

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

26/5/2025

DATE



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR1562/21

In the matter between:

MURAMBO TOWING SERVICES (PTY) LTD

Applicant

HUMPHRY MATHADA

2nd Applicant

(To be joined)

and

CCMA

First Respondent

COMMISSIONER VALENCIA NOMASANTO SIBEKO N.O. **Second Respondent**

NGOAKO EVERISTOS LETSOALO

Third Respondent

Heard: 13 May 2025

Summary: Application in terms of Rule 11 brought by the Third Respondent seeking an order dismissing the Applicant's review application instituted on 30 July 2021 for failure to expeditiously execute the review application. Application granted.

JUDGMENT

MARQUES, AJ

Introduction

[1] This is an application in terms of Rule 11¹ brought by the Third Respondent seeking an order in the following terms:

- 1.1 Dismissing the Applicant's review application instituted on 30 July 2021 for failure to expeditiously execute the review application.
- 1.2 The arbitration award dated 26 March 2021 issued by Commissioner Valencia Nomasonto Sibeko in the matter between the Third Respondent and the Applicant under the CCMA case number GATW15658/20 (the arbitration award) to be made an order of court in terms of Section 158(1)(c) of the Labour Relations Act² (LRA).
- 1.3 Humphry Mathada be joined as the 2nd Applicant in the above matter.
- 1.4 The 1st and/or 2nd Applicant [to be joined] to pay the Third Respondent the amount of R36 900.00 as per paragraph 56 of the arbitration award, plus interest at 10.5% per annum, from 22 April 2021 to date of payment.
- 1.5 The 1st and/or 2nd Applicant [to be joined] further to paragraph 1.4 above, be ordered to pay the Applicant's salary of R7 000.00 per month and

¹ GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.

² Act 66 of 1995, as amended.

benefits from 21 April 2021 to date of compliance.

1.6 The Applicant is to pay the costs of this application.

Background

- [2] The Third Respondent was employed by the Applicant from 13 September 2020 as a Tow Truck Driver. It appears from the arbitration award that the Third Respondent was earning a monthly salary of R7 000.00 per month.
- [3] The Applicant is in the business of towing cars. The Third Respondent was dismissed on 10 November 2020 by the Applicant.
- [4] Following the Third Respondent's dismissal, he referred a dispute to the First Respondent.
- [5] The arbitration was set down before the Second Respondent and was scheduled for a con/arb process on 6 January 2021. Failing a successful resolution of the matter, the matter was adjourned (at the Applicant's request) to 8 January 2021 for arbitration, where it was part-heard and thereafter rescheduled for finalisation on 16 March 2021. The Applicant (and his representative) did not attend the arbitration proceedings on 16 March 2021.
- [6] The award was rendered by the Second Respondent on 26 March 2021, in terms of which the Second Respondent found that:
- 6.1 The Third Respondent had been dismissed by the Applicant.
- 6.2 The dismissal of the Third Respondent by the Applicant was procedurally and substantively unfair. The Applicant was ordered to reinstate the Third Respondent and pay him backpay of R35 000.00 and short payment of R1 900.00 into the same bank account used to pay salaries.
- 6.3 The Applicant was ordered to pay the aforesaid amount by no later than 21 April 2021, failing which the Third Respondent may elect to invoke

the provisions of Section 143 to enforce the award.

6.4 The Applicant must report for duty on 21 April 2021 at 06:00 am.

- [7] Following receipt of the arbitration award issued by the Second Respondent, the Applicant filed a rescission application to rescind the arbitration award issued on 26 March 2021. The essence of this application was that the Applicant sought the rescission of the arbitration award as it was issued in the absence of the Applicant, and the Applicant was not given an opportunity to testify at the first seating of the arbitration proceedings. The rescission ruling was issued by the Second Respondent on 20 June 2021 under case number: GATW15658/20 in terms of which the rescission ruling was refused on the basis that the arbitration took place in the presence of the Applicant (the Applicant only absented itself on the last day of the arbitration process), the arbitration award was not issued erroneously and the Applicant did not address the issues in section 144 of the LRA (the LRA).
- [8] On 30 July 2021, the Applicant filed an application to review and set aside the arbitration award and the rescission ruling, both issued by the Second Respondent under case number GATW15658/20 in terms of the LRA.
- [9] The Third Respondent's application to dismiss the Applicant's review application and make the arbitration award an order of the court was filed on 13 April 2022.
- [10] The Third Respondent's application to dismiss the review application is premised on the fact that since the Applicant instituted its review application on 30 July 2021, it has not taken any further steps and/or made any efforts to finalise the review application, which is highly prejudicial to him.
- [11] The Applicant opposes the relief sought by the Third Respondent but did not appear in Court. I have considered the Court file and the notice of set down dispatched to the parties notifying them of the set down date. It is clear from the Court file that the Applicant was emailed a copy of the notice of set down on 26

