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

Signature Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case No. C405/23

In the matter between:

7Y **Applicant**

and

ELIZABETH DE WITT **First Respondent**

COLLEEN WEST N.O. **Second Respondent**

COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION **Third Respondent**

Heard: **12 February 2026**

Delivered: **19 February 2026**

Practice and Procedure - Review - Reinstatement of deemed withdrawn review application – Interest of justice - Explanation inadequate, inconsistent, and partly fabricated - Inaction by legal representatives not a bona fide mistake.

Review application - Unreasonable delay of six months in launching review under s 158(1)(g) of LRA - Prospects of success - Review directed at s 142A award - Weak prospects - Application not bona fide, brought only after execution steps commenced - Interests of justice do not favour reinstatement - Application dismissed.

JUDGMENT

MAKHURA, J

[1] This matter concerns an application brought by the applicant, Carpe Diem NPO, for the reinstatement of a review application that has been deemed withdrawn in terms of clause 11.2.3 of the (now repealed) Practice Manual of the Labour Court[1], or alternatively for the retrieval of the archived file. The review application, which the applicant seeks to revive, relates to an arbitration award issued in terms of section 142A[2] of the Labour Relations Act[3] (LRA), pursuant to a settlement agreement concluded between the applicant and the first respondent.

[2] It is common cause that the applicant failed to file the record of the arbitration proceedings within the prescribed sixty-day period following notification by the Registrar that the record comprising documents only was available for upliftment. As a result, the review was deemed withdrawn. Since reinstatement and/or revival applications are akin to condonation applications[4], this application therefore requires the Court to determine whether the interests of justice warrant the reinstatement of the review, taking into account the extent of the delay, the

[1] The review application is deemed withdrawn in terms of clause 11.2.2 and 11.2.3 the now repealed Practice Manual of the Labour Court of South Africa, April 2013 (Practice Manual).

[2] Section 142A provides that:

‘(1) The Commission may, by agreement between the parties or on application by a party, make any settlement agreement in respect of any dispute that has been referred to the Commission, an arbitration award.

(2) For purpose of subsection (1), a settlement agreement is a written agreement in settlement of a dispute that a party has the right to refer to arbitration or to the Labour Court, excluding a dispute that a part is entitled to refer to arbitration in terms pf section 74(4) or 75(7)’.

[3] Act 66 of 1995, as amended.

[4] *Samuels v Old Mutual Bank* (2017) 38 ILJ 1790 (LAC); [2017] 7 BLLR 681 (LAC).

adequacy of the explanation tendered, its impact on the administration of justice, and the prospects of success in the underlying review.[5]

[3] After the review application was served on 8 August 2023, the Registrar issued a rule 7A(5)[6] notice on 24 August 2023 indicating that the record of proceedings (with no audio recordings) was available for upliftment. The notice required the applicant to uplift the record within seven days and to file a transcribed record within 60 days. The sixty-day period expired on 17 November 2023.

[4] Two months before the deadline, on 19 September 2023, the first respondent's attorneys asked the applicant's attorneys whether they had uplifted the record and whether they intended to stand by or supplement their founding papers. The applicant's attorneys responded that they had already uplifted the record and had sent it to counsel for advice.

[5] It is common cause that no further steps were taken by the applicant after this exchange of correspondence. Despite having confirmed that the record had been uplifted and sent to counsel, the applicant did not file the record on or before 17 November 2023.

[6] On 6 March 2024, the first respondent requested arbitration of the unfair dismissal dispute that was withdrawn on 19 September 2023[7]. This request was made three and half months after the expiry of the sixty-day period. The applicant explains that:

> 'Consequently the applicant's attorney of record was alerted to the fact and realised that the first respondent was under the (mistaken) impression that the

[5] *Brummer v Gorfil Brothers Investments (Pty) Ltd and others* 2000 (2) SA 837 (CC); 2000 (5) BCLR 465 (CC) at para 3; *Van Wyk v Unitas Hospital and another (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC); *Grootboom v National Prosecuting Authority and another* 2014 (2) SA 68 (CC); [2014] 1 BLLR 1 (CC).

[6] Rules for the conduct of proceedings before the Labour Court, GG 17495 of 14 October 1996, repealed by Rules Regulating the Conduct of Proceedings of the Labour Court, GN4775a in GG 50608, 3 May 2024 (with effect from 17 July 2024).

[7] This was an unfair dismissal dispute referred by the first respondent, represented by her trade union, earlier in 2023. This dispute was set down for arbitration on 19 September 2023 and was withdrawn by the first respondent on the same day pending determination of the applicant's review application.

> Review was either not proceeding and/or that outcome of the Review was not still (sic) pending and/or that it had been withdrawn and/or archived by the Registrar.
>
> On investigation by the applicant's attorney it came to light that that Review record had not been filed as required in terms of Rule 7A(6) and sought counsel's advice as to the repercussions of the failure to timeously file the record.'

