



- (1) Reportable: NO
(2) Of interest to other Judges: Yes

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Signature

02 February 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C57/2024

In the matter between:

VENUS BIANCA JANSEN

First Applicant

and

**SOUTH AFRICAN LOCAL
GOVERNMENT BARGAINING
COUNCIL**

First Respondent

ORLANDO MOSES N.O

Second Respondent

**CITY OF CAPE TOWN
METROPOLITAN MUNICIPALITY**

Third Respondent

Heard: 21 January 2026

Delivered: 02 February 2026

JUDGMENT

LAGRANGE, J

Introduction

- [1] The applicant, Ms V Jansen ('Jansen') was employed by the third respondent ('the City') as a law enforcement officer in the City's Safety and Security Directorate.
- [2] At a time when she was working unusually long hours while a taxi strike was in progress, she lost her firearm together with 34 rounds of ammunition and two magazines. She was charged and found guilty of failing to take proper care of the employer's assets, of not reporting the loss timeously to the police, and of not storing her firearm in the prescribed manner. The misconduct was viewed in a very serious light and she was dismissed.
- [3] Jansen referred an unfair dismissal claim to the bargaining council four days late and applied for condonation. The second respondent ('the arbitrator') hearing the condonation application, refused to grant it. Jansen then applied to review that ruling. On being advised by the City that the review application was deemed withdrawn because of delays in filing the record of the arbitration, Jansen applied to have the review application reinstated. Later on she realised that the review application had not been filed with the registrar, and she applied for condonation of the late referral.
- [4] In these proceedings the court is therefore required to consider the reinstatement application and, if the review is reinstated, the condonation application. If the matter is reinstated and the late filing of the review application is condoned, then merits of the review of the arbitrator's condonation ruling will fall to be considered.

Summary chronology of events

- [5] Between 20 and 23 March 2023, Jansen lost her service firearm, ammunition and magazines, and she only reported the loss on 23 March 2023. Other than attributing the loss to her alleged diminished mental capacity owing to the overtime she was working she offered no explanation of where she might have lost it.
- [6] On 10 October 2023, Jansen was dismissed by the City of Cape Town following the disciplinary proceedings. Her internal appeal against the findings and the sanction was dismissed and the dismissal was confirmed on 6 December 2023.
- [7] Jansen received the internal appeal outcome the same day it was handed down. On an unspecified date between then and 4 January 2024, she claims she approached her union, but it declined to assist her in referring an unfair dismissal case. She claimed she then approached her 'legal representative' on 4 January 2024, who advised her that the 30-day period for making the referral would expire on 6 January 2024, but the bargaining council "could be closed" over the festive period. Nonetheless, she claims to have been advised that if she referred the dispute by 8 January it would not be substantially late. As the arbitrator correctly noted, the 30-day period expired on 5 January.
- [8] On 8 January 2024 Jansen returned to her legal advisor and the referral was made on 9 January together with a brief condonation application.
- [9] On 25 January 2024, the arbitrator dismissed her condonation application. The arbitrator did not consider it necessary to consider the merits of the dismissal. The arbitrator accepted Jansen's account of the steps she took in January 2024. However, the arbitrator took a very dim view of the fact that both Jansen and her legal advisor were aware that the referral deadline was about to expire but simply decided no harm would be done submitting it a few days later. The arbitrator concluded that the explanation for the delay was unreasonable and, in the light of jurisprudential authority, it was unnecessary to consider the prospects of success in the review application.

- [10] On 20 February 2024, Jansen served the Labour Court review application on the City but apparently failed to file the original application with the Labour Court.
- [11] On 23 February 2024, the Registrar issued a Rule 7A(5) notice, which ought to have been conveyed to Jansen's attorneys, informing them that the record had been filed by the bargaining council, and they were required to uplift it by 5 March 2024, and to file it by 23 May 2024. Jansen's attorneys deny receiving the registrar's notice. In the court file there is a Rule 7A(5) notice addressed to her attorneys, but there is no document evidencing in what manner, if any, it was transmitted to them.
- [12] In the circumstances it is not surprising that Jansen failed to uplift the record by the initial deadline imposed in the Rule 7A(5) notice and likewise failed to file the review record within the 60-day period prescribed by Rule 7A(6).
- [13] Notwithstanding this, on 4 June 2024, Jansen's counsel drafted a Rule 7A(8)(b) notice, mistakenly but not unreasonably believing that the record had been filed because it consisted solely of the documentary record, as the ruling was determined on the papers without an oral hearing.
- [14] For reasons which are not explained, it was only on 2 July 2024, nearly a month later, that this Rule 7A(8)(b) notice was served.
- [15] About a week after receiving the notice, on 8 July 2024, the City advised Jansen's attorneys that the 60-day deadline for filing the record expired on 23 May 2024 and, in the absence of doing so, the Rule 7A(8) notice was premature and was an irregular step. Their letter pertinently called on her attorneys to rectify the situation. They also advised that the review application was accordingly deemed withdrawn in terms of clause 11.2.3 of the Labour Court Practice manual ('the manual') and would require an application to reinstate it under clause 16.2 thereof, which the City would oppose.
- [16] On 16 July 2024, out of excessive caution, the City nevertheless delivered its answering affidavit in the review application, raising Jansen's failures to comply with Rules 7A(6) and 7A(8) as *in limine* issues. The City also

