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THE LABOUR COURT OF SOUTH AFRICA

(HELD IN JOHANNESBURG)

Not Reportable

Case No: JR1637/22

In the matter between:

LIVHUWANI KWINDA

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

RAESETJA SUZANNE MOTHAPO N.O.

Second Respondent

SHOPRITE CHECKERS (PTY) LTD

Third Respondent

Heard: 30 July 2025

Delivered: 03 December 2025

JUDGMENT

SASS, AJ

Introduction

- [1] This is an application to revive/reinstate the applicant's review application which is deemed withdrawn and accordingly archived by the Registrar of this

Court (the revival/reinstatement application) by operation of paragraph 11.2.3 of the Practice Manual of this Court (the Practice Manual) and/or section 145(5) of the Labour Relations Act No. 66 of 1995, as amended (the LRA).

- [2] The third respondent has opposed the revival/reinstatement application. In this regard, on or about 13 July 2023, it delivered the answering affidavit of Charlene Naicker deposed to on 7 July 2023 (the revival/reinstatement answering affidavit-2023).
- [3] Notwithstanding such opposition, the matter was enrolled for hearing on the unopposed motion court roll for 30 July 2025 and without the court file being indexed and paginated or the parties delivering any heads of argument. The applicant also did not deliver a replying affidavit.

The applicant's review application

- [4] The applicant launched instituted the review application to which the revival/reinstatement application relates on or about 27 July 2022 (the review application).
- [5] The Notice in terms of Rule 7A(5) of this Court's Rules (as applicable at that time) was issued on or about 15 August 2022 and consequently the applicant was required to file the record of the arbitration proceedings to which the review application relates (the Record) within 60 (sixty) days of that date (i.e., within 60 days of 15 August 2022).
- [6] The applicant delivered a Notice in terms of Rule 7A8(b) on or about 29 November 2022 indicating that it stood by its Notice of Motion (dated 26 July 2022). By that date, it did not appear that the applicant had filed the Record.
- [7] Notwithstanding the non-filing of the Record, the third respondent delivered its answering affidavit opposing the review application on or about 13 December 2022 being the answering affidavit of Christine Naicker deposed to on 13 December 2022 (the review application answering affidavit-2022). In this answering affidavit, the third respondent contended, *inter alia*, that the 60-day time period for the delivery of the Record had expired on 7 November 2022

- [8] It is common cause that the applicant did not deliver the Record by 07 November 2022 or by any earlier date that it may have been due if one has regard to calculating the relevant 60-day time period from 15 August 2022. By this deadline (07 November 2022), the applicant had also failed to seek an extension of the 60-day time period as contemplated in the Practice Manual (as applicable at that time).
- [9] It appears that between 07 November 2022 and 07 June 2023, the third respondent approached this Court for an order in the following terms – *‘In terms of paragraph 11.2.3 of the Practice Manual, the review application is deemed to have been withdrawn’*. An order was made to this effect by Honourable Acting Justice Sethene on or about 07 June 2023. Honourable Acting Justice Sethene also issued the following Judge’s Direction on or about 07 June 2023 – *‘Application Deemed Withdrawn’*.

The applicant’s revival/reinstatement application

- [10] Subsequent to the order of 7 June 2023, the applicant launched the revival/reinstatement application on or about 23 June 2023. The third respondent opposed the revival/reinstatement application and delivered its answering affidavit opposing same on or about 13 July 2023 (i.e., the revival/reinstatement application answering affidavit-2023). In that answering affidavit, the third respondent confirmed that the applicant had delivered her revival/reinstatement application on 23 June 2023.
- [11] I was not able to locate the applicant’s revival/reinstatement application in the court file, served on or about 23 June 2023, or at any time prior to 13 July 2023 (when the third respondent delivered its answering affidavit opposing the applicant’s revival/reinstatement application). The applicant needs to file a copy of that specific application at this Court and ensure that a copy thereof is placed in the court file.
- [12] While no affidavit purporting to be the applicant’s replying affidavit in the revival/reinstatement application *per se* has been delivered yet, the applicant has delivered a number of other documents subsequent to 13 July 2023, all apparently dated after 13 July 2023, purporting to be a range of documents

relating to the revival/reinstatement application (the applicant's further revival/reinstatement documents). I turn to briefly address some of the applicant's further revival/reinstatement documents.