[7] The reinstatement application was filed on 2 May 2024, five and a half months outside the sixty-day period. The failure to file the record timeously was attributed to the absence of the audio record and the applicant's attorney's mistaken impression that *"despite the provisions of the Rules, no Rule 7A(6) (with the documents) was to be filed in the circumstances"* and the fact that the applicant's attorneys *"do not primarily litigate in labour forums"* and *"were not familiar with the procedural requirements"* of this Court. The applicant then explained that:

> 'Only upon receipt of the applicant's 7.13 referral form in the CCMA… in a different dispute… did the applicant's attorney of record, on further investigation, realise that there had been a procedural mishap in that the Rule 7A(6) Notice which should have been filed had inadvertently never been filed.'

[8] The applicant and its attorneys cannot rely on the absence of the audio recording to justify their failure to comply. The award in question was issued under section 142A, based on the application which attached the written settlement agreement, and no oral evidence was required. The applicant therefore could not reasonably have believed that an audio record should exist. It also failed to take any steps to file the available documentary record and to the extent they believed that there should have been audio recording, they failed to take steps to enquire about such recording. This explanation is unfounded and constitutes a poorly constructed explanation of facts which must be rejected.

[9] The applicant then shifts full responsibility to its attorneys, who continue to act for it, asserting that their unfamiliarity with labour litigation and limited labour law experience caused the non-compliance. However, the attorneys appear to have

overlooked that on 19 September 2023, they had already informed the first respondent's attorneys that the record had been uplifted and was with counsel for advice, a fact that was not disclosed in the applicant's founding papers. Even if the attorneys lacked experience, an excuse that holds little to no weight, the applicant provides no explanation regarding the counsel who had the record since September 2023. After that 19 September 2023 correspondence, more than five and a half months passed before the first respondent sought arbitration on 6 March 2024. Only then did the applicant investigate the matter, leading to the supposed discovery of the *"procedural mishap"*.

[10] Counsel for the applicant, Ms Erasmus, characterised the attorney's conduct as a *bona fide* procedural mistake. I am unable to agree. A mistake presupposes that some action was taken, but taken incorrectly. In this case, the attorney did nothing at all to progress the matter. Inaction cannot be described as a mere mistake. The explanation is therefore poor and without merit.

[11] Ms Erasmus also relied on the judgment of *Matsekoleng v Synergy World Logistics (Pty) Ltd*[8] *(Matsekoleng)*, where this Court revived an employee's dispute because he had consistently made enquiries about the matter and overlooked his attorneys' inaction in prosecuting the matter. However, as Mr van der Merwe correctly argued, that case is distinguishable. Unlike the applicant in *Matsekoleng*, the applicant in this matter made no enquiries or attempts to advance its case. Given the facts and the applicant's inadequate and seemingly fabricated explanation, excusing the conduct of its legal representatives would not in my view serve the interests of justice.

[12] Even once the applicant became aware, through the arbitration referral on 6 March 2024, that there had been a procedural failure, it still delayed a further two months before filing the reinstatement application on 2 May 2024. The applicant attributes this period to further investigation and obtaining advice from counsel, yet provides no details about the specific steps taken, why earlier consultation

[8] [2025] ZALCJHB 46.

was not possible, or what prevented the attorney and counsel from acting sooner.

[13] The explanation for non-compliance with the rules and provisions of the Practice Manual (now repealed) is unacceptable. For the above reasons, the explanation is rejected. The remaining question, therefore, is whether the applicant's prospects of success in the review application are strong enough to outweigh the lengthy delay and the inadequate explanation provided.

[14] The applicant contends that it has good prospects of success in the review application. However, the prospects of success hinge on whether the delay in launching the review has been reasonably explained. Therefore, before the Court can even consider the merits of the review, it must first assess the adequacy of the explanation for the six-month delay between the applicant becoming aware of the section 142A award and filing the review application.

[15] According to the applicant's own version, it had already decided by November 2022 not to comply with the settlement agreement, yet it took no steps to set it aside. When the first respondent applied to have the settlement agreement made an award, the applicant elected not to oppose the application. After becoming aware of the award on 16 February 2023, the applicant still waited approximately six months until 8 August 2023 to serve the review application.

[16] The review was brought in terms of section 158(1)(g) of the LRA, which allows the Labour Court to review the actions or decisions of the CCMA on any legally permissible grounds. The LRA does not prescribe a specific time limit for such reviews. The Labour Appeal Court (LAC) in *G4S Secure Solutions (SA) (Pty) Ltd v Gunqubele N.O and Others*[9] held that courts may not impose a fixed period deemed *"reasonable"* or require condonation to be filed within a set timeframe. However:

[9] [2017] ZALAC 52; (2018) 39 ILJ 131 (LAC).

‘[11] … An application for condonation must be made when the delay is unreasonable and must be made at the earliest opportunity. The correct approach is that outlined by Brand JA in *Associated Institutions Pension Fund v Van Zyl*, followed by this court *in Colett v Commission for Conciliation, Mediation and Arbitration and Others*, namely:

‘[46] … It is a longstanding rule that courts have the power, as part of their inherent jurisdiction to regulate their own proceedings, to refuse a review application if the aggrieved party had been guilty of unreasonable delay in initiating the proceedings…

[47] The scope and content of the rule has been the subject of investigation in two decisions of this Court. They are the *Wolgroeiers* case and *Setsokosane Busdiens (Edms) Bpk v Voorsitter, Nasionale Vervoerkommissie, en ’n ander* 1986 (2) SA 57 (A). As appears from these two cases and the numerous decisions in which they have been followed, application of the rule requires consideration of two questions:

(a) Was there an unreasonable delay?