reiterated its submissions that the review application was deemed withdrawn by virtue of her failure to file the record within 60 days from the date of the 7A(5) notice.

- [17] In response, on 30 July 2024, Jansen launched a retrieval application seeking, among other things, reinstatement of the review application and condonation for her non-compliance. It is important to stress that the founding affidavit in this application seeks to explain why it was only after 8 July 2024 that her attorneys only became aware that the review application had not been filed with the registrar.
- [18] Further, they claimed that until the letter from the City's attorneys on 8 July alerted them to the fact that the record also had not been filed, they were unaware of the registrar's Rule 7A(5) notice. However, other than noting this, no explanation is offered why the record had still not been filed despite knowing, at the very latest, from 8 July that it had not been done, and despite the fact that the record consisted entirely of the documentary record.
- [19] Jansen's attorneys rectified their apparent omission to file the review application papers with the registrar, by filing them on 2 August 2024, 25 days after becoming aware that they had not previously been filed.
- [20] The City filed its answering affidavit in the retrieval application on 16 August 2024, in which it raised additional procedural defects. In particular, it highlighted the fact that the retrieval application was launched despite the record still not having been filed, meaning that the very reason which gave rise to the review application being deemed withdrawn had still not been remedied.
- [21] It was only on 14 October 2024, nearly two months later, that Jansen eventually filed the review record, which by now was 98 court days late with reference to registrar's Rule 7A(5) notice, or 68 court days since she received a copy of the registrar's notice from the City on being informed of her non-compliance on 8 July 2024. No application seeking condonation for the late filing of the record accompanied the record.

- [22] Nearly another two months passed before Jansen launched her application on 11 December 2024, seeking condonation for the late filing of the review application with the registrar. However, in her founding affidavit she sought wider relief, namely that her failure to comply with Rule 7A(6) in failing to deliver the record should also be condoned. Somewhat confusingly, the failure to file the record was described as “*resulting in the Registrar not serving the Applicant with the Rule 7A(5) notice*”. Obviously, this could not be the case, because the issuing of the Rule 7A(5) notice precedes the upliftment and filing of the record. In addition, she prayed that the review application should be placed back on the roll if it was deemed withdrawn even though she did not receive the Rule 7A(5) notice from the registrar.
- [23] The City delivered its answering affidavit in the condonation application on 24 January 2025, raising several preliminary objections including non-compliance with the Commissioners of Oaths Act, the absence of appropriate confirmatory affidavits, and that it was a repetition of the retrieval application launched on 30 July 2024. It seeks the dismissal of this application with a punitive cost award as it contends it amounts to an abuse of court.
- [24] On 17 June 2025, Jansen filed a replying affidavit in the condonation application more than 90 days late. In response the City lodged an objection to the late replying affidavit, but Jansen failed to seek condonation for the late filing of her affidavit.
- [25] It is apparent from the above that the progress of Jansen’s review application was fraught with procedural missteps and unexplained delays, coupled with a failure to appreciate the distinct nature of the various interlocutory issues that had to be dealt with.

Evaluation

The retrieval application

- [26] Before condonation for the late filing of the review application with the registrar can be considered, the reinstatement application must be dealt with. The trigger

relied on by the City for deeming the application withdrawn was the expiry of the 60 day period for filing the record. The operative provisions of the Labour Court Practice manual which applied at the time read

'Clause 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 filed.'

Clause 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...