November 2024. Accordingly, I have considered the opposing submissions filed by the Applicant. Further, in the opposing affidavit, the Applicant raises two *points in limine*, namely:

- 11.1 Non-compliance with the rules of court. In terms of the rules of this court, the Third Respondent is obliged to appoint a firm of attorneys within a 15 (fifteen) kilometre radius of the court. The Applicant alleges that the Third Respondent appointed a Pretoria-based attorney who is located more than 50 kilometres from the court.
- 11.2 Lack of service. The Third Respondent approached the above Honourable Court seeking joinder of the Second Applicant but failed to personally serve the Second Applicant, alternatively, send an email purporting to serve the Second Applicant without consent.
- 11.3 The Applicant prays that the opposing affidavit be dismissed on these points alone.

Points in Limine

- [12] The Labour Court Rules, unlike the High Court Rules, do not require that a party appoint a law firm within a 15-kilometre radius of the Court. Accordingly, this *point in limine* has no merit.
- [13] The opposing affidavit to this application has been deposed to by Mr Humphry Mathada, the party whom the Third Respondent seeks to join as the Second Applicant in these proceedings. Mr Mathada disputes that he should be joined to these proceedings as he was not personally served with a copy of the application. The Rules of the Labour Court do not require personal service of the application, and this court should not overly burden itself with technicalities. It is evident that Mr Mathada received the Third Respondent's application as he is the deponent to the opposing affidavit. As Mr Mathada had the opportunity to consider the Third Respondent's application and respond to the allegations, there can be no prejudice to the Applicant or Mr Mathada. Therefore, the

second *point in limine* similarly has no merit.

Consideration of the Third Respondent's Application

[14] It is common cause that:

- 14.1 The Applicant's review application was served and filed on 30 July 2021. The arbitration award was issued on 26 March 2021, and thereafter, a rescission ruling was issued on 20 June 2021.
- 14.2 The notice of intention to oppose the Applicant's review application was filed by the Third Respondent on 14 October 2021.
- 14.3 The CCMA Notice of Compliance in terms of Rule 7A(3) was delivered to the parties on or about 8 October 2021.

Evaluation

[15] It is evident from the documents before me that the Applicant has taken absolutely no steps to further the review application since the CCMA filed the Notice of Compliance in terms of Rule 7A(3) on or about 8 October 2021.

[16] Furthermore, if one has regard to the review application, it was filed more than 6 (six) weeks after the date that the arbitration award was issued. Accordingly, the review application, insofar as the award is concerned, was filed approximately 3 (three) months late. The Applicant has not filed a condonation application or given any explanation for this delay.

[17] Item 11.2.2 of the Labour Court Practice Manual³ provides that:

'For the purpose of Rule 7A(6), records must be filed within 60 days of the date on which the applicant is advised by the registrar that the record

³ Practice Manual of the Labour Court of South Africa, effective 2 April 2013, repealed with effect from July 2024.

has been received.'

[18] Item 11.2.3 of the Labour Court 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.'

[19] Item 11.2.4 of the Labour Court Practice Manual provides that:

'If the record of the proceedings under review has been lost, or if the recording of the proceedings is of such poor quality to the extent that the tapes are inaudible, the applicant may approach the Judge President for a direction on the further conduct of the review application. The Judge President will allocate the file to a judge for a direction, which may include the remission of the matter to the person or body whose award or ruling is under review, or where practicable, a direction to the effect that the relevant parts of the record be reconstructed.'

[20] Item 11.2.7 of the Labour Court Practice Manual provides that:

'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 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.'

