



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JS856/22

In the matter between:

ERICA H LUCKY MOTOPI

Applicant

and

SANLAM CORPORATE (A DIVISION OF SANLAM

LIFE INSURANCE LIMITED)

Respondent

Heard: 23 January 2026

Delivered: 25 February 2026

REASONS FOR ORDER

PHEHANE, J

Introduction

[1] On 23 January 2026, this Court handed down an order dismissing the applicant's application for condonation for the late filing of his statement of claim with no order as to costs.

[2] The brief reasons for the order follow below.

Background

- [3] In an *ex tempore* judgment delivered on 12 June 2025, this Court found the referral by the applicant to this Court to adjudicate his unfair dismissal dispute launched in terms of the provisions of section 191(5)(b)(ii) of the Labour Relations Act¹ (LRA) was filed late. Consequently, the applicant was ordered to bring a condonation application within 10 days of the issuance of the order; in addition, the parties were ordered to file practice notes and heads of argument before the allocated date of the hearing of the condonation application.
- [4] The condonation application served before me on 23 January 2025. Both parties were legally represented by counsel on this occasion.
- [5] The applicant's attorney of record filed a practice note before the hearing date, in which practice note the following is recorded: the legal representatives of the applicant, the issues for determination by this Court, the relief sought, the pages of the record that the presiding judge should read, and that the matter was ripe for determination and no preliminary matters were required to be determined.
- [6] The impression created by the practice note was that the matter was ripe for hearing.

Postponement

- [7] In a surprise turn of events, at the commencement of the proceedings, counsel for the applicant brought an application for the postponement of the application and made the following submissions from the Bar: when the applicant brought the condonation application, he was self-representing; the applicant's current attorney of record was instructed on 23 December 2025, and therefore, the applicant's attorney did not have an opportunity to peruse the Court file; however, the applicant's legal representatives were aware that the founding affidavit in the condonation application was wholly inadequate and therefore required a postponement in order to "*amend*" the condonation

¹ Act 66 of 1995 (as amended).

application and that such amendment would be made within 10 days of the Court order. It was submitted by the applicant's counsel that costs should be costs in the cause, as the respondent has a strong financial arm and would suffer no prejudice should postponement be granted, whereas the applicant being unemployed, would suffer prejudice should postponement be refused. Insofar as the applicant's financial standing is concerned, the applicant's counsel submitted that the applicant could not afford the services of legal representation, was let down by the *pro bono* office when he launched his referral and that his current legal representatives are acting on a *pro bono* basis. Therefore, the applicant was not in a position to tender costs should the postponement be granted.

- [8] When asked by the Court why the application for postponement was not brought prior to the hearing date considering the applicant's attorneys had been on record for a month, counsel for the applicant submitted it was due to the applicant not having funds to pay his legal costs. I find this submission perplexing given that Counsel submitted that the applicant is being assisted on a *pro bono* basis.
- [9] Counsel for the respondent opposed the application for postponement on the grounds that the respondent was brought to Court under the impression created by the applicant that the application was ripe for hearing. This impression arises when considering the content of the practice note which was drafted by the applicant's current attorney of record and filed on 9 January 2026. Counsel for the respondent emphasized that the applicant's practice note is detailed and records that the condonation application was ready to be heard, that heads of argument had been filed and no preliminary matters were to be determined. In addition, counsel for the respondent submitted that the postponement application was not brought timely and the reasons for requiring postponement are not made under oath. Further, the reasons for the postponement made from the Bar differ from the content of the applicant's practice note. In relation to the costs occasioned by the postponement, counsel for the respondent submitted that the respondent is custodian of its client's monies and it is incorrect to state that it has a strong

financial arm and would not be prejudiced, particularly when regard is had to the requirement in terms of the purpose of the Labour Relations Act² (LRA) that dismissal disputes ought to be resolved expeditiously as pronounced in the Constitutional Court case of *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others*³ (*Toyota*). In addition, the applicant's condonation application is wholly inadequate and falls short of the well-known requirements to succeed in the grant for condonation.

