



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR1788/19

In the matter between:

MUFAMADI, NA

Applicant

and

SAAYMAN, H N.O.

First Respondent

EDUCATION LABOUR RELATIONS COUNCIL

Second Respondent

DEPARTMENT OF EDUCATION: MPUMALANGA

Third Respondent

Heard: 4 March 2025

Delivered: 17 April 2026

JUDGMENT

MARTIN, AJ

[1] This is: (a) an unopposed application for condonation for the late filing of a review application; together with (b) an unopposed application in terms of sections 145 and 158(1)(g) of the Labour Relations Act¹ (LRA) to review a

¹ Act 66 of 1995, as amended.

condonation ruling made by the first respondent in which he dismissed an application for condonation for the late referral of a dispute to the second respondent.

- [2] The facts in this matter are convoluted, and the applicant's papers are silent on various aspects of the background chronology that might shed some light on the events that led up to the applications before me. They are also, in other respects, contradictory, as I set out below.
- [3] The applicant's founding affidavits in the review and condonation applications do not set out the applicant's position with the third respondent (the Department) at the time that the dispute between them arose. As best I can tell from the annexures to the founding affidavits in the review and condonation applications,² the applicant was then a Deputy Chief Education Specialist with the Department, and he resigned with effect from 31 August 2018.

The Condonation application before the Second Respondent:

- [4] On 28 September 2017 the applicant directed correspondence to the Director of HR Benefits of the Department complaining that it "*came to [his] attention*" that his pay progression for the years of 2011 to 2015 had not been processed. He requested that his pay progression be reviewed. He would later assert in arbitration proceedings that this request constituted a formal grievance.³
- [5] On 18 November 2017 his request was rejected on the basis that he had failed to submit the relevant documents to secure pay progression in the periods in question.
- [6] On 21 November 2017 the applicant, dissatisfied, made another request for a review of his pay progression. This request was also rejected on 23 March 2018.

² Annexure "G" to the review application at p27 of the review bundle, and annexure O to the condonation application, p79, paragraph 8 of the condonation bundle.

³ Page 47 of the review bundle, paragraph 6 of an interim ruling.

- [7] A month later, on 24 April 2018, he submitted a grievance which the Department did not entertain as it was purportedly not lodged in accordance with its grievance rules and procedures, and within a 90 day period prescribed by the Department's rules and procedures. The Department informed him of this on 22 May 2018.
- [8] On 5 June 2018 the applicant referred a dispute to the second respondent, which he classified as a dispute relating to the interpretation and application of a collective agreement. It seems that thereafter the referral was entertained as a dispute relating to an unfair labour practice, and this is evident from the applicant's founding affidavit.⁴
- [9] On 14 November 2018, and pursuant to an interim ruling, the applicant filed an application for condonation⁵ in which he: (a) contended that his referral was 271 days late; and (b) gave as his explanation that he had been engaged in "*internal procedures*" with the employer. This is important, because the applicant, in his founding affidavit in the review application, contends that he did not require condonation at all as his dispute was referred timeously.⁶
- [10] The Department opposed the condonation application and asserted that in the years 2010/2011; 2011/2012; 2012/2013; 2013/2014 and 2014/2015 the applicant had failed to submit the necessary performance agreements and assessments for pay progression, and that he had not received the pay progression in these years, with the clear implication being that he must have known that his pay was not progressing. He did not lodge grievances within the 90-day period required under the Department's policies for any of the years in question, and he waited to raise a cumulative complaint in September 2017 and lodge a formal grievance in April 2018.
- [11] In his replying affidavit, the applicant adjusted his version, and contended that his referral was in time, and contended that he only learned of the failure to process his pay progression in October 2017 (he had earlier alleged that he had learned of it in September 2017).

⁴ Paragraph 5, p7 of the review bundle.

⁵ Annexure N to the review application, p49 of the review bundle.

⁶ P11, para 8.11.

- [12] On 18 January 2019 the first respondent delivered a condonation ruling in which he dismissed the application for condonation. The first respondent, clearly preferring the Department's version, found that the applicant's version was not plausible, that the pay progression periods would have been effected or not effected in each of the years in question, and that the referral was some four years late. I am not certain that the first respondent's calculation of the extent of the delay is correct, but for the reasons I set out below, this is not material.