- [21] The Applicant's review application was filed on 30 July 2021. The Applicant has failed to comply with the aforesaid items of the Practice Manual, and it has taken absolutely no steps to prosecute the review application diligently, expeditiously or in accordance with the Rules of this Court.
- [22] The status of the record, which is not in dispute and which is reflected in the CCMA Notice of compliance in terms of Rule 7A(3), comprises one (1) audio disc of the arbitration proceedings, file contents and a bundle of documents. This does not appear to be a very cumbersome or voluminous record. However, the record of proceedings has to date not been filed by the Applicant.
- [23] The Applicant submits in its opposing affidavit to the Third Respondent's application that the Third Respondent's application is misguided, that he is not suffering any prejudice as the amount claimed and awarded was awarded erroneously and maliciously by the Second Respondent. The Applicant further provides that it has had difficulties with the transcriptions, but that does not entitle the Third Respondent to the setting aside order. The Applicant further contends that it will apply for condonation as soon as the problems with the transcription have been resolved. The Applicant further submitted in support of this application that the Third Respondent has nothing to show this court that the delay is intentional.
- [24] The submissions made by the Applicant are wholly unacceptable. The Applicant does not place anything before this Court to illustrate that it has taken any proactive steps to pursue its review application nor has it taken this Court into its confidence to explain exactly what technical difficulties it could have had with the transcriptions which has caused such a significant and excessive delay in the prosecution of its review application. From the documentation before me, it appears that the Applicant has simply not taken any steps to pursue its review

application in terms of the Rules of the above Honourable Court, nor has it complied with any of the provisions referred to hereinabove set out in the Practice Manual. It appears that the Applicant has simply sat on its hands and failed to prosecute its review application diligently or appropriately, thus causing the Third Respondent substantial prejudice. Furthermore, the Second Applicant offers no apology for the flagrant disregard of this Court's Rules and the non-compliance therewith.

- [25] In *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation & Arbitration & others*⁴ (*Toyota*) the majority found 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 disputes undermines the primary object of the LRA.'

- [26] Furthermore, in *Toyota*, it was highlighted that the Labour Relations Act, case law and the practice manual make it clear that expedition resolution of disputes is a fundamental requirement of fairness and of the Act itself.

- [27] It is thus quite correct, as was pointed out by the Third Respondent in his heads of argument, that the aim of the LRA is to ensure the speedy and expeditious resolution of disputes, to facilitate the efficient administration of justice. The undue delay in prosecuting the review application is inexcusable and has, as a result, prejudiced the Third Respondent.

⁴ (2016) 37 ILJ 313 (CC); [2016] 3 BLLR 217 (CC) at para 1.

Conclusion

[28] It is for these reasons that the Third Respondent's application must succeed in the following respects:

28.1 The Third Respondent's application applying to this Court to dismiss the Applicant's review application instituted on 30 July 2021 for failure to expeditiously execute the review application should succeed.

[29] As a result of the aforesaid finding made in terms of the review application, it therefore follows that the arbitration award dated 26 March 2021 issued by the Second Respondent under case number GATW15658/20 should be made an order of court in terms of Section 158(1)(c) of the LRA.

[30] The Third Respondent has sought that Mr Mathada be joined to these proceedings. The principles applicable to applications for leave to join further parties to an action were considered in *Marais and Others v Pongola Sugar Milling Co Ltd and Others*⁵. It was then held that even in those cases where the court has a discretion whether to allow joinder of a party, it must at least be shown that the party sought to be joined is a necessary party in the sense that he is directly and substantially interested in the issues raised, and that his rights may be affected by the judgment of the court. The Third Respondent has, however, not made any cogent submissions to support the relief that he seeks in this regard. Therefore, I cannot join Mr Mathada, in his personal capacity, as a party to these proceedings.

Costs

[31] This Court has a discretion in terms of Section 162 of the LRA to order costs in accordance with the requirements of the law and fairness. In the present instance, I do not see why the Applicant should not pay the costs of the Third Respondent's application due to its flagrant disregard of the Rules of Court and its clear failure to prosecute the review application timeously and in accordance

⁵ 1961 (2) SA 698 (N).

with the Rules of this Court.

[32] Clearly, the undue delay in processing the review application is prejudicial to the Third Respondent. The delay in the prosecution of the review application is excessive and cannot be condoned.

[33] In the premises, I make the following order:

Order

1. The Applicant's review application filed under case number JR1562/21 is dismissed.
2. The arbitration award dated 26 March 2021 issued by the Second Respondent, Commissioner Valencia Nomasondo Sibeko, under case number GATW15658/20, is declared an Order of Court in terms of Section 158(1)(c) of the Labour Relations Act, Act 66 of 1995.
3. The Applicant is directed to pay the Third Respondent in accordance with the arbitration award, together with interest thereon at the prescribed rate of interest prevailing at 21 April 2021, calculated from 21 April 2021 to the date of payment.
4. The Applicant is to pay the costs of this application.


B. Marques
Acting Judge of the Labour Court of South Africa