(b) If so, should the delay in all the circumstances be condoned?...’

[48] The reasonableness or unreasonableness of a delay is entirely dependent on the facts and circumstances of any particular case (see eg *Setsokosane* at 86G). The investigation into the reasonableness of the delay has nothing to do with the Court’s discretion. It is an investigation into the facts of the matter in order to determine whether, in all the circumstances of that case, the delay was reasonable. Though this question does imply a value judgment it is not to be equated with the judicial discretion involved in the next question, if it arises, namely, whether a delay which has been found to be unreasonable, should be condoned (see *Setsokosane* at 86E-F).’

[17] The Court must therefore determine whether the applicant acted unreasonably in delaying the launch of the review application, and if so, whether the delay should

be condoned. In this context, a six-week period, similar to the timeframe applicable to section 145 reviews, serves as a useful benchmark. A six-month delay in labour matters is substantial. Whether this delay is unreasonable and whether it deserves condonation depends on the specific facts pleaded by the applicant.

[18] The applicant states that after receiving the award, it met with its legal representative on 21 February 2023, who later provided preliminary advice, although the applicant does not indicate when this advice was given. The School Governing Body (SGB) only met a month later, on 23 March 2023, to consider that advice, with no explanation as to why it could not meet sooner or what decision it reached. During this period, the applicant and the first respondent, through her union, were allegedly in ongoing discussions to try to resolve the matter amicably.

[19] It is common cause that the first respondent had referred an unfair dismissal dispute to the CCMA. On 17 April 2023, the applicant raised a point *in limine*, which the commissioner dismissed on 26 April 2023. The SGB then met again a month later, on 25 May 2023, to consider that ruling. The applicant offers no explanation why the SGB meeting could not be convened earlier. At that meeting, the SGB resolved to seek legal advice, which was subsequently provided and recommended that the award be challenged on review.

[20] On 29 May 2023, the sheriff attended the applicant's premises for the purpose of executing the award. The applicant claims that its attorneys provided legal advice in June 2023, recommending a review of the award. Despite receiving this advice, the applicant does not explain what steps were taken to prepare and file the review application. Meanwhile, the unfair dismissal dispute that was referred earlier was scheduled for arbitration on 25 July 2023. The applicant states that although the parties attempted to settle this dispute on that date, they were unsuccessful.

[21] On 4 August 2023, the sheriff informed the applicant's attorney that he held the instruction to remove the attached assets. The applicant then states that this left it with no alternative but to bring this review application, suggesting that the sheriff's communication to execute the award triggered the application.

[22] The applicant suggests that the unfair dismissal dispute and attempts to settle that dispute caused the delay in filing the review application. However, it fails to provide adequate facts to support the explanation of why this delayed the filing of the review application. The discussions to resolve the dispute refer to the unfair dismissal dispute. Despite its intention as early as November 2022, the applicant did not take any steps to set aside the binding settlement agreement before it was made an award, nor did it oppose the section 142A application. Instead, it waited approximately six months after the award was issued before launching the review. Even after receiving legal advice in June 2023, the applicant still delayed until 8 August 2023. Based on the above, the only reasonable conclusion is that the review was brought only because the sheriff was about to execute the award, making the application not *bona fide* but rather an attempt to delay or obstruct the implementation of a valid award.

[23] Accordingly, the applicant unreasonably delayed in launching the review application, and its explanation for this delay is inadequate. Moreover, the applicant would not have brought the review had the sheriff not attempted to execute the award. Granting condonation in these circumstances would effectively reward dilatory, careless conduct and erode the LRA's purpose of ensuring that labour disputes are resolved quickly and efficiently. It would also undermine the proper administration of justice.

[24] Regarding the merits of the review, it must be emphasised that the award in question was issued under section 142A of the LRA, meaning the commissioner merely converted a voluntarily and freely concluded settlement agreement into an arbitration award, a process akin to making a settlement an order of court. Even if the applicant had a potentially arguable case, its failure to provide a

satisfactory explanation for its procedural non-compliances in the reinstatement and condonation applications weighs heavily against it. Granting the reinstatement application and then condoning the late filing of the review would, in these circumstances, result in a miscarriage of justice.

[25] Therefore, the reinstatement application falls to be dismissed. Although both parties sought costs against one another, the Court is not persuaded that the circumstances justify departing from the established principle that costs do not ordinarily follow the result in this Court. Accordingly, no order as to costs is made.

[26] In the premises, the following order is made:

Order

1. The application for reinstatement is dismissed.

2. There is no order as to costs.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Ms A. Erasmus
Instructed by:	Raubenheimers Attirneys
For the First Respondent:	Mr F. van der Merwe
Instructed by:	Le Roux Lamprecht Inc.