



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR1597/2019

In the matter between:

MINISTER OF WATER AND SANITATION

Applicant

and

JANE MODIBA

First Respondent

JANE TLOU

Second Respondent

J.J. MPHELA

Third Respondent

MOYO MASHUDU

Fourth Respondent

M.M. MOTLOUTSI

Fifth Respondent

NATIONAL EDUCATION HEALTH AND

ALLED WORKERS UNION (NEHAWU)

Sixth Respondent

MOLOKO PHOOKO N.O.

Seventh Respondent

GENERAL PUBLIC SERVICE SECTORAL

BARGAINING COUNCIL (GPSSBC)

Eighth Respondent

Heard: 21 January 2026

Delivered: 06 March 2026

JUDGMENT

PHAKEDI, AJ

Introduction and material facts

- [1] This is an opposed application to reinstate the review application which is deemed to be withdrawn as envisaged in clause 11.2.7 read with 16.2 of the Practice Manual of the Labour Court.¹ The first to sixth respondents (the respondents) are seeking an order dismissing this application with costs.
- [2] The review application was launched on 26 September 2019 and the record was served on 6 December 2019. However, the applicant did not file a notice as required by rule 7A(8) of the now repealed Rules for the Conduct of Proceedings in the Labour Court² (the Rules). No steps were taken by the applicant to prosecute the review application and it became archived by operation of the practice manual.
- [3] On 6 December 2020, the respondents launched an application in terms of section 158(1)(c) of the Labour Relations Act³ (the LRA) to make an arbitration award an order of court. The applicant opposed the application and also launched an application to condone the late filing of its notice in terms of rule 7A(8)(b) which it filed on 4 December 2020.
- [4] The respondents' application came before Tlhotlhemaje J on 6 November 2023 who made the following order:

¹ Practice Manual of the Labour Court of South Africa, effective 2 April 2013 (Repealed and replaced with the Rules Regulating the Conduct of the Proceedings of the Labour Court, effective 17 July 2024).

² Repealed and replaced with the Rules Regulating the Conduct of the Proceedings of the Labour Court, effective 17 July 2024).

³ Act 66 of 1995, as amended.

- '1. The applicants' application to make the arbitration award issued by the second respondent in terms of section 158(1)(c) of the Labour Relations Act is postponed *sine die*.
2. The first respondent is directed to deliver and file an application in accordance with clause 16.2 of the Practice Manual of this Court within 30 days of this order.
3. The first respondent is ordered to pay costs...'

[5] In compliance with the above-mentioned order, the applicant then launched this current application. The basic principle in our jurisprudence is that in order to properly deal with condonation applications, the Court must consider all the factors as pleaded by the applicant in order to exercise its discretion judiciously.

The reinstatement application and principles

[6] It is trite that an application for reinstatement is akin to a condonation application and the applicant must show good cause for its failure to comply with the Rules and the Practice Manual. In its application, the applicant must address the degree of lateness, provide an explanation for the delay, prospects of success, importance of the case, prejudice to the other party and the court, and the interests of justice.

Degree of lateness

[7] There are two sets of explanations which the applicant ought to provide to this Court in respect of the late filing of the notice in terms of rule 7A(8) and the application for reinstatement. The record was filed on or during December 2019 but the notice in terms of rule 7A(8)(b) was only filed another year later on 4 December 2020. No proper and reasonable explanation has been provided for the period between 6 October 2020 when the applicant received the section 158 (1)(c) application and the eventual filing of the rule 7A(8) (b) notice on 4 December 2020.

Explanation for the delay

- [8] The explanation provided by the applicant for its delay in filing the notice in terms of rule 7A(8) is that there was a change of personnel within the Office of the State Attorney in that Ms Hongo left the office without ensuring that the notice in terms of rule 7A(8)(b) was filed. Ms Sibanyini took over the file on or during March 2020 and she only learned that the notice was never filed when she received the section 158 (1)(c) application.
- [9] The respondents are not happy with the explanation provided by the applicant, particularly as no explanation is provided to cover the period between the date of 6 October and 4 December 2020. Furthermore, the respondents argued that the applicant ought to have brought the application for reinstatement rather than sit and do nothing between 6 October 2020 and 31 October 2023.
- [10] The applicant states that at no stage did it abandon the review application and the matter was being handled by the Office of the State Attorney and the record was filed within the period prescribed in the rules. It further issued instructions to the State Attorney to file a notice in terms of rule 7A(8)(b) as there was no need to amend the notice of motion nor file a supplementary affidavit. The applicant was at all material times waiting for the respondents to file their answering affidavit resisting the review application.
- [11] The applicant then issued instructions for Counsel to draft the notice to oppose, counter application to condone the late filing of the notice in terms of rule 7A(8)(b) and to file heads of argument in the lapsed review application. It was as a result of this action that the Court then granted them an opportunity to launch the reinstatement application.

