



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

Signature

13 April 2026

Date

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case no: D340/2023

In the matter between:

THE NATIONAL BARGAINING COUNCIL FOR THE First Applicant
ROAD FREIGHT AND LOGISTICS INDUSTRY
SIYAMBATHA MANYAL AND 26 OTHERS Second and Further Applicants

and

VASHNEE NAIDOO N.O. First Respondent
THE NATIONAL BARGAINING COUNCIL FOR THE Second Respondent
ROAD FREIGHT AND LOGISTICS INDUSTRY
JOHDEL TRADING (PTY) LTD T/A Third Respondent
RECYCLING SERVICES

Heard: 26 June 2025

Delivered: 13 April 2026

JUDGMENT

OOSTHUIZEN, AJIntroduction

- [1] This is an application for condonation for the late delivery of a review in terms of section 145(1)(2)(a)(ii) of the Labour Relations Act¹ (LRA).
- [2] The Third Respondent opposed the application, and this Court is required to determine whether the Applicants have made out a case for condonation.

Relevant background

- [3] The First Applicant is empowered to conclude Collective Agreements in the Road Freight and Logistics Industry and to enforce such agreements in terms of section 33 of the LRA.
- [4] The First Applicant's Collective Agreements are binding on the employer and employee parties to those agreements in terms of section 31 of the LRA.
- [5] The First Applicant's Collective Agreement which deals with the substantive terms and conditions of employment within the Road Freight and Logistics Industry was extended to non-parties by Ministerial Proclamation and binds the Third Respondent.
- [6] The Second and further Applicants complained to the First Applicant that they were being paid less than the wages set out in the Collective Agreement. The First Applicant appointed designated agents to investigate the Third Respondent's non-compliance with the First Applicant's Main Collective Agreement.
- [7] On 4 November 2021 the First Applicant issued a compliance order demanding that the Third Respondent comply with the various clauses of the Main Collective agreement and pay the assessed amount of R136 181.11 within 14 days of the receipt of the compliance order.

¹ Act 66 of 1995, as amended.

- [8] Despite this the Third Respondent failed to comply and so the First Respondent referred the dispute to arbitration as provided for in section 33A (4)(a) of the LRA read with clause 5 of the First Applicants Exemptions and Dispute Resolution Collective Agreement.
- [9] The arbitration convened on 11 February 2022 under the auspices of the Second Respondent. The First Respondent issued a ruling on 22 February 2022 where she dismissed the matter against all the Second and further Applicants save for Messrs Phezani and Zondo who were present at the hearing. She also postponed the matter for the First Applicant to have an opportunity to determine how the amounts were arrived at in the compliance order.
- [10] It is this ruling that the Applicants seek to review in this Court. The Applicants were required to apply for condonation of the late filing of the review application because it was filed with this Court, on the Third Respondent's version (which must be accepted in accordance with the *Plascon Evans* rule²), one year three months and 13 days late.³

Preliminary remarks

- [11] It is important for litigants to understand that when this Court is approached for an indulgence, it is expected, at the very least, that the correct statutory provisions are referred to and the Rules of this Court are followed as closely as possible.
- [12] Whilst it is trite that this Court is enjoined to realise the expeditious resolution of labour disputes, this does not mean that practice and procedure should be ignored. Ordinarily, technical points are not encouraged, and this Court is often required to look at the substance of a matter at the expense of the form. However, this matter is replete with errors which hardly engender the sympathy of the Court.

² *Plascon-Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) Ltd* [1984] 2 All SA 366 (A)

³ Index to Pleadings p 20 pp 43 – the Applicants allege that it was filed 'a little over 13 months late...'

