



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR 2778/19

In the matter between:

EKURHULENI METROPOLITAN MUNICIPALITY

Applicant

and

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

First respondent

ITUMELENG WILLIAMS N.O.

Second Respondent

DAVID K. MATEE N.O.

Third Respondent

MOTOME SEHUNANE N.O.

Fourth Respondent

RJA KATISI obo 286 OTHERS

Fifth Respondent

Heard: 18 June 2024

Delivered: 26 November 2025

JUDGMENT

KUMALO, AJIntroduction

- [1] The applicant, Ekurhuleni Metropolitan Municipality (Ekurhuleni), seeks an order to retrieve its review application from the archives in terms of Rule 7 of the Labour Court Rules, read with paragraph 16.2 of the repealed Practice Manual of this Court. The review application was archived after the applicant failed to comply with the prescribed timelines for prosecution.
- [2] The application is opposed by the fifth respondent (erstwhile employees). The erstwhile employees argue that the applicant failed to prosecute its review diligently, breached the repealed Practice Manual for nearly two years, and gave inadequate reasons for prolonged delays.
- [3] They claim the Applicant's conduct is an abuse of process, causing prejudice to indigent respondents, while any prejudice to the Applicant is self-inflicted. They further assert the review has no prospects of success and seeks dismissal with costs.

Background

- [4] Ekurhuleni launched a review application on 17 December 2019, challenging the arbitration award issued under the auspices of the first respondent, the South African Local Government Bargaining Council (SALGBC), under case number GPD 071708.
- [5] In the award, dated 15 November 2019, it was found that the dismissal of 286 employees was both procedurally and substantively unfair and ordered their reinstatement and compensation.
- [6] The review application was served on the erstwhile employees on 13 December 2019 and filed in Court on 17 December 2019

Discussion

- [7] In *Samuels*,¹ the Labour Appeal Court stated that an application to reinstate a review application is akin to an application for condonation for failure to comply with the Rules of the Court, and that an applicant thereto must demonstrate good cause. The Court has a judicial discretion to determine whether good cause is present, based on fairness and an objective assessment of all relevant facts, including the degree of lateness, the explanation provided, prospects of success, and the importance of the case.
- [8] These factors are interrelated and not individually decisive, except that without prospects of success, condonation is pointless. A rigid rule would undermine the flexibility required. Thus, a slight delay with a good explanation may offset weak prospects, while strong prospects and the significance of the matter may justify a long delay. Moreover, the erstwhile employees' interest in finality must also be considered.²

Degree of lateness

- [9] It is well-established that an excessively long delay with no valid explanation makes it unnecessary to even consider prospects of success. This is true even if a matter may be important to the applicant, that factor carries little weight where the delay is extreme and the explanation amounts to none. In such circumstances, good cause for condonation cannot be established, and the application must fail.³
- [10] In this case, Ekurhuleni contended that the relevant timeframe is the six months of inactivity in terms of paragraph 16.1 and the twelve months for the filing of the complete pleadings in terms of paragraph 11.27 of the Practice Manual. This contention is incorrect. This is because Ekurhuleni confirmed that on

¹ *Samuels v Old Mutual Bank* [2017] ZALAC 10; [2017] 7 BLLR 681 (LAC); (2017) 38 ILJ 1790 (LAC) at para 17.

² *Melane v Santam Insurance Co. Ltd* 1962 (4) SA 531 (A) at 532B – E.

³ *Moila v Shai N.O. and Others* (2007) 28 ILJ 1028 (LAC) at para 34.

18 June 2021, the SALBC had filed the missing portions of the record with the Court. The revival application was filed on 7 March 2022.

