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

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Signature

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Date

**IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN**

Case No: D2160/2018

In the matter between:

VIKRAM SINGH

Applicant

and

BUFFALO CITY METROPOLITAN MUNICIPALITY

First Respondent

COMMISSIONER SOUTH AFRICAN LOCAL GOVERNMENT  
BARGAINING COUNCIL (SALGBC) Second Respondent

Third Respondent

Heard: 7 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties and / or their legal representatives by email. The date and time for handing-down is deemed 13h00 on 25 March 2026.

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JUDGMENT

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ALLEN-YAMAN J

Introduction

- [1] The applicant seeks an order reinstating his review application, as well as orders condoning the late initiation of the review application itself and the late delivery of the record. The review application is one in which the applicant seeks to set aside an award issued by the second respondent dated 14 August 2018 under case number ECD021418 in which she found that his dismissal had been both substantively and procedurally fair.
- [2] Despite both interlocutory applications having been opposed by the first respondent, which also opposed the main application, there was no appearance on behalf of the first respondent when the matter came before this court, and nor had the first respondent delivered heads of argument in advance of the hearing.
- [3] Mr Mpanza, who appeared on behalf of the applicant, informed the court that he had spoken with the attorney responsible for dealing with the matter on behalf of the first respondent, Mr Majebe, and had reminded him that the matter was in court. Mr Majebe informed him that he had not received the notice of set down which Mr Mpanza disputed, he himself having transmitted it to him by way of email on 21 July 2025, and a email notification had been received by him indicating that his own email had been read. In addition, Mr Mpanza indicated that he had transmitted both the applicant's heads of argument and practice note to the first respondent's attorney, with one Ms Cabane having indicated to him that both documents had been received at the first respondent's attorney's offices. Mr Mpanza informed the court further that he had enquired of Mr Majebe as to his intentions for the day, whereupon he was informed that Mr Majebe wanted the application postponed, with costs reserved.

- [4] The review application was served on the first respondent by way of both email and posting by registered post on 17 January 2019. Four days later, on 21 January 2019, the first respondent notified the applicant of its intention to oppose the application and thereby appointed a firm of attorneys to represent it, with that firm of attorneys' address to be used for the purposes of service. The email address specified therein was I[...].
- [5] Seemingly having overlooked that a notice of opposition had already been delivered, the first respondent's attorney delivered a second notice to this effect on 21 February 2022. In the second notice, the email address a[...] was noted as having been the first respondent's attorneys' email address.
- [6] Nothing in the court file indicated that, prior to the delivery of the second notice of opposition, the first respondent's attorney had notified the Registrar of this court of its intention to utilise an email address other than the first one stipulated, or that the first stipulated email address, I[...], was no longer functional. This was the email address to which the notice of set down was sent by the Registrar on 13 November 2024. The automated notification system reflected further that delivery to that address had been completed.
- [7] This court is accordingly satisfied that the notice of set down was transmitted to the first respondent's attorney, having been sent to and received by an email address appointed by it for service.
- [8] Whilst this court was not privy to the other documentation Mr Mpanza sent to the first respondent's attorney on 21 July 2025, his service affidavit reflected that he had transmitted the applicant's heads of argument and practice note to the first respondent's attorney that day. He had taken the precaution of transmitting the documents to both email addresses utilised by the first respondent's attorney, and Ms Samantha Cebane subsequently confirmed that both documents had been received. If the first respondent's attorney had somehow overlooked the notice of set down which had been transmitted to it by the Registrar, Mr Mpanza's practice note clearly reflected that the date of the hearing was 7 August 2025.

- [9] In the circumstances, this court having satisfied itself that the first respondent was properly notified of the hearing of the application and ought to have been aware thereof, and there having been no application for a postponement before the court, Mr Mpanza was permitted to present argument in respect of both the reinstatement and condonation applications.

