



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR1913/22

In the matter between:

SOLIDARITY OBO P.F. VISAGIE

Applicant

and

HARMONY GOLD MINING COMPANY LTD

First Respondent

**THE COMMISSION FOR CONCILIATION MEDIATION
AND ARBITRATION**

Second Respondent

COMMISSIONER JAN LE FLEUR N.O.

Third Respondent

Heard: 8 October 2025

Delivered: 10 April 2026 (This judgment was handed down electronically by emailing a copy to the parties. The 10 April 2026 is deemed to be the date of delivery of this judgment).

JUDGMENT

COLLIS AJ

Introduction

- [1] This is an application for the condonation for the late filing of the Applicant's Replying Affidavit, together with a Rule 11 application to dismiss the Review application of the First Respondent. The premise upon which the Rule 11 dismissal is sought, is that the First Respondent failed to prosecute and further such review.
- [2] At the commencement of the proceedings, the parties were advised that it would be prudent to first argue the condonation application and once an order in this regard is made either way the parties will be appraised of the extent of the affidavits to be considered in the pending Review Application. This ruling follows an argument in respect of the condonation application which was opposed.

Parties

- [3] Solidarity herein acts on behalf of the Applicant. It is a Trade Union registered as such in terms of the Labour Relations Act in terms of section 96.
- [4] The First Respondent is Harmony Gold Mining Company Limited; a private Company duly registered in terms of the applicable legislation of the Republic of South Africa. It shall hereinafter be referred to as Harmony.
- [5] The Second Respondent is the Commission for Conciliation, Mediation and Arbitration ('CCMA') established in terms of the Labour Relations Act, 66 of 1995.
- [6] The Third Respondent is Jan Fluer in his capacity as a Commissioner of the First Respondent c/o the First Respondent's main place of business.

Background

- [7] Harmony launched an application to review an arbitration award issued by the Commission for Conciliation Mediation and Arbitration under case number FSW 2381-21.
- [8] On 15 May 2023, Solidarity launched an application to dismiss the Review Application and to make the arbitration award an order of Court on behalf of Mr. Visagie (Rule 11 Application').
- [9] On 29 May 2023, Harmony delivered its notice of intention to oppose and its Answering Affidavit in opposition. In this regard a service affidavit was deposed to by a candidate attorney on 5 June 2023.
- [10] Thereafter and only on 17 August 2023, did the Applicant deliver its Replying Affidavit to the Rule 11 Application.
- [11] This, notwithstanding that the Applicant should have filed its Replying Affidavit within five (5) days from the date on which the notice of intention to oppose and the Answering Affidavit were delivered.
- [12] The said Replying Affidavit having been filed late, Harmony proceeded to file a Notice of Objection to the late filing of the Applicant's Relying Affidavit in the Rule 11 Application on 18 August 2023 (Notice of Objection').
- [13] This prompted the Applicant on 7 September 2023, to deliver an application seeking condonation for the late filing of its Replying Affidavit in the Rule 11 Application.

[14] It is trite that in an application for condonation, a deponent will be required to address the following aspects:¹

14.1 the degree of lateness or non-compliance in relation to the prescribed time frames;

14.2 the explanation for the lateness or the failure to comply with the time frame;

14.3 prospects of success in the main application and obtaining the relief sought against the respondents; and

14.4 prejudice to the Respondents party.

Extent of the Delay

[15] As per the Founding affidavit Harmony delivered its notice of intention to oppose and Answering Affidavit on 29 May 2023 and as such any Replying Affidavit should have been served on Harmony by no later than 5 June 2023. The Replying Affidavit, having only been delivered on 17 August 2023, was therefore two and a half months late.

[16] In addition to the above, and despite being aware that there is a need to apply for Condonation, the said Condonation Application was only however delivered approximately three (3) weeks after the delivery of Harmony's Notice of Objection. The total delay is therefore three (3) months and 2 days.

Explanation for the Delay

[17] In the Founding affidavit, the deponent explains that the matter was previously dealt with by Ms. Melissa Erasmus, a union official who has since resigned, with her last working day being 26 June 2023. Ms.

¹ Silber v Ozen Wholesalers (Pty) Ltd 1954 (2) SA 345 (A) at 353A.

Karolien Van Wyk, the deponent further explains that she was only appointed in the position of Ms. Erasmus on 1 August 2023 and having made enquiries as to the status of the present matter proceeded to draft the Replying Affidavit on 17 August 2023.

- [18] The deponent further sets out that the delay was not caused intentionally by the Applicant but was as a result of new information contained in the Answering Affidavit that necessitated the filing of a Replying Affidavit.
- [19] The First Respondent refutes the assertions made by the Applicant as to the reasons for the delay in filing the Replying affidavit timeously.
- [20] In this regard Harmony alleges that as early as 14 June 2023, when Ms. Erasmus was still in the employ of Solidarity, she emailed the attorneys of Harmony informing them that she will proceed to set the matter down on the opposed roll. This was before any Replying Affidavit was filed and also at a time when Ms. Erasmus was still in the employment of Solidarity. Thus, a month before she left such employment.
- [21] This email correspondence directed to Harmony clearly indicates that at no stage did Solidarity harbour the intention to file a Replying Affidavit, at least not at the time when Ms. Erasmus informed Harmony that she will proceed to set the matter down on the opposed roll.
- [22] The affidavit deposed to by Ms. Van Wyk, fails to adequately explain why no other official employed by Solidarity could assist with the matter of Mr. Visagie in the absence of Ms. Erasmus and prior to Ms. Van Wyk taking over the file. The affidavit also fails to explain the entire period of the delay and flies in the face of an intention being expressed by Solidarity that steps will be taken to enroll the application on the opposed motion roll.

[23] An Applicant is required to adequately explain the entire duration of the delay and from what has been set out in the founding affidavit regarding the delay, this Court cannot but conclude that the Applicant never intended to deliver a Replying Affidavit and that it would appear that this need only arose when Ms. Van Wyk took over the matter and suggests to be a mere afterthought.

[24] For the reasons alluded to above, this Court concludes that the explanation for the delay is wholly inadequate.

Prospects of success

[25] In respect of the Applicant's prospect of success, as per the founding affidavit, the deponent sets out that the Applicant enjoys good prospects of success. To this end the Applicant merely avers as follows:

".....The prospects of success of the rule 11 application are more fully explained in the founding affidavit filed herein."²

[26] The mere say so, of enjoying good prospects of success without expanding what those prospect entails is insufficient absent any reference to the supporting facts justifying such contention.

[27] It is for these reasons that this Court cannot conclude that the requirement of prospects of success has been met.

Prejudice

[28] In respect of prejudice, the deponent alleges that Harmony will not suffer any unreasonable prejudice should the condonation application be granted as the Respondent has already opposed the Review Application.

² Founding Affidavit para 23.

[29] This stance adopted by the Applicant is however not entirely correct as it already has made an election not to file a Replying Affidavit and as such the pleadings in the Review Application had closed.

[30] In contrast, if this Court is to permit the filing of the Replying Affidavit this will amount to the reopening of pleadings whereas Harmony will be entitled to finality in respect of its pending Review Application.

Order

[31] For the reasons alluded to above, this Court is not persuaded that the Applicant has met the requirements and is entitled to be granted condonation and as such the following order is made:

31.1 The Condonation application is dismissed.

31.2 No order as to costs.

COLLIS AJ

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Karla Endres (Solidarity Official)

Instructed by: Solidarity

For the Respondent: Victor Mndebele

Instructed by: Webber Wentzel

LABOUR COURT