- [11] Recently, the Labour Appeal Court in *Gololo*⁴ held that a holistic reading of the Practice Manual is required, notably paragraph 11.2.7, which stipulates the automatic archiving of review applications where all requisite documents are not filed within 12 months of the application's initiation. Unlike paragraph 16.1, paragraph 11.2.7 imposes no obligation on the Registrar to act, but rather, the failure of a party to comply with the prescribed timeframe results in the application acquiring archived status, necessitating judicial intervention for its revival.
- [12] It must be accepted that this is equally applicable to paragraph 11.2.3 of the repealed Practice Manual. Consequently, the fifth respondent's filing of the notice to archive on 22 October 2021, together with the subsequent court order issued on 16 November 2021, were rendered academic. By that juncture, the review application had, by law, in accordance with paragraph 11.2.3 of the repealed Practice Manual, been deemed withdrawn as of 10 September 2021. This implies that, even on the assumption that the period contemplated in paragraph 11.2.2 of the repealed Practice Manual for the filing of the complete record expired on 6 June 2021, the review application would nonetheless have been deemed withdrawn on 10 September 2021 by operation of law, in accordance with paragraph 11.2.3 of the repealed Practice Manual. The delay between the SALGBC's filing of the missing record and the institution of the present application amounts to approximately 181 court days, being a period of eight months and fifteen days.
- [13] The periods of delay are manifestly excessive to the extreme. This is in circumstances where the Practice Manual in paragraph 11.2.7 deems review applications inherently urgent and contemplates that all documents in terms of the Rules must be filed within 12 months of the filing of the review. The period

⁴ *Gololo v Limpopo Department Economic Development Environment and Tourism and Others* [2025] ZALAC 30; (2025) 46 ILJ 1895 (LAC); [2025] 9 BLLR 925 (LAC) at para 8.

between the filing of the review on 17 December 2019 and the filing of this application on 18 June 2021 is 376 days or 18 months and three days. Therefore, this case calls for a full, accurate and detailed explanation for the delay from 60 days from 18 December 2019 or 60 days from 18 June 2021. Either period is excessive to the extreme.

Explanation

- [14] It is well-established that an applicant seeking condonation must provide a reasonable explanation that accounts for the entire period of delay.⁵ Where the delay is inordinate and the explanation proffered is either absent or so deficient as to amount to no explanation, condonation cannot be granted. In such circumstances, it is unnecessary to consider the prospects of success as good cause has not been established.⁶
- [15] The explanation proffered for the delay is that after launching the review application in December 2019, the Applicant collected the record on 18 December 2019. In January 2020, the transcriber was appointed. On 9 March 2020, the transcription was completed.
- [16] It is alleged that when drafting the supplementary affidavit, it was discovered that the record was incomplete, missing crucial portions of evidence and the jurisdictional ruling. This prompted a series of steps to obtain the missing parts. On 18 June 2020, the applicant wrote to the SALGBC requesting the missing recordings, followed by further letters on 30 September 2020 and 23 October 2020. The SALGBC responded on 26 October 2020, merely stating that the request had been referred to the regional secretary, but no substantive resolution was provided.
- [17] During this period, the Applicant also engaged the fifth respondent's attorneys to assist with the recordings. On 22 September 2020, the attorneys confirmed they

⁵ *Van Wyk v Unitas Hospital and Others* 2008 (4) BCLR 442 (CC) at para 22.

⁶ *Moila v Shai N.O. and Others* (2007) 28 ILJ 1028 (LAC) at para 34.

had the recordings and offered to provide them. After continued follow-ups, including letters and calls, a flash drive was collected on 25 May 2021, but the files could not be opened. Eventually, on 18 June 2021, the SALGBC confirmed that it had filed the missing portions of the record with the Court on 1 March 2022. The applicant argues that these delays were largely beyond its control, compounded by COVID-19 movement restrictions and its efforts to avoid unnecessary litigation costs by not prematurely launching an application to compel or reconstruct the record.

[18] The erstwhile employees oppose the explanation by Ekurhuleni on several grounds. They argue that the applicant failed to prosecute its review diligently and is almost two years out of compliance with the Court's Practice Manual. The applicant did not file the record within the prescribed 60-day period and never sought an extension, as required by paragraph 11.2.3. Its explanation for the delay is inadequate and does not cover the entire period of the default, with long gaps of inactivity left unexplained. The erstwhile employees contend that Ekurhuleni's conduct reflects a disregard for the rules and an attempt to frustrate the enforcement of the arbitration award, amounting to an abuse of process.

[19] It is evident from the outset that, save for a bare assertion attributing the delay in part to Covid-19 restrictions, the applicant has failed to demonstrate the manner in which such restrictions materially impeded compliance with the prescribed timeframes. This omission is material, as condonation is not granted as of right; rather, an applicant bears the onus to furnish a comprehensive and cogent explanation for the delay, detailing its causes and consequences, to enable the Court to properly assess accountability. Where non-compliance pertains to time limits, the applicant must specify the relevant dates, the duration of the delay, and the extent of any impediments encountered.⁷ It is, therefore, insufficient for Ekurhuleni to merely assert that Covid-19 restrictions occasioned the delay without articulating with precision the specific periods, manner, and reasons for such impediment. Consequently, the explanation premised on the restrictions

⁷ *Uitenhage Transitional Local Council v South African Revenue Service* 2004 (1) SA 292 (SCA) at para 6.

falls to be rejected as inadequate, unsatisfactory, and unreasonable, owing to its lack of particularity.