### Background

- [10] The applicant was employed by the first respondent as a Senior Superintendent, responsible for the first respondent's public swimming pools until his dismissal on 28 February 2014, having been found to have been guilty of misconduct. Albeit that the notice given to the applicant to attend a disciplinary enquiry was not presented to this court as a part of the record, it is evident from the award that he had been dismissed pursuant to having been found to have given an unlawful instruction to one of his subordinates, Mr Graham Goliath, to repair a motor operating a gate at a property which he owned and which he leased to tenants.
- [11] The applicant challenged the fairness of the decision to dismiss him. The award which is the subject of the present proceedings is the third award issued in his dispute, the first two awards having been set aside at the conclusion of review proceedings initiated by the applicant, and in both cases, his dispute having been remitted to the South African Local Government Bargaining Council to be arbitrated *de novo*. Whilst it is not clear from the papers before this court on what basis the first of the applicant's review proceedings succeeded, the second review application resulted in an order taken by consent due to the record having been irrecoverably lost.
- [12] As with the previous arbitrators, the second respondent found that the applicant's dismissal had been both substantively and procedurally unfair, a finding which the applicant seeks this court to overturn. In the review proceedings the applicant asked this court to order,

*'That the arbitration award dated 14 August 2018 issued by the second respondent is hereby reviewed and replaced with an Award that the dismissal of the applicant was unfair, alternatively that the dispute be referred back to the South African Local Government Bargaining Council (SALGBC) for arbitration before another commissioner other than the Second Respondent.'*

### Analysis

- [13] In circumstances in which the review application itself was initiated outside of the time frames permitted, and the record was delivered late, the applicant has applied for both re-instatement and condonation. Both applications require this court to consider the length of the delay, the explanation therefor, the applicant's potential prospects of success, as well as questions of prejudice. In the final result, this court must be persuaded that the interests of justice require it to grant the applicant the indulgences he seeks.
- [14] As regards the delay in the initiation of the application was concerned, although the award is dated 14 August 2018, he alleged that he only received a copy thereof by way of email from the SALGBC on 28 August 2018. The first respondent denied the correctness of that assertion, and alleged that the SALGBC had disseminated the award on 15 August 2018. In support of this assertion, reference was made to a letter by the SALGBC said to have been annexed to its answering affidavit, but which was not attached. In reply, the applicant, having observed that he did *'not phantom what the first respondent [was] trying to decipher'*, stated only that the first respondent had not submitted any proof contradicting the statement made by him in his founding affidavit. In this, he overlooked that even without the letter the first respondent had attested to a version which countered his own, and which he had not refuted. Being motion proceedings, this court must accept the version of the first respondent that the award was transmitted to the parties on 15 August 2018, the day after the award was issued by the second respondent.

- [15] The applicant's review application was initiated on 24 January 2019. The applicant himself did not favour this court with the specifics as to the date by which he ought to have initiated his application, or the actual length of the delay, leaving this court to establish the relevant information itself. Given that the applicant had a period of six weeks from the date on which he received the award, he had until 26 September 2018<sup>1</sup> to commence review proceedings. In the result, the period of delay has been calculated to have been 120 days.
- [16] The applicant also failed to favour this court with any specifics concerning the extent of the delay in the delivery of the record, which resulted in the review application having lapsed. Having investigated the notices delivered, this court has determined that the Notice in terms of Rule 7A(5) in terms of which the applicant was advised that the record had been made available was transmitted to him on 17 March 2020, whilst the transcribed portion thereof was delivered on 16 November 2023. As the applicant had a period of 60 days within which to deliver the record,<sup>2</sup> this ought to have been done by not later than 9 June 2020. The period of delay was accordingly three years and five months.
- [17] The applicant's explanation for both periods of delay lacked either particularity or substantiation.
- [18] Insofar as the delay in having initiated the application was concerned, he stated that he received the award on 28 August 2018 and approached the Durban Justice Centre for assistance two weeks later, although the precise date on which he did so was not specified. He said that he could not locate the attorney allocated to his matter when he went to the address which had been provided to him (which address was not specified), and returned to the Durban Justice Centre. Again the date or dates on which these attempts were made was not specified. On his own version, he did not obtain a new address or contact details for the attorney from the Durban Justice Centre on his last visit, but seemingly then contented himself awaiting a call from that attorney. When such a call was received on 26 October 2018, timeous initiation of the review

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<sup>1</sup> Section 145(1)(a) of the LRA

<sup>2</sup> Clause 11.2.2 of the Practice Manual of the Labour Court then in force.

application was no longer possible. Having consulted with the attorney on a date unspecified, the applicant alleged that he made 'numerous' telephone calls to him during which he was advised that his matter was being attended to. He eventually deposed to the founding affidavit (without a condonation application) on 8 January 2019. The application was launched more than two weeks later on 24 January 2019, although he could not explain the cause of that further delay.

