



(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: JR1264/23

In the matter between:

MALESELA ABRAM MABUELA

Applicant

and

XANDER WEHNCKE N.O.

First Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

Second Respondent

POLOKWANE LOCAL MUNICIPALITY

Third Respondent

Heard: 26 February 2026

Reasons delivered: 10 March 2026

REASONS FOR ORDER

PHEHANE, J

Introduction

[1] On 26 February 2026, this Court handed down an order refusing to grant condonation for the late filing of a review application launched by the applicant, with no order as to costs.

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

Background

- [3] The applicant alleges that his dismissal from the employ of the third respondent was in terms of section 186(1)(b) of the Labour Relations Act¹ (LRA). The applicant referred an unfair dismissal dispute to the second respondent. As his dispute was referred late, he was required to file a condonation application. His condonation application was dismissed. The applicant launched a rescission application to rescind the ruling on condonation. The rescission application was filed late and was accompanied by a condonation application. The first respondent dismissed the condonation application in the rescission application as he found that the applicant failed to show good cause for the delay. The condonation ruling in the rescission application dated 26 March 2023 is the subject of the present review application.²
- [4] The applicant seeks an order reviewing and setting aside the rescission ruling, granting condonation for the late filing of his referral to the second respondent and an order directing the second respondent to schedule a hearing to determine his dispute.³ The application is opposed by the third respondent.

Submissions

- [5] The third respondent raised two preliminary issues: the first was that the record of the proceedings before the first and second respondent was filed late; the second is that the review application was filed late.
- [6] The notice of motion does not contain a prayer seeking condonation for the late filing of the review application.
- [7] The applicant sought condonation for the late filing of his review application in his supplementary affidavit filed in terms of the former Rule 7A(8)(a) of the Rules for the Conduct of Proceedings in the Labour Court⁴.

¹ Act 66 of 1995, as amended.

² Pleadings, pp 27 to 29.

³ Pleadings, notice of motion, prayers 1 and 2, on p 2.

⁴ Repealed on 17 July 2024.

[8] Rule 7A(8)(a) read:

‘(8) The applicant must within 10 days after the registrar has made the record available either-

(a) by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit.’

[9] When the applicant filed his notice in terms of the former Rule 7A(8)(a), he did not, as was required by this Rule, amend his notice of motion. He simply supplemented his founding affidavit by adding paragraphs pertaining to condonation for the late filing of the review application and the late filing of the record.

[10] As it transpired that the record was not filed late, the third respondent abandoned its preliminary point in this regard.

[11] The applicant submits that it was not necessary for him to amend his notice of motion to include a prayer seeking condonation for the late filing of his review application, as the prayer “*further and/or alternative relief*” in the notice of motion is sufficient to include a prayer for condonation.⁵

Degree of lateness and reason for delay

[12] The applicant avers that he received the rescission ruling on 26 March 2023. It is common cause that the review application was launched approximately 5 months late. The review application was delivered to this Court on 5 October 2023.

[13] The applicant explains that the reason for the delay is due to two occurrences. The first is the respondent evading service of the application; the second is the delay by the Sheriff in providing the return of service.

[14] The applicant explains that the staff of the third respondent refused to accept service of the application in April 2023 and June 2023. On 3 August 2023, a

⁵ Para 3 of the applicant's supplementary heads of argument.

staff member of the third respondent acknowledged receipt of the application and signed for it but did not affix an office stamp. The applicant was of the view that there was no proper service of the application in the absence of an office stamp, and therefore, proceeded to instruct the sheriff to serve the application on the third respondent. The applicant avers that the sheriff served the application on the respondent on 6 September 2023, however, the return of service was received on 27 September 2023 and whereafter, the application was delivered to this Court in October 2023.⁶ The applicant contradicts himself and avers that the return of service was received on 6 September 2023.⁷

Prospects of success and prejudice

- [15] The applicant avers that he has sufficient prospects of success, as the period of delay was minimal and he provided an explanation for the delay. The applicant avers that the third respondent will not suffer any prejudice should condonation be granted, as it will have the opportunity to defend the review application.

Opposition

- [16] The third respondent denies evading service and asserts that the applicant has not explained why other forms of service in terms of the Rules of this Court were not utilised by the applicant. The third respondent points out that the applicant has omitted to attach the sheriff's return of service to his supplementary affidavit. In addition, the third respondent points out that although the notice of motion is dated April 2023, the founding affidavit is dated 9 May 2023, therefore, it is impossible that any attempts were made by the applicant to effect service on the third respondent in April 2023. The third respondent confirms that service was effected on its staff member on 3 August 2023 and denies that an office stamp is necessary.
- [17] The third respondent contends that the applicant has no prospects of success on the merits. Further, that it is entitled to finality and the pattern of late filing

⁶ Pleadings, supplementary affidavit at para 16 on p 44.

⁷ *Ibid* at para 13.

of processes by the applicant undermines the LRA and the Rules of this Court. In conclusion, the third respondent submits that the applicant has failed to satisfy the requirements for the grant of condonation.

Test for condonation

- [18] The requirements that must be met for the grant of condonation are well established.⁸ It is trite that condonation is not for the mere asking. 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.
- [19] In *Allround Tooling (Pty) Ltd v NUMSA and others*,⁹ the Labour Appeal Court restated the well-established principle that a condonation application must be filed without delay and/or as soon as an applicant becomes aware that condonation is necessary.