- [20] It must be accepted that the explanation advanced by Ekurhuleni is inadequate and scant, with significant periods remaining unexplained. The contention by the erstwhile employees is correct that, during the initial stages, Ekurhuleni failed to seek an indulgence or extension as contemplated in paragraph 11.2 of the repealed Practice Manual of this Court. This omission is material because, by the time the initial transcription was completed, 56 of the 60 days prescribed for filing the record had elapsed, creating urgency for compliance. Notwithstanding this, there is no discernible activity until 18 June 2020, when Ekurhuleni addressed correspondence to the SALGBC, reflecting an additional delay of 68 days. The erstwhile employees are correct that this constitutes an extensive and unexplained lapse.
- [21] There is a further period of 73 days between the date on which Ekurhuleni addressed correspondence to the SALGBC and 30 September 2020, when a follow-up request was made. This, too, constitutes an extensive and unexplained delay. More concerning is that, on 22 September 2020, Ekurhuleni was informed that the erstwhile employees' attorneys of record had a copy of the missing record. Other than a single follow-up email on 23 October 2020, there is no indication that Ekurhuleni took any active steps to secure the missing record. Ultimately, the record was delivered to Ekurhuleni by the erstwhile employees' attorneys on 25 May 2021, reflecting a further period of 146 days of inactivity.
- [22] Furthermore, it was only on 18 June 2021 that Ekurhuleni advised the parties that the record received from the fifth respondent was inaccessible or defective. This date coincides with the filing of the additional record by the SALGBC. These constitute further delays in circumstances where the record had long been due. More troubling is that the complete record was not filed until after the erstwhile employees filed a notice to archive the review application.

- [23] Ekurhuleni contends that this was merely a period of four months from the date on which the SALGBC filed the complete record. This contention is clearly self-serving, given that the period amounts to 89 days, notwithstanding that Ekurhuleni was afforded 60 days to file the record. The delays do not end there; the present application was only filed on 7 March 2022, representing a further lapse of 94 days from the date of the notice to archive.
- [24] To describe Ekurhuleni's conduct in prosecuting the review as lax would be an understatement. This is particularly so given that the delay between the initial filing of the incomplete record by SALGBC and the filing of the present application spans 556 days. This is in circumstances where an applicant is afforded 60 days to comply. Expressed differently, the delay amounts to twenty-six and a half months, or approximately two years and two months.
- [25] It is equally correct, as contended by the erstwhile employees, that the explanation advanced by the applicant is devoid of any account for the numerous and protracted delays. Furthermore, no justification is provided as to why the applicant required persistent prompting by the former employees at every stage, notwithstanding that the obligation to prosecute and finalise the review application rested squarely upon the applicant. It is also significant that, despite being legally represented at all material times, the applicant failed to exercise due diligence in complying with the applicable Rules.

Prejudice

- [26] Ekurhuleni contends that the assessment of prejudice must be undertaken with due regard to the respective rights of the parties and the broader public interest. While conceding that the former employees enjoy a right to the expeditious resolution of disputes, the municipality submits that such a right must be weighed against its own constitutional entitlement to have the matter adjudicated on its merits rather than disposed of on purely technical grounds. It further avers that the dismissal of the review application solely on account of the file having been

archived would amount to a denial of its right of access to courts as guaranteed under section 34 of the Constitution.

