particularly in light of the service affidavits, which demonstrate that Mr Hardy accepted service of the statement of claim and the default application. It is evident that, even in the present proceedings, Mr Hardy acted on behalf of the respondent, including consulting with the attorneys of record in relation to the current applications. The explanation that the respondent failed to defend the claim solely because service was effected on Mr Hardy is implausible, lacks *bona fides*, and is therefore unreasonable and unacceptable.

¹² *Trans-Africa Insurance Co. Ltd v Maluleka* 1956 (2) SA 273 (A) at 278F–G.

[31] On the issue of a bona fide defence, the respondent correctly notes that the inquiry centres on whether the defence advanced may, if proven, constitute a valid and acceptable basis for success in the dispute. It is acknowledged that the respondent may have had a substantiable reason for the dismissal and that alternative measures were considered before the dismissal. However, these considerations do not outweigh the interests of justice in ensuring the speedy resolution of disputes, particularly where constitutional rights are implicated. The prejudice to the employee, coupled with the respondent's failure to provide a *bona fide*, reasonable, and acceptable explanation for the default, renders the application unsustainable. Accordingly, the rescission application falls to be dismissed.

Costs:

[32] The applicant correctly asserts that the respondent did not act *bona fide* in bringing the rescission application, and that its strategy was aimed at delaying the resolution of the employee's claim. Such conduct is contrary to the objectives of the LRA and must be discouraged through the imposition of punitive costs orders where appropriate. Although the employee is represented by a trade union, which ordinarily is not entitled to costs, there is no reason why the union should not recover its disbursements incurred in opposing the application. Accordingly, the respondent is ordered to pay the applicant's disbursements.

[33] In the premises, the following order is made.

Order:

1. The respondent's application to condone the late filing of the rescission application is dismissed.
 2. The respondent's application for rescission is dismissed.
 3. The respondent is to pay the agreed or taxed disbursements incurred by the applicants in opposing both applications.
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M. Kumalo

Acting Judge of the Labour Court of South Africa

LABOUR COURT

APPEARANCES:

For the applicant:

K. Rapitsi, Union Official of the National Union of Metalworkers of South Africa.

For the respondent:

C. Higgs, instructed by De Wet Wepener Attorneys.

LABOUR COURT