



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR685/20

In the matter between:

TRANSNET FREIGHT RAIL

Applicant

and

NUMSA OBO ZONDO ML

First Respondent

MASENYE DIDA N.O

Second Respondent

MANGALISO MASHIANE NO

Third Respondent

TRANSNET BARGAINING COUNCIL

Fourth Respondent

Heard: 3 July 2025

Delivered: 07 November 2025

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 07 November 2025.

JUDGMENT

SCHENSEMA, AJIntroduction

- [1] This is an opposed review application in terms of section 145 of the Labour Relations Act¹ (LRA) in which the applicant seeks to review and set aside the arbitration award of the third respondent in terms of which it was found that the first respondent's dismissal by the applicant was procedurally and substantively unfair.
- [2] In terms of the arbitration award, the applicant was ordered to reinstate the first respondent from 1 May 2020, on the same terms and conditions no less favourable to that which he enjoyed prior to his dismissal. The applicant was further ordered to pay the third respondent the accrued back pay in the amount of R965 149.00.
- [3] At the commencement of the proceedings and the court file containing both a Rule 11 application in which the third respondent sought the dismissal of the applicant's review application on the basis that it had become archived as well as the review application, I sought clarity from the parties as to which application was before this Court, as neither party had filed a practice note with the Court.
- [4] It was confirmed by the first respondent's legal representative that the Rule 11 application had been abandoned, notwithstanding this however, the reasons for the Rule 11 application are relevant to this judgment in light of the inordinate delay by the applicant to prosecute the review application timeously.
- [5] Before considering the review application, this Court ultimately has to determine whether the review application is before this Court given the delay in its prosecution and whether the Court Order of Tlhotlhemaje J reinstated the review application.

¹ Act 66 of 1995.

Chronology of Events

- [6] This matter has a lengthy history and a summary of the chronology of events is therefore necessary.
- [7] On 9 April 2020, the applicant received the arbitration award in response to which it timeously launched the review application on 29 May 2020. On 16 July 2020, the first respondent filed his notice of intention to oppose the applicant's review application.
- [8] On 13 July 2020, the applicant received the Rule 7A (5) notice from the Labour Court, in respect of which the applicant's attorneys of record at the time, Selomo Attorneys were notified that the record is available for collection and that the record is to be collected within seven days from the date of the letter from the Labour Court.
- [9] Notwithstanding the Labour Court informing the applicant's legal representative at the time, that the record was to be collected within seven days of receiving the letter, the applicant only uplifted the record from the Labour Court on 12 August 2020. Subsequent to receiving the record, and despite having received the record on 12 August 2020, the first respondent only received the transcribed record on 3 March 2021, 269 days from the date the application for review was launched.
- [10] At the time the record was served on the first respondent, there is no dispute that the 60-day period as set out in the now repealed Practice Manual of the Labour Court² (Practice Manual) had not been complied with, thereby triggering the consequences of clause 11.2.3.
- [11] On 18 August 2021, the first respondent instituted the Rule 11 application in which he sought an order dismissing the applicant's review application. In response to the Rule 11 application, the applicant's erstwhile attorneys filed its notice to oppose the Rule 11 application.

² Practice Manual of the Labour Court of South Africa, effective 2 April 2013 and repealed with effect from 17 July 2024.