- [27] Ekurhuleni underscores that the arbitration award carries substantial financial consequences and that its enforcement, absent judicial scrutiny, would constitute an improper expenditure of public funds, thereby adversely impacting service delivery. The municipality further contends that the delay in prosecuting the review was not attributable solely to its conduct but was occasioned in significant part by SALGBC's failure to furnish a complete record and by delays on the part of the fifth respondent's legal representatives. It avers that it undertook reasonable measures to procure the outstanding portions of the record and submits that any prejudice alleged by the respondents is self-induced, in that they elected to await the archiving of the matter rather than invoking judicial intervention to compel compliance.
- [28] Finally, the Municipality of Ekurhuleni frames the issue of prejudice within the principles of legality and justice, contending that permitting an allegedly unlawful arbitration award to remain extant would erode the integrity of the dispute resolution process and undermine the development of sound jurisprudence. It concludes that the prejudice it stands to suffer outweighs that of the respondents, as it faces the prospect of being bound by an award it regards as invalid, a consequence which, in its submission, would have a far-reaching impact on the public interest as opposed to the comparatively limited effect on the individual respondents.
- [29] The fifth respondent vigorously opposes the retrieval application, contending that its grant would occasion severe prejudice and subvert the principle of expeditious dispute resolution enshrined in the Labour Relations Act. The respondent emphasises that the municipality has exhibited excessive dilatoriness, having failed to prosecute its review application for a period approaching two years without furnishing a comprehensive and satisfactory explanation for each interval of delay. It is further submitted that the Practice Manual is designed to prevent

such abuse of process and to ensure that litigants do not thwart the enforcement of arbitration awards through protracted inaction.

- [30] The erstwhile employees assert a clear and compelling right to finality, particularly given their status as indigent individuals who have already incurred unnecessary costs in resisting what they characterise as a meritless retrieval application. They further contend that any prejudice alleged by the municipality is self-created, arising from its failure to adhere to explicit procedural obligations, including the requirement to file the record within 60 days or to seek an extension from the Judge President. The respondents maintain that the municipality's invocation of public interest and service delivery considerations is a hollow justification that cannot supersede the imperative of compliance with the Rules of Court. Therefore, allowing the retrieval would perpetuate uncertainty and delay, contrary to the LRA's objective of speedy dispute resolution. In their view, the balance of convenience and the interests of justice strongly favours dismissing the application and upholding the archived status of the review.
- [31] The contention advanced by the erstwhile employees regarding the existence of prejudice is well-founded and warrants acceptance. Such prejudice becomes evident when assessed in light of the primary objectives underpinning the LRA. It is material to note that statutory time-bar provisions serve a legitimate purpose and enjoy constitutional sanction. Their function is to safeguard the expeditious resolution of disputes and to prevent undue delay in proceedings occasioned by an applicant's negligent inaction, particularly where no impediments exist to the timely institution of legal proceedings.⁸
- [32] The underlying rationale for limitation provisions is firmly anchored in considerations of public policy and is premised upon two cardinal principles: first, the State's interest in ensuring the finality of litigation and preventing perpetual uncertainty; and second, the maxim *vigilantibus non dormientibus iura subveniunt*, the law aids the vigilant, not those who slumber on their rights. Such

⁸ *Mtokonya v Minister of Police* [2017] ZACC 33; 2017 (11) BCLR 1443 (CC); 2018 (5) SA 22 (CC) at para 144.

provisions serve to protect defendants from the prejudice inherent in adjudicating claims where material facts have become obscured by the passage of time, thereby promoting procedural fairness and the efficient administration of justice through the timely institution of proceedings. However, these imperatives must be judiciously balanced against the applicant's entitlement to access courts and the rights enshrined in section 34 of the Constitution.⁹

- [33] It must be accepted, as contended by the erstwhile employees, that any limitation of the applicant's rights is self-induced. There exists no cogent or discernible reason why the applicant could not have acted with expedition in securing the missing record. On its own version, the applicant elected, of its own volition and without regard to the former employees' legitimate interest in finality, not to invoke the pre-emptive measures available under the repealed Practice Manual or the Rules, citing financial considerations. Such an approach cannot be sanctioned, as it would engender unilateral and selective adherence to the Rules, thereby undermining the integrity of the proceedings and constituting an abuse of process.
- [34] The applicant was afforded ample opportunity to achieve finality by prosecuting the review within the strict timeframes prescribed by the Rules and the now-repealed Practice Manual. In the interim, the erstwhile employees have remained in a state of vulnerability, dependent upon the applicant's diligence to advance the review and thereby give effect to the statutory purpose of promoting expeditious dispute resolution. It is therefore inescapable that the applicant bears responsibility for its own prejudice, having failed to prosecute its review rights diligently and having provided no satisfactory or reasonable explanation for its dilatoriness. Accordingly, the dictates of fairness do not justify the relaxation of the time-bar provisions.

⁹ *Mtokonya v Minister of Police Ibid* at paras 145 – 146.