- [13] On a very basic level, in terms of Rule 37 (6) of the Rules Regulating the Conduct of the Proceedings of the Labour Court⁴, a copy of the order or award that an applicant seeks to review must be annexed to the affidavit. Despite stating in the Notice of Motion and Founding Affidavit that the Ruling is annexed to the Notice of Motion marked 'AA', it is not. After extensively searching the court file the order was eventually found at p 33 in the Index to the Notices bundle. This is contrary to the Rules of the Labour Court.
- [14] Next, in pp 44.3 of the founding affidavit, the Applicants state that '*...the ruling which is the subject matter of this review was not a final determination of the matter...*'
- [15] In that paragraph the Applicants have conceded that this review cannot be one of an 'Arbitration Award' contemplated in section 145 of the LRA. This means that the deponent to the founding affidavit has referred to the incorrect test for review in paragraph 9 and the incorrect section of the LRA in paragraph 10⁵ when she states that it is a review in terms of section 145(1) and (2)(a)(ii).
- [16] This could only ever be a review in terms of section 158(1)(g) of the LRA as it is the '*...review of the performance or purported performance of any function provided for in the LRA...*' The First Respondent's Ruling falls within these parameters. Therefore, the test set out in the *locus classicus* Constitutional Court judgment *Sidumo v Rustenburg Platinum Mines Ltd*⁶ does not have application in this matter. This Court is not required to make a finding on whether the ruling is one that a '*...reasonable decisionmaker could not reach...*'
- [17] Given the submission by the Applicants that the ruling is not one that sets out the final determination of the dispute, it is subject to the provisions of section 158 (1B) of the LRA which states that:

'*...the Labour Court may not review any decision or ruling made during conciliation or arbitration proceedings conducted under the auspices of... any bargaining council in terms of the provisions of this Act before the issue in*

⁴ GN 50608. Effective 17 July 2026.

⁵ Index to Pleadings p 9 pp 9

⁶ [2007] 12 BLLR 1097 (CC) at para 10.

dispute has been finally determined by ... the *bargaining council*... except if the Labour Court is of the opinion that it is just and equitable to review the decision or ruling made before the *issue in dispute* has been finally determined...'

- [18] The Court is mindful of the fact that the parties did not argue this issue before it and that the issue was not raised by the Third Respondent. It is curious that the Third Respondent did not notice any of these issues and blithely argued the incorrect provisions without a second thought. However, the Court is bound to determine the case that is pleaded in the papers advanced by the Applicants. In the matter of *Smuts v Adair and others*,⁷ the Court stated in respect of another type of review under the LRA:

'..... the other part[ies] to the dispute must not be placed in the position where the application is heard and decided on grounds other than those pleaded. They must know what case they are required to oppose...'

- [19] Had the Third Respondent not opposed the matter, the Applicants would not have been entitled to the relief sought in law by default as the matter was referred under the wrong section.
- [20] In *Vanguard of Organised Labour (Voola) v Mahlangu and others*,⁸ Snyman AJ stated the following:

'...In order for the Labour Court to have jurisdiction, the issue for determination must be specifically provided for in the LRA, ... to be decided by the Labour Court. The applicant must also indicate on what provision in any of these items of legislation the applicant relies....' (own emphasis)

The Condonation Application

- [21] It is common cause that the application for condonation was brought over one year after the ruling was handed down by the First Respondent.

⁷ [1999] 4 BLLR 392 (LC) at para 16.

⁸ [2025] JOL 69950 (LC) at para 20. The Court relied on the following authority set out in fn 24 thereof, i.e. *SA Medical Association Trade Union on Behalf of Rikhotso v Member of the Executive Council, Department of Health, Limpopo Province and Others* (2023) 44 ILJ 1779 (LC) at para 6, *Shezi v SA Police Service and Others* (2021) 42 ILJ 184 (LC) at para 10 and *Booyesen v Beaufort West Municipality and Another* (2021) 42 ILJ 2415 (LC).

Legal Principles

- [22] The recent case of *Chasi v University of Johannesburg*⁹ outlined the established legal principles for granting condonation citing those set out in the case of *Melane v Santam Insurance Co Ltd*¹⁰:

'In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success and the importance of the case. Ordinarily these facts are interrelated, they are not individually decisive, save of course that if there are no prospects of success there would be no point in granting condonation.'

- [23] In the Constitutional Court case of *Grootboom v National Prosecuting Authority and another*¹¹ the Court restated the principles of their previous condonation decisions¹²

'...It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default...