The condonation application before this court:

- [13] The applicant should have served and filed the review application by no later than 1 March 2019. He did not.
- [14] He asserts that he learned of the ruling on 5 February 2019, and that after this he decided to utilise the services of alternative attorneys.
- [15] He only secured the services of alternative attorneys on 2 April 2019 after he secured funds. At this stage the review application would have been one month late.
- [16] He and his new attorneys then engaged in a back and forth to obtain the file from the applicant's previous attorneys. On 9 April 2019 the applicant's previous attorneys recorded that the file was available for collection.⁷ Notwithstanding this, the parties only secured the file by courier on 10 May 2019. At this stage the review application would have been approximately two months late.
- [17] At this point the explanation in the founding affidavit ends. The applicant asserts that on receiving the file his attorneys prepared the review and condonation applications and that the review application is 99 days late, which is inserted in manuscript in the founding affidavit.⁸ However this is not the case.

⁷ Annexure E to the condonation application, condonation bundle, p24.

⁸ Condonation bundle, p09.

- [18] The founding affidavit in the review application was deposed to 31 July 2019, and the founding affidavit in the condonation application was deposed to on 7 August 2019, three months after the attorneys obtained the file, and at which stage the review would have been more than five months late.
- [19] The notices of motion in the condonation and review applications were signed on 14 August 2019, at which stage the review application was 168 days, or five and a half months, late.
- [20] In a service affidavit deposed to by the applicants then attorneys on 8 April 2020, the assertion is made that the review and condonation applications were served on 14 and 20 August 2019, however the applications are both stamped, and were seemingly only filed (an act which completes delivery) on 15 November 2019, some 259 days or eight and a half months late.
- [21] If I take the date of the signature of the notice of motion as the end date, some three months of delay are unexplained. If I take the date of filing as the end date, some six months of delay are totally unexplained.
- [22] It is evident that the applicant has not put forward a reasonable explanation for his delay in filing the review application.

The principles and application to the facts:

- [23] In *NUM v Council for Mineral Technology*⁹, the Labour Appeal Court (LAC) confirmed the approach in *Melane v Santam Insurance Co Limited*¹⁰ as the approach to adopt when considering condonation applications: The factors to be considered are: (a) the degree of lateness; (b) the explanation for the delay; (c) the prospects of success; and (d) the prejudice to both parties. It set out a further principle that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial.¹¹ This principle was confirmed in *National Education Health and Allied Workers Union on behalf of*

⁹ [1998] ZALAC 22; [1999] 3 BLLR 209 (LAC)

¹⁰ 1962 (4) SA 531 (A) at 532C - F.

¹¹ *Id* fn 9 at para 10.

*Mofokeng and others v Charlotte Theron Children's Home*¹², where the LAC held that, without a reasonable and acceptable explanation for a delay, the prospects of success are immaterial.

- [24] In summary: the Courts have endorsed the principle that where there is a delay with no reasonable, satisfactory, and acceptable explanation for the delay, condonation may be refused without considering prospects of success, and to grant condonation where the delay is not explained may not serve the interests of justice. In *Grootboom v National Prosecuting Authority and Another*¹³, the Constitutional Court held that the standard for considering an application for condonation is the interests of justice. It found that the concept of “*the interests of justice*” is so elastic that it is not capable of precise definition but 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.’

- [25] The Constitutional Court held that the ultimate determination of what is in the interests of justice must reflect due regard to all of the relevant factors, with the particular circumstances of each case determining which of them are relevant.¹⁴
- [26] The delay is not trivial, and in the circumstances a comprehensive explanation for the delay is required. Without a reasonable explanation for delay (and for much of the delay period there is no explanation at all) I am not enjoined to consider the applicant's prospects of success. However, for completeness, I am not satisfied that the applicant's prospects of success are such that it would be in the interests of justice to grant condonation.
- [27] The applicant accepted in his condonation application before the first respondent that his referral was late. His failure to refer the unfair labour

¹² (2004) 25 ILJ 2195 (LAC) at para 23.

¹³ 2014 (1) BCLR 65 (CC) at para 22.

¹⁴ Ibid at para 22.

dispute pending his repeated internal approaches to the Department does not constitute a reasonable explanation for his failure to refer the dispute timeously, unless the parties were subject to an agreement requiring them to exhaust defined internal remedies (a case not made out on the papers).

[28] Notwithstanding the dispute about whether the delay should be calculated from the years in which his pay progression was not processed, or from when he purportedly became aware of the dispute, it is evident that his referral to the second respondent was late, that he at face value did not have a good reason for being late, and that his version changed before the first respondent (and has also changed before this court where he again contends that no condonation was required notwithstanding the contents of his condonation application before the first respondent) all of which would have contributed to a reasonable finding that his version on the delay was implausible and unsatisfactory.

[29] In the circumstances, I am of the view that it is not in the interests of justice that condonation be granted.

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

Order

1. The applicant's application for condonation is dismissed.
2. The applicant's review application is struck from the roll.
3. There is no order as to costs.

H. W. S Martin

Acting Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the Applicant : Nikita Schroeder of Higgs Attorneys

LABOUR COURT