



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

Signature

26 February 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C249/22

In the matter between:

SIYABONGA MYEKO

Applicant

and

THE CITY OF CAPE TOWN

First Respondent

THE SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

Second Respondent

COMMISSIONER A SINGH-BHOOPCHAND NO

Third Respondent

Heard: 26 February 2026

Delivered: 26 February 2026

Summary: An application to set aside a notice of objection to the late filing of an answering affidavit in a review application as an irregular step because the condonation application in the review application is defective.

JUDGMENT

GANDIDZE, J

Background

- [1] The applicant has a pending review application, filed in May 2022, in which he is contesting an arbitration award issued in favour of the City of Cape Town (the City). As the application was filed outside the six-week prescribed time period, the applicant filed a condonation application in June 2022.
- [2] The complete record in the review application was served, and in November 2022, the applicant filed a notice that he stood by his notice of motion. The City did not file an answering affidavit in the review application.
- [3] The City filed its answering affidavit in the condonation application on 14 March 2023. It also raised the issue of the need for condonation for the late service of the review application.
- [4] In November 2024, a set-down notice for the hearing of the review application in January 2025 was issued.
- [5] In December 2024, in terms of Rule 57 of the Rules Regulating the Conduct of the Proceedings of the Labour Court¹ (the new Labour Court Rules),² the City brought an application to set aside the set-down notice for the hearing of the matter on 23 January 2025, and confirmation that the review application was archived in terms of the Labour Court Rules.
- [6] The review application could not be heard in January 2025 due to the City's interlocutory application, and it was postponed.
- [7] The City's interlocutory application was dismissed by Barthus AJ on 25 June 2025.
- [8] On 9 July 2025, the City delivered an answering affidavit in the review application.

¹ GN 4775, G. 50608 of 3 May 2024, which commenced on 17 July 2024.

[9] On the same day, the applicant filed a notice of objection to the late filing of the answering affidavit.

[10] The present application is the City's second interlocutory application, also made under Rule 57 of the Labour Court Rules, to set aside the notice of objection. The City considers the notice of objection an irregular step. When the applicant did not respond favourably to the City's notice to remove the cause of the complaint, it set down for hearing its application to set aside the notice of objection as an irregular step.

[11] The applicant opposed the application.

The parties' contentions

[12] Rule 57 provides for the setting aside of an irregular step taken by a party upon application to this Court.

[13] The City contends that the review application was submitted late and that the condonation application served on 15 June 2022 is defective because the notice of motion refers to the late submission of a Statement of Case, and the founding affidavit refers to the delayed filing of an application for leave to appeal. The submission is that the condonation application is incomplete and that the applicant has not attempted to amend it. The further argument is that even if condonation is granted, it would not fully address the applicant's non-compliance nor confer jurisdiction on this Court to hear the review application.

[14] The City also contends that, although the review application is not properly before the Court, it filed the answering affidavit out of an abundance of caution, and that filing the affidavit does not constitute consent or acceptance that the review application is properly before the Court.

[15] The submission further states that, because the review application is not properly before the Court, the filing of the answering affidavit cannot be regarded as late.

- [16] The City refers to the decision of the Constitutional Court in *Grootboom v National Prosecuting Authority & Another*³, which, *inter alia*, deals with principles governing condonation applications and submits that the applicant's condonation application did not fully address the extent of the delay in instituting the review application.
- [17] A submission is also made that, until a proper condonation is determined and granted, the review application is not properly before this Court. The Court was requested to issue a directive that the condonation application be enrolled for hearing.
- [18] The further submission is that the City is not acting in an obstructive manner and does not seek to delay the finalisation of the matter.
- [19] Costs are also sought against the applicant, relying on a decision of the Constitutional Court in *Myathaza v JHB Metropolitan Bus Service (SOC) Ltd t/a Bus Metrobus*⁴. It is alleged that the applicant's prolonged inaction has unduly delayed and protracted the legal proceedings, and that should the review application succeed, the City will be prejudiced if it is ordered to reinstate him or if the matter is remitted for a fresh hearing. It is also said that the applicant had been given several opportunities to remedy the irregularities to facilitate the expeditious resolution of the matter, but he failed to do so.
- [20] The applicant argued that the application had been misplaced and that the City's actions had delayed the finalisation of the review process. There is merit to this argument, as discussed below.

