



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR 1956/22

In the matter between:

**DEPARTMENT OF SPORTS, ARTS, CULTURE
AND RECREATION**

Applicant

and

**GENERAL PUBLIC SERVICE SECTOR
BARGAINING COUNCIL**

First Respondent

ISAAC KEKANA N.O

Second Respondent

JEFFREY GAWE

Third Respondent

Heard on: 12 August 2025

Delivered: 13 November 2025

JUDGEMENT

MAMANYUHA, AJ

Introduction

- [1] This is a review application, in which the applicant seeks to review and set aside the arbitration award issued by the second respondent (the Arbitrator) under case number GPBC 1523-20 on 13 August 2022.
- [2] In the award, the Arbitrator ordered that the third respondent be retrospectively reinstated, with backpay in the amount of R1,195 339.92 less lawful deductions.
- [3] The applicant failed to comply with the time periods prescribed in Rule 7A(8)(b) of the Labour Court Rules. It therefore seeks *condonation* for the late filing of the Rule 7A(8)(b) notice.
- [4] The third respondent opposes the condonation application. It is common cause that if condonation is not granted, this Court lacks jurisdiction to consider the merits of the review.
- [5] I accordingly deal first with the condonation application, as it is dispositive of the matter.

Background facts

- [6] The applicant filed its review application on 28 September 2022. The arbitration record, as required by Rule 7A(6), was filed on 23 January 2023.
- [7] The applicant only filed the Rule 7A(8)(b) notice on 13 March 2023, after being alerted to its non-compliance by correspondence from the Third Respondent's attorneys. The notice was 38 days out of time.
- [8] Despite being aware of its default, the Applicant failed to file a condonation application promptly. Condonation was sought only on 31 July 2025, more than two years after the breach.
- [9] No explanation whatsoever is provided for the period between March 2023 and July 2025. The condonation application merely asserts that oversight, bereavement, and staff changes caused the delay, but does not indicate when these events occurred or how they prevented compliance.

- [10] The applicant further failed to comply with this Court's directive dated 20 February 2024, which required it to deliver heads of argument by 14 March 2024. As of 4 April 2024, no heads had been filed, prompting further correspondence from the third respondent's attorneys. The applicant only delivered its heads of argument belatedly on 30 April 2024.
- [11] The Applicant's pattern of procedural default is, therefore, both persistent and material.

Legal Framework for Condonation

- [12] The test for condonation is well-established in *Grootboom v National Prosecuting Authority and Another*¹, the Constitutional Court held that the following factors must be considered:

- '(a) the length of the delay;
- (b) the explanation for, or cause for, the delay;
- (c) the prospects of success for the party seeking condonation;
- (d) the importance of the issue(s) that the matter raises;
- (e) the prejudice to the other party or parties; and
- (f) the effect of the delay on the administration of justice.'

- [13] The Court added that where the delay is unacceptably excessive and no satisfactory explanation is given, there may be no need to consider the prospects of success.

- [14] The Labour Appeal Court in *Collett v Commission for Conciliation, Mediation and Arbitration and others*² (*Collett*) confirmed that:

'without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without good prospects of success, no matter how good the explanation for delay, an application for condonation should be refused.'

¹ 2013 (5) ZACC 37; (2014) 35 ILJ 121 at paras 50 and 51.

² [2014] 6 BLLR 523 (LAC).

- [15] Similarly, in *Allround Tooling (Pty) Ltd v NUMSA & others*³, the Court held that a condonation application must be filed as soon as a party becomes aware of the need for it, and the absence of such promptness is fatal.

The Length of the Delay

- [16] The Rule 7A(8)(b) notice was filed 38 days late, but the condonation application was only filed over two years later, on 31 July 2025.
- [17] A delay of this magnitude is excessive by any measure. In the absence of any proper explanation, it is, on its own, sufficient to justify refusing condonation.

Explanation for the Delay

- [18] The applicant attributes its non-compliance to oversight, personnel changes, and the bereavement of its legal representatives.
- [19] While the Court sympathises with personal loss, the Applicant failed to indicate *when* these events occurred, *how long* they lasted, and *how they impeded compliance* for over two years. In *Independent Municipal and Allied Trade Union (IMATU) obo Zungu v South African Local Government Bargaining Council and Others*⁴ it was held that:

‘The mere listing of significant events which took place during the period in question without an explanation for the time that lapsed between these events does not place a Court in a position properly to assess the explanation for the delay.’

- [20] In *Ntsele v Commission for Conciliation, Mediation and Arbitration and Others*⁵, this Court held that a party seeking condonation must provide a full, detailed, and accurate account of the causes of the delay, explaining each period of default. The applicant has not done so. This Court is in no position to understand or assess the reasonableness of the delay.

- [21] The explanation offered is therefore wholly inadequate. It is neither comprehensive nor compelling, and cannot sustain a plea for indulgence.

³ [1998] 8 BLLR 847 (LAC).

⁴ [2009] ZALC 137; (2010) 31 ILJ 1413 (LC) at para 13.

⁵ [2017] ZALCJHB 161 at para 9.

- [22] In the present case, there is no reasonable or acceptable explanation for the delay, and the application for condonation accordingly cannot succeed.

Prospects of Success

- [23] The Applicant contends that the review enjoys strong prospects of success, but even if prospects existed, they are immaterial in the absence of a comprehensive, convincing and compelling explanation for the delay. (See *Collett, supra*.

Prejudice and the Interests of Justice

- [24] The Third Respondent has endured more than three years of uncertainty since the award, awaiting the outcome of the review. The prejudice against him is real and ongoing.
- [25] The Applicant's prolonged inaction frustrates the expeditious resolution of labour disputes, a key objective of the Labour Relations Act.
- [26] Granting condonation in these circumstances would erode the authority of the Court's Rules, encourage procedural laxity, and undermine the administration of justice.

Applicant's Argument on "No Prejudice" and "Costs as Penalty"

- [27] The Applicant argues that procedural blunders that have no substantive implications should attract cost orders, not dismissal, and that there is no prejudice, since it merely confirms reliance on its founding papers and does not seek to supplement them.
- [28] This argument cannot be sustained. Compliance with Rule 7A(8)(b) is not a formality, it is a jurisdictional requirement that defines whether the matter is properly before the Court.
- [29] Where condonation is required and not granted, the Court is precluded from entertaining the review. This is not a matter of discretion on costs but of jurisdiction and procedural integrity.

[30] The Applicant's assertion of "no prejudice" ignores the systemic prejudice caused to the administration of justice and to the opposing party, who is entitled to procedural certainty and the finality of an arbitration award.

Conclusion

[31] The delay of more than two years is excessive and unexplained. The explanation is unsatisfactory. The applicant's argument that costs alone should serve as a penalty misapprehends the nature of condonation.

[32] The applicant has failed to demonstrate good cause for the indulgence sought. It has displayed a pattern of disregard for the Court's Rules and directives.

[33] The interests of justice do not favour granting condonation.

[34] Accordingly, the following order is made:

Order

1. The application for condonation for the late filing of the Rule 7A(8)(b) notice is refused.
2. The review application is accordingly dismissed.
3. There is no order as to costs.

T. Mamanyuha
Acting Judge of the Labour Court of South Africa

Appearances

For The Applicant: Mr S. Kunene

Instructed by: State Attorney

For The Respondent: Adv S.S. Mashabela

Instructed by: Ipeleng Mompati Inc.

LABOUR COURT