



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

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: J867/23

In the matter between:

GRACE SKIN & WELLNESS CC

Applicant

and

TAMARA LEE MOEN

Respondent

In re

TAMARA LEE MOEN

Applicant

and

GRACE SKIN & WELLNESS CC

Respondent

Heard: 4 March 2025

Delivered: 21 April 2026

JUDGMENT

MARTIN, AJ

- [1] The applicant (the applicant or Grace Skin) is the respondent in the main referral, and the respondent (the respondent or Ms Moen) is the applicant in the main referral. The main referral is a claim by Ms Moen against Grace Skin for commission payments and leave pay.

- [2] The applicant seeks condonation for the late filing of a statement of response in the main action.
- [3] On 3 July 2023 Ms Moen issued a statement of claim, which was served on Grace Skin on 5 July 2023, and filed on 7 July 2023.
- [4] The applicant's statement of response was to be served and filed by 19 July 2023, and with Ms Moen's consent, the date of delivery was extended to 31 July 2023.
- [5] On 31 July 2023, Grace Skin emailed the statement of response to Ms Moen's attorneys and it emailed the pleading to Ms Francinah Ntuli of the Labour Court. It did not thereafter physically file the statement of response at Court, until the events set out below.
- [6] The parties are of the view that pleadings had been exchanged¹, engaged in pre-trial preparation, and an extensive pre-trial engagement ensued.
- [7] On 15 August 2024, approximately a year after the applicant emailed its statement of response to Ms Ntuli, Ms Moen's legal representatives addressed correspondence to the applicant's representatives and informed them that they had attended to court to prepare the court file, and noted that the statement of response had not been filed in the court file. The applicant was requested to ensure that the pleading was filed.
- [8] The applicant contends that on 16 August 2024, its representatives attended court and filed the statement of response.² The applicant has attached to its founding affidavit a copy of an email dated 16 August 2024 to which pictures are attached each of which show in turn: (a) a filing notice; (b) a service affidavit; and (c) the first page of the statement of response, each of which appear to have been stamped by the court on "2024-08-16".

¹ See paragraph 57 of Ms Moen's answering affidavit.

² Paragraph 18.3 of the founding affidavit.

- [9] However, the respondent's attorneys would attend court again after 16 August 2024, and in correspondence dated 26 August 2024, they asserted that on inspection of the court file, they were only able to locate the filing notice and the service affidavit.³ Because of this, the respondent requested that the file be taken to a Judge for a directive.
- [10] Acting Justice Kumalo, presumably on the strength of a submission or representation that the statement of response had not been physically filed, issued a directive that the applicant was to file its original statement of response together with an application for condonation. The directive is dated 7 October 2024.
- [11] In these circumstances, the application for condonation has come before the Court.
- [12] Before dealing with the application, I mention that the court file contains an indexed and paginated bundle titled "*INDEX TO PLEADINGS*". The bundle was filed and stamped on 14 August 2024, presumably the day that Ms Moen's representatives were first informed that the statement of response could not be located in the Court file. The bundle contains a full complement of pleadings, including the statement of response, and a copy of a signed pre-trial minutes.
- [13] In other words: At the time that the directive was sought from Acting Justice Kumalo, at a date after 16 August 2024, a fully indexed and paginated pleadings bundle was in the Court file and, on the back of the pleadings, a pre-trial meeting had resulted in the preparation of pre-trial minutes.
- [14] These factors are important. Firstly, and notwithstanding that the applicant failed to physically file its statement of response on 31 July 2023, the irregularity did not pose an obstacle to the parties' preparation for trial. Secondly, at the time that Acting Justice Kumalo was

³ Paragraph 65 of the answering affidavit.

approached for his directive, a copy of the statement of response was, as a matter of fact, in the court file as a component of the pleadings bundle.

[15] In *NUM v Council for Mineral Technology*⁴, the Labour Appeal Court (LAC) confirmed the approach in *Melane v Santam Insurance Co Limited*⁵ 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.⁶ This principle was confirmed in the *National Education Health and Allied Workers Union on behalf of Mofokeng and others v Charlotte Theron Children's Home*⁷, where the LAC held that, without a reasonable and acceptable explanation for a delay, the prospects of success are immaterial.

[16] 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*⁸, 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.’

⁴ [1998] ZALAC 22; [1999] 3 BLLR 209 (LAC)

⁵ 1962 (4) SA 531 (A) at 532C - F.

⁶ *ibid* fn 4 at para 10.

⁷ [2004] ZALAC 9; (2004) 25 ILJ 2195 (LAC) at para 23.

⁸ [2013] ZACC 37; 2014 (1) BCLR 65 (CC) at para 22.