Evaluation

- [20] The purpose of the notice of motion is to notify the party's opponent of the case that it is to meet. The supporting affidavit is to make out a case for the prayers sought in the notice of motion. In the present application, the applicant does not incorporate a prayer in his notice of motion seeking condonation for the late filing of his review application and his founding affidavit is silent on condonation.
- [21] It is only when the applicant is confronted with the answering affidavit, that he belatedly adds averments in his supplementary affidavit pertaining to condonation.

⁸ *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A). In *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; (2014) 35 ILJ 121 at para [51], the Constitutional Court stated 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.'

⁹ [1998] ZALAC 8; [1998] 8 BLLR 847 (LAC) at para [8].

- [22] It is trite that a party is to make out its case in its founding papers. The purpose of a supplementary affidavit in review proceedings is to amend, add or vary the applicant's founding papers after the record of the proceedings sought to be reviewed have been obtained, as the applicant may not have a full spectrum of the grounds of review before obtaining the record. The purpose of a supplementary affidavit is not to make out a new case.
- [23] The applicant's reliance on the "*further and/or alternative relief*" phrase as a catch all phrase being sufficient to incorporate a prayer for condonation is misguided.
- [24] In *Chao v Gomes*¹⁰ the Court examined the use of the words "*further and/or alternative relief*" and referred to judgments which stated that the use of these words amounted to nothing more than surplusage, verbiage and a superfluous prayer and is not a magical wand that entitles a party to relief that is inconsistent with the factual statements and the terms of the express claim. In the present case, the applicant seeks an indulgence from the Court. Therefore, the notice of motion must seek condonation, as without the grant of condonation, the Court lacks jurisdiction. Further and/or alternative relief presupposes initial relief, which a Court that lacks jurisdiction is disempowered to grant; therefore, there can be no question of further and/or alternative relief in such instance. Therefore, I am not persuaded that the phrase "*further and /or alternative relief*" includes a prayer for condonation.
- [25] Even if this Court were to take a lenient and generous approach and consider the applicant's request for condonation in view of the third respondent's opposition and that condonation is fully ventilated, the applicant does not meet the requirements for the grant of condonation for the reasons that follow.
- [26] The applicant is legally represented, and he states in his supplementary heads of argument that he knew at the stage of attempting to serve this application, that his review application would be filed late. However, he elected to wait for the record before applying for condonation.¹¹ This

¹⁰ (2012) JOL 29270 (GSJ) at para [14].

¹¹ Para 5 of the applicant's supplementary heads of argument.

explanation is untenable, as a party is to apply for condonation as soon as he or she is aware that condonation is necessary. The applicant did not do so.

[27] All the reasons proffered for the delay are unsound:

27.1 The applicant failed to explain why the application was not emailed to the third respondent when service was evaded on the first occasion on his own version. The applicant's legal representative emailed the application to the first and second respondents¹² yet no email service was effected on the third respondent despite the practice directives of this Court permitting service by email at the time. It is not explained why service by email was not utilised.

27.2 The applicant does not attach to his supplementary affidavit, the return of service by the sheriff that he alleges was the cause of the delay. Neither does he attach to his supplementary affidavit a confirmatory affidavit by his legal representative to confirm the alleged evasion of service by the respondent and the delay by the sheriff in providing the return of service.

27.3 The application was served on the third respondent on 3 August 2023. The application was served on the first and second respondent on 27 September 2023 by email. The applicant does not explain this delay. The elusive return of service of 27 September 2023 smacks off the applicant conjuring up a reason for the delay.

[28] The delay is egregious and undermines expeditious dispute resolution that underpins the LRA.¹³

[29] The applicant's reasons for delay are unsatisfactory and constitute hearsay evidence. As there is no reasonable and acceptable explanation for the delay, the prospects are immaterial.¹⁴

¹² Pleadings, supplementary affidavit at p 51.

¹³ In *Toyota SA Motors (Pty) Ltd v CCMA and Others* [2015] ZACC 40; (2016) 37 ILJ 313 at para [1], where the Constitutional Court stated that "any delay in the resolution of labour disputes undermines the primary purpose of the LRA", being expeditious dispute resolution. See also: *National Union of Metalworkers of SA on behalf of Thilivali v Fry's Metals (A Division of Zimco Group) and others* (2015) 36 ILJ 232 (LC); [2014] ZALCJHB 115 at para [25].

[30] In view of the afore-going, it is not in the interests of justice to grant condonation.

[31] This is a case that warrants the payment of costs. The applicant has shown a pattern of failing to adhere to the provisions of the LRA and the Rules of this Court in pursuing his dispute. It is well established that in this Court, the costs do not, as a general rule, follow the result. Legal representatives ought to ensure that disputes are pursued with diligence and where condonation is sought, the Rules of this Court pertaining to such applications must be adhered to. Had the third respondent confined its opposition to its preliminary point which was sound, as opposed to fully opposing condonation, it would not have been necessary to determine condonation, as the preliminary point would have been upheld. The requirements of the law and fairness indicate that no order for the payment of costs should be made.

Conclusion

[32] It is for the above reasons that the aforementioned order was made.

M T M Phehane

Judge of the Labour Court of South Africa

¹⁴ *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC); [1998] ZALAC 22 at para [10].