



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

26/02/2026

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR1196/22

In the matter between:

MINISTER OF POLICE

Applicant

and

**SAFETY & SECURITY SECTORAL
BARGAINING COUNCIL**

First Respondent

MAHUBEDU SIMON RANTHO

Second Respondent

POPCRU

Third Respondent

TUMISI SAMUEL MAREMANE

Fourth Respondent

MOSHATE JACK MATSHA

Fifth Respondent

PHUTI PIET MOREMA

Sixth Respondent

Heard: 4 December 2025

Delivered: 26 February 2026

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 26 February 2026.

JUDGMENT

HORN, AJ

Introduction

- [1] This is an application in terms of which the applicant seeks to show good cause why the review application under the above case number ought to be retrieved from the archive and/or reinstated.
- [2] The application is opposed by the fourth, fifth and sixth respondents respectively (the employees). The sixth respondent (Mr Morema) has, in the meantime, become deceased.
- [3] For their part, the employees have brought a counter-application seeking (i) confirmation that the review application is archived and considered dismissed (ii) that the first and second respondents (Messrs. Maremane and Matsha) be retrospectively reinstated and (iii) that the third respondent (Mr Morema) “*be posthumously retrospectively reinstated and payments due shall be payable to his surviving spouse*”.¹
- [4] The application and counter-application were made whilst the erstwhile Rules² and Practice Manual³ of this Court applied. This application is accordingly determined with reference thereto.
- [5] It is useful to commence with a brief chronology of relevant events.

¹ No substitution appointing an administrator/executor to act on behalf of Mr Morema’s late estate has taken place. The employees’ attorneys have no authority to act on behalf of the estate. See *Booyesen and Others v Booyesen and Others* 2012 (2) SA 38 (GSJ) (25 March 2011).

² GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.

³ Practice Manual of the Labour Court of South Africa, effective 2 April 2013, repealed with effect from July 2024.

Chronology of Relevant Events

- [6] In relation to the reasons for the employees' dismissal, it was *inter alia* alleged that certain suspects had been arrested by the South African Police Service (SAPS) for selling non-essential goods during the COVID-19 lockdown in breach of the prevailing regulations issued under the Disaster Management Act.⁴
- [7] The suspects were permitted to pay an admission of guilt fine in the amount of R2,500.00 each. Despite paying those amounts, they were issued with receipts indicating that they had only paid R1,000.00 each. The balance of the payments was purportedly misappropriated by the employees.
- [8] In response to these allegations, the employees stated *inter alia* that the suspects had been arrested for failing to confine in breach of the COVID-19 regulations, not for selling non-essential goods. The applicable admission of guilt fine was accordingly R1,000.00. This was the amount that had been paid by the suspects, who had signed the relevant receipts.
- [9] On 15 October 2021, the second respondent (the commissioner) issued an arbitration award under the auspices of the third respondent (the bargaining council) in terms of which he found the dismissal of the employees substantively unfair and ordered their retrospective reinstatement (the award).⁵
- [10] Suffice it to say that, for a variety of reasons, the commissioner found it improbable that the suspects had been arrested for selling non-essential goods instead of for failing to confine in accordance with the regulations. He was not convinced on a balance of probabilities that the employees had misappropriated any monies.
- [11] On 9 June 2022, the applicant filed its review application seeking *inter alia* to review and set aside the award and substitute it with a finding that the dismissal of the employees was substantively fair.

⁴ Act 57 of 2002, as amended.

⁵ The applicant states in its review application that the award was received by the parties on 21 October 2021. The review application ought to have been delivered prior to 2 December 2021.

