



- (1) Reportable Yes/**No**
- (2) Of interest to other Judges: Yes/**No**
- (3) Revised

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case Nr: JR 1659/17

In the matter between:

MORTY RACHABEDI

Applicant

and

UNILEVER SOUTH AFRICA (PTY) LTD

First Respondent

NATIONAL UNION OF FOOD BEVERAGE WINE SPIRITS

AND ALLIED WORKERS UNION

Second Respondent

UNILEVER SITE EMPLOYEE RELATIONS MANAGER

(IR SPECIALIST)

Third Respondent

NATIONAL UNION OF FOOD, BEVERAGE, WINE, SPIRITS

AND ALLIED WORKERS UNION'S SECRETARY GENERAL:

MR NQOBILE SHABANGU

Fourth Respondent

CCMA: RENE HUYSER

Fifth Respondent

MR JUSTICE MPARA (NUFWSAW)

Sixth Respondent

Heard: 27 February 2025

Delivered: 21 January 2026

JUDGMENT

MILO, AJ

- [1] Two condonation applications came before this Court for determination.
- [2] First, the applicant brought a condonation application for *inter alia* the late filing of a review application in terms of which the applicant seeks that the decision of the fifth respondent (the Commissioner) be reviewed and set aside, and that the applicant be reinstated retrospectively into the first respondent's employ, alternatively be paid compensation.
- [3] Second, the first respondent seeks condonation for the late delivery of (i) its answering affidavit to the applicant's condonation application (ii) its notice of notice of opposition to the applicant's statement of case and (iii) its notice of exception to the applicant's statement of case.
- [4] Both condonation applications are opposed.
- [5] Although the first respondent initially submitted that its condonation application need not be determined if the applicant's condonation failed, the Court considered it prudent to determine the first respondent's condonation application first, as the material contained in the first respondent's opposing affidavit is relevant to the assessment of the applicant's condonation application. In the interests of justice, after hearing argument on the first respondent's condonation application, the Court granted the first respondent's application for condonation. Full reasons follow below.

The papers filed by the applicant

- [6] The applicant is unrepresented. On or about 26 and 27 August 2024 he filed a review application, a statement of case and an application to condone the late delivery of those documents.
- [7] These papers are difficult to follow. They contain repetitions, formatting inconsistencies, and passages that appear to derive from multiple drafts. In assessing the matter, the Court has afforded a fair and generous indulgence to his papers and has attempted, where possible, to extract the essence of his assertions and claims, in order to do justice to the issues he raises.
- [8] Although the notice of motion in the condonation application seeks condonation for the late filing of the review application it also seeks relief that would ordinarily feature in the review application itself, such as a claim for reinstatement alternatively compensation. However, the founding affidavit goes further. It appears to raise a number of additional and disparate causes of action. These include allegations that:
- 8.1 the first respondent failed to adjust his salary grade in accordance with a recognition agreement, in alleged contravention of that agreement;
 - 8.2 he was unfairly suspended for more than twelve months in the period prior to his dismissal;
 - 8.3 he was victimised by the first respondent for exercising his rights under the recognition agreement, and that underpayments to him formed part of that alleged victimisation; and
 - 8.4 the first respondent placed his life at risk and threatened his safety.
- [9] In this regard, the founding affidavit contains broad references to rumours that the applicant was perceived as an “agent” of management, to unspecified threats to his safety, and to a concern that disclosing certain matters might

affect another case pending before this Court under another case number. These allegations are framed in general terms and are not elaborated upon.

