



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

Signature

27/02/2026

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR2880/22

In the matter between:

PELCHEM (SOC) LTD

Applicant

and

ALETTA NKEPILE LETSOALO

First Respondent

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Second Respondent

LUNGISANE AMOS SITHOLE N.O

Third Respondent

Heard: 12 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties by email and publication on the Labour Court's website. The date for hand down is deemed to 27 February 2026.

JUDGMENT

HOLMES, AJ

Introduction

- [1] The application before this Court concerns the reinstatement of a review application. The review application was deemed withdrawn in terms of clause 11.2.3 of the Labour Court Practice Manual,¹ owing to the applicant's, Pelchem (SOC) Ltd (Pelchem), failure to file the record within sixty (60) days after being notified by the Registrar that the record was available for collection. The application is opposed by the first respondent (Ms Letsoalo).

Legal principles

The Practice Manual

- [2] The Practice Manual, prior to its repeal, did not serve as a substitute for the Rules for the Conduct of Proceedings in the Labour Court² (the Rules). Rather, its primary purpose was to regulate the practical application of those Rules in the Court's day-to-day functioning. It sought to promote uniformity and consistency in practice and procedure, and to provide guidance on the standards of conduct expected of practitioners who appear before this Court.³
- [3] Clause 11.2.2 of the Practice Manual provides that records must, for purposes of Rule 7A(6), be filed within sixty (60) days of the date on which the applicant is advised by the Registrar that the record has been received.
- [4] If an applicant fails to file a record within the above prescribed time period, the applicant would, in terms of clause 11.2.3 of the Practice Manual, be deemed to have withdrawn the application, unless the applicant has, during that period, requested and been given consent by the respondent for an extension of the time. If consent is refused, the applicant may, on notice of motion

¹ Practice Manual of the Labour Court of South Africa effective 1 April 2013 (repealed, 17 July 2024).

² GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.

³ See introductory clause of the Practice Manual. Also see *MJRM Transport Services CC v Commission for Conciliation, Mediation & Arbitration & others* (2017) 38 ILJ 414 (LC) at para 14, where the Court held that the purpose of the Practice Manual "is to fill in gaps not adequately catered for in either the rules or the provisions of the LRA for the proper functioning of the court and the expeditious resolution of disputes. Inasmuch as its provisions call for flexibility in their application where required, litigants are nevertheless bound by them. To hold otherwise would lead to a dysfunctional court system, where parties can litigate in any manner that they deem fit, simply because it suits them to do so".

supported by affidavit, apply to the Judge President in chambers for an extension of time.⁴

- [5] In essence, the Practice Manual served to clarify and supplement the Rules by prescribing specific time frames within which certain procedural steps in the prosecution of a review application must be taken (time frames which were not expressly provided for in the Rules themselves). Importantly, the Practice Manual not only set out these time limits but also stipulated the adverse consequences that flow from non-compliance, through the deeming provisions contained in, *inter alia*, clause 11.2.3, in terms of which a review application may be deemed withdrawn. This deeming provision is designed to curb the dilatory prosecution of review applications and to promote the expeditious finalisation of matters before the Court.⁵

The test for reinstatement of review applications

- [6] This Court has long held that an application for reinstatement is akin to a condonation application.⁶ The principles applicable to condonation can therefore be set out briefly.

6.1. The general principles applicable to condonation are well established. Condonation is not there for the asking, nor are applications for condonation a mere formality.⁷ A party seeking condonation must make out a case for the indulgence sought and bears the onus to satisfy the court that condonation should be granted.

6.2. In determining whether to grant the relief sought, the Court is enjoined to exercise a discretion, taking into account the length of the delay, the adequacy and reasonableness of the explanation advanced for such delay, the applicant's prospects of success in the review, and the

⁴ *Digital Experience (Pty) Ltd v Veira and Others* (JR 2167/19) [2023] ZALCJHB 335 (1 November 2023) at para 21.

⁵ See *Overberg District Municipality v Independent Municipal & Allied Trade Union on behalf of Spangenberg & others* (2021) 42 ILJ 1283 (LC) at para 24.