[19] Thereafter the applicant alleged that he had difficulty contacting Mr Mbili, who neither took nor returned his calls. Despite this, it was only one and a half years later in June 2020 when he finally returned to the Durban Justice Centre to complain about the lack of attention to his matter. Whether he requested that another attorney be assigned to his matter, or that suggestion came from an official in the Durban Justice Centre was not explained, however, it was the applicant's further version that he kept making enquiries thereafter as to whether his matter had been reassigned. It was only in December 2020 that he was told that such a process had commenced; in January 2021 that funding for such process had been approved; and in February 2021 that he was informed that his present attorneys had been appointed.

[20] He consulted with Mr Mpanza on 17 February 2021 during the course of which consultation Mr Mpanza advised him that he would attend to the Notice of Appointment as attorney or record, and would attend this court to uplift the record of the arbitration proceedings for the purposes of obtaining a transcription. Whilst the transcription of the oral evidence was completed on 20 September 2021, this court was not taken into the applicant's confidence as to when the record had been uplifted for that purpose. The totality of the explanation furnished for that part of the delay was occasioned as a result of '*Covid 19 associated Lockdown regulations.*'

[21] With the record having been transcribed, the applicant consulted with Mr Mpanza on 6 October 2021, at which consultation he was provided with a copy of the transcribed record for his consideration with a view to delivering a supplementary affidavit in the review application. He explained that it took him

'a while' to consider the record although no supplementary affidavit was ever delivered. In February 2022 he once again consulted with Mr Mpanza concerning the present application. On 17 February 2022 he deposed to the affidavit in the present application which was then initiated, despite that the record had still not then been delivered.

[22] The record was eventually delivered on 16 November 2023.

[23] This court is of the view that neither period of delay, both of which were excessive, has been adequately explained, in circumstances in which the delays were inordinate. Vast periods of time were wholly unexplained. Where events were described, they were described arcanelly, devoid of any particularity and wholly unsubstantiated by extraneous, objective evidence. Considered holistically, the totality of the actions undertaken by the applicant since having received the award are inimical to those of a diligent litigant.

[24] Compounding the inadequacy of the applicant's explanations for the delays in initiating the review application, delivering the record, and having failed to take any steps in the prosecution of the application for extended periods of time, is the fact that the applicant has no demonstrable prospects of success in the review application.

[25] In having considered the question of the substantive fairness of the applicant's dismissal the second respondent assessed the evidence of the first respondent's witnesses on the one hand, and the applicant's evidence on the other. The evidence unequivocally demonstrated that Mr Graham Goliath, one of the applicant's subordinates, was found to have been present at a house owned by the applicant during working hours, then working on a faulty gate motor. Mr Goliath testified that the applicant had requested he repair it, and Mr Ngcobo testified that he had overheard the applicant make such a request. The applicant's version was rejected as having been contradictory of his previous versions, and improbable.

[26] Beyond having referred this court to the allegations made by him in his review application, the applicant did not address his prospects of success in the



present application. Despite the time taken by the applicant to consider the transcribed record, for the specific purpose of identifying 'further' grounds of review, no supplementary affidavit was delivered and his grounds of review were to be gleaned from his founding affidavit alone. Putting aside for the moment that it is inappropriate to deal with the issue of the prospects of success by reference to another affidavit, and this court having considered such affidavit, nothing contained therein evinces a basis upon which this court could interfere with the second respondent's award.

[27] The applicant's founding affidavit in his review application simply stated,

'5.

