



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Case No: JR703/22

In the matter between:

**MFANUFIKILE DAZA**

**Applicant**

and

**COMMISSION FOR CONCILIATION  
MEDIATION AND ARBITRATION**

**First Respondent**

**COMMISSIONER LUNGILE MTIYA  
MINE HEALTH AND SAFETY COUNCIL**

**Second Respondent**

**Third Respondent**

**Heard: In Chambers**

**Delivered: 06 November 2025**

**This judgment was handed down electronically by emailing a copy to the parties. The (date) is deemed to be the date of delivery of this judgment.**

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**JUDGMENT: LEAVE TO APPEAL**

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**MAMABOLO, AJ**

### Introduction

- [1] The judgment, which is the subject of leave to appeal, was delivered on 14 May 2024. On 8 November 2024, the Applicant filed an application for leave to appeal. This application was not accompanied by an application for condonation.
- [2] On 11 March 2025, the Court delivered a judgment to the effect that it lacked the necessary jurisdiction to entertain the application for leave to appeal due to the Applicant's failure to file an application to condone the late filing of the application for leave to appeal.

### Length of the delay

- [3] The application for leave to appeal is 22 weeks late, which is excessive.
- [4] On 28 July 2025, the Applicant filed a document titled "FOUNDING AFFIDAVIT (APPLICATION FOR CONDONATION)". This founding affidavit was not attached to a notice of motion as provided for in Rule 35, which renders the application defective. However, for the sake of completeness and taking into consideration the spirit and purport of the Labour Relations Act<sup>1</sup>, this defectiveness shall be condoned, and the application shall be dealt with based on the contents of the founding affidavit.

### Reasons for the delay

- [5] The reasons advanced for the late filing of the application for leave to appeal is essentially that Applicant was not aware of the existence of the Rules of Conduct of Proceedings in the Labour Court and the provisions of Rule 67 that requires an application for leave to appeal to be filed within 15 days of the date on which judgment was issued, that he relied solely on the provisions of Rule 9 and lastly that, this was his first time filing an application for leave to appeal.
- [6] The court has inherent discretion to grant condonation where reasons for non-compliance with the time limits have been explained to the satisfaction of the

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<sup>1</sup> Act 66 of 1995, as amended.

court. Accordingly, condonation is not for the mere asking. Thus, the applicant seeking condonation must provide a full explanation for the entire period of the delay.

- [7] Time periods in the context of labour disputes are of paramount importance as the objective is to purely resolve disputes speedily. A delay thus undermines the primary objective of the Labour Relations Act.
- [8] The requirements that must be met in applications of this nature have been clearly spelt out in the case of *Melane v Santam Insurance Co Ltd*<sup>2</sup>. These principles were restated by the Constitutional Court in the case of *Grootboom v National Prosecuting Authority & another*<sup>3</sup>.
- [9] The explanation proffered by the Applicant is unsatisfactory. It is unacceptable for the Applicant to state that he was unaware of the Rules of Conduct of Proceedings in the Labour Court. Being a litigant in this court, the Applicant is expected to familiarise himself with the Rules governing the conduct of proceedings in this court. For him to come to this court and plead negligence and/or lack of knowledge, is unacceptable. His negligence is inexcusable. Accordingly, there is no reasonable explanation for the delay.
- [10] Furthermore, it is apparent from the Applicant's explanation that he was in possession of the Rules of the Labour Court as he makes reference to the

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<sup>2</sup> 1962 (4) SA 531 (A); [1962] 4 All SA 442 (A).

<sup>3</sup> (2014) 35 ILJ 121 (CC); [2014] 1 BLLR 1 (CC) at para 50. The Constitutional Court stated that the factors that are to be considered, in the interests of justice, in determining a condonation application include the following:

- '(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.