⁶ *Tadyn Trading CC t/a Tadyn Consulting Services v Steiner and others* (2014) 35 ILJ 1672 (LC).

⁷ *NUMSA and Another v Hillside Aluminium* [2005] 6 BLLR 601 (LC); also see *Grootboom v National Prosecuting Authority and Another* [2014] 1 BLLR 1 (CC).

potential prejudice that may be suffered by either party should the application be granted or refused. These considerations are not to be assessed in isolation. Rather, they are interrelated and must be weighed collectively in arriving at a just and equitable determination.

- 6.3. In this Court, that formulation which has its roots in *Melane v Santam Insurance Co Ltd*⁸ has long been qualified by the rule that where there is an inordinate delay that is not satisfactorily explained, the applicant's prospects of success are immaterial.⁹
- 6.4. The application for condonation must offer an explanation for the full length of the delay.¹⁰ A reckless or intentional disregard of the rules will not be condoned and neither will a lack of *bona fides*.¹¹ For the avoidance of doubt, this means that the applicant is required to explain the period of the delay before *and after* the deemed withdrawal. It further means that, if there is any delay in seeking condonation, this too must be adequately explained.¹² This is more so when having regard to the manner in which the Applicant has conducted the prosecution of the review application.¹³
- 6.5. Equally significant, of course, are the respondent's interests in the finality, which should not be disregarded, together with the Court's own interest in the efficient administration of justice and the avoidance of undue delays that impede the expeditious resolution of disputes.¹⁴

⁸ 1962 (4) SA 531 (A).

⁹ *National Union of Mineworkers v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC). This principle was confirmed in *National Education Health and Allied Workers Union on behalf of Mofokeng and Others v Charlotte Theron Children's Home* (2004) 25 ILJ 2195 (LAC) at para 24, where the LAC held that without a reasonable and acceptable explanation for a delay, the prospects of success are immaterial.

¹⁰ *eThekweni Municipality v Ingonyama Trust* 2013 (5) BCLR 497 (CC).

¹¹ See *Floorworx Africa (Pty)Ltd v Mazars (Gauteng) Inc and others* (87546/2018) [2023] ZAGPPHC 498 (23 June 2023).

¹² *CWIU and Another v Ryan and Others* [2001] 3 BLLR 337 (LC); *Darries v Sheriff, Magistrate's Court Wynberg and Another* 1998 (3) SA 34 (SCA).

¹³ *Digital Experience* supra note 4 at para 41 and 42.

¹⁴ See *S v Di Blasi* [1995] ZASCA 111 at 3g.

[7] In *Overberg District Municipality v Independent Municipal & Allied Trade Union on behalf of Spangenberg & others (Overberg)*,¹⁵ the Court, dealing with an application for the reinstatement of a review application deemed withdrawn, stated the following:

[31] ... If effect is to be given to the deemed status of the review application, it seems the correct approach is that the application must be reinstated and that a condonation application for the non-compliance alone cannot be brought because an interlocutory application relating to a non-existent review application makes no sense. It appears that most judgments favour the approach that a reinstatement application has to be brought together with the condonation application.

[32] However, even though this approach seems to be formally correct, when it comes to deciding whether or not to reinstate the review application that decision will always be inextricably linked with whether or not the non-compliance with the manual should be condoned. It is difficult to envisage how any review application could be reinstated, unless the act of non-compliance is also condoned.

...

[39] On the approach adopted, as one pre-condition for reinstatement, the court needs to be satisfied that the non-compliance with the manual which led to the application being deemed inactive, should be condoned. If that conduct should be condoned, its dilatoriness up to the point the application was deemed inactive will be excused. Further, if it is to ultimately succeed in reinstating the application it should still demonstrate that it acted promptly in launching the reinstatement application and has provisionally taken further steps in a bona fide attempt to ensure the expeditious finalisation of the review if reinstatement is permitted. To the extent that those further steps would also need to be condoned if the application is brought back to life, the court must determine if they should be. If not, that will sometimes prevent the reinstatement of the application, just as the failure to

¹⁵ *Overberg* supra note 5 at para 31, 32 and 39.