(emphasis added)

- [27] On the available material in court file, it seems the Rule 7A(5) that was to be served on Jansen's attorneys was drawn up by the registrar's office but there is no evidence it was transmitted. The first time her attorneys had knowledge of the notice was when they received a copy from the City's attorneys on 8 July 2024. The City argued that its transmission of the notice to her attorneys should be accepted as equivalent to receiving the notice from the registrar, in which case the record was still filed eight court days out of time.
- [28] A literal reading of clause 11.2.2, or its successor Rule 37(14)¹, suggests that the applicant must have received the Rule 7A(5) notice (currently a Rule 37(9) notice) directly from the registrar. There is no case authority I could find which holds that if the relevant notice is not received directly from the registrar, but is served with it by the respondent party, that the applicant can simply ignore the notice. In my view, it would be an absurd and unjustifiably formalistic interpretation of the provisions to suggest that an applicant who receives a copy of the notice from the respondent, can simply decide to ignore it and wait patiently to see if it also receives another copy directly from the registrar. What matters is when the applicant party received it and thereby gained knowledge that the record was available for upliftment².

¹ Rule 37 (14) reads: *'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.'*

² When determining the commencement of the six week period for filing a review application, in terms of s 145(1) of the LRA, it is the date the award is served upon the applicant that is critical. See e.g., *Librapac CC v FEDCRAW & others* (1999) 20 ILJansen510 (LAC) at paragraph 6.

[29] In the circumstances, I am willing to accept that Jansen's attorneys first became aware the record could be uplifted on 8 July 2024, even if they should have been more diligent in monitoring the progress of the review application, which had been launched four months earlier. As mentioned, other than pointing out that she was unaware the record could be uplifted until that date, no explanation was provided why she took sixty-eight court days to file it. The lack of an explanation for this is all the more baffling in an instance like this where the record did not require any transcription to be prepared. There simply is no explanation provided. It is true the delay is relatively short, but she needed to explain the reasons which prevented her from filing it for 68 court days.

[30] Can a consideration of the merits of her case compensate for the absence of an acceptable explanation for the delay? *In Grootboom v National Prosecuting Authority & another*³, the Constitutional Court held:

'[51] 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 delay is short and there is an unsatisfactory explanation but there are reasonable 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.'

(emphasis added)

[31] In the earlier decision of *NUM v Council for Mineral Technology*⁴, the LAC court confirmed the principle that:

³ (2014) 35 ILJansen21 (CC)

⁴ [1999] 3 BLLR 209 (LAC)

“There is a further principle which is applied and that is that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused”⁵

[32] It would appear, considering *Grootboom*, that the principle in *NUM v CMT* might no longer be applicable in cases where the explanation is not acceptable or non-existent but the delay is not excessive⁶. I will assume in favour of the applicant this to be the case and consider the prospects of success in the review application, despite the absence of any explanation for the delay, on the basis that the eight-day delay is not excessive.

[33] Jansen wishes to review and set aside the condonation ruling because of the arbitrator's alleged failures in his assessment of the evidence and on his failure to consider her prospects of success.

[34] The key evidence before the arbitrator, in summary, was that:

34.1 Jansen provided no details of when she consulted with her union and when she was advised it would not assist her.

34.2 There was no explanation why Jansen and the legal professional she saw decided that the bargaining council was probably closed, without taking any step to verify that, which could easily have been done.

⁵ At paragraph 10.

⁶ See also *Government Printing Works v Public Service Association & another* (2025) 46 ILJ 915 (LAC):

‘[29] The effect is that an approach which completely ignores the prospects of success on the merits whenever there is an unsatisfactory, unreasonable or unacceptable explanation for a delay, requires explication. 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. The SCA has confirmed that an assessment of prospects of success is a relevant factor in the exercise of a discretion regarding condonation, unless the cumulative effect of the other relevant factors in the case is such as to render the application for condonation ‘obviously unworthy of consideration’. It is in cases of ‘flagrant’, ‘gross’ breaches of the rules, especially in the absence of an acceptable explanation, that condonation may be refused regardless of the merits of the appeal, even where the blame lies solely with the legal representative. In this court, it has been acknowledged that excellent prospects of success lead to the granting of condonation even when the delay is substantial and the explanation inadequate.’

34.3 Knowing that a referral had to be made by 6 January and that it would be out of time on 8 January she decided not to make any attempt to file the referral before 8 January and then only did so on 9 January, on the basis it would not be ‘*substantially*’ late.

