



- (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: JR 853/20 &

JS100/22

In the matter between:

RONALD ALLEN ERENS

Applicant

and

CITY OF MATLOSANA MUNICIPALITY

First Respondent

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

Second Respondent

COMMISSIONER MOTHUS MAJE N.O.

Third Respondent

Heard: 29 MAY 2025

Date Delivered: 24 APRIL 2026

Summary: Condonation Application for the late filing of the review application – the period of delay is excessive, and the explanation proffered by the Applicant amounts to no explanation at all. Accordingly, condonation ought to be dismissed on this basis alone. The Applicant's prospects of success are equally unpersuasive. Condonation Application refused.

JUDGMENT

CITHI, AJ

Introduction

- [1] There were originally three distinct applications set down for argument: first, an application by the Applicant for condonation of the late filing of his review application in terms of section 145 of the Labour Relations Act¹ (LRA); second, an application to reinstate the review application, which is currently deemed withdrawn; and third, an application by the First Respondent (Municipality) in terms of Rule 11 of the Rules Regulating the Conduct of Proceedings of the Labour Court² to dismiss the Applicant's review application by virtue of his delay in prosecuting it.
- [2] In Chambers, Adv Segage, appearing on behalf of the Municipality, indicated that the Rule 11 application is no longer being pursued. Consequently, only the applications for condonation and reinstatement remain for determination.
- [3] The granting of condonation for the late filing of the review application is a jurisdictional prerequisite for this court to entertain any subsequent application for reinstatement. In the absence of an order condoning the non-compliance with the six weeks period to file a review application, the review application is not properly before the Court and remains a legal nullity. Consequently, if the condonation application is refused, this Court would lack the requisite jurisdiction to consider the merits of the reinstatement application. Accordingly, I will first recite the facts pertaining to the condonation application.
- [4] The Municipality opposes the Applicant's condonation application.

¹ Act 66 of 1995, as amended

² Repealed and replaced with the Rules Regulating the Conduct of the Proceedings of the Labour Court. Published 3 May 2024 (GN 50608). Effective 17 July 2024.

Background

- [5] I will only detail the background insofar as it is relevant to the Applicant's condonation application. Prior to his dismissal on 9 April 2019, the Applicant was employed by the Municipality as a Management Representative in the Stilfontein Traffic Department effectively from 1 January 2008 earning R25 006.00 per month. The Applicant reported to the Assistant Director responsible for Licensing in the City of Matlosana, Mr Shaya Muntu (Muntu). The Applicant's responsibilities included *inter alia* ensuring the overall smooth running of the testing station, assigning to the examiners on duty tasks regarding the conduct of driving tests, monitoring and checking daily work done by the examiners relating to the testing and attending to complaints arising therefrom.
- [6] The Traffic Department falls under the responsibility of the Northwest Provincial Government. The Member of the Executive Council ("MEC") appointed by the Premier of the Northwest Province is responsible for grading the testing stations in each municipality. The Northwest Provincial Government and Municipality concluded a Service Level Agreement ("SLA") wherein the Municipality is designated as an agent of the province to run the Department.
- [7] In terms of the SLA, the Management Representative is prohibited from conducting driving tests while scheduled examiners are on duty at Stilfontein traffic department. However, in the event that examiners are absent from duty for whatever reason, the Assistant Director (Muntu), is required to write a letter to the Directorate requesting permission authorising the Management Representative to conduct the driving test.
- [8] The National Traffic Management Cooperation received an anonymous hotline call wherein the caller alleged that the Applicant tested and fraudulently issued three drivers licenses in November 2016. The caller further alleged that the Applicant accepted a bribe to issue the drivers licenses. Mr Nyembe, a Detective in the South African Police Services ("SAPS") was appointed to investigate the allegations. Mr Nyembe requested

copies of the completed DL1 form (application for driving licence), test sheets, IDs and eye test reports as part of his investigation. Mr Nyembe further conducted interviews with the implicated individuals and requested written statements from relevant witnesses as part of the investigation.