- [12] The review application was filed approximately six and a half months late. The application for condonation - brought together therewith - states that the relevant person at SAPS only became aware of the review in late December 2021, that it was thereafter allocated to the state attorney on 6 January 2022, that Counsel subsequently received a brief on 21 February 2022 and that the first consultation with Counsel was subsequently scheduled “...*at counsel’s earliest convenience...*” on 11 April 2022. The review papers were thereafter only finalised by 10 May 2022 (and subsequently served and filed in early June 2022).
- [13] In respect of the condonation application for the late filing of the review, it is worth noting that a proper explanation for each period of the delay is not provided and, for this reason alone, the condonation application in the main review may suffer from limited prospects of success.
- [14] The applicant thereafter received an incomplete copy of the audio recordings of the arbitration proceedings from the bargaining council on 18 July 2022 (although it was unaware that the record was incomplete at the time).⁶ After transcription, the record was sent to the applicant’s Counsel on 3 August 2022.
- [15] The applicant’s Counsel had apparently identified that certain portions of the audio recordings were missing, at which stage Ms Makhamathe of the offices of the state attorney was alerted to the problem. Ms Makhamathe thereafter followed up with the bargaining council concerning the missing recordings by way of email on 3 November 2022 and 18 November 2022.
- [16] No explanation for the delay between 3 August 2022 and 3 November 2022 has been provided. The relevant email correspondence from Ms Makhamathe to the bargaining council is also not attached to the founding affidavit.
- [17] At some unidentified point thereafter, Ms Makhamathe resigned from the offices of the state attorney. At some further unidentified point, the file was

⁶ The audio recordings of the arbitration proceedings on 26 January 2021, 11 and 12 March 2021, 13 May 2021, 20 and 21 July 2021 were missing.

apparently re-allocated to a new attorney at the offices of the state attorney, namely a Mr Masete.

- [18] Mr Masete apparently made two telephone calls to the bargaining council during which he was informed that it had dispatched the complete record. When Mr Masete corrected the bargaining council officials and noted that the record was substantially incomplete, those officials had then promised to dispatch the complete record, but thereafter failed to do so.
- [19] There is no indication on the papers before this Court when Mr Masete made these phone calls, with whom he spoke, or why he did not follow up after the promised missing portions of the record did not subsequently materialise.
- [20] Suffice it to say that it was only in November 2023, almost a year after the offices of the state attorney had initially followed up with the bargaining council, that Colonel Makobela, the deponent to the founding affidavit, took it upon himself to travel to the offices of the bargaining council to rectify the issue.
- [21] Colonel Makobela's intervention resulted in additional parts of the record being dispatched on 1 December 2023 (which was again believed to be all of the missing audio recordings). The additional audio records could, however, not be accessed as a result of being in a file format that was not accessible by SAPS or the offices of the state attorney.
- [22] It then took until 19 February 2024 for these audio recordings to be placed in a format that they could be accessed. The additional audio recordings were subsequently sent for transcription, although the specific date that this transpired is also not disclosed.
- [23] The transcription of the recordings was ultimately returned on 3 May 2024, at which stage it was determined that the record was still incomplete. In particular, the audio recordings of the arbitration proceedings after lunch on 12 March 2021 were missing, the entirety of the proceedings of 13 May 2021 were missing, and the evidence on 20 and 21 July 2021 was missing (with

only the housekeeping issues being recorded on 20 July 2021 being available).

[24] At the time of launching this application, the applicant states as follows in relation to the record:

‘The applicant has not as yet taken the next step of furnishing the transcribed record as well as the amended notice of motion and supplanted (sic) affidavit, such shall await the direction of this court.’

and

‘The applicant will take the necessary steps required to compel the respondent to dispatch the remainder of the record, should the court grant the applicant the indulgence of having this matter put back on the roll.’

[25] Thus, at the time of the hearing of this matter on 4 December 2025, in excess of four years after the arbitration award was issued and three and a half years after the (late) review application was instituted, the record remains fatally defective, and the applicant’s further notices and affidavits remain outstanding.

[26] Even if the matter were to be reinstated, it is common cause that the record would require substantial rectification before the review application could be heard.

Counter-application

[27] Both parties filed comprehensive heads of argument, for which this Court is grateful. It is useful to begin with the employees’ counter-application.

[28] Firstly, in relation to the relief that Mr Morema be posthumously and retrospectively reinstated, this is obviously not possible. A deceased person cannot factually or legally be reinstated.