- [12] On 20 January 2023, a number of assets were attached by the Sheriff which resulted in the applicant requesting an update from its erstwhile attorneys as to the status of its review application. No response was received from Selomo attorneys resulting in Mamatela Attorneys being appointed.
- [13] On 28 February 2023, an urgent application was launched in which the applicant sought to stay the execution pending the outcome of the review application. On 1 March 2023, Tlhotlhamajie J granted an order (which order was by consent between the parties) in which the execution of the award was stayed pending the finalisation of the review application and which the applicant considers having the effect of reinstating the review application.
- [14] Throughout March 2023, Mamatela Attorneys made multiple attempts to contact Selomo Attorneys to obtain the record, which was missing from the court file. In early April 2023, while attending Court, the applicant's legal representative, upon reviewing the court file, discovered the Rule 11 application as well as the heads of argument filed on 11 March 2023, which had been served on Selomo Attorneys despite the applicant having appointed Mamatela Attorneys.
- [15] On 11 April 2023, the first respondent's trade union representative is contacted for purposes of requesting a copy of the arbitration record. On 13 April 2023, the applicant served its answering affidavit to the Rule 11 application in respect of which it raised a point *in limine*.
- [16] In summary the point *in limine* relates to the consent order obtained on 1 March 2023 in respect of which it was agreed that the execution of the arbitration award would be stayed pending the outcome of the review application and that the applicant would further file security in the amount of R965 145.00 in terms of section 145(8) of the LRA. The applicant further submits that by not opposing the urgent application, the applicant contends that the first respondent had consented to the applicant pursuing the review application to its finality.
- [17] On 23 May 2023, the application filed its condonation application for the late filing of its answering affidavit in the Rule 11 application.

- [18] On 5 June 2023, the applicant delivered its supplementary affidavit in the review application and further sought leave to file the supplementary affidavit outside of the prescribed timeframes. On 23 June 2023, the first respondent filed his answering affidavit to the review application. In response to which the replying affidavit is filed on 7 July 2023.

The applicable principles and provisions

- [19] The purpose of the LRA is *inter alia* the effective resolution of labour disputes and the processes introduced by the LRA are intended to bring about the expeditious resolution of labour disputes. The detrimental implications of delays are obvious.³
- [20] It is trite that this Court has accepted that a review application is by its nature an urgent application which is confirmed in clause 11.2.7 of the Practice Manual wherein an applicant in a review application is required to ensure that all the necessary papers in the application are filed within 12 months of the date of the launch of the application and where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown as to why it should not be archived.⁴
- [21] In terms of the Practice Manual the following clauses are relevant:

'11.2.1 Once the registrar has notified an applicant in terms of Rule 7A(5) that a record has been received and may be uplifted, the applicant must collect the record within seven days.

11.2.2 For the purposes 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 has been received.

³ See: *NEHAWU obo Seloba v Office of the Premier: Limpopo and others* (2025) 46 ILJ 1244 (LC) (8 November 2024) (*Seloba*) at para 13 which further makes reference to *Commercial Workers Union of SA v Tao Ying Metal Industries and others* 2009 (2) SA 204 (CC), where the Constitutional Court held at para 63 that: "These disputes, by their very nature, require speedy resolution. Any delay in resolving a labour dispute could be detrimental not only to the workers who may be without a source of income pending the resolution of the dispute, but it may, in the long run, have a detrimental effect on an employer who may have to reinstate workers after a number of years."

⁴ *Seloba supra* at para 14.

11.2.3 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.' (emphasis added)

- [22] In this matter it is common cause that the applicant did not file the record within the prescribed 60-day period, in fact the record was only filed 269 days after the review application had been launched. Furthermore, the applicant did not approach the first respondent to consent to an extension of time nor was an application made to the Judge President for an extension of time, prior to the time period as envisaged in the Practice Manual having expired.
- [23] On 18 August 2021, after having received the transcribed record on 3 March 2021, the first respondent instituted the Rule 11 application, seeking an order dismissing the applicant's review application. The applicant opposed the application by filing a notice of opposition on 15 September 2021. Despite this, the applicant only submitted the answering affidavit on 13 April 2023, which, according to the applicant, was filed and served as a precaution in response to the first respondent's indication that he intended to proceed with the Rule 11 application. This was done notwithstanding the Court Order of Tlhotlthalemaje J on 1 March 2023 and the applicant's view that the said order had reinstated the review application.
- [24] It is further common cause that the applicant has not sought to revive the review application and simply relies on the Court Order of Tlhotlthalemaje J that the matter was reinstated and the first respondent had consented to the time delays.

[25] Clause 11.2.3 of the Practice Manual makes it clear that the applicant will be deemed to have withdrawn the application, unless the applicant has during the prescribed 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.⁵ Alternatively and in terms of clause 11.2.7 where the time limit has not been 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.

