



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case No: C375/2021

In the matter between:

PAPAKI LAZARUS OAGENG

Applicant

and

DIS-CHEM PHARMACIES LTD

First Respondent

MARIEKE VAN ROOYEN N.O.

Second Respondent

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Third Respondent

Heard: In Chambers

Delivered: 23 February 2026

Summary: Application for condonation for late filing of application for leave to appeal. Requirements not met. Application dismissed.

JUDGMENT

DANIELS J

Introduction

- [1] The applicant seeks condonation for the late filing of his application for leave to appeal.

Material facts

- [2] The first respondent had applied to this court to review and set aside an arbitration award issued by the second respondent, under CCMA case reference WECT8240-19.
- [3] Unfortunately the applicant failed to serve his answering affidavit on the first respondent, despite being warned that he had failed to make proper service, and the review proceeded unopposed.
- [4] The review application was heard, on an unopposed basis, on 16 October 2024, when an order was issued reviewing and setting aside the award and substituting it with a finding that the dismissal of the applicant was procedurally and substantively fair.
- [5] Some four months later, on 13 February 2025, applicant's attorneys requested reasons for the order. Reasons were issued and emailed to the applicant's attorney on 7 March 2025. By this time, the applicant's attorneys had not filed a notice of withdrawal as attorneys of record. Nor did his attorneys notify the court that they would not accept the reasons on their client's behalf.

- [6] The applicant filed an appeal notice on 2 April 2025. The first respondent objected and filed an application to declare the notice an irregular step. The applicant withdrew the notice on 4 July 2025.
- [7] On 25 July 2025, the applicant, through his new attorneys, filed an application for leave to appeal accompanied by an application for condonation. The first respondent contends that the application for leave to appeal is 84 days late. The applicant contends that the application is approximately 90 days late. By any account, the application is considerably late.

Legal principles and analysis

- [8] Before exploring the condonation application, it is necessary to set out the legal principles that govern such issues. They are aptly summarised in *Grootboom v National Prosecuting Authority & another*¹ at paras 50 and 51 where Zondo J (as he then was) held:

[50] In this court the test for determining whether condonation should be granted or refused is the interests of justice. If it is in the interests of justice that condonation be granted, it will be granted. If it is not in the interests of justice to do so, it will not be granted. The factors that are taken into account in that enquiry include:

- (a) the length of the delay;
- (b) the explanation for, or cause for, the delay;
- (c) the prospects of success for the party seeking condonation;
- (d) the importance of the issue(s) that the matter raises;
- (e) the prejudice to the other party or parties; and
- (f) the effect of the delay on the administration of justice.

Although the existence of the prospects of success in favour of the party seeking condonation is not decisive, it is an important factor in favour of granting condonation.

[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

¹ (2014) 35 ILJ 121 (CC)

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."

(own emphasis)

- [9] An important principle, emphasized in para. 51 of *Grootboom*, echoes the words of Holmes JA in *Melane v Santam Insurance Co. Ltd*² where the learned judge stated: "*If there are no prospects of success there would be no point in granting condonation*". Accordingly, where the delay is excessive and the explanation amounts to no explanation at all, it is unnecessary to consider the prospects of success.³
- [10] It is important to mention a further principle. Our courts have held that when an individual realises that he has not complied with a court rule or statutory time period, he must apply for condonation without delay.⁴ In this regard, in *Napier v Stoperas*⁵ Grosskopf JA held: "*His inaction may also be relevant when he should have realised but did not, that he has not complied with a Rule.*" It goes without saying that an applicant's failure to apply for condonation with the necessary expedition undermines the other party's interest in the finality of a judgment, the avoidance of unnecessary delay in the administration of justice and may impact the convenience of the Court.
- [11] Litigants frequently seek to lay the blame on their legal representatives. In this regard, it is trite that there is a limit to which a litigant can escape the

² 1962 (4) SA 531 (A) at 532

³ *Moila v Shai NO & others* (2007) 28 ILJ 1028 (LAC) at para 34

⁴ *Allround Tooling (Pty) Ltd v NUMSA & others* [1998] 8 BLLR 847 (LAC) at para 8

⁵ 1995 (2) SA 665 (A) at 671

result of his attorney's lack of diligence, but it is equally true that the facts of a matter will dictate whether the actions (or inactions) of a litigant's representative can be imputed to the litigant.⁶

Analysis of the application for condonation

[12] As illustrated in *Grootboom*, where the delay is lengthy there ought to be a reasonable explanation for the delay. However, where the delay is lengthy, absent a reasonable explanation for the delay, there must be reasonable prospects of success. In my view, as explained below, the explanation for the delay is poor:

12.1 Several months after the order was issued, the applicant requested reasons for the order (through his attorneys) and then, on his own rather improbable version, he terminated the services of his attorneys before the reasons arrived – within the next three weeks.

12.2 The applicant had access to his attorney for several months *after* the order was issued and cannot reasonably plead ignorance of the applicable time periods to apply for leave to appeal.

12.3 Thereafter, the applicant filed an irregular notice of appeal. He withdrew the notice of appeal three months later, on 4 July 2025.

12.4 Knowing full well that his notice of application for leave to appeal was late, his new attorneys only filed the application for leave to appeal on 25 July 2025.

⁶ *Govender & others v CCMA & others* (2024) 45 ILJ 1197 (LAC) at para 69

12.5 No explanation at all is provided for the delay of almost three weeks between the withdrawal (4 July 2025) and the filing of the proper application for leave to appeal (25 July 2025).

[13] The explanation for the delay is weak on its own terms. But it is also weak because it fails to deal with every period of the delay.⁷

[14] The applicant's prospects of success are also weak. The review was unopposed. The applicant's counsel conceded that the answering affidavit was not served on the first respondent. There was no basis for the court to consider the contents of the answering affidavit. In any event, on the arbitration record, it is clear the first respondent discharged the onus of proving that the dismissal of the applicant was procedurally and substantively fair.

[15] The first respondent will suffer prejudice if condonation is granted and the matter ultimately is referred for hearing de novo. The dismissal occurred seven years earlier, during 2018. The witnesses it used to prove its case are no longer available. Even if they were, it is trite, memories fade.

[16] The effect on the administration of justice of having matters drag interminably through the courts is unfortunate. The resources available to our justice system are limited and should be used with care. Of course, we must consider that labour disputes, by their nature, require expeditious resolution. That disputes can drag on for years and years in this manner is a travesty for all. Employees, and employers alike, are entitled to finality. Ultimately, it is simply not in the interests of justice to grant condonation.

⁷ *NUMSA & another v Hillside Aluminum* [2005] 6 BLLR 601 (LC) at para [12]

Conclusion

[17] The application for condonation is dismissed. There is no order as to costs.

RN Daniels

Judge of the Labour Court of South Africa

LABOUR COURT