



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

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JS714/23

GLADMAN LUYANDA MPAKO

Applicant

and

SOUTH AFRICAN ELEVATOR COMPANY (PTY) LTD

Respondent

Heard: 4 November 2025

Delivered: 13 March 2026

JUDGMENT

PHAJANE, AJ

Introduction

[1] Justice delayed is not merely justice denied, it is justice distorted. This application comes before the Court burdened not by complexity, but by avoidable delay attributable to those entrusted with its diligent prosecution.

[2] This is an application for condonation for the late filing of the applicant's statement of case, which was delivered approximately two years and ten months out of time.

[3] The respondent did not file opposing papers, however, the respondent sought to argue the matter from the bar. At the hearing of the matter, I asked the respondent's counsel to explain the failure to file opposing papers and why

the respondent thought it was a good idea to seek to argue the matter from the bar. Advocate Blumenthal stated that she was briefed late, and the explanation is that since the application was interlocutory in nature, the respondent was under no obligation to file an answering affidavit. That contention is unsustainable. The fact that an application is interlocutory does not dispense with the requirement that a party opposing relief must place its version before the Court under oath. In the absence of an answering affidavit, the factual averments made by the applicant stand largely unchallenged and are therefore accepted for the purpose of the application.

- [4] The Labour Court Rules envisage that opposition to applications, whether interlocutory or final, must ordinarily be set out in an answering affidavit¹. The Court requires a properly filed affidavit to consider the respondent's version; a mere assertion, unsupported by affidavit, is insufficient to constitute opposition.
- [5] Accordingly, I proceed to consider the condonation application on the basis of the applicant's founding affidavit, noting the absence of any formally filed opposition.

The Applicable Legal Principles

- [6] The Court has a wide judicial discretion to grant condonation if it would be in the interest of justice to do so after considering the following interrelated factors: the degree of lateness; the explanation for the delay; and the prospects of success in the main dispute². The Labour Court has also, at various times, given additional consideration to the following ancillary factors: relative prejudice to the other party and the court, as well as the importance of the case. These foundational principles, reflected in *Melane*³, requires a full and satisfactory explanation covering the period of delay.

¹ Rule 35 (6) and (7) of the Rules Regulating the Conduct of the Proceedings of the Labour Court, 2024.

² *Steenkamp & Others v Edcon Ltd* (2019) 40 ILJ 1731 (CC); See also *Chetty v Baker McKenzie* (2022) 43 ILJ 1599 (LAC); *Melane v Santam Insurance Co Ltd (Melane)* 1962 (4) SA 531 (A).

³ *Supra*.

- [7] Condonation is not merely for the asking⁴. The applicant bears the onus to establish that an indulgence should be granted⁵. The Court in *Thilivali* added the following consideration when evaluating condonation applications in reviews:

‘It must also always be considered that the applicant for condonation actually bears the onus to prove good cause for condonation to be granted in terms of the principles set out above. There is, however, an additional consideration which applies in employment disputes in determining whether an applicant for condonation has discharged this onus. This is the fundamental requirement of expedition. The Constitutional Court has, as a matter of fundamental principle, confirmed that all employment law disputes must be expeditiously dealt with and any determination of the issue of good cause must always be conducted against the backdrop of this fundamental principle in employment law.’

Degree of Lateness

- [8] According to the papers, the application is approximately two years and two months out of time.
- [9] However, the record reveals that the application for condonation and the statement of case were not filed immediately upon being signed before the commissioner of oaths on 6 December 2023, rather, they were filed approximately four months later on 2 May 2024.
- [10] Accordingly, the delay in this matter is approximately two years and ten months.
- [11] Clearly, the delay is not merely substantial, it is egregious. Such a delay calls for an exceptionally compelling and comprehensive explanation.

Explanation for the Delay

⁴ *Groot v National Prosecuting Authority & another* (2014) 35 ILJ 121 (CC).

⁵ *National Union of Metalworkers of SA on behalf of Thilivali v Fry's Metals (A Division of Zimco Group) & others (Thilivali)* (2015) 36 ILJ 232 (LC) at para 22.

- [12] Following the applicant's retrenchment on 9 April 2021, the applicant approached his legal insurance provider, Legal Wise, for assistance. Legal Wise referred the applicant to a firm of attorneys, Kitching Attorneys (former attorneys), for a consultation. With their assistance, the applicant referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) for conciliation. Following the issuance of a certificate of non-resolution on 23 April 2021, the applicant was required to file a statement of case within 90 days⁶.
- [13] Instead of referring the dispute to the Labour Court for adjudication, the applicant's dispute was referred for arbitration on 30 April 2021.
- [14] The matter was enrolled for arbitration on 6 July 2021, and unbeknown to the applicant, his former attorneys sought postponement of the matter on 5 July 2021 and advised the applicant not to attend the CCMA on 6 July 2021.
- [15] The applicant's former attorneys attended at the CCMA on 6 July 2021. The record reflects that on 6 July 2021 the attorney called the applicant and asked how many employees were retrenched, to which the applicant stated that it was about five.
- [16] Subsequently, the applicant was informed by the attorney that the matter was postponed due to covid related reasons. On 23 July 2021, the applicant was advised that the dispute had to be referred to the Labour Court.
- [17] On 4 October 2021, the applicant's former attorneys forwarded an affidavit to the applicant for signature before a commissioner of oaths. The applicant duly attended to sign and commission the said affidavit and returned it to his former attorneys on the same day.
- [18] Subsequently, the applicant made various telephone calls to follow up on his matter without success, which led to the applicant directing his request to Legal Wise to follow up with the former attorneys on 19 April 2022. The applicant persisted in enquiring about his matter, with the last correspondence