obtain condonation for the initial non-compliance would. However, if the condonation required relates to some step that is not a pre-condition for pursuing a review, such as the late filing of a replying affidavit, then it would not be an obstacle to reinstating the review application, even if that step is not condoned.’ [Own emphasis]

- [8] Accordingly, an applicant seeking the reinstatement of a review application arising from non-compliance with clause 11.2.3 of the Practice Manual was required to furnish a comprehensive explanation addressing three distinct periods.
- [9] *First*, an explanation must be provided as to why the record could not be transcribed and filed within the prescribed sixty (60) days. *Second*, the applicant must account for the period between the date of non-compliance and the filing of the reinstatement application. *Third*, and as set out in *Overberg*, the applicant is required to set out what provisional steps it has taken in a *bona fide* attempt to ensure the expeditious finalisation of the review if reinstatement is permitted.¹⁶
- [10] The Court explained that an explanation of the provisional steps taken is required for the following reasons:¹⁷

[37] Strictly speaking, once a review application’s legal status as a pending application ceases by operation of one of the deeming provisions in the manual there can be no enforceable obligation on either party to file further court process in the main application. Should the inaction of an applicant party after the application has become defunct be a consideration in reinstating the application, or should the determination of reinstatement be confined essentially to whether the non-compliance which led to it being deemed such, should be excused?

[38] In my view, it would be odd that a party whose non-compliance had caused its application to become inactive, could then fold its arms until its application for reinstatement was decided. While it might not be strictly obliged to take further steps, its bona fides in seeking to finalise the review would surely be questionable if it did nothing further to ready the matter for speedy resolution in the event its reinstatement application succeeds. To accept the passivity of such a party once their application is deemed inactive, would also seem to promote

¹⁶ *Overberg* supra note 5 at para 39 (footnotes omitted).

¹⁷ *Overberg* supra note 5 at para 37 and 38.

further delay rather than curtail it, contrary to the principle that reviews should be dealt with expeditiously. An applicant party that has been dilatory and is seeking an indulgence to revive the review application therefore ought to satisfy the court that in the interim it has done what it can to remedy its failure which led to the application being deemed inactive in the first place and done whatever else it could reasonably do so that the matter would be ready for hearing if reinstated... in my view this would be in keeping with the condonation principles affirmed in Samuel's case...' [Own emphasis]

- [11] It is within this context, and against the above legal framework and principles, that Pelchem's application must be assessed.

Analysis of the application to reinstate the review application

- [12] The delay in this matter is significant. It is common cause that the record should have been filed on or before 26 April 2023. However, owing to what, on Pelchem's version, appears to be persistent financial hurdles that prevented it from being in a position to (i) pay for the security bond in terms of section 145(7) of the LRA and (ii) afford the costs of transcribing the record of proceedings, Pelchem was unable to file a transcribed record by 26 April 2023, as required in terms of clause 11.2.2 of the Practice Manual.

- [13] For purposes of determining whether Pelchem has established a proper basis for the granting of the reinstatement application, it is necessary to summarise the material facts relevant to this assessment. These facts are considered with reference to the following three distinct periods, as they are material to Pelchem's explanation for the period of delay:

- 13.1. The initial sixty (60) day period following receipt of the Rule 7A(5) notice from the Registrar;
- 13.2. The period between the date of non-compliance with clause 11.2.3 of the Practice Manual and the filing of the present reinstatement application; and
- 13.3. The period from the filing of the reinstatement application to its determination, during which Pelchem is required to demonstrate the

measures taken to ensure the expeditious prosecution and finalisation of the review application.¹⁸

Launching of the review application

- [14] On 20 November 2022, the third respondent issued an arbitration award in favour of Ms Letsoalo under case number GATW110-21. On 22 December 2022, Pelchem launched a review application under case number JR2880/22, seeking an order reviewing and setting aside the arbitration award.
- [15] On 4 January 2023, the Commission for Conciliation, Mediation and Arbitration (“**the CCMA**”) certified the award in terms of section 143(1) of the Labour Relations Act¹⁹ (“**the LRA**”). Shortly thereafter, and on 26 January 2023, Pelchem was served with a writ of enforcement of the award, authorising the Sheriff to attach Pelchem’s movable property in satisfaction thereof.
- [16] On 30 January 2023, the Registrar issued a notice in terms of Rule 7A(5), advising Pelchem that the record of the arbitration proceedings was ready for collection.