The applicant's further revival/reinstatement documents

- [13] On or about 23 June 2023, the applicant appears to have filed a service affidavit at this Court (deposed to by the applicant on or about 23 June 2023). This service affidavit purports to serve a number of documents on the CCMA, including, *inter alia*, the transcript of the arbitration proceedings to which the review application relates. I was unable to locate any documents in the court file to confirm service of the Record on the third respondent. That being said, the court file did contain a transcript of the arbitration proceedings held on 6 July 2022 under CCMA case reference number GATW3928-22, which is the CCMA case reference number under which the arbitration award was made to which the review application relates. A transcriber's certificate is attached to this transcript from transcriptionist Lydia Mwale dated 03 October 2022 (from PML Transcribers at 92 Juta Street, Braamfontein).
- [14] On or about 28 July 2023, the applicant appears to have filed a service affidavit at this Court (deposed to by the applicant on or about 28 July 2023), which purports to have served on the CCMA a number of documents, including, *inter alia*, the following: (i) some form of notice titled 'Amendment'; (ii) a document titled 'Notice of Motion [Application to Reinstate the Applicant's Review Application]'; and (iii) a further document titled 'Supporting Affidavit'.
- a. All of these documents purport to be deposed to before a commissioner of oaths in Atteridgeville at the R.T.E. Internet Café.
 - b. In the document titled 'Notice of Motion [Application to Reinstate the Applicant's Review Application]', the applicant indicates, *inter alia*, that
 - i. on 12 September 2022, the applicant received a call from the Labour Court indicating that "*the record/cd are (sic) available*";

- ii. on 3 October 2022, the applicant collected the recording/cd and decided to take it to a transcriptionist, Lydia Mwale; and
- iii. on 11 November 2022, the transcription was collected from the transcriptionist and sent by email to the third respondent's attorney at [w\[...\]](#) but because that email address was blocked, the transcript was sent by post to 4[...] L[...] Drive, H[...], Sandton 2196.

c. Having regard to the pleadings, notices etc. delivered on the third respondent's behalf, the email address [w\[...\]](#) does not appear to be the correct email address for the third respondent's attorney (it appears to be [w\[...\]](#)), which is probably why the email was blocked.

[15] On or about 05 March 2024, a service affidavit deposed to by applicant appears to have been filed purporting to serve the following document on the third respondent's legal representatives – Notice of Motion Section 158(1)(g), along with a document titled 'Direction' in which the applicant requests direction from this Court on the way forward.

[16] On or about 06 May 2024, a service affidavit deposed to by the applicant appears to have been filed purporting to serve the following document on the third respondent's legal representatives – Amendment of CCMA Rules and Pre-Trial, along with a document titled 'Amendment of CCMA Rules' in which the applicant purports to reserve the right to supplement an affidavit upon receipt of the record of the arbitration.

[17] On or about 23 May 2024, a service affidavit deposed to by the applicant appears to have been filed purporting to serve the following document on the third respondent's legal representatives – Notice of Motion (4 pages), along with a document titled 'Clarity'. The applicant deposed to this service affidavit

[18] On or about 21 May 2025, the applicant appears to have filed the following documents: (i) a document titled 'set down' which requests a set down date; (ii) a document titled 'notice of motion – reinstatement' which purports to launch a further reinstatement application but which is not supported by any

affidavit and which also does not appear to satisfy the requirements of a notice of motion; and (iii) a service affidavit deposed to by the applicant and purporting to service 51 (fifty-one) pages of documents on the third respondent's legal representatives.

- [19] On or about 9 June 2025, the applicant appears to have filed a document titled 'Index of Pleadings' referring to a set down document, a notice of motion – reinstatement and proof of service.

Enrolment and proceedings on 30 July 2025

- [20] The applicant requested the enrolment of the revival/reinstatement application on or about 29 May 2025, after which the Registrar of this Court then enrolled the revival/reinstatement application (on or about 18 June 2025) for hearing on 30 July 2025 on the unopposed motion roll (notwithstanding the revival/reinstatement application being opposed).
- [21] The applicant and the third respondent both failed to deliver a Practice Note or their respective Heads of Argument in respect of the opposed revival/reinstatement application on or before 30 July 2025.
- [22] During argument on 30 July 2025, the third respondent's legal representative (Ms Maitland) made mention of there being 3 (three) revival/reinstatement applications brought by the applicant albeit all under the same case number. Ms Maitland indicated that the first had been received by the third respondent on or about 23 June 2023, the second had been received by the third respondent on or about 28 July 2023, and the third had been received by the third respondent on or about 18 June 2025. Some or all of these appear to form part of the applicant's further revival/reinstatement documents (as described above).
- [23] Subsequent to the matter being heard on 30 July 2025, the applicant filed the following documents at this Court:

- a. on or about 20 August 2025 –

- i. a purported answering affidavit, purportedly deposed to by Mahlomola Ledwaba before a commissioner of oaths in Pretoria East;
 - ii. a service affidavit, deposed to by the applicant on 20 August 2025, serving an 18 (eighteen) page notice of motion on the third respondent's legal representatives; and
- b. on or about 2 September 2025, the applicant's heads of argument.