- [9] The investigation revealed that on 16 November 2016, the Applicant prepared a schedule for the examiners conducting driving tests on 18 November 2016. In that schedule, the Applicant allocated work to the two examiners on duty at the Stilfontein Licensing Department, namely Mr Morero and Jeminah Lekitlane ("Lekitlane"). The Applicant inexplicably re-allocated the two driving tests to himself. The investigation further revealed that the Applicant directed a letter to the Directorate requesting that the province grant him access to and open transaction 718 in order to conduct the driving tests on 18 November 2016 at Stilfontein between 10h00 and 12h00.
- [10] This request was made without the knowledge and/or permission of Muntu, who was empowered to make such a request in terms of the SLA. On 18 November 2016, the Applicant conducted driving tests for Mrs Nombulelo Elsie Mokoena ("Mokoena") between 10h00 and 11h00, and for A Tsotetsi between 11h00 and 12h00, at Stilfontein. The circumstances surrounding the issuance of a driving licence to Mokoena underpin the factual allegations against the Applicant, which ultimately led to his dismissal on 9 April 2019.
- [11] The investigation further revealed that the Applicant did not allocate the R718 files to either Mr Morero or Jeminah Lekitlane to conduct the driving tests on 18 November 2016, despite them being the examiners on duty on that day. The record obtained indicates that Mokoena was issued with a driving licence on 18 November 2016 by the Applicant. The investigation could not find any evidence of a driving licence being issued to A Tsotetsi on the same day. As part of the investigation, Mokoena deposed to a statement in which she detailed the circumstances surrounding the issuance of her driving licence, including paying a R5 000 bribe to the Applicant.
- [12] In her evidence during the arbitration proceedings, Mokoena stated that she attended driving lessons at AA Driving School around November 2016.

However, she was advised not to book a test due to her advanced pregnancy at the time. Mokoena thereafter went to another driving school, known as He & She, based in Stilfontein and where she met Shadrack, an instructor at the school. On 16 November 2016, Mokoena went to the Stilfontein testing station to book an appointment for a driving test.

[13] On 17 November 2016, Mokoena met Shadrack at the Stilfontein testing station. Shadrack enquired from her whether the “cold drink money” was available. At some stage, Shadrack went inside the offices of the traffic department and returned with a gentleman who was later identified as the Applicant. The Applicant and Shadrack had a separate discussion away from Mokoena. Mokoena testified that she was later requested to join the discussion. At that stage, Shadrack, in the presence of the Applicant, asked Mokoena whether the “cold drink money” for obtaining the driving licence was available. The required “cold drink money” amounted to R5 000. Mokoena stated that the date of 18 November 2016 was allocated to her after she expressed her willingness to pay the required amount. On 18 November 2016, Mokoena arrived at the Stilfontein traffic department as per her appointment, with the required “cold drink money”, which she handed to Shadrack.

[14] Mokoena stated that Shadrack placed the money inside a bag and went into the Stilfontein testing station, presumably to meet the Applicant. After a while, Shadrack returned and advised Mokoena to sit in the truck, stating that everything would be sorted. Mokoena later went inside and met the Applicant, who gave her documents to sign, and her photographs were taken. Mokoena was issued with a temporary licence without undergoing the actual testing. On the testing sheet, it is reflected that the testing vehicle used to test Mokoena was a white Nissan Cabstar truck with registration number HLJ 769 NW.

[15] This vehicle was later identified as belonging to Mrs Ntaoleng Joyce Kameta (“Kameta”), the owner of Orkney Driving School. Kameta deposed to a statement as part of the investigation. In her statement, Kameta indicated that she was not aware that her truck had been used for testing purposes on 18

November 2016. Kameta further stated that the truck was on her premises on that day and was being used for driving lessons by her clients.

- [16] Arising out of the above, on 9 August 2017, the Applicant was arrested by the SAPS. On 9 January 2018, the Applicant was issued with a notification to attend a disciplinary hearing scheduled on 17 January 2028 to answer to the following allegations:

“CHARGE 1: GROSS DISHONESTY

That on the 18th November 2016, you solicited a reward, gift or favour in the amount of R5000 00 from Nombulelo Elsie Mokoena, an applicant for a drivers licence in exchange of issuing her with a code C1 drivers licence.

CHARGE 2: DISHONESTY

Count 1

That on the 18th November 2016, you misrepresented to the Municipality on a test sheet report that you tested Mrs. N. Mokoena for drivers licence while she was driving a Nissan truck with registration HLJ 796 NW knowingly that you at no stage tested her for a drivers licence.

Count 2

That on the 18th November 2016, you allocated R701 file of Ms N. Mokoena, an applicant for a drivers licence to yourself and tested her for a driver's licence well knowing that you had no authority to do so”.

- [17] The Applicant was found guilty and dismissed on 9 April 2019. Dissatisfied with the outcome, the Applicant, assisted by his trade union IMATU, referred an alleged unfair dismissal dispute to the Bargaining Council. The arbitration proceedings were held on 21 July, 12 August, 13 August and 14 August 2019. On 27 August 2019, the Commissioner delivered his arbitration award. In terms of the arbitration award, the Commissioner found that the Applicant was guilty of the allegations of dishonesty and gross dishonesty and that dismissal was warranted in the circumstances of this case.