- [10] The statement of case, dated 27 August 2024, is drafted in almost identical terms to the founding affidavit in the condonation application and repeats these allegations. Under the heading “prospects of success”, the applicant alleges that his suspension was procedurally and substantively unfair, and that his dismissal was procedurally and substantively unfair. The relief he seeks includes retrospective reinstatement, payment of allegedly outstanding earnings in terms of the recognition agreement, and more general statements such as *“I’m seeking justice”*, *“I want my matter to be heard”*, and complaints that both his union and the first respondent victimised him.
- [11] The confusion in the papers is compounded by the fact that, although the notice of motion in the condonation application seeks condonation for the late filing of the review application, the founding affidavit concludes by stating that the applicant seeks condonation for the late filing of the statement of case. It is therefore unclear from the papers whether the applicant seeks condonation for the review application, the statement of case, or both. The applicant appears to be attempting to pursue a review of a commissioner’s award upholding a dismissal as fair, while simultaneously instituting a fresh statement of case in this Court seeking retrospective reinstatement on the basis that the same dismissal that he contends was substantively and procedurally unfair, and without first having referred that dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) for conciliation. The papers do not explain how the two processes are intended to coexist, nor how the statement of case could competently proceed in the face of an extant arbitration award finding the dismissal to be fair.
- [12] In fairness to the applicant, his condonation application is considered in respect of both his review application and his statement of case.

[13] The first respondent, in turn, has delivered an answering affidavit opposing the applicant's condonation application, a notice of opposition to the statement of case, and an exception to the statement of case. As already noted, the first respondent has also applied for condonation for the late delivery of these documents.

[14] For purposes of determining the condonation applications, the following salient facts are either common cause or uncontentious:

14.1 The applicant was dismissed by the first respondent on 16 November 2016 after he had been found guilty of misconduct.

14.2 The applicant referred an unfair dismissal dispute to the CCMA in respect of his dismissal. The arbitration came before the Commissioner who specifically records in her award that although the applicant also complained about an alleged unfair suspension, no suspension dispute was before her and no findings on the fairness or otherwise of the suspension were made by the Commissioner.

14.3 In an arbitration award dated 5 April 2017, the Commissioner found that the applicant's dismissal was both substantively and procedurally fair.

14.4 On or about 1 August 2017 the applicant approached this Court and requested that a case number be allocated to him. In that request he expressly described the nature of his intended application as a "review" and identified the type of review as one brought in terms of section 145 of the LRA. A review case number (JR1659/17) was duly allocated. However, notwithstanding having initiated this process, the applicant took no active steps to prosecute the review for several years thereafter.

14.5 Although the applicant does not specify in his papers the degree of lateness it was only several years later, on or about 26 and 27 August 2024, that the applicant delivered his review application, statement of case, and condonation application. This was some seven years and 4

months after the CCMA found his dismissal to have been fair, and almost 8 years after he was dismissed by the first respondent.

- [15] The legal principles governing applications for condonation are well settled and require only a brief restatement.
- [16] Sections 158(1)(f) and 145(1A) of the Labour Relations Act¹ (LRA) empower this Court to condone the late filing of any document with, or the late referral of any dispute or application to, this Court. This Court will only do so on good cause shown by the applicant. The Court's discretion in assessing any such application must naturally be exercised judicially, and only where the applicant has laid a proper foundation for the indulgence sought.
- [17] Condonation is therefore never a mere formality. An applicant must explain the non-compliance fully and place before the Court material capable of satisfying it that the non-observance of the time limit should be excused. As the Constitutional Court held in *Grootboom v National Prosecuting Authority and another*², the explanation must be sufficiently reasonable to persuade the Court that good cause exists to excuse the non-compliance.
- [18] The starting point in the assessment of condonation applications remains the well-known passage in *Melane v Santam Insurance Co Ltd*³, where the Appellate Division identified the factors ordinarily considered in condonation applications. These are: the extent of the delay, the explanation proffered, the prospects of success, the importance of the matter, and the balance of fairness between the parties. These factors are interrelated and must be weighed together. None is decisive in isolation, although the absence of prospects of success will usually render condonation futile.
- [19] The principles in *Melane* have been applied routinely by this Court. For example, in *Academic and Professional Staff Association v Pretorius NO and*

¹ Act 66 of 1995, as amended.

² [2014] 1 BLLR 1 (CC).

³ 1962 (4) SA 531 (A) at 532C-E.

*Others*⁴ this Court listed the factors commonly considered in condonation applications as: (i) the extent of the delay; (ii) the explanation for the delay; (iii) prospects of success or the existence of a *bona fide* defence; (iv) the significance of the matter; (v) the respondent's interest in finality; (vi) inconvenience to the Court; and (vii) the general need to avoid unnecessary delays in the administration of justice.