Pelchem’s explanation for the initial sixty (60)-day period

- [17] After receiving the Rule 7A(5) from the Registrar, and on 31 January 2023, Pelchem attended court to uplift the record.
- [18] On 15 February 2023, Pelchem discussed with its legal representatives the issue of providing security as contemplated in section 145(8) of the LRA. It was noted that obtaining a guarantee from the National Treasury would take approximately six (6) to nine (9) months.
- [19] On 24 February 2023, Pelchem informed Ms Letsoalo’s legal representatives that, as a state-owned entity, it possessed sufficient assets to satisfy the award and made an undertaking to settle the amount of R1 033 125.00 in full. Ms Letsoalo’s legal representatives, however, rejected this undertaking as

¹⁸ *Overberg* supra note 5 at para 39.

¹⁹ Act 66 of 1995, as amended.

insufficient to constitute proper security for purposes of section 145(7) of the LRA.

- [20] On 2 March 2023, following a request by the Sheriff to access Pelchem's premises to effect attachment, Pelchem's Senior Legal Advisor, Mr Jantjies, advised that the premises were situated within a National Key Point and that the Sheriff would be required to undergo an induction process before access could be granted. Therefore, on 6 March 2023, a meeting was convened to address the issue of security. It was noted that Pelchem lacked the financial means to furnish a cash guarantee and would therefore approach its holding company, the South African Nuclear Energy Corporation (NECSA), for assistance. These discussions, however, did not yield any results.
- [21] On 16 March 2023, the Sheriff underwent the required SHEQ Training and Access Card induction. By 30 March 2023, Pelchem had still not secured the necessary security payment, and the Sheriff proceeded to attach Pelchem's movable assets, consisting of spare parts stored in its YMB facility, as security.
- [22] On 4 April 2023, the Sheriff attached Pelchem's assets to an estimated value of R2.5 million but did not remove them from the premises.
- [23] On 16 April 2023, Mr Jantjies convened a meeting to explore the possibility of selling Pelchem's spare parts (valued at approximately R48 million) as previously authorised by the NECSA Board, to realise the amount of R1 033 000.00 required as security. During this period, Mr Jantjies cautioned that the delay in securing payment of security could have adverse implications for the pending review application, particularly as it prevented Pelchem from instructing its legal representatives to have the record transcribed.
- [24] On 16 April 2023, Pelchem's Supply Chain Management Department was instructed to proceed with the sale of the spare parts. By early May 2023, three interested parties had submitted quotations, and sales were subsequently concluded. Pelchem received R32 325.50 on 16 May 2023, R47 652.00 on 18 May 2023, and R41 328.00 on 31 May 2023, totalling R121 305.50.

Pelchem's explanation for the period between the date of non-compliance and the filing of the present reinstatement application

- [25] In terms of clause 11.2.3 of the Practice Manual, the record in the review application ought to have been filed by no later than 26 April 2023. Pelchem, however, failed to do so.
- [26] By the time the quotations were received, the prescribed period had already expired, and the review application had consequently lapsed. Mr Jantjies thereafter sought instructions from Pelchem, which advised that it intended to utilise anticipated income from container rentals, expected from a Saudi Arabian entity, to furnish the required security.
- [27] Around this time, Pelchem's former Managing Director, Mr Umesh Natho, vacated office, and Petrus Schute assumed the role of Acting Managing Director. During this transition, correspondence from the Sheriff continued to be sent to the former Managing Director's email address, resulting in the Acting Managing Director only becoming aware of the Sheriff's communications on or about 3 July 2023. A meeting was subsequently arranged and held with the Sheriff on 6 July 2023.
- [28] At this meeting, the Sheriff indicated his intention to proceed with advertising Pelchem's assets for auction on 1 August 2023. The Sheriff was informed that Pelchem anticipated being able to furnish the security payment on or about 10 July 2023. On 7 July 2023, Pelchem received USD 56 264.26 (which, at the time, was approximately R1 069 016.00) from container rentals. Approval was granted for this amount to be utilised as security. Pelchem accordingly deposited the amount of R1 155 983.50 into Ms Letsoale's attorneys' trust account and notified the Sheriff of the payment.
- [29] Despite this, on 1 August 2023, the Sheriff proceeded to advertise the attached assets for public auction. Pelchem therefore took steps to launch an urgent application before the Labour Court to interdict the auction and to suspend enforcement of the arbitration award, pending an application for the reinstatement of the review application. An order to that effect was granted,

directing that Pelchem file the reinstatement application within five (5) days therefrom.