⁶ Section 191(11) of the Labour Relations Act 66, 1995, as amended (LRA).

being a WhatsApp message to Mr Kitching of the former attorneys on 14 September 2022.

- [19] On 1 November 2022, Legal Wise instructed Brown, Braude and Vlok Inc (BBV Inc.) to act as a post box in the applicant's matter. This was confirmed by Brown, Braude and Vlok Inc in an email dated 10 November 2022. From this email, it appears that the former attorneys remained as the instructing attorneys and BBV Inc would merely follow their instructions from time to time in order to update the applicant.
- [20] On 21 November 2022, the applicant addressed an email to BBV Inc in which the applicant confirmed that he spoke to Mr Kitching, who promised a swift response to his matter.
- [21] On 6 December 2022, there was still no feedback from the former attorneys.
- [22] In January 2023, a gentleman who identified himself as Willem informed the applicant that the attorney who was dealing with his matter had left Kitching Attorneys and was no longer employed at their firm. When this was brought to the applicant's attention, the applicant contacted Legal Wise in order to get clarity on his matter.
- [23] The applicant also followed up with Kitching Attorneys on 10 January 2023, and the applicant was advised that documents would be sent out to BBV Inc the next day.
- [24] On 11 January 2023, the applicant advised BBV Inc that he spoke to Mr Kitching on 10 January 2023 and that he promised to send documents to BBV Inc for signature by the end of that week.
- [25] On 13, 18 and 24 January 2023, respectively, the applicant followed up again with his former attorneys, with no response. The former attorneys remained unresponsive to the applicant's request for documents until March 2023, when the applicant submitted a formal complaint to Legal Wise.
- [26] On 29 March 2023, the applicant received a response to his complaint, in terms of which the applicant was advised that the case at the CCMA was

withdrawn. According to the applicant, this revelation shocked him because the applicant was not aware that the referral to the CCMA was withdrawn, however, he was under the impression that his case was merely referred/redirected to the Labour Court.

- [27] Legal Wise advised that the applicant's matter was being investigated and that the former attorneys would no longer represent him.
- [28] Subsequent to consultations with Legal Wise and them re-evaluating the applicant's matter, Legal Wise instructed BBV Inc on 31 July 2023 to provide an opinion on the applicant's prospects of success in the litigation.
- [29] The applicant consulted with one Ms Van Rensburg of BBV Inc on 30 August 2023. During the consultation, it became clear that an investigation was necessary as there were more questions than answers and further, documents had to be sourced.
- [30] The applicant forwarded all the documents in his possession to BBV Inc for consideration, whereupon he was advised that his matter had to be discussed with the director of the firm, Mr Craig Jessop, to give his opinion on the prospects of success in order to proceed with the matter.
- [31] On 18 September 2023, BBV Inc requested documents from the CCMA. On 26 September 2023, the CCMA provided the requested documents. The applicant saw the notice of withdrawal as attorneys of record by his former attorneys of record for the first time when the CCMA provided the requested information.
- [32] On 28 September 2023, BBV Inc addressed a communication to Kitching Attorneys to obtain clarity on the matter.
- [33] On 4 October 2023, the former attorneys responded to BBV Inc's communication. The information received from them revealed *inter alia* that Kitching Attorneys had prepared a review application in circumstances where there was no award or ruling to form the subject matter thereof.

- [34] The applicant was advised that the appropriate manner to proceed was by way of a statement of case and a condonation application.
- [35] The timeline formed the subject matter of discussion with Mr Jessop on 31 October 2023, and the papers were finalised on 22 November 2023.
- [36] In summary, the explanation advanced by the applicant's counsel at the hearing of the matter is that the delay in the filing of the statement of case is attributable neither to the wilful disregard of the Rules of this Court nor to indifference on the part of the applicant, but rather by the applicant's former attorneys who referred the matter to the CCMA rather than the Labour Court, their failure to exercise adequate professional oversight, compounded by administrative and bureaucratic delays within Legal Wise, which is the applicant's legal insurance provider.
- [37] No explanation has been furnished for the delay between the completion of the papers on 22 November 2023, the signing of the papers on 6 December 2023 and their eventual filing on 2 May 2024. I accept that the applicant was probably not aware of this further period of delay, as the applicant signed the affidavit in support of this application on 6 December 2023. A supplementary affidavit ought to have been submitted by the attorneys explaining this further delay of some four months.
- [38] It is evident that the explanation tendered for the period of delay is bereft of sufficient detail. Material periods of delay, such as 23 July 2021 to October 2021, 4 October 2021 to 19 April 2022 and 14 September 2022 to 1 November 2022, have remained completely unexplained, and the applicant has tendered no version as to what happened during those periods, especially when one considers the inordinate period of delay. These are not the only examples of the unexplained material periods of delay, as the record shows.
- [39] There is likewise no satisfactory explanation between 29 March 2023 and July 2023, a period said to have been occupied by Legal Wise's request for an opinion on prospects of success on the applicant's matter, Legal Wise launching an investigation into the matter and a further opinion on the

prospects of success by the director of the firm. This explanation is illogical and not borne out by the evidence.