- [10] Counsel for the applicant maintained that the applicant's legal representatives did not have the opportunity to peruse the Court file; further, that the content of the practice note is incorrect. I found this submission quite alarming to say the least, in view of the fact that detailed heads of argument and a detailed practice note directing the Court to the portions of the papers that must be read were filed by the applicant's current attorneys of record. It cannot be, in such circumstances, that they had not perused the Court file. Thus, the reason for requiring a postponement in order to peruse the file is not *bona fide* in my view.
- [11] The reason for requiring a postponement to supplement the applicant's inadequate pleadings is unconvincing, as the legal representatives of the applicant drafted detailed heads and a practice note based on the current pleadings and did not submit in these documents that there were any shortcomings in the applicant's papers, this despite the shortcomings being glaring. The applicant's legal representatives elected to proceed with heads of argument on the pleadings they concede are inadequate.
- [12] In *Myburgh Transport v Botha t/a SA Truck Bodies*⁴ the Supreme Court of Namibia set out principles applicable for the grant of postponement which are instructive. In summary, the Court adjudicating a postponement application has a discretion whether or not to grant the application. The applicant in a postponement application seeks an indulgence and must provide a full and satisfactory explanation of the circumstances that give rise to the application.

² Act 66 of 1995, as amended.

³ 2016 (3) BCLR 374 (CC) at para 1.

⁴ 1991 (3) SA 310 (Nms).

The application must be brought timely, that is, as soon as the circumstances which give rise to the postponement become known to the applicant. The application must be *bona fide* and must not be a tactical manoeuvre that will advantage the applicant, which advantage the applicant is not entitled to. Prejudice to either party is an important consideration.

- [13] In *Lekolwane v Minister of Justice and Constitutional Development*⁵ the Constitutional Court stated as follows in respect of the factors to be taken into account in determining an application for postponement:

'The postponement of a matter set down for hearing on a particular date cannot be claimed as a right. An applicant for a postponement seeks an indulgence from the court. A postponement will not be granted, unless this Court is satisfied that it is in the interests of justice to do so. In this respect the applicant must ordinarily show that there is good cause for the postponement. Whether a postponement will be granted is therefore in the discretion of the court. In exercising that discretion, this Court takes into account a number of factors, including (but not limited to) whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties, whether the application is opposed and the broader public interest. All these factors, to the extent appropriate, together with the prospects of success on the merits of the matter, will be weighed by the court to determine whether it is in the interests of justice to grant the application.'

(Own emphasis).

- [14] After hearing the submissions for postponement, this Court refused to grant postponement for the reasons that follow below.
- [15] The application was not brought timely. The reasons for postponement as explained by the legal representatives are not contained in an affidavit. Nothing is placed before this Court to determine *when* the applicant's legal representatives became aware that postponement was necessary. The explanation provided that the reason postponement was sought on the date of

⁵ 2007 (3) BCLR 280 (CC) at para 17.

hearing is due to the applicant not having funds to pay for legal representation is not plausible in light of counsel's submission that the applicant is represented *pro bono*. In addition, the reason for postponement was not *bona fide* as it transpired that the applicant's legal representatives had perused the pleadings such that they were able to file detailed heads of argument as well as a practice note, which they would not have filed had they not perused and considered the pleadings.

- [16] The applicant's legal representatives sought to amend the application which they conceded was inadequate in circumstances in which they failed to file a replying affidavit. A detailed answering affidavit was filed yet no replying affidavit was filed despite this Court's order of 12 June 2025 specifically ordering that further pleadings may be filed. No satisfactory explanation was provided for failing to file a replying affidavit together with an application for condonation for its late filing if the late filing were to be opposed. There was simply no intention to file a replying affidavit. In the absence of a replying affidavit, the respondent's averments as contained in its answering affidavit stand uncontested.
- [17] The impression that is created is that the applicant's intention in seeking a postponement was to alter his case in *toto* as his representative conceded that his papers are inadequate. This is not a fair manner in which to litigate.
- [18] A party is entitled to amend or supplement his or her papers. This must be done in line with the Rules of Court and an amendment will be granted where there is no prejudice to the other party. In the present application, the impression created before the hearing date was that the applicant was satisfied with his pleaded case and made an election to proceed on the current papers. To allow a postponement in such circumstance would not only delay the disposal of the matter, but it will also be prejudicial to the respondent, which prejudice would not be cured by a costs order. Labour disputes must be resolved – delays are detrimental to the rights of an employee who may be without income pending the resolution of the dispute

and are also detrimental to an employer who may be ordered to reinstate an employee after several years.⁶

- [19] Even if postponement were allowed with an appropriate costs order, the applicant has failed to demonstrate prospects of success on the merits. For this reason and the afore-going reasons, it was not in the interests of justice to grant postponement.