Prospects of success

- [35] Ekurhuleni argues that it has excellent prospects of success in the review application. It contends that the entire arbitration proceedings before the Bargaining Council were a nullity because the council lacked jurisdiction to determine the dispute. This jurisdictional defect, according to Ekurhuleni, is a decisive factor that should weigh heavily in favour of granting the retrieval application. To support its position, Ekurhuleni refers to the Constitutional Court's guidance in *Steenkamp*,¹⁰ which emphasised that condonation and related relief must align with the interests of justice, considering factors such as the nature of the relief sought, the extent and cause of the delay, its effect on the administration of justice, the reasonableness of the explanation, the importance of the issue, and the prospects of success. Ekurhuleni argues that these considerations favour its case because the jurisdictional challenge is fundamental and, if upheld, would render the arbitration award invalid.
- [36] The erstwhile employees argue that Ekurhuleni has no reasonable prospects of success in the review application and that this is a critical factor against granting the retrieval. They emphasise that the municipality failed to challenge the jurisdictional ruling within the prescribed six-week period after it was issued in July 2018. Instead, Ekurhuleni proceeded with arbitration and only later sought to review both the jurisdictional ruling and the award without providing any substantive basis or evidence to show that no employment relationship existed. According to the erstwhile employees, the only uncontested evidence before the court is that they were employed by Ekurhuleni from 2002 until their dismissal in May 2010, which supports the arbitrator's finding of jurisdiction.
- [37] They further contend that the arbitration award, which declared the dismissals substantively and procedurally unfair, was properly made and that Ekurhuleni has not demonstrated any cogent grounds for review. The contention is that the explanation for its delay is inadequate and fails to cover the entire period of

¹⁰ *Steenkamp and Others v Edcon Limited* [2019] ZACC 17; 2019 (7) BCLR 826 (CC); (2019) 40 ILJ 1731 (CC); [2019] 11 BLLR 1189 (CC).

default, which, under established case law, excludes the granting of condonation regardless of prospects on the merits. The erstwhile employees argue that the review application is effectively doomed because Ekurhuleni ignored clear procedural obligations and now seeks indulgence without compelling justification. In their view, the interests of justice and the principle of expeditious dispute resolution under the LRA require that the retrieval application be dismissed, as allowing it would reward dilatory conduct and undermine finality.

- [38] Even assuming, *arguendo*, that the review application enjoys reasonable prospects of success on account of the alleged irregularities in the arbitration proceedings, the retrieval application nevertheless falls to be dismissed. The alleged irregularities relate to the absence of jurisdiction arising from non-compliance with the mandatory formal requirements for the referral of a dispute to SALGBC. Moreover, it was argued that it was significant that the principal dispute was resolved through a settlement agreement concluded between the parties, and that the remedy awarded by the Arbitrator was manifestly disproportionate. Specifically, the Arbitrator ordered reinstatement notwithstanding that the applicants were employed on fixed-term contracts which had, by that stage, lawfully expired.
- [39] While it may be conceded that the review application arguably enjoys strong prospects of success, given the alleged jurisdictional irregularity and the nature of the remedy awarded, this factor is not dispositive. In exercising its discretion, the Court is enjoined to weigh such prospects against all other relevant considerations in determining whether the interests of justice favour the granting or refusal of condonation.
- [40] Beyond the excessive delay and the wholly inadequate, unsatisfactory, and unreasonable explanation proffered, the erstwhile correctly contends that the interests of justice require due regard to the primary objectives of the LRA. These objectives underscore the imperative that labour disputes be resolved expeditiously to preserve industrial peace and economic stability. Public interest,

therefore, demands that parties prosecute such matters with diligence and promptitude.¹¹

- [41] Consequently, it must be affirmed that courts should seldom entertain belated applications unless such matters implicate significant questions of law or constitutional principle. This approach is necessitated by the imperative of strict compliance with prescribed timeframes, which are integral to the prompt resolution of labour disputes. The historical context is instructive: the previous legislative framework under the old LRA was characterised by uncertainty, inefficiency, and prohibitive costs. In contrast, the current LRA introduced a streamlined dispute-resolution mechanism designed to achieve expeditious outcomes. Therefore, delays in prosecuting labour disputes undermine this statutory purpose, as protracted litigation operates as a double-edged sword, prejudicing employees who remain without income and employers who may be compelled to reinstate employees after an extended lapse of time.¹²
- [42] It is well established that the expeditious resolution of labour disputes constitutes a core objective of the LRA. To give effect to this purpose, the LRA prescribes strict time limits for the institution of applications, subject to the Court's discretion to grant condonation in exceptional circumstances. While the general principles governing condonation apply, labour-specific considerations impose a heightened standard. In this context, explanations for non-compliance must be compelling; the defect complained of must be sufficiently serious to occasion injustice; and any delay must not be deliberate or indicative of disregard for the statutory imperative of prompt dispute resolution.¹³
- [43] Flowing from the foregoing, it must be accepted that even excellent prospects of success cannot, in themselves, outweigh the primary objectives of LRA. In determining applications for condonation, the Court is required to weigh all