- [24] The Court exercises its discretion based on fairness to both parties, weighing several interrelated factors rather than viewing them in isolation. In *Academic and Professional Staff Association v Pretorius NO and Others*¹³ the Labour Court, stated the approach to condonation as follows:

'The factors which the court takes into consideration in assessing whether or not to grant condonation are: (a) the degree of lateness or non-compliance with the prescribed time frame; (b) the explanation for the lateness or the failure to

⁹ (J 1747/18) [2022] ZALCJHB 341 (25 November 2022).

¹⁰ 1962 (4) SA 531 (A) 532C-E.

¹¹ [2014] 1 BLLR 1 (CC) at para 23.

¹² See: *Brummer v Gorfil Brothers Investments (Pty) Ltd and others* 2000 (2) SA 837 (CC) at para 3 and *eThekweni Municipality v Ingonyama Trust* 2013 (5) BCLR 497 (CC)

¹³ (2008) 29 ILJ 318 (LC) paras 17-18. See also *Mndebele and Others v Xstrata SA (PTY) Ltd t/a Xstrata Alloys (Rustenburg Plant)* (2016) 37 ILJ 2610 (LAC) at para 4.

comply with time frame; (c) prospects of success or bona fide defence in the main case; (d) the importance of the case; (e) the respondent's interest in the finality of the judgment; (f) the convenience of the court; and (g) avoidance of unnecessary delay in the administration of justice. It is trite law that these factors are not individually decisive but are interrelated and must be weighed against each other. In weighing these factors for instance, a good explanation for the lateness may assist the applicant in compensating for weak prospects of success. Similarly, strong prospects of success may compensate the inadequate explanation and long delay.'

[25] In *Maphai v South African Forestry SOC Ltd and Others*¹⁴ the Court stated

'...I am of the view that the longer the delay, the worse it is for the applicant seeking condonation ... An excessive delay could in itself be seen to be fatal to the issue of good cause. As a general benchmark, delays in excess of two months after the expiry of the time limit ... can generally be described to start becoming excessive.'¹⁵

[26] In *Seatlolo and others v Entertainment Logistics Service (a division of Gallo Africa Ltd)*¹⁶ the Court held:

'In order to exercise its discretion whether or not to grant condonation, this court must be appraised of all the facts and circumstances relating to the delay. The applicant for condonation must therefore provide a satisfactory explanation for each period of delay. See *NUMSA & another v Hillside Aluminium* [2005] 6 BLLR 601 (LC) where Murphy AJ held that an unsatisfactory explanation for any period of delay will normally be fatal to an application, irrespective of the applicant's prospects of success.'

¹⁴ (JR 1021 / 19) [2022] ZALCJHB 293 (7 October 2022) at para 9.

¹⁵ Compare *Plastics Convertors Association of SA and Another v Metal and Engineering Industries Bargaining Council and Others* (2017) 38 ILJ 2081 (LC) at para 15; *Silplat (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (2011) 32 ILJ 1739 (LC) at para 24; *National Education Health and Allied Workers Union and Others v Vanderbijlpark Society for the Aged* (2011) 32 ILJ 1959 (LC) at para 2; *Van Dyk v Autonet (A Division of Transnet Ltd)* (2000) 21 ILJ 2484 (LC) at para 12.

¹⁶ (2011) 32 ILJ 2206 (LC) at para 11.

[27] In the Court in *Independent Municipal and Allied Trade Union on behalf of Zungu v SA Local Government Bargaining Council and Others*¹⁷ provided the following guidance:

'In explaining the reason for the delay it is necessary for the party seeking condonation to fully explain *the* reason for the delay in order for the court to be in a proper position to assess whether or not the explanation is a good one. This in my view requires an explanation which covers the full length of the delay. The mere listing of significant events which took place during the period in question without an explanation for the time that lapsed between these events does not place a court in a position properly to assess the explanation for the delay. This amounts to nothing more than a recordal of the dates relevant to the processing of a dispute or application, as the case may be.'

[28] When the Court is looking at an Applicant's prospects of success as required in a condonation application, it is required to consider whether, if the claim as advanced in the statement of claim of the applicant is true, the applicant would succeed.¹⁸ However, where an applicant fails to provide an explanation for the delay or material parts of the delay, the issue of prospects of success in fact becomes an irrelevant consideration.¹⁹ In *NUM v Council for Mineral Technology*²⁰ the Court held:

'There is a further principle which is applied and that is that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without good prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused...'