Prospects of success

- [12] The applicant submitted that there are prospects of success in the review application and raised various grounds for reviewing and setting aside the arbitration award as it does not fall within the band of reasonableness.
- [13] What is common cause, however, is that the first to fifth respondents were employed as General workers on a salary level 3 on or during 2012. From

their commencement of employment, by arrangement with their supervisor, they performed clerical duties which were graded at salary level 5 but continued to be remunerated at salary level 3. An investigation was launched into their functions and recommendations of the investigators were rejected. The respondents then referred an unfair dismissal dispute to the GPSSBC and the Commissioner ordered the applicant to retain the employees at salary level 5 and pay them the salary difference from 2018.

[14] It is trite that in a condonation application, an applicant need not fully address the merits of a dispute to establish that they will succeed. What is required is for an applicant to set out facts which, if established, would result in the relief sought being granted or refused. In this application, the applicant has sufficiently outlined facts upon which it is argued that the arbitration award ought to be reviewed and set aside. The respondents are opposing this application and have also provided a set of facts justifying the award.

[15] The onus of showing the existence of good cause in a condonation application rests with the applicant, and this essentially entails satisfying the two well-established requirements, namely: (a) providing a satisfactory explanation for the delay; and (b) showing the prospect of success in the main case. The applicant bears the burden of showing good cause. A mere allegation of good cause will not be sufficient to assist the Court in exercising its discretion whether to grant condonation or not. In other words, as stated in *Standard General Insurance Co Ltd v Eversafe (Pty) Ltd and Others*⁴, the applicant must:

“at least, furnish an explanation of his default sufficiently full to enable the court to understand how it really came about and to assess his conduct and motives... Where there has been a long delay, the court should require the party in default to satisfy the court that the relief sought should be granted”.⁵

Prejudice and the interests of justice

⁴ 2000 (3) SA 87 (W) at para 12.

⁵ *Aspen Holdings (Pty) Ltd and another v Phelane and another (Aspen Holdings)* [2025] 4 BLLR 409 (LAC) at para 14.

- [16] The applicant submitted that it is in the interests of justice that the review application be reinstated for the purpose of ventilating the main dispute. If this application does not succeed, the award will undermine promotion policies and the respondents will be promoted to positions which have not been advertised, funded nor approved on the organogram of the Department. The respondents are opposing the reinstatement of the review application on the basis of prejudice as a result of excessive delays in prosecuting the review application.

Evaluation

- [17] Section 1(d) of the LRA provides that one of the objects of the LRA is to promote the effective resolution of labour disputes. The Labour Appeal Court (LAC) in *Samuels v Old Mutual Bank*⁶ (*Samuels*) held that:

‘... [The] purpose of [the Practice Manual] is, *inter alia*, to provide access to justice by all those whom the Labour Court serves; promote uniformity and/or consistency in practice and procedure and set guidelines on standards of conduct expected of those who practise and litigate in the Labour Court. Its objective is to improve the quality of the court’s service to the public, and promote the statutory imperative of expeditious dispute resolution.’

- [18] In *Samuels*⁷ the LAC held that:

‘the practice manual is not intended to change or amend the existing Rules of the Labour Court but to enforce and give effect to the Rules, the Labour Relations Act as well as various decisions of the courts on the matters addressed in the practice manual and the Rules. Its provisions therefore, are binding. The Labour Court’s discretion in interpreting and applying the provisions of the practice manual remains intact, depending on the facts and circumstances of a particular matter before the court.’

Although this court is not bound by the provisions of the Manual, litigating parties are bound by it. It is incumbent on the applicant in the review

⁶ (2017) 38 ILJ 1790 (LAC) at paras 14.

⁷ Ibid at para 15.

application to ensure that the matter is dealt with in line with the prescripts and not to frustrate the object of the LRA.

- [19] In *Macsteel Trading Wadeville v Francois van der Merwe N.O and Others*⁸, the LAC held that:

‘The Practice Manual came into effect during April 2013; midway through the review application. It, therefore, applies to it. Clause 11.2.7 imposes an obligation on the applicant to ensure that all the necessary papers in the application are filed within 12 months of the date of the launch of the application (excluding heads of argument), and the registrar is informed in writing that the application is ready to be set down for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not be archived or be removed from the archive. The record in the review application had been filed approximately 20 months after the launch of the review application. And the review application was set down for hearing almost six years from its launch. This means that by the date of set down of the review application, it had been archived and regarded as lapsed.’