At para 51, the Constitutional court went on to find that "The interests of justice must be determined with reference to all relevant factors. However, some of the factors may justifiably be left out of consideration in certain circumstances. For example, where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of a delay is short and there is an unsatisfactory explanation but there are prospects of success, condonation should be granted. However, despite the presence of reasonable prospects of success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party. As a general proposition the various factors are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice".

provisions of Rule 9. He declares that he had read and relied on the provisions of Rule 9, which do not make any reference to the timelines within which an application for leave to appeal should be filed. Had he read further, he could have come across Rule 30, which sets out timelines for the filing of an application for leave to appeal. His failure to do so amounts to sheer negligence.

- [11] To make matters worse for the Applicant, on 11 March 2025, the Applicant became aware of the need to apply and file an application to condone the late filing of the application for leave to appeal. It is common cause that the application to condone the late filing of an application for leave to appeal was only filed on 27 July 2025.
- [12] The delay in launching this condonation application is excessive, taking into consideration the fact that the Applicant was made aware of the need to bring an application for condonation on 11 March 2025.
- [13] The Labour Appeal Court in *Allround Tooling (Pty) Ltd v NUMSA & others*<sup>4</sup> restated the principle that a party applying for condonation must do so as soon as s/he become aware of the need to do so. The Applicant in this matter failed to observe this requirement. The Applicant knew of a need to apply for condonation on 11 March 2025, and yet it took him more than 4 months to file an application for condonation.
- [14] In explaining the delay, the Applicant makes a bald statement that between May 2025 to July 2025, he was sick. The whole period from 12 March 2025 to the month of April 2025 is unaccounted for. This tells us that the Applicant simply failed to make time for his matter, thus failing to take the interests of the Respondent into account.
- [15] Furthermore, the explanation lacks detail. The Applicant failed to take the court into his confidence by stating the exact dates on which he took ill, he further failed to state whether he was admitted and, if so, attach supporting documentation. Neither did he mention the extent of the illness. The

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<sup>4</sup> [1998] 8 BLLR 847 (LAC); [1998] JOL 2719 (LAC).

Applicant's failure to explain in any meaningful manner the date, duration and extent of any obstacle on which reliance is placed leads to the conclusion that he was lackadaisical.

- [16] This bald statement is unsatisfactory and therefore fatal to the application for condonation. It therefore goes without saying that the explanation is not reasonable nor is it acceptable.

#### Prejudice

- [17] The Applicant argues that the Respondent would not be prejudiced if condonation is granted. The Applicant's contract of employment was terminated on 31 December 2021. Reference in the preceding paragraphs was made to the spirit and purport of the Labour Relations Act. Fairness dictates that the Third Respondent, and so is the Applicant, is entitled to finality in the matter.
- [18] The judgment in the review application was delivered on 14 May 2024. The Respondent is thus entitled to assume and accept that the matter has reached its natural conclusion, more especially when an application for leave to appeal was not filed within the prescribed timelines.
- [19] Put differently, inactivity by one party in the matter affects the interests of the other party in the finality of the matter. Accordingly, the court finds that the granting of condonation in circumstances where the delay is unexplained would be prejudicial to the Third Respondent.

#### Prospects of success

- [20] With regards to the prospects of success, the Court was tasked to determine whether the decision arrived at by the commissioner was one that a reasonable decision maker could not reach. The review court found the decision of the commissioner to have been within the bounds of reasonableness.
- [21] The evidence before the commissioner established that the Applicant, who was employed on a fixed-term contract pending finalisation of the recruitment

process, was subjected to an interview in terms of the recruitment process. Unfortunately, he was unsuccessful. The outcome of the interviews was communicated to the Applicant on 30 November 2021. On 1 December 2021, he was notified that his contract would come to an end on 31 December 2021. Based on this evidence, which was, in the main, undisputed, the court is convinced that the Applicant's prospects of success are next to nothing.

[22] In view of the foregoing, the court finds that the Applicant has failed to make out a case for condonation.

[23] Consequently, the following order is made:

Order

1. The application to condone the late filing of the application for leave to appeal is dismissed.
2. There is no order as to costs.

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N.O. Mamabolo

Acting Judge of the Labour Court of South Africa