Condonation

The test

- [20] The requirements that must be satisfied to succeed in an application for condonation are well-known.⁷ An applicant in a condonation application must set out the degree of the delay and show good cause for the delay; further, the applicant must deal with the prospects of success on the merits and prejudice. An applicant for condonation seeks an indulgence from the Court and is to show sufficient cause to succeed in the grant of condonation by the Court.

⁶ *Toyota* (id fn 3) at para 4. See also: para 45 where the Constitutional Court held that excessive delays in labour litigation may induce a reasonable belief for the successful party that the order had become unassailable.

⁷ See: *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A). In *Grootboom v National Prosecuting Authority and another* (2014) 35 ILJ 121 at para 50, the Constitutional Court stated that the factors that are to be considered, in the interests of justice, in determining a condonation application include the following:

- (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.'

The Constitutional Court went on further to state at para [51] as follows:

'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 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]

[21] Recently, in *Aspen Holdings (Pty) Ltd and another v Phelane and another*,⁸ the Labour Appeal Court (LAC) restated the essence of the test as follows:

‘The onus of showing the existence of good cause in a condonation application rests with the applicant, and this essentially entails satisfying two well- established requirements, namely: (a) providing a satisfactory explanation for the delay and (b) showing the prospects of success in the main case’.

[22] It is trite that in the absence of a full, accurate and reasonable explanation for the delay, the prospects of success are immaterial.⁹

[23] At the outset I mention that the applicant filed two purported applications for condonation.

[24] The first is a typed notice of motion dated 24 June 2024. This notice of motion does not contain a prayer seeking condonation for the late filing of the applicant’s statement of claim. It is accompanied by a terse handwritten affidavit deposed to by the applicant on 17 June 2025.¹⁰ The respondent filed an answering affidavit on 24 June 2025.

[25] The second application comprises of a typed notice of motion dated 8 October 2025 similarly worded as the June 2025 notice of motion, together with a typed affidavit.¹¹ Several problems arise with this application. First, it does not comply with the order of this Court of 12 June 2025 directing the applicant to bring a condonation application within 10 days of that order. Second, the notice of motion does not contain a prayer seeking condonation for the late filing of the statement of claim. Third, the purported affidavit in support of this application is unsigned. The respondent opposes this application and in so doing, stands by its answering affidavit delivered on 24 June 2025.

[26] Counsel for the applicant informed this Court that the application delivered in October 2025 is the *correct* condonation application that this Court is to

⁸ [2025] 4 BLLR 409 (LAC) at para 14.

⁹ See: *National Union of Mine Workers v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC) at para 10.

¹⁰ Pleadings, pp 1 to 6.

¹¹ Pleadings pp 73 to 79.

determine and this is the application the applicant sought to amend. When presented with the problems as set out above, Counsel for the respondent abandoned this application and proceeded to argue the applicant's case on the basis of the handwritten affidavit.

- [27] The handwritten affidavit contains no averments regarding the period of the delay, the reasons therefore, the prospects of success in the main referral and the prejudice to either party should condonation be granted or refused. This is fatal to the condonation application. I point out that counsel for the applicant did not make any submissions regarding being afforded the opportunity to supplement this handwritten affidavit. Rather, he submitted that following the refusal of the postponement application and in light of the flaws in the typed condonation application, the only document remaining to argue on was this handwritten affidavit.
- [28] The delay is egregious. The Commission for Conciliation, Mediation and Arbitration (CCMA) issued its certificate of non-resolution of the dispute on 22 April 2022. Therefore, the referral to this Court ought to have been brought before 22 July 2022. The referral was filed 138 days late.¹²
- [29] The applicant appears to assume that the period of delay should be calculated from 24 November 2022 when the CCMA issued a ruling that he should refer his dispute to this court. This is incorrect as section 191(11)(a) of the LRA makes provision that a referral in terms of section 191(5)(b) must take place 90 days after the issuance of the certificate.
- [30] In his affidavit, the applicant avers that the *pro bono* office let him down and filed a wrong '*condonation*' when he launched his referral in this Court. He states on the one hand, that a new '*condonation*' was issued on 22 August 2022 '*that superseded the one that was issued in April*' and a ruling was made by the CCMA on 22 November 2022 that he should refer his dispute to this Court, which he did. He states that the correct '*condonation*' is attached together with emails confirming what transpired and he asks this Court to consider this information and enrol his referral for hearing.

¹² Respondent's heads of argument at para 19.