*The Arbitrator's Award, The Purpose of this Application and Grounds upon which Relief is Sought*

- *The matter relates to the dismissal of the Applicant for misconduct.*
- *The applicant was charged with one count of misconduct in that he instructed a staff member to carry out private work at the Applicant's house during working hours using municipal equipment and tools.*
- *The applicant denies having sent or instructed a staff member to his private property, the Applicant believes that his dismissal was as a result of a conspiracy.*

*The arbitrator, without showing evidence accepted the above as good cause shown by the First Respondent to dismiss the Applicant.*

6.

*The Arbitrator shies away from material facts and makes findings that an objective decision maker would not make.*

7.

*It is submitted that the Third Respondent [sic] is in conflict with the behests of the Act handed down an Award which was not an Award or [sic] a reasonable and objective decision maker in that:*

- 7.1 *Found the dismissal to be fair and appropriate sanction.*
- 7.2 *Finding that alleged conduct warranted a dismissal.*

*It is my belief that the arbitrator's Award is that not of a reasonable and objective decision maker and was unjustifiable in relation to the reasons advanced and accordingly the arbitrator exceed his powers in terms of section 145(2)(a)(i)(ii)(iii) and or (b) of the Act and has committed gross irregularity in conduct of the proceedings including making mistakes of law, resulting in his misconceiving the nature of the enquiry, accordingly justifying the reviewing and setting aside, alternatively correcting of the Award handed down by him.'*

- [28] It is self-evident that nothing stated in the applicant's founding affidavit evinces any specific complaint regarding the manner in which the second respondent dealt with either the evidence or the law; the applicant did no more than express generic complaints raised in review applications, without amplification or explanation, wholly unrelated to the actual evidence before the second respondent or the resultant award.
- [29] On the face of it, the second respondent's conclusions appear to be well reasoned in relation to the issues which she was required to determine, and no issue may be taken with the manner in which she assessed the evidence, or her understanding of the law in relation to the issues she was required to decide. This being the case, and the applicant having failed to identify any specific failing on her part, this court cannot find that he enjoys any possible prospects of success in his review application.
- [30] Additionally, where the gist of the applicant's complaint appears to have been that the second respondent ought to have concluded that he had not been guilty of the misconduct in question, and rather that his co-workers had conspired to orchestrate his dismissal, it was crucial for him to have placed the reviewing court in possession of the complete record of the arbitration, which he did not. The record which was ultimately delivered constituted the transcribed portion only, and excluded the documentary evidence relied upon by the first respondent. That documentary evidence included photographs taken of Mr Goliath on the day of the incident at the applicant's house together with the first respondent's tools and vehicle. It also included the full transcription of the first arbitration as well as such partial transcription of the second arbitration as had then been available. These documents were relied

upon by the first respondent in support of its case that the applicant's dismissal had been substantively fair. Even if a cogent ground of review could be distilled from the applicant's founding affidavit, his failure to have included such evidence negates the ability of a court in due course to assess the reasonableness of the second respondent's conclusions in relation to the evidence before her.

[31] Without any possible prospects of success, the issue of possible prejudice to the applicant does not arise. On the other hand, the first respondent took what appears to have been a fair decision to terminate the applicant's services in 2018 and has, since then, been bound to commit itself and the public funds at its disposal to the applicant's ongoing litigation. In the absence of any reason to re-instate the review application, the first respondent is entitled to finality.

[32] In consideration of the applications before this court, the application to re-instate the review application will be dismissed. The review application not having been re-instated, the issue of condonation for the late initiation of the review application itself will not be decided.

### Costs

[33] Albeit that the first respondent asked in its answering affidavit that the application be dismissed, with costs, the failure on the part of the first respondent to have delivered heads of argument or to appear at the hearing of the matter meant that its request could not be canvassed with its representative. This court will accordingly follow the usual practice that each party will be required to bear its own costs.

### **Order**

1. The application to re-instate the review application is dismissed.
2. There is no order as to costs.

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ALLEN-YAMAN J

Judge of the Labour Court of South Africa

Appearances

Applicant:

Mr D Mpanza, Mpanza & Associates Inc

First Respondent:

No appearance