



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

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JS 102/24

In the matter between:

HOKOMA ANDREW SOLDAAT AND

17 OTHERS

Applicant

and

MEIBC BARGAINING COUNCIL

First Respondent

AG SDURD

Second Respondent

SS PROFILING (PTY) LTD

Third Respondent

Heard: 7 November 2026

Delivered: 25 March 2026

JUDGMENT

PHAJANE, AJ

Introduction

- [1] This is an application for condonation for the late filing of the Applicants' statement of case. The delay is 37 days late.
- [2] The Third Respondent did not file an opposing affidavit to the condonation application. Instead, the Third Respondent sought to oppose the application by way of heads of argument and also, argument from the bar. It is trite that heads of argument do not constitute evidence and cannot substitute an answering affidavit. In motion proceedings, a party is required to place its version before the Court under oath, and a failure to do so leaves the applicant's version largely uncontested.
- [3] According to the Third Respondent's representative, the Third Respondent did not receive the application for condonation. The issue of the need to file a condonation application was first raised by the Third Respondent in the statement of reply in the form of a *point in limine* (lack of jurisdiction of the Court in the absence a condonation application). Even after the issue was raised as a point *in limine*, the Third Respondent alleged that it did not receive the application for condonation. However, the record shows that the application for condonation was served on the Third Respondent.
- [4] As a general rule, Revelas J pointed out in *MISA/SAMWU v Madikor Drie (Pty) Ltd*¹, there are three sets of affidavits in motion court proceedings: the founding affidavit, the answering affidavit, and the replying affidavit. Rule 35(7) and (8)² incorporates this general rule. Accordingly, the Third Respondent was obliged to file an answering affidavit in terms of the Rules of this Court, and the Third Respondent failed to do so.

¹ [2006] 1 BLLR 12 (LC)

² Rules Regulating the Conduct of the Proceedings of the Labour Court.

[5] In these circumstances, there is no factual basis properly placed before the Court to sustain the Third Respondent's opposition to condonation. Accordingly, the matter must be determined on the Applicant's papers.

[6] In the circumstances, the issue before the Court is whether the Applicant has shown good cause for the late filing of the statement of case.

Legal Principles

[7] The principles governing condonation are well established and there are various decided cases in this regard. The leading authority remains *Melane v Santam Insurance Co Ltd*³, where the Court held that the factors relevant to the determination of condonation include: the degree of lateness; the explanation for the delay; the prospects of success on the merits; the importance of the case; and prejudice to the parties.

[8] These factors are not individually decisive but must be weighed together in determining whether it is in the interests of justice to grant condonation.

[9] The Constitutional Court in *Grootboom v National Prosecuting Authority and another*⁴ emphasized that the overarching consideration in condonation applications is the interests of justice. The Court in *Grootboom* set out the factors that must be considered in determining whether or not it is in the interests of justice to grant condonation as follows:

"[22] [T]he standard for considering an application for condonation is the interests of justice. However, the concept 'interests of justice' is so elastic that it is not capable of precise definition. As the two cases demonstrate, it includes: the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal, and the prospects of success. It is crucial to reiterate that both *Brummer* and *Van*

³ 1962 (4) SA 531 (A).

⁴ 2014 (2) SA 68 (CC) at para 22.

Wyk emphasize that the ultimate determination of what is in the interests of justice must reflect due regard to all the relevant factors, but it is not necessarily limited to those mentioned above. The particular circumstances of each case will determine which of these factors are relevant...".

- [10] The Constitutional Court in *Steenkamp and others v Edcon Ltd*⁵ referred to *Grootboom* and held that all relevant factors, including prospects of success, must be considered to arrive at a conclusion as to what is in the interests of justice, except in extreme cases of flagrant delay and gross procedural breaches.
- [11] All factors should therefore be considered when assessing whether it is in the interests of justice to grant or refuse condonation.

