



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: C236/2024

In the matter between:

BWAWUSA o.b.o GERALD KIMISHI SETI

Applicant

and

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Respondent

MACJON MAARMAN N.O.

Second Respondent

LANCEWOOD FARM (PTY) LTD

Third Respondent

Heard: 16 October 2025

Delivered: 15 January 2026

**Summary: Review application - review application late - record late -
application for condonation - reinstatement**

JUDGMENT

MKHATSHWA, AJIntroduction

[1] This is an opposed application:

- for condonation for the late filing and / or service of the Transcribed Record of the arbitration award of the Second Respondent issued on the 05th of April 2024 in his capacity as an arbitrator of the First Respondent in the matter between BWAUSA OBO GERALD KHIMISHI SETI and LANCEWOOD FARM (PTY) LTD under case number WEGE621-2023, in terms of which he dismissed the Applicant's claim and found that the Third Respondent had not unfairly dismissed the Applicant.
- to reinstate the Applicant's Review Application under case number C236/2024.

[2] The Building, Wood and Allied Workers Union of South Africa (BWAUSA) is the Applicant, acting on behalf of the employee, Mr Gerald Khimishi Seti.

Background facts

[3] The Applicant avers that it served what it calls a "homebrewed" transcribed record on 21 August 2024 via email on the Registrar and the Respondents. On 05 September 2024, the Third Respondent's attorneys of record questioned the authenticity of the transcribed record and also asked for all documentation and CDs from the Registrar so they could construct their own record. On 06 September 2024 the Applicant responded and indicated the status of its dire financial position and what assistance it could provide to secure a correct transcription. On 10 September 2024, the Applicant alleges that it sent all the documentation and records requested by the Third Respondent's attorneys of record.

[4] On 12 November 2024 the Third Respondent's attorneys of record acknowledged receipt of the documentation and records. On 01 November 2024 the Third Respondent's attorneys of record advised the Applicant that the review application had lapsed and therefore deemed to have been withdrawn.

The Applicant states that on 04 November 2024, it sought an indulgence for time "*to fix the errors*" and to comply with the Rules for the Conduct of Proceedings in the Labour Court (the rules). On 06 November 2024 the Third Respondent's attorneys of record advised the Applicant to bring an application to reinstate the review application as they could not allow the Applicant to file the transcribed record without a court order but also that the application for reinstatement would be opposed.

- [5] According to the Applicant, the reinstatement application was 54 days late. The Applicant alleges that the Third Respondent has not suffered significant prejudice because of the delay. Further that the Third Respondent has been fully engaged in the process and has had the opportunity to prepare its version of the transcribed record.
- [6] Regarding the prospects of success, the Applicant argues that the Second Respondent accepted evidence that was objected to as hearsay. Also, that the Second Respondent failed to determine the reasonableness of the management's decision to belatedly cancel leave it had already granted.
- [7] On its part the Third Respondent alleges that it received the application for condonation and the application for review on 11 June 2024 via email. This made the application approximately 25 days late.
- [8] The Third Respondent states that a previous version of the application that contained neither a case number nor a court stamp was electronically served on it on 31 May 2024. In that case the application would have been 14 days late. To this end the Third Respondent's attorneys of record advised the Applicant that the application had not been served in accordance with rule 3(1) and that it could not be considered as it did not have a case number. That the Applicant took another 11 days until 11 June 2024 to formally serve the papers, without an explanation of the delay. Further that the papers served on 11 June 2024 did not contain a court stamp and as such it was not possible to ascertain when the papers were issued.
- [9] The Third Respondent denies the explanation of the lack of funds by the Applicant, as the Applicant alleges to be the largest trade union in the building

sector in the Western Cape. According to the Third Respondent, the Applicant's legal department ought to have prepared the application.

- [10] Regarding prejudice, the Third Respondent argues that the employee continues to reside on the Third Respondent's premises since his dismissal. Further that the employee is causing disharmony among existing farm employees and that he has had an altercation with the farm's security company that has led to criminal charges. Further that his stay on the farm has caused a shortage of accommodation as his vacancy needs to be filled.
- [11] The Third Respondent states that the Applicant has failed to set out what legal errors were allegedly made by the Second Respondent. Further that the Applicant failed to state which crucial evidence was objected to as hearsay. That the employee's leave was cancelled by the Applicant upon receipt of a protected strike as the Third Respondent is a dairy farm it could not stop its operations.

Evaluation

- [12] The employee was dismissed on 08 September 2023 after a disciplinary hearing. He was employed as a Farm Manager. The dismissal of the employee was upheld on 05 April 2024 in the award of the Second Respondent.
- [13] Immediately on the date of the award, the Applicant made its intention clear that it was going to bring a review application. Coincidentally it specifically made reference to the six weeks requirement to bring the application. On 31 May 2024 an unissued application was served outside of the six weeks period. It was only on 11 June 2024 that the application with a case number but without a court stamp was served.
- [14] The so-called "homebrewed" transcript was filed on 21 August 2024. The Third respondent's attorneys of record advised the Applicant that the transcript was not certified. There was no response and again on 5 September 2024 the Third Respondent's attorneys of record highlighted issues with the record. The following day the Applicant responded indicating that the entirety of the record filed by the First Respondent would be couriered.