Analysis

- [21] The main question to determine is whether a notice of objection to the late filing of an answering affidavit counts as an irregular step. The answer depends on the Labour Court Rules.

³ (2014) 35 ILJ 121 (CC).

⁴ 2018 (1) SA 38 (CC).

- [22] When the review application was lodged in May 2022, the old Labour Court Rules, which were repealed effective from 16 July 2024, were applicable. Without reproducing the entire Rule 7A, which was in force at the time, the sequence of events in a review application is that the application is filed, the record is delivered, and then a notice indicating that the applicant stands by the Notice of Motion, or a supplementary affidavit elaborating on the grounds of review, is filed.
- [23] Rule 7A provided as follows:
- ‘(9) Any person wishing to oppose the granting of the order prayed in the notice of motion must, within 10 days after receipt of the notice of amendment or notice that the applicant stands by its notice of motion, deliver an affidavit in answer to the allegations made by the applicant.’
- [24] The full record in the review application was filed in September 2022, together with a notice that the applicant stood by his notice of motion. The City did not deliver an answering affidavit.
- [25] On 14 March 2023, the City delivered an answering affidavit in the condonation application. The applicant did not file a replying affidavit, with the consequence that the pleadings in the condonation application closed and the application was ripe for hearing.
- [26] The applicant states that when his attorneys were preparing to index and paginate a file so that a hearing date could be allocated, they realised that it could not be heard due to the City’s first interlocutory application. Therefore, on the scheduled hearing date in January 2025, the matter was postponed for the determination of the City’s interlocutory application.
- [27] That interlocutory application was dismissed in June 2025.
- [28] The City delivered its answering affidavit in the review application in July 2025, following the dismissal of the interlocutory application.
- [29] The answering affidavit was submitted after the new Labour Court Rules were in force. These new Labour Court Rules did not alter the position regarding the deadline for filing an answering affidavit in a review application. Rule 36 of

the new Labour Court Rules deals with the filing of answering and replying affidavits. It states as follows:

‘36. Filing of answering and replying affidavits

(1)

(2) If the respondent or the applicant has filed its opposing or replying affidavits respectively outside the time period set out in the rules, there is no need to apply for condonation for the late filing of such affidavits unless the party upon whom the affidavits are served delivers a notice of objection to the late filing of the affidavits.

(3) The notice of objection must be served and filed within 10 days of the receipt of the affidavits after which time the right to object shall lapse.’

[30] The City neither claims nor could claim that it filed its answering affidavit within the required 10 days. Therefore, the applicant’s objection to the late filing of the answering affidavit, submitted outside that period, is not an irregular step.

[31] If the City believes its answering affidavit was not filed late, it should have ignored the applicant's notice of objection. The court hearing the review application would have decided whether it was opposed, and the answer depended on whether the answering affidavit was filed on time. An application to set aside the filing of the notice of objection as an irregular step was unnecessary, if not incompetent.

[32] In oral argument I invited Ms Mahillal, the City’s counsel to refer to the case authority relied upon in bringing the application. She responded that she was not aware of any, but persisted with the argument that the City’s second interlocutory application was competent that it did not file the answering affidavit late.

[33] The City’s argument that it was not required to submit an answering affidavit in response to a defective condonation application does not alter the position outlined in the Rules, as I have stated above. If the City believes that the condonation application is defective, it must raise this issue in its answering affidavit to the condonation application, and the Court hearing that application will decide the matter.