[20] These factors do not operate as self-standing requirements. They must be assessed collectively and holistically. The Court's task is to balance the full set of considerations in a manner that accords with law and fairness.

[21] The extent of the delay is frequently a decisive consideration. As the period of non-compliance increases, so too does the obligation on an applicant to furnish a compelling and comprehensive explanation as this must be for the entire period of delay. The passage of time also has a bearing on prejudice, the reliability of evidence, the proper functioning of the dispute-resolution system, and the broader public interest in the finality of litigation.

[22] It is worth reiterating that an applicant is required to account for the entire period of delay. It is not sufficient simply to identify isolated dates or events and leave the Court to infer how they relate to the delay. As this Court observed in *Chasi v University of Johannesburg*⁵, the explanation must set out, with adequate particularity, what occurred throughout the relevant timeframe so that the Court is properly equipped to assess whether the delay was justified. A chronology without explained connections with one another and linked to a reasonable explanation for the delay in its entirety, does not amount to an acceptable explanation.

[23] Prejudice remains an important aspect of the condonation enquiry and must be assessed from the perspective of both parties. Applicants often address only the hardship they say they will suffer if condonation is refused, but that is only

⁴ (2008) 29 ILJ 318 (LC).

⁵ (J 1747/18) [2022] ZALCJHB 341 (25 November 2022).

part of the enquiry. It is incumbent on them to articulate, with sufficient clarity, not only the prejudice they allege will arise if condonation is declined, but also why the respondent will not be unfairly disadvantaged if the delay is overlooked⁶. Statutory time periods exist to afford respondents a measure of finality and certainty; condonation undermines that purpose unless the interests of justice clearly justify it.

[24] Prospects of success are a relevant part of the enquiry. Although earlier jurisprudence tended to disregard prospects where the explanation was inadequate, the Constitutional Court in *Steenkamp and Others v Edcon Ltd*⁷ confirmed that prospects should be factored into the overall assessment. While hopeless prospects may weigh decisively against condonation, and strong prospects cannot automatically cure an entirely absent explanation, they nonetheless form part of the constellation of factors to be weighed.

[25] In *Government Printing Works v Public Servants Association*⁸ the Labour Appeal Court (LAC) pointed out that prospects of success ordinarily remain a relevant part of the analysis and almost always will be considered as one of the interrelated factors in the overall assessment, even where the explanation for the delay is not entirely satisfactory. The LAC, however, was careful to note that this general approach is not without exception. While prospects of success will ordinarily form part of the overall enquiry, there exists a narrow class of cases in which the delay is so excessive, and the explanation so wholly lacking so as to be flagrant and gross, that the merits may be jettisoned⁹. However, where this is the judicial approach taken in a particular matter, this must be carefully considered and explained. In such circumstances, the interests of justice may in appropriate cases permit a court to refuse condonation irrespective of the underlying merits.

⁶ *Balmer and others v Reddam (Bedfordview) (Pty) Ltd* (2011) 32 ILJ 2121 (LC)

⁷ [2019] 7 BCLR 826 (CC).

⁸ [2025] 2 BLLR 112 (LAC).

⁹ *Ibid* at para 30.

- [26] In the end, the enquiry is a composite one. All relevant considerations must be assessed together. A substantial delay may still be overlooked if it is properly explained and supported by credible prospects of success, while even a matter of apparent merit may nonetheless fail where the default is serious and remains unexplained. The balance must ultimately be struck in accordance with fairness and the interests of justice.
- [27] It is against this legal framework that the condonation applications fall to be determined.