- [30] In light thereof, Pelchem instituted the present application for reinstatement on 5 September 2023.

The period from the filing of the reinstatement application to its determination

- [31] There is no specific description of steps taken by Pelchem since filing the reinstatement application on 5 September 2023, and as at the date of delivery of this judgment, Pelchem has yet to transcribe, prepare and file the record of the proceedings in the review application it seeks to reinstate.

- [32] Pelchem provides no explanation for its failure to take steps to ensure the expeditious resolution of the review application.

Assessment of Compliance with Practice Manual

- [33] Pelchem sought to justify its non-compliance with the Practice Manual on the basis that, during the relevant periods, its primary focus was directed at securing the funds required to furnish security in terms of section 145(7) of the LRA.

- [34] When Pelchem elected to institute review proceedings, as *dominus litis*, it bore responsibility for ensuring compliance with not only section 145(7) of the LRA, but all the procedural time frames governing the review proceedings it had initiated, including the time periods prescribed by Clause 11.2.2 of the Practice Manual.

- [35] Clause 11.2.3 of the Practice Manual envisages that litigants may experience difficulties with complying with the 60-day period. For this reason, it allows for the respondent to consent to an extension of the time, failing which the applicant may approach the Judge President in chambers for an extension of the time. Properly construed, the Practice Manual does not oblige an applicant to seek an extension of time, however, in the absence of an application for an extension, a review application is deemed withdrawn.

- [36] Notwithstanding the difficulties it claims to have encountered, Pelchem did not invoke clause 11.2.3 of the Practice Manual by seeking an extension of time. It concedes that no attempt was made to obtain an extension, either from Ms Letsoalo's attorneys or, failing that, from this Court. Pelchem states that it did not seek Ms Letsoalo's consent because it anticipated that such consent would be refused. It was, however, left with the option of approaching the Judge President, no explanation is furnished for why this step was not taken in accordance with the Practice Manual.
- [37] Pelchem's failure to do so is unfortunate. The explanation advanced by the applicant for the delay in furnishing security is not without merit. It is well known that state-owned entities are often required to navigate extensive administrative and regulatory processes before securing approval for the release of large sums of money, including for purposes of furnishing security under section 145(7) of the LRA. Had these considerations been properly placed before the Judge President, it is very probable that an extension of time would have been granted.
- [38] I accordingly agree with Ms Letsoale that Pelchem's decision to prioritise the securing of funds for purposes of compliance with section 145(7), to the exclusion of its obligations under clause 11.2.3 of the Practice Manual, was misplaced and does not assist it in the present application. This is particularly so given that Pelchem expressly acknowledged in its papers that it was aware that a failure to comply with the Practice Manual would result in the review application being deemed withdrawn.
- [39] When having regard to Pelchem's *bona fides* in expediting the review application, it is noteworthy that it has taken no steps to further the review application since filing the reinstatement application on 5 September 2023.
- [40] It is also necessary, at this stage, to address the following inconsistencies in Pelchem's version:
- 40.1. On 18 May 2023, Ms Letsoale's attorneys addressed correspondence to Pelchem's attorneys advising that the 60-day period prescribed by

the Practice Manual had expired on 26 April 2023 and that, consequently, the review was deemed withdrawn.