- [34] During oral argument, both Ms Mahillal and Mr Yono for the applicant confirmed that the same contention—that the condonation application was defective—was raised before Barthus AJ and it was dismissed. However, as per Ms Mahillal's submission, the City could raise the same argument again, given the notice of objection to its answering affidavit. If an argument is raised before a Court and dismissed, it cannot be raised again. If the City believed that Barthus AJ was wrong in dismissing its first interlocutory application, its remedy was to seek leave to appeal against the judgment. It did not do so and cannot raise the same issue in a new application, hoping for a different outcome.
- [35] The City's submission that the condonation application fails to provide an explanation covering the entire period of the delay relates to the merits of the application, which the Court hearing it will decide. It is not a valid reason not to file an answering affidavit when a party has been served with a notice that it stands by its notice of motion and founding affidavit in a review application.
- [36] It is correct that, until condonation is granted for the late filing of a review application, the Court cannot entertain it. However, in practice, both the condonation and the review applications are heard in one sitting to ensure the swift resolution of labour disputes, which is one of the main objectives of the Labour Relations Act⁵ (LRA).
- [37] On the facts, the City's complaint that the applicant is delaying the matter is remarkable. Based on the limited facts before the court, it appears that the City is hindering the progress of the review application by submitting meritless interlocutory applications for reasons best known to it. To demonstrate my point, half of what was submitted in the City's heads of argument in the first interlocutory application is repeated in the heads of argument in the present application, and as I have recorded above, Ms Mahillal submitted that the City was within its rights to make the same submissions that Barthus AJ dismissed. I have dealt with the submission above.
- [38] Without these interlocutory applications, this matter would have been heard in January 2025, and a judgment would have been delivered by now. Instead,

⁵ Act 66 of 1995.

the City is obstructing the progress of the review application, yet it complains that delays will prejudice it if the applicant is reinstated or if the matter is remitted for a fresh hearing.

- [39] If the Court is mistaken in its *prima facie* view that the City, rather than the applicant, caused the delay in progressing the litigation, the City has remedies available, excluding applications to set aside notices filed claiming they constitute irregular steps.
- [40] It follows that there is no merit in the City's application, which the Court has determined was merely a scheme to delay the finalisation of the review application. In saying this, I am mindful that the City has requested the Court to issue a directive for the hearing of the condonation application. That is commendable of the City, but it raises the question of why the City wishes the condonation application to be heard separately from the review application. The Court is of the view that this is yet another attempt by the City to prolong the finalisation of the matter.
- [41] It is not necessary for the Court to issue any orders concerning the next steps. If the pleadings have closed, either party may contact the Registrar to request a set-down notice for the hearing of both the condonation and the review application in one sitting.

Costs

- [42] Shockingly, the City also sought costs against the applicant. I find this shocking because it is the City that initiated and requested a set-down date for an unnecessary application that the Court has found meritless. In accordance with the requirements of law and fairness, under section 162 of the LRA, it is the City that should be ordered to pay the costs for bringing an unmeritorious and unnecessary application. This is a second one, arguing the same issues that were dismissed by Barthus AJ. Any legal representative applying their mind to the matter, because they are being paid for the services rendered, would have realised that the application was a waste of the applicant's and the Court's time and already limited resources.

[43] In oral argument, Mr Yono informed the Court that the applicant, an individual, is paying the legal bills out of his own pocket. Twice he has been dragged to Court to oppose meritless interlocutory applications, when he should have only worried about costs related to arguing the condonation and review applications. He must not be left out of pocket. I am also convinced that, unless a costs order is issued against the City, this interlocutory application is unlikely to be the last. A costs order ensures that serious consideration is given before filing any further interlocutory applications in this matter. Had the applicant sought costs on a punitive scale, I would have granted the order.

[44] In the result, the following order is made:

Order

1. The City of Cape Town's application to set aside the notice of objection to the late filing of the answering affidavit is dismissed.
2. The City of Cape Town is ordered to pay the applicant's costs.

T Gandidze
Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Y Bono
Instructed by: YBI Attorneys

For the first respondent: Advocate Ureesa Mahilall
Instructed by: Cluver Markotter Inc.