- [15] On 10 September 2024 the Third Respondent's attorneys of record informed the Applicant that the 60 days period within which to file the record was approaching and that the Applicant was not absolved from filing the proper record. There was no response from the Applicant. The due date for the filing of the record was on 16 September 2024.
- [16] On 04 November 2024 the Applicant requested an indulgence for the late filing. On 06 November 2024 the Third Respondent's attorneys advised the Applicant to bring a reinstatement application.
- [17] The entire application in this matter is replete with serious problems. The review application was approximately 14 days out of time. There is no replying affidavit in respect of the condonation application. The application for reinstatement was approximately 54 days out of time. The Applicant did not file a notice indicating whether it stood by its notice of motion and founding affidavit. It did not file a replying affidavit in the reinstatement application. The correct transcript (properly certified) has not been filed by the Applicant with the Registrar to date. The Applicant has also not filed a record of the arbitration proceedings.
- [18] The Applicant blames a "miscommunication" for its failures, in particular with reference to the various correspondences that were exchanged between the parties.

Legal analysis

- [19] In the matter of *Saloojee and Another NNO v Minister of Community Development*¹, Steyn CJ held as follows:

"A litigant, moreover, who knows, as the applicants did, that the prescribed period has elapsed and that an application for condonation is necessary, is not entitled to hand over the matter to his attorney and then wash his hands of it. If, as here, the stage is reached where it must become obvious also to a layman that there is a protracted delay, he cannot sit passively by, without so much as directing any reminder or enquiry to his attorney...and expect to be exonerated of all blame; and if, as here, the explanation offered to this Court is patently

¹ 1965 (2) SA 135 (A) at para 141.

insufficient, he cannot be heard to claim that the insufficiency should be overlooked merely because he has left the matter entirely in the hands of his attorney. If he relies upon the ineptitude or remissness of his own attorney, he should at least explain that none of it is to be imputed to himself. That has not been done in this case.”

- [20] My sister Prinsloo J in *South African Social Security Agency v Hartley and others*², makes a distinction between a scenario where the record is available, yet the applicant has done nothing to have it transcribed and filed, and a scenario where the applicant has made serious attempts to file the record but cannot do so because the record either does not exist or is not made available.
- [21] In terms of the former Practice Manual³, sub-clauses 11.2 and 11.3 respectively read as follows:

‘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.

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.’

- [22] Sub-ule 37(13), (14), (15) and (16) of the current Rules of this court now provide that:

² (2023) 44 ILJ 1334 (LC).

³ Effective 2013. Repealed and replaced by the Rules regulating the conduct of proceedings of the Labour Court (GN50608). Effective 17 July 2024.

- “(13) The applicant must furnish the registrar and each of the other parties with a copy of the record or portion of the record, as the case may be, and a copy of the reasons filed by the person or body; provided that, should it transpire that the person or body upon whom a notice of motion is served in terms of subrule
- (2) has failed to deliver a complete record, the 60-day period contemplated in subrule (14) will commence running only once a complete record has been delivered.
- (14) Transcribed records must be delivered within 60 days of the date on which the applicant is advised by the registrar that the record has been received.
- (15) If the applicant fails to file a transcribed 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. Any consent given must be expressed in writing and filed with the registrar.
- (16) 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 35.”

[23] It was held in *Govender and Others v CCMA and Others*⁴ that the application for reinstatement requires an assessment of the applicant’s prospects of success in the review application.

[24] An example of an extreme case of tardiness, was dealt with in *Liwambano v Department of Land Affairs and Others*⁵, the applicant had for a period of four years made no effort whatsoever to have the arbitrator’s bench notes transcribed and had made no attempt to reconstruct the transcript of the evidence from inaudible, incomplete and intelligible electronic recording,

⁴ (2024) 45 ILJ 1197 (LAC).

⁵ (2012) 33 ILJ 1862 (LC).

despite the respondent employer's willingness to cooperate in the reconstruction. The application for review was dismissed as a result.

- [25] Regarding the application for condonation, the Applicant has provided scant details explaining the delay in bringing the review application itself. The absence of the record of the arbitration makes it doubly hard to understand the merits of the Applicant's case. As a result, it is impossible to determine what prospects of success if any the Applicant has in the review application.
- [26] While the delays both in the review application and in the reinstatement application are not excessive (approximately 14 days and 54 days respectively), once more it is the explanation that is not sound. A miscommunication cannot be a reason why a party does not comply with the rules of court. The Employee was employed as a Farm Manager, a fairly senior position. He should have known that he needed to hurry the Applicant along to process his case. He was initially represented by attorneys (plus Counsel) and subsequently by the Applicant. The fact that the Third Respondent's attorneys of record kept responding in writing and advising the Applicant on what steps to take to move the application forward counts against the Applicant and the employee. The Applicant knew that the time lines were approaching and that they subsequently passed for the processing of the application. Yet the Applicant paid scant regard to the requirement to comply with the rules of the court.
- [27] On the question of prejudice, the employee has effectively been "free loading" as he has enjoyed accommodation at the Third Respondent's premises way past his date of dismissal. A factor that should have spurred him and the Applicant on to process the application expeditiously. They have failed to do so. It begs the question whether the Applicant deliberately delayed the application, because the employee continues to enjoy the benefit of the Third Respondent's accommodation? Whatever the motivation, the Applicant, clearly with the full knowledge of the employee has not done much to assist the employee's case.

[28] Do the interests of justice favour the Applicant? Considering the facts of this matter and the applicable law, even the interests of justice militate against the court exercising its discretion in favour of the Applicant or the employee.

Conclusion

[29] The Applicant has not shown good cause for the granting of the application for condonation and it has failed to show good cause for the reinstatement of the review application.

[30] In the premise the following order is made:

Order

1. The application is dismissed.
2. There is no order as to costs.



M. Mkhathshwa

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Mr H Mdyogolo (BWAWUSA)

For the Third Respondent : Adv M Aggenbach

Instructed by : Brand & Van der Bergh Attorneys

LABOUR COURT