Evaluation

- [28] It is common cause that the applicant was dismissed on 16 November 2016 and that the arbitration award upholding his dismissal as substantively and procedurally fair was issued on 5 April 2017. The applicant does not state when he received the award, but even on the most generous assumption this would not materially alter the extraordinary delay between the award and the filing of his review application and statement of case. It was only on or about 26 and 27 August 2024, some seven years and four months after the award, that the applicant delivered his review application, statement of case and condonation application.
- [29] The applicant does not, in his papers, attempt to calculate the degree of lateness. On any reckoning, however, the delay is egregious.
- [30] The applicant first approached this Court as early as 1 August 2017 to request a case number for a review application in terms of section 145 of the LRA. A review case number was duly allocated. He took no further steps to prosecute the review for more than seven years thereafter. This fact is significant. It demonstrates that the applicant knew, at an early stage, the proper process to challenge the arbitration award. His subsequent inaction aggravates the degree of the delay and weighs heavily against the grant of condonation.

- [31] The applicant has not provided a coherent or satisfactory explanation for the delay. While he makes reference in his founding affidavit to rumours that he was perceived as an “agent” of management, unspecified threats to his safety, and a concern that disclosing certain matters might prejudice another case pending before this Court, these allegations are not particularised in any meaningful way. The applicant does not, for instance, say when the alleged threats occurred, who made them, what form they took, or how they prevented him from prosecuting his case for a period spanning more than seven years.
- [32] During the hearing, the Court expressly invited the applicant to elaborate on these issues. He was unable to furnish any further detail beyond reiterating the vague assertions contained in his affidavit. Even on the most generous interpretation of his papers and oral submissions, these statements do not constitute a coherent or reasonable explanation for the extraordinary length of the delay.
- [33] In sum, the applicant has not provided a reasonable, comprehensive or credible explanation for any portion of the delay. The explanation offered is, in substance, no explanation at all.
- [34] In this context, and as mentioned earlier, the LAC reaffirmed that although prospects of success ordinarily remain a relevant factor in the condonation enquiry, there are exceptional circumstances where the degree of non-compliance is so egregious, and the explanation so wholly absent, that the merits recede entirely. In *Government Printing Works*¹⁰ the LAC observed:
- “There does come a time in any case where a party's disregard for procedure and delay in pursuing a matter is so extensive that they will be penalised irrespective of the merits of the case.”
- [35] The present matter squarely falls within that category. Here, the delay is so excessive, the explanation so wholly absent, and the non-compliance so

¹⁰ Id fn 8 at para 29.

flagrant that condonation may properly be refused without regard to the prospects of success.

[36] In any event, even if prospects of success remained a relevant consideration, they do not assist the applicant at all. In both his review application and statement of case, the applicant asserts that his suspension and dismissal were procedurally and substantively unfair. However:

36.1 Insofar as his review application is concerned, the Commissioner expressly recorded in her award that no unfair suspension dispute was before her and she made no findings in that regard. The review of the Commissioner's award is therefore confined to her findings that his dismissal was procedurally and substantively fair. On this score, the applicant advances no challenges of substance to the Commissioner's findings. His papers do not identify any reviewable irregularity, misdirection or error of law.

36.2 The statement of case, which mirrors the founding affidavit, does not improve matters. To the extent that the statement of case seeks reinstatement, such relief would amount to bypassing both the arbitration award (which remains extant and valid) and the statutory processes required to pursue an unfair dismissal claim.

36.3 Insofar as the applicant's complaint relates to his suspension, he makes no averment that he referred an unfair suspension dispute to the CCMA which would be clothed with jurisdiction to determine it.

[37] The applicant also alludes to a claim based on alleged non-compliance with a recognition agreement in relation to his pay. Any such claim would, on the applicant's own version, be several years out of time and has plainly prescribed, as the first respondent asserts. He provides no factual detail whatsoever to suggest otherwise.