- [17] 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.⁹
- [18] Within this context, the applicant contends that it has reasonable prospects of success; that Ms Moen has not suffered any significant prejudice; and that the delay was not frivolous, sufficient to cause discomfort to the court, or significant enough to cause a delay in the finalisation of the matter.
- [19] Ms Moen on the other hand contends that the applicant is obliged to provide a reasonable explanation for the entire length of the delay, from 31 July 2023, until the original statement of response was filed in consequence of Acting Justice Kumalo's directive. She asserts that this has not been done. Furthermore, in argument her counsel submitted that I should also take into account that Ms Moen is of the view that unrelated conduct by the applicant delayed the finalisation of the pre-trial minute. That may or may not be the case, but it has no bearing on the matters before me.
- [20] It seems to me that the dispute is fundamentally artificial. In *Raya/ Industrial (Pty) Ltd v Haroon Abdul Magid Khan*¹⁰, Acting Justice Domingo of the High Court held the following:

[14] In avoiding an overly technical approach in determining whether to grant the condonation, I am reminded of the dictum in the case of *Louw v Grobler and Another* which is often cited as the “universal compass in cases in which court orders, rules and process are abused, manipulated and not observed”; the dictum is as follows:

“The purpose of the uniform court rules is to regulate the litigation process, procedure and the exchange of pleadings. The entire process of litigation has to be

⁹ Ibid at para 22.

¹⁰ Unreported: 076126/2023.

driven according to the rules. The rules set the parameters within the course of litigation has to proceed. The rules of engagement, must, therefore, be obeyed by litigants. However, dogmatically rigid adherence to the uniform court rules is as distasteful as their flagrant disregard by the litigants. Dogmatic adherence, just like flagrant violations, defeats the purpose for which the court rules were made. The prime purpose of the court rules is to oil the wheels of justice in order to expedite the resolution of disputes. Quibbling about trivial deviations from the court rules retards instead of enhancing the civil justice system. The court rules are not an end in themselves.”

[15] While I am mindful of the almost four month delay in filing of the answering affidavit; in the pursuit of a just outcome in this matter, weighing up the interest of both parties, and taking into account the nature of this matter, I am of the view that granting the condonation will not severely prejudice the applicant. The applicant has filed a replying affidavit and filed heads of argument taking cognisance of the submissions made in the respondent's answering affidavit. Thus, in the premises, having read the papers filed on record and having heard the applicant's counsel and the respondent himself, in the interest of justice, I grant the condonation of the late filing of the answering affidavit.’

[21] The primary purpose of the rules relating to the delivery of pleadings and notices is to ensure that the parties are aware of an initiating process and the subsequent documents that are served in the course of the litigation. The applicant's failure to physically file the original statement of claim was no doubt a failure to comply with the rules, however it is evident that the electronic service satisfied the requirement that the statement of response come to the claimant's attention, notwithstanding that the physical filing of the statement of response was delinquent.

[22] The subsequent year-long engagement in pre-trial procedures, including the signing of pre-trial minutes, demonstrates that both parties

proceeded to prepare on the belief that the issues were properly ventilated by the pleadings, and the delay in physical filing did not materially impede the progress of the matter, so much so that Ms Moen's representatives prepared a pleadings bundle comprising both the pleadings and the signed minutes, even before the applicant's failure to physically file the pleading became a controversy. In the circumstances, the delay in filing the original pleading did not cause material prejudice to the parties.

- [23] It appears from the email attached to the applicant's founding affidavit that the statement of response was filed on 16 August 2024, before Acting Justice Kumalo was approached for a directive. I do not doubt the respondent's attorneys that they could not thereafter locate the pleading in the Court file, but it would make little sense for the applicant to attempt to remedy the irregular filing by having the filing notice, the service affidavit, and the statement of response stamped and photographed, only to thereafter remove the physically filed pleading from the court file.
- [24] Furthermore, there are, as is apparent from the pleadings and the pre-trial minute, triable issues between the parties.
- [25] In these circumstances, the grant of condonation will not result in any material prejudice to the respondent. However, the refusal of condonation would serve no purpose other than to preclude the applicant from participating in a trial for which both it and the respondent have prepared based on the pleadings that have been exchanged. Such an outcome would not be in the interests of justice.
- [26] I am satisfied that it is in the interests of justice that condonation be granted for the applicant's late filing of the statement of response.
- [27] In my view there are no reasonable grounds to depart from the general rule relating to costs in this Court.
- [28] In the result, the following order is made:

Order

1. The applicant's late filing of its statement of response is condoned.
2. There is no order as to costs.

HWS Martin

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	AJ Swanepoel Jay Inc Attorneys
For the Respondent:	S Francis Lee Wrench Attorneys

LABOUR COURT