¹⁷ (2010) 31 ILJ 1413 (LC) at para 13.

¹⁸ See: *Nature's Choice Products (Pty) Ltd v Food and Allied Workers Union and Others* (2014) 35 ILJ 1512 (LAC) at para 21; *National Union of Metalworkers of SA and Others v Crisburd (Pty) Ltd* (2008) 29 ILJ 694 (LC) at para 8; *Dial Tech CC v Hudson and Another* (2007) 28 ILJ 1237 (LC) at para 38; *Gaoshubelwe and Others v Pie Man's Pantry (Pty) Ltd* (2009) 30 ILJ 347 (LC) at para 27.

¹⁹ See: *Mziya v Putco Ltd* [1999] 2 BLLR 103 (LAC) at para 9; *Moila v Shai NO and Others* (2007) 28 ILJ 1028 (LAC) at para 34; *Universal Product Network (Pty) Ltd v Mabaso and Others* (2006) 27 ILJ 991 (LAC) at para 20; *Colett v Commission for Conciliation, Mediation and Arbitration and Others* (2014) 35 ILJ 1948 (LAC) at para 38; *Mgobhozi v Naidoo NO and Others* (2006) 27 ILJ 786 (LAC) at para 34.

²⁰ [1999] 3 BLLR 209 (LAC) at para 10.

- [29] In employment law matters in particular there is a critical component that needs to be considered - this is the consideration of the interests of justice.²¹ What this entails is that in the particular case, there may be some very unique or exceptional circumstance that necessitates the Court to consider the case on the merits, because it is in the interest of justice to do so.
- [30] In other words, the exercise of judicial discretion in favour of condonation should not be done in instances where the Applicants have shown a disregard for the statutory provisions and Rules of Court and there is no pressing and particular issue that is worthy of the Court's indulgence.

Analysis

- [31] As mentioned before, this Court takes a rather more robust approach to the substance of disputes rather than a laser focus on form. However, it is appropriate for me to quote the Constitutional Court from the *Grootboom v National Prosecuting Authority* judgment:²²

'I need to remind practitioners and litigants that the rules and courts' directions serve a necessary purpose. Their primary aim is to ensure that the business of our courts is run effectively and efficiently. Invariably this will lead to the orderly management of our courts' rolls, which in turn will bring about the expeditious disposal of cases in the most cost-effective manner. This is particularly important given the ever-increasing costs of litigation, which if left unchecked will make access to justice too expensive.'

- [32] Unfortunately for the Applicants, there is really no explanation for the delay except to set out the vagaries of the workload of various agents and state simply that this matter '*slipped through the cracks...*' Whilst I can admire the candour of this submission, it cannot be rewarded by this Court in these circumstances. It would not be in the interests of justice or fairness to allow condonation for the late filing of a review application that has no prospects of success in its current

²¹ See: *MJRM Transport Services CC v Commission for Conciliation, Mediation and Arbitration and Others* (2017) 38 ILJ 414 (LC) at para 22; *Sasol Infrachem v Sefafe and Others* (2015) 36 ILJ 655 (LAC) at para 29; *Thiso and Others v Moodley NO and Others* (2015) 36 ILJ 1628 (LC) at para 7; *SA Post Office Ltd v CCMA and Others* (2011) 32 ILJ 2442 (LAC) at para 17.

²² *Id* fn 11 at para 32.

form. In any event, I am not convinced that the Applicants have made out a case on the merits at all.

Costs

[33] I have a wide discretion where it comes to the issue of costs, having regard to the provisions of section 162(1) of the LRA. In my view, it would not be appropriate for me to depart from the norm of not awarding costs to the successful party. This could have been an instance where I would have awarded costs to the Third Respondent however, it did not identify the issues with the application and have benefitted from it by being successful. The Court is of the view that no order as to costs is appropriate and fair in this case.

[34] For all of the reasons set out above, the following order is made:

Order

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

V. M. Oosthuizen

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Andrew John Prior

Prior and Prior Attorneys

For the Respondent: Ms T Moodley

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