[29] It may well be that the executor and/or administrator of the late estate of Mr Morema could institute a claim against the applicant for the value of the

remuneration that he would have been entitled to until the date of death of Mr Morema.⁷

- [30] This Court, however, is not well placed to make any findings in that regard. For one thing, the attorneys for the employees have failed to demonstrate any authority whatsoever to act on behalf of the estate of Mr Morema.
- [31] For another thing, even if substitution had taken place, the total amount due to the estate would have to be quantified before any meaningful order could be made. This has not been done.
- [32] Finally, a proper application setting out the legal basis for such a claim would also have to be placed before this Court. The papers in the counter-application manifestly fail to plead any legal basis for affording the estate of Mr Morema any relief.
- [33] As a means of addressing this, a direction will be issued at the end of this judgment requiring the employees' attorneys to provide a copy hereof to Mr Morema's widow, with whom they are evidently in contact in circumstances where she has deposed to a confirmatory affidavit. Mr Morema's widow may thereafter decide whether to provide the same to the executor and/or administrator of the estate, assuming the estate has not been wound up.⁸ The relevant person/functionary can then determine what further steps, if any, might be taken.
- [34] In respect of the balance of the relief sought for the other two employees, suffice it to say that they do not require a declaration that the review application is archived and considered dismissed. This has already transpired, hence the applicant's application.
- [35] In respect of the prayer that this Court should order that Messrs. Maremane and Matsha be retrospectively reinstated, this relief is incompetent. Both Messrs. Maremane and Matsha already have an arbitration award granting

⁷ See *Estate Late W G Jansen van Rensburg v Pedrino (Pty) Ltd* (2000) 21 ILJ 494 (LAC). See also *National Union of Metalworkers of SA on behalf of Fohlisa & others v Hendor Mining Supplies (A Division of Marschalk Beleggings (Pty) Ltd)* (2017) 38 ILJ 1560 (CC).

⁸ The Master may re-open a deceased estate where new assets, debts or claims are discovered after the estate has been wound up in certain circumstances.

them retrospective reinstatement. At best, this Court could order that the arbitration award be made an order of court, although this is not necessary for the reasons appearing hereunder.

[36] Suffice it to say that if this revival application fails, Messrs. Maremane and Matsha would be entitled to tender their service and, should the applicant fail to reinstate them, they would, in the ordinary course, be entitled to proceed with contempt of court proceedings under section 143(4) of the Labour Relations Act.⁹ This is the ordinary mechanism through which the LRA and the Rules allow a party to enforce a reinstatement arbitration award in their favour.

[37] In my view, the employees' counter-application amounts to little more than an attempt to bypass the normal enforcement processes in the LRA. It must fail for that reason.

[38] As an aside, an unfortunate trend appears to have developed in terms of which applications to revive review applications are met not only with opposition (often justified) but also with a litany of other counter-applications in relation to enforcement. This, of course, might be understandable on the part of unrepresented litigants who may be desirous of securing immediate relief in the form of a Court Order and unaware of the applicable enforcement provisions.

[39] It is worth reiterating, however, that in the vast majority of cases, such counter-applications are entirely unnecessary and also create unnecessary work for this Court. Where an application for reinstatement of a review is dismissed, the parties should thus in the ordinary course follow the enforcement procedures set out in section 143 of the LRA.

The Reinstatement Application

[40] Turning then to the merits of the main application. At the outset, the applicant's Counsel conceded, rightly, that the explanation put up by the applicant for the delay is exceedingly poor.

⁹ Act 66 of 1995, as amended (the LRA).

- [41] Perhaps predictably, the applicant's Counsel sought to place emphasis on the issue of prospects of success and prejudice, especially given the nature of the allegations of misconduct made against the employees and the public trust required in SAPS. Given the nature of the allegations, it is indeed troubling that a review should be dismissed without SAPS having the right to test the reasonableness of the commissioner's award simply as a result of a delay in prosecution of the review. Issues related to the protection of the public interest weigh in favour of the applicant.
- [42] On the other hand, the employees argue *inter alia* that they had been criminally charged and found not guilty and also that the applicant had failed to follow the provisions of item 11.2.3 of the Practice Manual in circumstances where the record would not be timeously filed.¹⁰
- [43] This Court's attention was also drawn to the decision in *Sol Plaatjie Local Municipality v South African Local Government Bargaining Council and Others*¹¹ which contains a useful summary of the steps to be taken where incomplete records are filed by the CCMA or a bargaining council.
- [44] In respect of the failure of the state's criminal prosecution, this has either little or no bearing on these proceedings.¹² I am fortified in this view by the fact that a criminal burden of proof is not the same standard that the commissioner was called upon to apply in the matter. Thus, the fact of a criminal acquittal is of no moment in this matter.
- [45] What would ordinarily follow is this Court's application of the factors set out in *Melane v Santam Insurance Company Limited*¹³ in determining whether or not the applicant has shown good cause for the matter to be revived.
- [46] It appears to me, however, that a more fundamental issue that this Court must grapple with is the fact that the record remained fatally defective at the time this application was launched (and subsequently argued).

