



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR1008/22

In the matter between:

SAMWU OBO ZP TSHAWWE

Applicant

and

**SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING
COUNCIL**

First Respondent

SILUS RAMUSHOWANA NO

Second Respondent

MIDVAAL LOCAL MUNICIPALITY

Third Respondent

Heard: 25 June 2025

Delivered: 25 March 2026

JUDGMENT

BALOYI, AJ

Introduction

[1] This is an application in terms of which the applicant seeks an order to review and set aside the second respondent (the commissioner)'s Ruling dated 24

February 2022. The applicant further seeks condonation for the late filing of the review application.

The facts

- [2] The applicant, who is represented by SAMWU, was apparently employed by the third respondent (the municipality) as a driver. The applicant was dismissed in September 2014 for misconduct in that he was found guilty of having been involved in the stripping and selling of the gearbox of the bush cutter machine.
- [3] Following his dismissal, the applicant referred a dispute of unfair dismissal to the first respondent (the council). The unfair dismissal dispute was set down for arbitration on 25 August 2020; however, the matter was postponed owing to the passing away of the applicant's representative.
- [4] The arbitration was then scheduled to take place on the 11 of March 2021, but the matter did not proceed owing to the unavailability of the municipality due to defective service.
- [5] A third notice of set down was issued by the council and served on the parties with a date of 12 and 13 April 2021. The hearing was to proceed at the council's offices in Centurion, Pretoria.
- [6] On the 12th of April 2021, the applicant and his representative from SAMWU, named Mr Bafana Mphuthi, drove to Benoni, apparently to attend the hearing, as Benoni is the default venue. This is despite the notice indicating that the hearing was to take place in Centurion. It is alleged in the affidavit by the deponent (Rhau Mphahlele) that he did not tell Mphuthi that the matter would be sitting in Centurion.
- [7] It is alleged that while the applicant Mphuthi were waiting in Benoni, they called the offices of the Council to ascertain where the hearing was sitting, It is alleged further that one Refilwe informed the applicant and his representative that the hearing venue is Centurion and upon being advised as

such informed Refilwe that they are making their way to Centurion and that the matter should be stood down.

- [8] It is alleged in the founding affidavit that Refilwe informed the applicant and his representative that the matter was postponed *sine die*. However, the applicant and his representative were surprised to receive a ruling that dismissed the referral of the unfair dismissal dispute.
- [9] Following the ruling to dismiss the referral of the dispute, the applicant filed a rescission application. The rescission application was filed out of the prescribed period, which necessitated an application for condonation. The commissioner, having read the submissions made by the parties, dismissed the condonation application and the rescission application.
- [10] It is this ruling that the applicant seeks to review and set aside. As set out above, the applicant seeks condonation for the late filing of the review application. The review application is thirty-five (35) days late.

Condonation

- [11] The principles governing condonation have been discussed in a number of judgments by this Court and the Constitutional court. In *Grootboom v National Prosecuting Authority & Another (Grootboom)*¹, Zondo J (as he then was) stated:

[50] In this Court the test for determining whether condonation should be granted or refused is the interests of justice. If it is in the interests of justice that condonation be granted, it will be granted. If it is not in the interests of justice to do so, it will not be granted. The factors that are taken into account in that inquiry include:

- (a) the length of the delay;
- (b) the explanation for, or cause for, the delay;
- (c) the prospects of success for the party seeking condonation;

¹ (2014) 35 ILJ 121(CC) at paras 50 and 51.

- (d) the importance of the issue(s) that the matter raises;
- (e) the prejudice to the other party or parties; and
- (f) the effect of the delay on the administration of justice.

Although the existence of the prospects of success in favour of the party seeking condonation is not decisive, it is an important factor in favour of granting condonation.

[51] 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.'

[12] In *SA Post Office Ltd v Commission for Conciliation, Mediation & Arbitration & Others*², the Labour Appeal Court (LAC) Held that:

'it is generally accepted that if an applicant does not provide an acceptable explanation for its delay, the court need not consider the other factors and refuse condonation. This again is not an inflexible rule. It applies where the other factors do not in themselves raise issues that could necessitate the court's interference to grant the indulgence sought.'