- 40.2. Pelchem received USD 56 264.26 for container rentals on 7 July 2023 and, shortly thereafter, on 10 July 2023, informed Ms Letsoale's attorneys that security in the amount of R1 155 983.50 had been furnished by way of a deposit into its attorneys' trust account. Pelchem advised Ms Letsoale's attorneys that it was "*proceeding with requesting the transcribed records*" in order to finalise the review application. This is significant, as any contention that funds were previously unavailable to procure the transcription of the record and to advance the review would, on Pelchem's own version, have fallen away by that stage.
- 40.3. On 11 July 2023, Ms Letsoale's attorneys again addressed correspondence to Pelchem's attorneys advising that the 60-day period had expired on 26 April 2023 and that the review was accordingly deemed withdrawn. This notwithstanding, no steps were taken by Pelchem either to advance the review application or to institute an application for reinstatement.
- 40.4. On 11 August 2023, Ms Letsoale's attorneys addressed correspondence to Pelchem's attorneys requesting confirmation as to whether the audio recordings of the arbitration proceedings had been provided to transcribers and, if so, to whom. In response, Pelchem's attorneys indicated in correspondence dated 11 August 2023 that they had "*instructed Digital Audio Recording Transcriptions on 1 February 2023*". This statement, however, is contradicted by the version later advanced in Pelchem's replying affidavit, where it is acknowledged that the attorneys had merely obtained a quotation from digital audio recording transcriptions and, due to an alleged lack of funds, had not in fact instructed them to proceed with the transcription.
- 40.5. Pelchem's heads of argument attempt to justify the failure to file the record on the basis that the "*Applicant realised that the record of proceedings was incomplete and accordingly made several attempts to*

the CCMA to procure same". Reference is made to annexure AL8, page 67 of the founding affidavit in the reinstatement application. There is no AL8 in the founding papers, and ALR8 of the answering papers does not support this averment. Moreover, no reference is made in either the founding or answering papers to any attempts to contact the CCMA.

- [41] These inconsistencies are material and weigh against Pelchem. The contradictory versions advanced in correspondence and in the affidavits undermine the reliability of its explanation and cast doubt on its *bona fides*. A litigant seeking an indulgence must place a full, frank and consistent account before the Court. Where an explanation shifts over time and is contradicted by contemporaneous correspondence, an adverse inference may properly be drawn. In these circumstances, the inconsistencies materially weaken Pelchem's attempt to establish good cause and render its explanation for the delay unpersuasive.
- [42] To compound matters, at no stage, whether in correspondence or in its founding papers, does Pelchem contend that it lacked sufficient funds to procure the transcription of the record. The explanation advanced in Pelchem's founding papers for its non-compliance with the Practice Manual is that it was "*more focused on seeking funds to satisfy the security bond as provided for in section 145(7) of the LRA*". The version that Pelchem lacked the necessary funds to transcribe the record emerges only for the first time in its replying papers.
- [43] I accordingly find that no satisfactory explanation has been furnished for the delay.
- [44] I nevertheless proceed to consider the prospects of success.

Prospects of success in the review application

- [45] The Court is also required to consider whether an applicant has reasonable prospects of success on review, should it be able to establish the grounds upon which the review is premised when the matter is argued. This requires

an applicant to set out allegations which, if established, demonstrate a reasonable prospect of success.²⁰

- [46] Ms Letsoale contended that Pelchem's case does not enjoy reasonable prospects of success. She further states that, had Pelchem genuinely enjoyed strong prospects of success, as it contends, it would have had little difficulty in diligently prosecuting the review. I am persuaded that this contention is well founded.
- [47] In the absence of a transcribed record and the full complement of affidavits filed in the review application, this Court is left only with the Commissioner's award, which appears to have been reached in a careful and considered manner, particularly having regard to the extensive body of evidence before him, including, in Ms Letsoale's bundle alone, documentation running to approximately 3 000 pages. It is apparent from the comprehensive nature of the award that the Commissioner considered and addressed all material issues placed before him. The Commissioner delivered a detailed and well-reasoned arbitration award, the findings of which are justified when viewed against the extensive evidence that was before him.
- [48] By contrast, Pelchem's case rests largely on vague and unsubstantiated grounds of review, unsupported by documentary evidence and unaccompanied by confirmatory affidavits. This deficiency is compounded by material inconsistencies in the correspondence and affidavits.
- [49] Having regard to the material before this Court, I am satisfied that the Commissioner's finding is one that a reasonable decision-maker would have reached and, accordingly, Pelchem enjoys little prospect of success in the review application.