¹⁰ That item deals with the ability of a party to request an extension and, if said request is refused, approach the Judge President for an extension. It is common cause that this was not done by the applicant. The consequence is that the application was deemed to be withdrawn.

¹¹ (PR192/15) [2017] ZALCPE 11 (13 June 2017).

¹² See *Hollington v Hewthorn & Co Ltd* 2 1943 All ER 35.

¹³ 1962 (4) SA 531 (A).

[47] In this regard, the *ratio decidendi* in *Kock v Commission for Conciliation, Mediation and Arbitration and Others (Kock)*¹⁴ is relevant. In *Kock*, this Court held as follows:

[54] Because the reinstatement application is in essence a condonation application, the applicant's reinstatement application brought on 27 August 2018 faces what is in my view an insurmountable difficulty. When the application was brought, the record still had not been filed. Surely, condonation is sought to show good cause why an action taken in contravention to a legal prescript should be allowed. It must follow that the action must already have been taken in order to condone it. *In casu*, it must mean that the record has already been filed and the condonation is intended to validate this action because it was done out of time. It is impossible to ask for condonation for the late filing of the record where the record has still not been filed.'

[48] As appears from the facts set out above, despite several years having passed with the applicant being aware of the fatal defects in the record of proceedings, it has failed to take the requisite steps to rectify that issue.¹⁵ It neither brought an urgent application to compel the bargaining council to file the missing audio recordings, nor was there any application to the bargaining council to re-construct the missing portion of the record to the extent that these could not be located. The applicant is content to state that the Court should first revive the matter and then *mero motu* take the requisite steps to address the fatally defective record by issuing appropriate directions.

[49] The facts above demonstrate an entirely apathetic and unacceptable approach to resolving the issue of the defective record, and more generally towards prosecuting the review as a whole. It is not sufficient to say that this Court should, at the eleventh hour, issue directions to resolve a defective record where the parties are required to take those steps in the first instance and thereafter seek condonation for any delay.

¹⁴ (JR764/18) [2021] ZALCJHB 101 (31 May 2021).

¹⁵ It neither brought an application to compel the bargaining council to file the record, nor did it apply for the reconstruction of the record.

[50] In circumstances where this application was both made and argued before the record was rectified, it is premature and falls to be dismissed for the reasons articulated by this Court in *Kock*.

[51] Even if the application were not premature, however, the prospects of success would not have saved the applicant. Several years have gone by with scant or no explanation whatsoever being put up for the various delays. The state has simply not prosecuted this review with a sufficient degree of diligence to allow this Court to come to its assistance and condone what amounts to a wholesale departure from the expeditious dispute resolution procedure required by the LRA.

[52] This application must accordingly fail for all of these reasons.

Costs

[53] I am of the view that this is a matter where the interests of justice will be best served by making no order as to costs.

[54] I am mindful of the ongoing relationship between the parties. I am also mindful of the legally untenable counter-application brought by the employees.

[55] In the premises, I make the following order:

Order

1. The applicant's application to retrieve the review application from archive and/or reinstate the review application is dismissed.
2. The fourth, fifth and sixth respondents' counter-application is dismissed.
3. The fourth, fifth and sixth respondents' attorneys are directed, within fifteen (15) days of receipt of this judgment, to take all reasonable steps to provide a copy thereof to the widow of the sixth respondent, Mrs Morema Maserole Rahab.
4. There is no order as to costs.

J Horn

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate V. Rikhotso

Instructed by: State Attorney

For the Third Respondent: Mr M. Moitsi (Moitsi and Associates Incorporated)