Degree of Lateness and Explanation

- [12] The delay of 37 days is not insignificant. However, it is also not excessive as to, in itself, justify a refusal of condonation, particularly where a satisfactory explanation and reasonable prospects of success can be demonstrated.
- [13] The Applicants' case is that they were previously represented by NUMSA and the union official responsible for their matter did not advise them of the need to apply for condonation in view of the late filing of the statement of case. The Applicants alleged that they were oblivious to the need to apply for condonation and they placed reliance on the union to comply with the rules and practice manual of this Court. Accordingly, in their view, it would be unfair to place blame for non-compliance at their door.
- [14] The Court is satisfied that the Applicants were not negligent. The Court's view is that it would not be in the interests of justice to penalize the Applicants for the delay, in circumstances where they demonstrably took matters into their own hands and proceeded to obtain the referral form which they completed in respect of the condonation application and filed at Court themselves.

⁵ (2019) 40 ILJ 1731 (CC).

[15] The explanation for the delay is therefore reasonable.

Prospects of success

[16] The Applicants bear the onus of placing before the Court sufficient facts to enable it to assess the prospects of success in the main matter.

[17] It is not sufficient to make bald or conclusory statements that the Applicants have good prospects of success. The Applicants must set out factual and legal basis to underpin the claim.

[18] In this matter, the founding affidavit is conspicuously silent on the merits of the underlying dispute. The Applicants have failed to:

18.1. Outline the nature of the main claim in any meaningful detail; and

18.2. Identify the factual basis upon which relief is sought.

[19] What is before the Court amounts to no more than a bare assertion that the Applicants have prospects of success. Such an assertion is insufficient as it is incumbent upon the Applicants to go further than making a bald statement. This Court in *Public Servants Association obo Manamela v General Public Services Sectoral Bargaining Council and Others*⁶ held that:

“[5] The applicant is required to show good cause for the late filing of her statement of case. The Court must necessarily take into account the degree of lateness, the reasons of lateness, the applicant’s prospects of success, any prejudice to the Respondent and any other relevant factors. In regard to prospects of success, it is not necessary for an applicant to prove that he or she will succeed when the merits of the matter are considered; it is necessary only to provide a basis to establish that the applicant has a good chance of succeeding when the matter is heard. This requires an elucidation of the prospects of success beyond a broad

⁶ (JR 1354/2018) [2020] ZALCJHB 155 (25 August 2020).

and sweeping statement to the effect that the applicant has good prospects- the averments must be substantiated.” (own emphasis)

- [20] In the absence of any substantive averments, this Court is unable to assess whether the Applicants enjoy any prospects of success.
- [21] This omission is fatal. Prospects of success are not a peripheral consideration but a central requirement in an application for condonation. The Applicants should stand and fall on their papers as far as ‘*prospects of success*’ are concerned.

Prejudice and Interests of justice

- [22] The Applicants submit that they will suffer prejudice if their dispute is not determined, which in their view outweighs any prejudice which the Third Respondent may suffer.
- [23] While the Court is mindful of the importance of affording litigants’ access to justice, and while the Court may wish to rescue the Applicants’ case, the Court’s discretion is circumscribed by the requirement to consider all relevant factors in a condonation application.
- [24] As stated, the Applicants have failed to place the necessary material before the Court to consider the prospects of success. As a result, the Court has not been able to engage with the prospects of success in this matter. In the absence of any engagement with prospects of success, granting condonation would be improper, as this remains a material factor which is indispensable in the exercise of the Court’s discretion.

Conclusion

- [25] The complete failure to deal with prospects of success renders the application materially defective. Accordingly, the Applicants have failed to discharge the onus of establishing that it is in the interests of justice for condonation to be granted.

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

Order

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

G. K. Phajane

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants : Mr. Matlhomola Ledwaba

For the Third Respondent : Mr. Kobus Hayward (Union Official)

National Employer's Association of South Africa
(NEASA)