Prejudice

- [50] As far as prejudice is concerned, Pelchem contends that they would suffer significant prejudice if the reinstatement were refused. The refusal of

²⁰ *MEC for Public Works: North West Province and Another v Public Service Coordinating Bargaining Council and Others* (JR430/18) [2025] ZALCJHB 54 (4 February 2025) at para 8.

reinstatement would bar them from challenging the arbitration award, which found to the contrary.

[51] On the other hand, Ms Letsoalo contends that no prejudice would befall Pelchem should reinstatement be refused. On the contrary, she submits, *inter alia*, that –

51.1. She has already endured a protracted delay in securing finality in this matter, occasioned by Pelchem's failure to prosecute the review application diligently and in good faith, as required by the principles of expeditious dispute resolution; and

51.2. Despite its acknowledged financial constraints, Pelchem has continued to incur unnecessary and avoidable legal costs arising solely from its own non-compliance.

[52] It is for these main reasons Ms Letsoalo asserts that Pelchem is the author of its own misfortune, and that it would be unjust to subject her to further prejudice and delay while Pelchem continues to pursue this matter in the dilatory manner it has exhibited to date. I am inclined to agree with Ms Letsoale.

[53] I therefore find that the balance of prejudice favours Ms Letsoale.

Finding

[54] Having considered the submissions advanced, and when weighed against Ms Letsoale's detailed response, I am not persuaded that Pelchem has established good cause for the reinstatement of the review application. This is particularly so in light of the unsatisfactory explanation for the delay, which is riddled with inconsistencies, and the unconvincing prospects of success, which do not sufficiently compensate for the extent of that delay.

[55] In the circumstances, the present application must fail. The review application is accordingly not reinstated, remains deemed withdrawn and is accordingly dismissed.

Costs

- [56] Turning to the issue of costs, this Court enjoys a wide discretion in determining an appropriate costs order, guided at all times by the principles of law and fairness. Section 162 of the LRA permits the Court to have regard to, *inter alia*, the conduct of the parties in the course of litigation.
- [57] In rendering a decision with respect to costs, it is important to acknowledge that, as alluded to above, on 18 May 2023, the Respondent's attorneys addressed correspondence to Pelchem's attorneys advising that the 60-day period prescribed by the Practice Manual had expired on 26 April 2023 and that, as a consequence, the review was deemed withdrawn. Pelchem, however furnished no explanation for its failure to comply with the Practice Manual, no steps were taken to apply for reinstatement until 5 September 2023, and no reasonable explanation for this delay was advanced in its papers for this substantial delay.
- [58] Such conduct is inappropriate. The Practice Manual, at the time that Pelchem filed this reinstatement application, had been in operation for nearly a decade and provided clear mechanisms to address each stage of the review process. In particular, where difficulties arise in relation to the record, it expressly provided that a party may, within the prescribed time period, seek the consent of the opposing party for an extension and, failing such consent, approach the Judge President of this Court for appropriate directions. Pelchem did neither.
- [59] Instead, it elected to proceed in isolation, despite the availability of both the opposing party and the Judge President as mechanisms to resolve the difficulties encountered. In the circumstances, Pelchem is plainly the author of its own misfortune. This conclusion is reinforced by the fact that it has been legally represented throughout the proceedings.
- [60] In the circumstances, it would be unfair to burden Ms Letsoale with the costs of an application that could and should have been avoided had due diligence been exercised. The dictates of fairness therefore, justify an award of costs in this application.

[61] For the avoidance of doubt, the costs order granted herein is confined to this reinstatement application. As regards the costs associated with the review application, the provisions of Rule 43(1)(b) of the Labour Court Rules find application. Accordingly, unless Pelchem tenders the wasted costs, Ms Letsoale may, on notice, apply for such costs.

[62] In the circumstances, I accordingly make the following orders:

Order

1. The application to reinstate the review application is dismissed.
2. The Applicant must pay the costs of this reinstatement application.

K A Holmes

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv. Nicholas Zwane

Instructed by: Mpoyana Ledwaba

For the First Respondent: Rudolph Kuhn

Instructed by: Rudolph Kuhn Attorneys

LABOUR COURT