- [31] As I understand the applicant's papers, he contends his referral was not filed out of time.
- [32] Firstly, no other certificate of outcome was presented to this Court other than the certificate dated 22 April 2022. Secondly, I understand 'condonation' to be a condonation ruling, but no condonation ruling is attached to the affidavit. Even if it were, the condonation ruling would not assist the applicant, as the provisions of section 191(11)(a) of the LRA state that a referral in terms of section 191(5)(b) must be made 90 days after the body that conciliated the dispute issues a certificate of outcome. Thus, the launching of the applicant's referral remains out of time.
- [33] To the extent that the applicant contends that this Court erred in considering the certificate of 22 April 2022, neither the applicant nor his legal representative took any steps to set aside this Court's judgment and order of 12 June 2025. Thus, the judgment still stands.
- [34] What is apparent, is that in the application before this Court, the applicant seeks that his referral be re-enrolled. He does not seek condonation for the late filing of his statement of claim. The applicant is legally represented in these proceedings and ought not to have proceeded with this fatally defective application.
- [35] The applicant's legal representatives assumed that postponement would be granted and were ill-prepared to proceed with this application. This Court was informed that the "*correct*" condonation application is the one that was filed in October 2025. When faced with the predicament that the notice of motion in that application did not contain a prayer for condonation and that the founding affidavit in support thereof was unsigned, counsel for the applicant resorted to reliance on the inadequate affidavit filed in June 2025, which is fatally defective.
- [36] The respondent's answering affidavit sets out in detail that the applicant has not made any averments regarding the prospects of success on the merits. The respondent has fully explained why the applicant has no prospects of success in the main referral – following a consultation process in terms of

section 189 of the LRA, he was offered an alternative role, which he refused, notwithstanding that the business rationale for change was conceded; the applicant also refused to apply for a vacant role and ultimately, he signed a separation agreement and received a severance package. No process was instituted to set aside this agreement nor has he offered restitution for the severance pay he received. Therefore, his contention that his dismissal was unfair is frivolous.

- [37] The respondent submits that the applicant is not inexperienced in labour law as he makes himself out to be in his affidavit, as he holds qualifications in labour law and is a self-professed specialist in human resources and has knowledge and experience in labour relations.¹³
- [38] Counsel for the applicant repeatedly implored this Court to be lenient and not to close the doors of justice on the applicant. It is concerning that a perception is created that this Court would close its doors on a litigant, where the legal representatives were ill-prepared, and did not bother to place a paginated set of pleadings before the Court despite being the dominant litigant. It is the respondent that placed a comprehensive indexed and paginated bundle of pleadings and documents before the Court.
- [39] The Constitution of the Republic of South Africa, 1996¹⁴ provides that every person has a right to fair labour practices. The LRA gives effect to this right. This Court is a creature of statute. That this is a Court of equity is correct. However, there is a growing unsavoury practice in this Court, where litigants who are ill-prepared resort to statements that this is a Court of equity and expect this Court to jettison its Rules, legal principles and requirements and give way to mediocrity. The day that happens will be a travesty of justice. It is one thing to ask the Court to take a generous approach to pleadings prepared by laypersons as the Constitutional Court has pronounced,¹⁵ and another to ask this Court to accept, as in the present case, pleadings that do not seek

¹³ See: pleadings, answering affidavit at para 26 at p 18, para 43 at p 20 and annexure “PR2” at p 26.

¹⁴ See: section 23 thereof.

¹⁵ *Xinwa and others v Volkswagen South Africa (Pty) Ltd* [2003] 5 BLLR 409 (CC) at para 13.

condonation at first blush because a litigant is adamant that his referral was not late.

Conclusion

[40] The applicant's affidavit is wholly inadequate. No case is made out for condonation and that is the end of the matter for the applicant. Having considered the prospects of success on the merits, even if this Court were to take a generous approach in considering the applicant's case as pleaded, as there are no reasonable prospects of success on the merits, the application cannot succeed. The applicant is well versed in labour law. This is not disputed. This is not a layperson that does not comprehend labour law and how labour disputes are to be resolved. The prejudice to the respondent would have been greater in defending an unmeritorious dispute if condonation was granted.

[41] In consideration of the afore-going, it was not in the interests of justice to grant condonation. The respondent did not seek any order as to costs against the applicant.

[42] It is for the above reasons that the aforesaid order was made.

M. T. M. Pehane

Judge of the Labour Court of South Africa

LABOUR COURT