¹¹ *National Education Health & Allied Workers Union (NEHAWU) v University of Cape Town and Others* [2002] ZACC 27; 2003 (2) BCLR 154; 2003 (3) SA 1 (CC); (2003) 24 ILJ 95 (CC) at para 31.

¹² *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.

¹³ *Steenkamp and Others v Edcon supra* at paras 38 – 44.

relevant factors holistically, with particular emphasis on avoiding undue delays that frustrate the expeditious administration of justice and undermine the statutory imperative of prompt dispute resolution.¹⁴ It cannot be overemphasised that the erstwhile employees have endured an inordinate delay in the resolution of their dispute. The applicant's conduct has been marked by extreme laxity, and the explanation tendered for such delay is wholly inadequate. When viewed through the prism of the primary objectives of the LRA, the interests of justice do not warrant the granting of the application to retrieve the file from the archives.

- [44] In sum, in light of the foregoing, the application to retrieve the file from the archives cannot be sustained. The applicant's failure to act with diligence, coupled with an inordinate and unexplained delay, militates against the granting of condonation. While prospects of success may exist, they do not outweigh the statutory imperative of expeditious dispute resolution under the LRA. The interests of justice, viewed through the lens of fairness and public policy, demand finality in litigation and adherence to prescribed timeframes. To hold otherwise would undermine the core objectives of the LRA and perpetuate uncertainty in labour relations. Accordingly, the application falls to be dismissed.

Section 158(1)(c) application

- [45] The erstwhile employees' case is that the arbitration award issued on 15 November 2019 under case number GPD071708 should be made an order of the Court in terms of section 158(1)(c) of the LRA. The erstwhile employees argue that Ekurhuleni's review application, launched on 17 December 2019, was never prosecuted and was archived on 16 November 2021, effectively rendering it withdrawn. They contend that the enforcement of the award is necessary to give effect to their rights and prevent further prejudice, as they have been without employment or compensation since 2010.

¹⁴ *Mulaudzi v Old Mutual Life Assurance CO (South Africa) Ltd and Others* 2017 (6) SA 90 (SCA) at para 26.

- [46] Ekurhuleni argues that the arbitration is defective, unreasonable, and unenforceable, and therefore should not be made an order of the Court. It contends that the award granted relief that was impractical and beyond the arbitrator's powers, including retrospective reinstatement of employees nearly a decade after their dismissal and compensation to deceased individuals without proper joinder of their estates.
- [47] Ekurhuleni contends that it has instituted review proceedings to set aside the award and argues that the Court's practice is to hear enforcement applications together with the review, as enforcement while a review is pending would be inappropriate. As mentioned, it submits further that the award is invalid as it exceeds the arbitrator's powers and imposes obligations that are impossible to fulfil given the passage of time and the absence of available positions.
- [48] Given that the review application has lapsed and the application for its retrieval from the archives falls to be dismissed, there exists no impediment to the arbitration award being made an order of the Court.

Costs

- [49] In determining costs, the Court is guided by the principles of law and fairness. The applicant's dilatory conduct in prosecuting the review and in bringing the present application is egregious and undermines the objectives of the LRA, while prejudicing the employees' constitutional right to fair labour practices under section 23(1) of the Constitution.
- [50] Accordingly, such conduct warrants judicial censure, and the applicant must be ordered to bear the costs of this abortive application.
- [51] In the premises, the following order is made:

Order:

1. The application to retrieve the review from archives is dismissed.

2. The arbitration award dated 15 November 2019 under case number GPD071708 is made an order of the Court.
3. The applicant (Ekurhuleni) is ordered to pay the costs of both the retrieval application and the section 158 application.

M. Kumalo

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: G. Fourie SC, with Z. Ngwenya, instructed by Lebea Inc. Attorneys.

For the Fifth Respondent: Cliffe Dekker Hofmeyr Incorporated.

LABOUR COURT