[26] For purposes of a revival, clause 16 of the Practice Manual provided as follows:

[16.2] A party to a dispute in which the file has been archived may submit an application, on affidavit, for the retrieval of the file, on notice to all other parties to the dispute. The provisions of Rule 7 will apply to an application brought in terms of this provision.

[16.3] Where a file has been placed in archives, it shall have the same consequences as to further conduct by any respondent party as to the matter having been dismissed.'

[27] The issue of archiving was considered by the Labour Appeal Court (LAC) in *E Tradex (Pty) Ltd t/a Global Trade Solution v Finch and others*⁶ where the LAC confirmed that:

[9] The notion of a case being 'archived' was invented by the drafters of the Practice Manual as a penalty for dilatoriness and to relieve the burden of carrying dormant cases indefinitely. The consequence of a case being archived is serious. Upon archiving, in terms of clause 11.2.7, a matter is '*regarded as lapsed, unless good cause is shown why the application should not be archived or be removed from the archive.*' To add to that provision, clause 16.3 states unequivocally that: 'Where a file has been placed in the archives, it shall have the same consequences as to further conduct by any respondent party as

⁵ Clause 11.2.3 of the Practice Manual.

⁶ (2022) 43 ILJ 2727 (LAC) at paras 9 to 11.

to the matter having been dismissed.’ Moreover, clause 16.2 is equally unequivocal: *‘A party to a dispute in which the file has been archived may submit an application on affidavit, for the retrieval of the file.’* There can be no plausible doubt that once the case is ‘archived’ it requires the intervention of the court to ‘un-archive’ it. There is no room to read into these provisions a role for the registrar to resuscitate the case. (emphasis added)

[10] The use of the term ‘archived’ is peculiar to the Labour Court Practice Manual. In the general civil courts, for example, the failure to prosecute an appeal timeously results in the appeal having lapsed.⁷ The effect of that is that the case shall not be dealt with by a court unless an application to reinstate the appeal is made. It is, in our view, plain that the archiving of a Labour Court case was intended to have the identical effect; indeed, clause 16.3 goes even further, to equate the consequence of an archiving of a case to be understood to mean the application is ‘dismissed’, albeit that a procedure exists to reinstate the case on good cause shown.

[11] It must therefore follow that the archived case acquires a peculiar status which requires the delinquent party to justify why it should be reinstated and thereafter be entertained by a court in the wake of a lack of expeditious prosecution. The Labour Court *a quo*, treated the ‘archiving’ as an administrative act, not as a matter of status. The significance of this distinction between status and an administrative act is that the acquisition of a peculiar status means that upon a given event, the status automatically adheres to the case. That status has legal consequences which a mere administrative act by the registrar cannot undo.’ (emphasis added)

[28] In light of the above and in the absence of an order reinstating the review application there is effectively no “live” review pending before this Court.

[29] Furthermore the Court Order of 1 March 2023 does not assist the applicant, in that an order staying the execution of an award granted in a separate urgent application is an interim measure designed to preserve the status quo and

⁷ Rule 49(6)(a) and (b) of the Uniform Rules of Court

prevent irreparable harm, while a pending and properly filed review application is being determined.

- [30] The Court Order of 1 March 2023, however does not address the validity of the procedural status of the underlying review application itself and can therefore not be relied upon to circumvent the requirement to bring a revival application under these circumstances. In view of the current status of the review application, it is therefore not necessary to determine the review application.

Costs

- [31] This Court has a wide discretion in awarding costs. I am of the view that this is a matter where the interests of justice will be best served by making no order as to costs.

- [32] In the premises, the following order is made:

Order

1. Noting that the review application has lapsed in terms of clause 11.2.7 of the Labour Court Practice Manual, the review application is struck off the roll, and may not be reinstated until such time as the applicant is successful in applying to have the lapsed application retrieved from the archive and reinstated.
2. There is no order as to costs.

H. Schensema

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate S Rasekakine

Instructed by: Mamatela Attorneys Inc

For the First Respondent: Mr T Manasoe of Letsholo Manasoe Attorneys

LABOUR COURT