[13] In this matter, the period of delay is 35 days. The period is not excessive. The applicant explained that the cause of the delay was the obtaining of the municipality's opposing affidavit against the recession application. In essence, the delay was caused by the fact that the applicant's attorneys requested

² (2011) 32 ILJ 2442 (LAC).

copies of the arbitration documents, apparently from the Municipality.³ The applicant explained that he wanted the opposing affidavit to the rescission application in order to assess whether to proceed with the review application. The applicant contends that the opposing affidavit to the rescission application was not served on him. These contentions are not disputed by the municipality in its opposing affidavit in this Court. In my view, the explanation for the delay is reasonable.

- [14] The inquiry to grant condonation does not end here. The prospect of success is also a factor to be considered by the court in exercising its discretion whether to grant condonation or not. An important principle emphasised in para 1 of the *Grootboom* case echoes the words of Holmes JA in *Melane v Santam Insurance Co. Ltd*⁴ where the learned judge stated, “*if there are no prospect of success there would be no point in granting condonation*”.
- [15] The applicant makes the bald statement that he has a good prospect of success, as the applicant will present evidence and testify in defence of the charges against him and prove that he was not involved in the theft of the bush cutter’s gearbox.
- [16] It is incumbent upon the applicant to go further than making a bold statement⁵:

[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 reason for 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 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 and sweeping statement to the effect that the

³ Index to pleadings, page 21 to 22 of the FA.

⁴ 1962 (4) SA 531(A) at 532.

⁵ Public Servants Association v GPSSC case JR 1354-2018(unreported).

applicant has good prospects – the averment must be substantiated.’
(own emphasis)

- [17] In *National Union of Metalworkers of SA on behalf of Thilivali v Fry’s Metals (A Division of Zimco Group) & others*⁶, the Court held that:

‘What is clear from the judgment in *Hardrodt* is that general principles applicable to condonation applications are even more stringently applied where it comes to a condonation application for the late filing of a review application. In review condonation applications, the explanation that needs to be submitted must be compelling and the prospects of success need to be strong. Where it comes to the issue of prejudice, the applicant in fact has to show that a miscarriage of justice will occur if the applicant’s case is not heard. The reason for these more stringent requirements is that review applications occur after the parties have already been heard, presented their respective cases and a finding has been made. Under such circumstances, considerations of justice, fairness and expedition require that challenges of such findings must not be delayed and must be completed as soon as possible.’ (own emphasis)

- [18] In this matter, the applicant seeks to review and set aside the ruling made by the commissioner in terms of which the commissioner refused the recission application and the condonation for the late filing of the recission application. The relief that is sought is that the matter be remitted to the Council for hearing anew before a different commissioner.

- [19] What brought about the recission application was the applicant and his union representative’s failure to attend the arbitration on the 12th of April 2021. The applicant does not dispute that the notice of set down was properly served on him, indicating the venue for the arbitration as Centurion.⁷ The applicant and his representative decided to travel to Benoni; according to them this was the “default” venue of the Council. The commissioner, after a lapse of time, dismissed the applicant’s referral, reasoning that there was no application for a postponement and no plausible excuse had been presented by the applicant.

⁶ (2015) 36 ILJ 232(LC).

⁷ Index to pleadings, page 11, para 22 of the FA.

[20] In my view, the Commissioner's finding cannot be faulted. The applicant and his representative knew the correct venue where the arbitration was to take place, but decided not to travel to Centurion. The applicant and his union representative were, in my view, negligent.

[21] The rescission application was filed out of time approximately ten(10) months late. In my view, the delay is substantial considering the fact that the applicant received the dismissal of the referral on the same day of the arbitration (12 April 2021). The explanation tendered for the delay in the affidavit supporting the rescission was that the union representative misunderstood the law in that he did not know that the rescission application must be filed with the Council. It was contended that an opinion was sought from the attorneys representing the union. In my view, the explanation was no explanation at all. One would expect a union representative to be familiar with the rules of the Council. An opinion from the attorneys would also not have taken such a long time to procure. This Court is left with no other conclusion than that the applicant and his union representative were negligent.

[22] For the reasons set out above, the application for condonation must fail, and the review application must also fail.

[23] Accordingly, the following order is made;

Order

1. The application for condonation for the late filing of the review application is dismissed.
2. The application to review and set aside the ruling issued by the second Respondent is dismissed.
3. There is no order as to costs.

F Baloyi

Acting Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the Applicant: Mr Gwebu

Instructed by: Madlela Gwebu Mashamba Inc

For the Respondent: Mr Ramushu

Instructed by: Ramushu Mashile Thwala Inc

LABOUR COURT