[24] Notwithstanding the explanation tendered by the applicant in relation to the service of the transcript and/or the documentary record of the arbitration proceedings on the third respondent and/or any debate about whether the explanation tendered forms part of evidence properly before this Court courtesy of affidavits deposed to in compliance with the Justices of the Peace and Commissioners of Oaths Act No. 16 of 1963, as at 07 June 2023, there is an order of this Court which confirms that the review application is deemed to be withdrawn (and archived), thus necessitating a revival/rescission application.

Analysis and further conduct of this matter

[25] In my assessment and as canvassed with the parties during the proceedings on 30 July 2025, the opposed revival/reinstatement application is not ripe to be heard for a number of reasons (as is apparent from the foregoing). I briefly address some of these reasons below.

[26] Firstly, the applicant did not appear to have received the third respondent's Revival/Reinstatement Applicant Answering Affidavit. The third respondent submitted that the Revival/Reinstatement Application Answering Affidavit had been served on the applicant and referred the Court to its service affidavit in this regard. Notwithstanding the aforementioned, the third respondent's legal representative agreed to provide the applicant's representative with a copy of the revival/reinstatement application answering affidavit at the conclusion of proceedings on 30 July 2025. The parties' representative also agreed that they would exchange their respective contact details with each other at the

conclusion of the proceedings on 30 July 2025 and that the contact details would also be provided to the Court so that it could be reflected in any order which this Court may make in respect of the further conduct of the matter.

- [27] Secondly, the court file had not been indexed and paginated and was in a somewhat disorganised state. Besides impairing the efficient hearing of the matter, this also made it difficult to determine which of the many affidavits, notices, documents etc. in the court file were relevant to the hearing of the revival/reinstatement application. An example of the sort of uncertainty and issues generated by this, was the third respondent's view that there were three different reinstatement applications before the Court and not just one.
- [28] Thirdly, the parties failed to file a Practice Note. This resulted in the Court lacking certain essential information necessary to ensure an efficient and expedited hearing of the matter – for example, the Court did not have the necessary clarity from the parties in respect of which parts of the court papers are most important for it to consider as part of the revival/reinstatement application.
- [29] Fourthly, the parties failed to file heads of argument. Heads of argument would assist the Court greatly in an opposed application of this nature by presenting a clear and concise summary of each party's legal argument, identifying the key issues for the Court to decide, and to explain each party's position on the relevant facts and law.
- [30] Fifthly, a copy of the applicant's revival/reinstatement application, which it served on the third respondent on or before 23 June 2023, was not in the court file.
- [31] In light of the above, the parties agreed that the gearing of the revival/reinstatement application ought to be postponed for re-enrolment by the Registrar on a later date on the Court's opposed motion court roll, subject to any further directions that this Court deems appropriate and necessary to ensure the expeditious and efficient finalisation of the revival/reinstatement application.

[32] In the circumstances, I make the following order:

Order

1. The applicant is required to re-file a copy of its revival/reinstatement application at the Court, which it had served on the third respondent on or before 23 June 2023, within 20 (twenty) court days of the date of this order.
2. The third respondent is required to re-serve a copy of its answering affidavit opposing the revival/reinstatement application (being the answering affidavit deposed to by Charleen Naicker on 7 July 2023) within 20 (twenty) court days of the date of this order if it did not do so at the conclusion of the proceedings on 30 July 2025.
3. The applicant is to deliver any replying affidavit in response to the answering affidavit referred to in paragraph 2 above within 5 (five) court days of receiving that answering affidavit.
4. The applicant is required to index and paginate the court file once the applicant and the third respondent have complied with paragraphs 1, 2 and 3 above, or the relevant time periods as referred to those paragraphs have lapsed.
5. Within 15 (fifteen) days of the date on which the applicant has indexed and paginated the court file in compliance with paragraph 4 above, the applicant is required to deliver his heads of argument.
6. Subsequent to the applicant delivering his heads of argument, the Registrar of this Court is required to enrol the opposed revival/reinstatement application for hearing on the opposed motion court roll.
7. The third respondent is required to deliver its heads of argument no later than 15 (fifteen) days prior to the hearing of the opposed revival/reinstatement application (i.e., the set down date).

8. The applicant is required to deliver a practice note, in compliance with Rule 31 of the Rules of this Court, no later than 5 (five) days prior to the hearing of the opposed revival/reinstatement application.
9. For the purposes of serving any affidavits, notices, documents etc. going forward in this matter, the parties are required to use the following contact details:
 - a. For the applicant – email addresses: [m\[...\]](#) and [k\[...\]](#); and telephone numbers: 0[...] and 0[...].
 - b. For the third respondent – email addresses: M[...] and [S\[...\]](#); and telephone numbers: 0[...] and 0[...].
10. There is no order as to costs.

Mendel Sass
Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant: Trade Union Official Mr M Ledwaba (Academic and Professional Staff Association).

For the third respondent: Attorney Ms S Maitland of Wilken Inc.