- [40] The record discloses that the applicant took some steps to pursue the matter and placed reliance on the legal representatives to advance the litigation. The reliance was met with fundamental misunderstanding of the applicable law, inattention, avoidable delays, and clearly Legal Wise internal procedural obstacles, which materially contributed to the non-compliance with the prescribed time periods.
- [41] While the Court is mindful of the operational demands faced by legal practices and legal insurance providers, such considerations cannot excuse a failure to comply with statutory time frames under the Labour Relations Act⁷, (the LRA). Legal practitioners who accepts instructions through entities such as Legal Wise remain personally responsible for the diligent conduct of their clients' matters and for compliance with the Rules of this Court.
- [42] Regrettably, the applicant's matter was allowed to drift into procedural non-compliance, not through complexity or unavoidable circumstance, but through inadequate management and lack of professional diligence.
- [43] The applicant is not entirely blameless in the circumstances. A litigant cannot entirely distance himself from the conduct of his representatives, particularly where he is aware of the deficiencies in the manner in which the matter is being handled. On the applicant's own account, he was aware that the matter was not receiving proper attention. Despite this, he continued to rely on the same attorneys without taking meaningful steps to safeguard his position until very late in March 2023 when he submitted a formal complaint to Legal Wise.
- [44] The Court also notes that the applicant elected to continue being represented by the same attorneys appointed by Legal Wise despite the consequences of their earlier lapses in professional standards. The applicant's choice to continue with the attorneys appointed by Legal Wise, is difficult to reconcile with prudent decision making. Despite this, the Court acknowledges that the

⁷ Act 66 of 1995, as amended.

applicant was at the mercy of the legal insurer, nonetheless, the decision cannot be ignored when assessing the applicant's own conduct in these proceedings.

- [45] The absence of confirmatory affidavits further weakens the explanation. At the very least the applicant ought to have obtained a confirmatory affidavit from Legal Wise and the current attorneys to the extent that they were involved. In these circumstances, the applicant has not provided a full and satisfactory explanation covering the period of delay.
- [46] The delay is evidently excessive. An applicant seeking condonation is required to furnish full, detailed and accurate explanation covering the entire period of the delay. The explanation advanced in this instance is unsatisfactory and fails to account adequately for significant portions of the delay. It falls short of establishing good cause.
- [47] Notwithstanding the inordinate delay, which may on the face of it justify refusal of condonation, the Constitutional Court has stated that these factors are not necessarily dispositive of condonation and that other factors relevant to the application may favour the granting of condonation and may tilt the interest of justice to the other side of the scale⁸.
- [48] The record shows that the applicant showed interest in his matter, maintained contact with the attorneys', prompted updates and sought action, yet the delays stems largely from the lack of responsiveness on the part of the former attorneys, the current attorneys by filing the papers four months after they were signed and not explaining this delay and the legal insurer. The responsibility for the delay cannot rest with him only.
- [49] In the circumstances, I proceed to consider the prospects of success.

Prospects of Success

- [50] Although the delay is excessive and the explanation for the delay is not sufficiently and convincingly set out, when considered with the prospects of

⁸ *Mphephu-Ramabulana and Another v Mphephu and Others* [2021] ZACC 43; 2022 (1) BCLR 202 (CC).

success, the respondent's failure to follow the correct procedures when dismissing the applicant, the prejudice that he would suffer should this application be dismissed and the fact that he clearly continued to show interest in asserting his rights, I am of the view that it is in the interest of justice to grant condonation.

[51] The applicant is only required to show *prima facie* prospects of success. The respondent did not comply with the provisions of section 189 of the LRA in that the applicant was not properly consulted; alternatives were not properly explored, and a proper criteria was not followed. This has a bearing on both procedural and substantive fairness of the dismissal. In the circumstances, a *prima facie* basis for prospects of success has been established.

Conclusion

[52] Weighing all the relevant factors, it is in the interest of justice to grant condonation.

Order

1. The application for condonation is granted.
2. There is no order as to costs.

GK Phajane

Acting Judge of the Labour Court of South Africa

Appearance

For the Applicant: Adv. Rushay Koovertjie

Instructed by: Brown Braude & Vlok Inc.

For the Respondent: Adv. Roxanne Blumenthal

Instructed by: Thomas Minnie Attorneys

LABOUR COURT