[35] Jansen had also made submissions why she had prospects of success in establishing that her dismissal was unfair. Firstly, she claimed she was totally exhausted from working excessively long hours which she said diminished her mental capacity and she would be able to substantiate that if she had an opportunity to call a forensic psychologist as an expert witness, and she claims the hours she worked conflicted with the Basic Conditions of Employment Act 75 of 1997.

[36] The arbitrator’s analysis of the poor explanation for the late referral and his rebuke of Jansen and her legal advisor for assuming that she would be entitled to condonation rather than doing what should have been done to meet the deadline, cannot be faulted in my view, even though the delay was short.

[37] However, in the case of a review of a condonation ruling, in *National Education Health and Allied Workers Union (Nehawu) v Metrofile (Pty) Ltd*⁷ the LAC said:

‘To grant condonation is an exercise of judicial discretion that is only fettered by being judicially explained. The test is whether the court whose decision is challenged on appeal has exercised its discretion judicially. The exercise of the discretion will not be judicial if it is based on incorrect facts or wrong principles of law or where the court of first instance acted capriciously, or in a biased manner, or committed a misdirection or an irregularity, or exercised its discretion improperly or unfairly. If none of these grounds is established, it cannot be said that the exercise of discretion was not judicial.’⁸

(emphasis added)

[38] In this instance, the arbitrator’s decision to simply ignore the prospects of success when dealing with such a short delay, is at odds with *Grootboom* and

⁷ (2021) 42 ILJansen914 (LAC)

⁸ At para 10.

was a misdirection on his part. Consequently, he did not exercise his discretion judicially and his condonation ruling would have to be reconsidered by the court.

- [39] In light of the above reasoning, I believe the review application must be reinstated, subject to dealing with the late filing of the review application with the registrar.

Condonation for the late filing of the review application

- [40] It is common cause that the City received the review application on 20 February 2024 but omitted to file the original with the registrar. This was only done on 2 August 2024 and Jansen applied for condonation for the delay in December 2024.

- [41] The delay in rectifying the filing oversight was egregious but it only came to the attention of Jansen's attorneys late. The City was not prejudiced in any way by it. There is no good reason why this infraction of the rules would warrant non-suiting the applicant, in circumstances where the crucial step of serving on the City was done timeously.

- [42] Accordingly, the late filing of the review application with the court should be condoned.

The review application

- [43] In the course of the discussion above, the arbitrator's findings on the poor explanation for the delay have been discussed already. The outstanding question is whether Jansen has demonstrated she has some reasonable prospect of success in showing she had been unfairly dismissed.

- [44] Jansen's defence does not attempt to address how she could have unintentionally lost track of a firearm, a considerable amount of ammunition and magazines, which together comprise a bulky collection of items. Her defence completely avoids trying to give any plausible explanation how or when it could have happened. Rather it is one that apparently seeks to absolve herself of responsibility, in whole or in part, for not retaining control and possession of the items owing to her alleged diminished mental capacity caused by fatigue. Considering what she testified at her disciplinary enquiry it also entails

complete amnesia on her part in relation to events which might explain how the items went missing. Whether or not the overtime she worked was permissible or not, in and of itself, is not an additional defence to the charge.

[45] In the disciplinary enquiry chairperson's extensive ruling which was also part of the evidence placed before the arbitrator, she did not even offer a tentative explanation of where the items might be. The presiding officer had noted her complaint of working long hours but concluded she had been entitled to refuse to work the overtime it entailed and noted that she did not attempt to dispute the evidence about her unexplained lack of co-operation and transparency regarding the lost firearm when dealing with the investigators. It was common cause that a loss of a firearm is an extremely serious form of misconduct, not least because of the fatal ramifications it could have if it had fallen into the wrong hands.

[46] On the evidence before the arbitrator, I am not persuaded that Jansen's defence based entirely on alleged diminished mental capacity arising from working long hours has a reasonable prospect of success in absolving her of responsibility for such critical items in her custody going missing.

[47] In conclusion, the review application must fail.

Order

1. The Applicant's review application is reinstated.
2. The late filing of the Applicant's review application with the Registrar is condoned.
3. The review application is dismissed.
4. No order is made as to costs



R Lagrange
Judge of the Labour Court of South Africa

Appearances:

For the Applicant: --- F Rodriques
Instructed by: --- Steenkamp Abrahams Attorneys Inc.

For the Respondent: --- S Bosch
Instructed by: --- Diale Mogashoa Attorneys

LABOUR COURT