- [20] The LAC in *Govender and others v Commission for Conciliation, Mediation and Arbitration and others*⁹ expanded the above-mentioned principles and held that:

[57] ... The factors relevant in the consideration of the grant or refusal of condonation include the degree of lateness, the explanation therefor, the prospects of success and the importance of the case. And in certain cases, the interest of justice may play a role.

- [58] Added to the factors applicable to condonation applications is the consideration that employment disputes should be dealt with expeditiously as a delay in the resolution of labour disputes undermines the object of the LRA and “any determination of the issue of good cause must always be considered against the backdrop of this fundamental principle” and further

⁸ (2019) 40 ILJ 798 (LAC) at para 23.

⁹ [2024] 5 BLLR 453 (LAC); [2024] ZALAC 6.

that review applications are by their nature, urgent and must be treated with a degree of diligence and promptness.’

[21] The applicant was at all material times legally represented and it can be assumed that its representatives became aware that the review was deemed withdrawn when a period of six months lapsed without any steps being taken to prosecute such application. Instead of bringing this reinstatement application at the earliest available opportunity, the applicant brought a condonation application for the late filing of the rule 7A(8) notice. Be that as it may, I do not believe that the inactions of the legal representatives should be imputed to the applicant department. I have taken note of the steps taken by the applicant from the moment the section 158(1)(c) application was instituted and it is in the interest of justice that the review application must be determined on the merits.

[22] As much as I sympathise with the respondents who have been sitting with an arbitration award in their favour since 2019, justice will be served in this matter if the review is reinstated, and the parties are allowed to proceed with the review application on the merits. In *Samuels* the court held that:

“The Practice Directive, in particular the provisions relating to archiving and retrieval are there to facilitate expeditious but fair adjudication of the disputes in the Labour Court. The manual should not be used to enable a party to gain an unfair advantage over the other”¹⁰

The Court concluded that *“it would be in the interest of justice and fairness that the non-compliance be condoned.”*

[23] In order to assist the parties in moving forward and ensuring that the review application is prosecuted without any further delays, it is accepted that the notice in terms of rule 7A(8)(b) filed by the applicant on 4 December 2020 has been received by the respondents. The respondents are therefore entitled to file their answering affidavit within fifteen (15) days of receipt of this judgment.

¹⁰ *Samuels* (id fn 8) at para 23

Costs

[24] It is trite that the awarding of costs in the Labour Court is discretionary as envisaged in section 162 of the LRA. The Constitutional Court in *Booi v Amathole District Municipality and others*¹¹, dealt with the issue of costs in the Labour Court and held as follows:

‘However, this is a labour matter and this court’s jurisprudence is settled: the ordinary rule that costs follow the result does not apply in labour matters. Rather, what emerges from the provisions of the LRA and the jurisprudence is that courts, when awarding costs in labour disputes, must consider what fairness demands and err on the side of not discouraging parties from approaching the courts for the peaceful resolution of labour disputes. Further, if costs are to be awarded in labour matters, there must be reasons that justify a court’s decision to depart from the position that a losing party should not be mulcted in costs in labour disputes.’

[25] The above-mentioned principle was clearly espoused in *Member of the Executive Council for Finance, KwaZulu-Natal and another v Dorkin NO and another*¹² where the Court held:

‘In making decisions on cost orders this court should seek to strike a fair balance between, on the one hand, not unduly discouraging workers, employers, unions and employers’ organizations from approaching the Labour Court and this court to have their disputes dealt with, and, on the other, allowing those parties to bring to the Labour Court and this court frivolous cases that should not be brought to court. That is a balance that is not always easy to strike but, if the court is to err, it should err on the side of not discouraging parties to approach these courts with their disputes. In that way these courts will contribute to those parties not resorting to industrial action on disputes that should properly be referred to either arbitral bodies for arbitration or to the courts for adjudication.’

¹¹ (2022) 43 ILJ 91 (CC) at para 60.

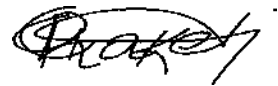
¹² (2008) 29 ILJ 1707 (LAC); [2008] 6 BLLR 540 (LAC) at para 19.

[26] Based on the above authorities, this Court comes to the conclusion that it is in the interests of the law and fairness that each party be burdened with its own costs.

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

Order

1. The lapsed review application launched under case number JR1597/2019 is reinstated.
2. The first to sixth respondents are directed to file their answering affidavit within fifteen (15) days of receipt of this judgment in the event that they wish to oppose the review application.
3. There is no order as to costs.



G. C. Phakedi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv H A Mpshe

Instructed by: The State Attorney, Pretoria

For the Respondent: Adv L Quilliam

Instructed by: Moabelo Attorneys

LABOUR COURT