- [38] In these circumstances, the applicant has not demonstrated any reasonable prospects of success in the review application, the statement of case or in any of the causes of action faintly discernible from his papers.
- [39] The prejudice to the first respondent should condonation be granted is considerable. It would be required to defend proceedings relating to a dismissal that occurred almost eight years prior to the institution of these proceedings. If condonation were granted and the applicant ultimately succeeded in obtaining retrospective reinstatement, the first respondent could, through no fault of its own, face a substantial back-pay liability. It would also incur further legal costs and inconvenience in circumstances where the delay has been unduly long and where its ability to defend the matter has been materially compromised.
- [40] In this regard, the first respondent has placed undisputed evidence before the Court demonstrating the extent of some such prejudice. The industrial relations specialist who would have been involved in the applicant's wage negotiations and disciplinary process and is thus clearly a key witness, has since passed away. Three other individuals who were involved in the matter are no longer in the first respondent's employ. The first respondent has cogently argued that even if they could be traced and persuaded to testify, their ability to recall the relevant events accurately would inevitably have been eroded by the passage of time.
- [41] In addition, the first respondent has experienced substantial difficulty locating records relevant to the applicant's employment due to a change in its Information Technology systems in 2020, a difficulty compounded by the lengthy delay in the institution of these proceedings. The deponent to the first respondent's answering affidavit, Mr Ntholeng, explains that he was not employed by the first respondent at the time of the applicant's dismissal. In addressing the allegations relating to the dismissal, he has therefore been compelled to rely solely on such documents as are available to him, including the arbitration award and the correspondence attached to the applicant's

statement of case. This in itself is highly prejudicial and foreshadows the type of prejudice that will possibly feature even more prominently as the litigation continues such as, for example, at a trial of the action. This is the type of practical prejudice that inevitably arises where an employer is called upon to defend a matter after such an extensive lapse of time.

[42] The applicant, for his part, states that he is currently unemployed and without income, that the first respondent was his source of livelihood, and that he seeks justice. He says he has suffered financially and that the matter has caused him psychological distress. While these concerns are not insignificant, they do not outweigh the severe prejudice to the first respondent, particularly in circumstances where the delay is extreme.

[43] Considering all these factors holistically, the delay in this matter is extraordinary, and no coherent explanation has been provided for any portion of it. The applicant's prospects of success, to the extent that they remain a relevant consideration in circumstances where the non-compliance is so flagrant and the explanation so wholly absent, are in any event poor. The first respondent will suffer significant prejudice if required to defend the matter after such an extensive lapse of time. No equitable or exceptional circumstances have been advanced that might justify condonation notwithstanding these deficiencies. In these circumstances, the interests of justice do not favour the granting of condonation.

The first respondent's condonation application

[44] The first respondent sought condonation for the late delivery of three documents: (i) its notice of opposition to the applicant's statement of case (17 court days late); (ii) its notice of opposition and answering affidavit to the applicant's condonation application (27 court days late); and (iii) its exception (8 court days late). While these delays are not insignificant, they are not inordinate.

- [45] The explanation for the delays falls into three broad categories: (i) the disordered and voluminous nature of the applicant's papers; (ii) a personal bereavement suffered by the attorney dealing with the matter; and (iii) practical difficulties in obtaining instructions and preparing a meaningful response in circumstances where the relevant events occurred many years ago.
- [46] On receipt of the applicant's documentation in late August 2024, the first respondent forwarded the papers to its attorneys promptly. The documents were, however, not in any discernible order and it was necessary for the first respondent's attorneys to inspect the court file to reconstruct a coherent record before meaningful instructions could be taken. The applicant does not dispute this.
- [47] The attorney dealing with the matter was then absent due to an unexpected bereavement. Upon her return, counsel was briefed to assist in settling the necessary pleadings.
- [48] In parallel, the first respondent experienced difficulty locating historical employment records due to an Information Technology System change in 2020, a challenge compounded by the lengthy passage of time.
- [49] In these circumstances, the first respondent's explanation adequately accounts for the periods of delay. The delays have caused the applicant no prejudice, and the interests of justice favoured granting condonation.

Costs

- [50] In terms of section 162 of the LRA, this Court has a discretion to make orders for costs according to the requirements of law and fairness. The applicant, although unsuccessful, is unrepresented. In these circumstances, and notwithstanding the outcome of the condonation applications, I am not persuaded that a costs order would be appropriate.
- [51] In the premises, the following order is made:

Order

1. The first respondent's application for condonation is granted.
2. The applicant's application for condonation is dismissed.
3. The applicant's review application and statement of case are consequently dismissed.
4. There is no order as to costs.



S. Milo

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : In person

For the First Respondent : Adv Navsa

Instructed by : Norton Rose Fulbright Attorneys

LABOUR COURT