- [18] The Applicant instituted review proceedings on 20 August 2020 to challenge the arbitration award issued by the Third Respondent ("Commissioner") on 27 August 2019 under case number NWD041907 acting under the auspices of the Second Respondent ("Bargaining Council"). In terms of the award, the Commissioner found that the Applicant's dismissal was substantively fair.
- [19] The Applicant's review application was filed outside the six weeks period prescribed in the LRA. That being the case, the Applicant's review application was accompanied by a condonation application. I am required to determine whether the Applicant has made out a case for condonation for his late filing of his review application.

The Applicant's condonation application

- [20] In his founding affidavit, the Applicant provided the following explanation for the delay:
- 20.1 the award that is the subject of the review proceedings was made by the Bargaining Council on 27 August 2019;
 - 20.2 the Union (IMATU) was unable to assist him further after the Award was delivered. He was advised to seek legal representation;
 - 20.3 He contacted Mr van Aswegen of Theron Jordaan & Smit Incorporated who was assisting him in his criminal case. He managed to secure an appointment for 22 October 2019.
 - 20.4 In that meeting, he was advised that Mr van Aswegen cannot assist him due to his involvement in the criminal case. He was referred to Pieter Strydom Attorneys who specialises in labour matters on 30 October 2019 after a brief was prepared by Mr van Aswegen;
 - 20.5 On 13 November 2019, Mr Pieter Strydom of Pieter Strydom attorneys advised him that he would not be able to assist him because of his involvement with the Afrikaanse Handelsinstituut Werkgewersorganisasie and cannot act on behalf of an employee;

- 20.6 He was then referred to Mr Willie Bosch of Willie Bosch Attorneys. Mr Bosch's next available date was on 27 November 2019 due to his busy schedule. In the meeting of 27 November, Mr Bosch requested a deposit of R100 000.00 before he can attend to drafting the review papers;
- 20.7 On 5 December 2019, he instructed Mr Bosch to return the file to Mr Aswegen in order to seek alternative representation as he was unable to raise the required funds;
- 20.8 He neglected to inform Mr van Aswegen about his instruction to Mr Bosch due to the criminal matter dominating the circumstance at the time. He did not contact Mr Bosch during this period. However, he was under the impression that the file was returned to Mr Aswegen and that he was attending to the matter;
- 20.9 On 20 February 2020, he had a meeting with Mr Aswegen to prepare for the criminal trial. During the meeting, he enquired about the progress in the arbitration and review matter;
- 20.10 Mr Aswegen informed him that he had not received the file from Mr Bosch and was not aware of the arrangement to return the file to him. Thereafter, he contacted Mr Bosch telephonically and an arrangement was made that Mr Bosch will return the file as soon as possible.
- 20.11 Mr van Aswegen received the file at the end of February 2020. During this period, Mr Aswegen was also attending to the Applicant's criminal case;
- 20.12 His criminal case was enrolled for trial in the Regional Court for the regional division of North West under case number CAS number 88/08/2017 on 17 and 25 March 2020;

20.13 At the conclusion of the state's case, the Applicant applied for discharged in terms of section 174 of the Criminal Procedure Act³ which was granted;

20.14 He was advised that the criminal matter and outcome thereof was important to the merits of his review application;

20.15 He was further advised that his case was only ready for review now as the criminal case was concluded and the outcome made available. Furthermore, the Applicant states that he was advised that in the absence of the criminal outcome, his review application would not be ready for hearing '*as the criminal matter would have substantially impacted this application*'.

20.16 Under the heading '*REASONS FOR BRINGING THIS APPLICATION*', the Applicant states that:

'6.2 As the evidence upon which the criminal charges were instigated, was essentially the same evidence upon which the disciplinary hearing was based and the subsequent arbitration held, it is submitted that the commissioner of the second respondent erred in finding that my dismissal with the First Respondent.

6.3 I am advised that a court of law, such as in which the criminal matter was instituted, is in a much better position to determine the quality of evidence and witnesses, than a bargaining council. The presiding officer in the Regional Court was indeed correct in her finding.

6.4 In the event that I was indeed guilty of the reasons for my dismissal, same would have been evident in the criminal trial, as by the time that trial proceeded, it would have been the witness' third time in which they convey the exact same incidents. Their evidence, if truthful, would not have been of such poor quality, on the third occasion, in the criminal court.

6.5 On the First Respondent's own version, was the disciplinary hearing based upon the contents of the docket opened under CAS number

³ Act 51 of 1977

88/08/2017. I cannot understand how a commissioner in a bargaining council can come to a different conclusion than a Regional Court Magistrate.

6.6 I still insist that I am not guilty of the charges levelled against me, and that the outcome of the disciplinary hearing as well as the arbitration is wrong”.

[21] Based on the above, the Applicant contends that condonation for the late filing of his review application ought to be granted.

The Law

[22] While the law and applicable principles around condonation are trite, considering the facts of this matter, and the submissions made by the parties, it is worthwhile to briefly outline them. In terms of section 145 (1) of the LRA, an aggrieved party alleging a defect in arbitration proceedings conducted under the auspices of the CCMA must institute review proceedings within six weeks of the date the award was served.

[23] In the oft-cited case of *Melane v Santam Insurance Co Ltd*⁴ it was held that:

“...the basic principle is that the court has a discretion, to be exercised judicially upon a consideration of all the facts, in essence, it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation thereof, the prospects of success and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there will be no point in granting condonation. What is needed is an objective conspectus of all the facts. Thus, a slight delay and a good explanation may help to compensate for the prospects of success which are not strong. The importance of the issue and strong prospects of success may tend to compensate for a long delay. The respondent’s interest in finality must not be overlooked.”

⁴ 1962 (4) SA 531 (A) at 532C-E.

[24] Rule 42 (1) of the Rules Regulating the Conduct of the Proceedings of the Labour Court states that this Court may extend or abridge any period prescribed by these rules on application, and on good cause shown, unless the court is precluded from doing so by an Act. Rule 42 (3) states that the Court may, on good cause shown, condone non-compliance with any period prescribed by these rules. In relation to Rule 12(1) of the amended rules which mirrored Rule 42 of the current Rules, the Labour Appeal Court (“LAC”) in *Nature's Choice Products (Pty) Ltd v Food and Allied Workers Union and Others*⁵ had stated:

“Rule 12(1) of the Labour Court Rules provides that a court may extend or breach any period prescribed by the Rules on application “on good cause shown”, unless the court is precluded from doing so by the Act. Rule 12(3) provides that the Labour Court may, on “good cause shown”, condone non-compliance with any period prescribed by the Rules. I have already referred to the cases of Motloi and Melane where the term “good cause” was given a practical meaning and in which the two main requirements that have crystallised, namely the explanation for the delay and prospects of success, are discussed. What is relevant at this juncture, however, is the issue of onus. It is for the applicant who seeks condonation to “show” good cause.”

[25] The LAC in *South African Police Service v Magwaxaza and Others*⁶ has held the following in relation to condonation applications:

“It is trite that condonation is not for the taking and that the applicant for such relief has to make out a proper case for it to be granted. Good, or sufficient, cause must be shown. This not only involves giving a full explanation for the delay, but also showing that the main process (in this instance the appeal) has reasonable prospects of success. Generally, a slight delay and a good explanation for the delay could compensate for weak prospects of success, and good prospects could make up for a long delay. But the interests of justice are paramount.”

[26] In *Van Wyk v Unitas Hospital and others*⁷, the Constitutional Court held that:

⁵ (2014) 35 ILJ 1512 (LAC) at para 19.

⁶ (2020) 41 ILJ 408 (LAC) at para 8.

⁷ 2008 (4) BCLR 442 (CC) at paras 20 to 22.

“the standard for considering an application for condonation is in the interest of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry but are not limited to the nature of the relief sought, the extent and the cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation of the delay the importance of the issue to be raised in the intended appeal and the prospects of success...An applicant for condonation must give a full explanation for the delay. In addition, the explanation must cover the entire period of the delay. And what is more the explanation must be reasonable.”

[27] In *National Union of Mineworkers v Council for Mineral Technology*⁸, the LAC 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 prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused ...’

[28] In *SACCAWU obo Letsoalo and Another v Commission for Conciliation, Mediation and Arbitration and Others*⁹, the LAC held:

‘[19] Added to the general principles, in *Steenkamp and Others v Edcon Ltd*, the Constitution Court endorsed the Labour Law – specific factors and considerations which are premised on one of the primary objects of the LRA to have labour disputes resolved expeditiously. Since labour disputes are inherently urgent, the LRA imposes strict time limits within which various applications and referrals must be launched to give effect to the primary object of the LRA. As a result, and pertinent to the case at hand, condonation in a case of disputes over individual dismissals will not readily be granted unless, inter alia, the explanation for non-compliance is compelling. What is more, a higher threshold has been set where the delay is attributed to the internal processes and procedures of trade unions’ (footnotes omitted)

⁸ [1999] 3 BLLR 209 (LAC) at para 10

⁹ (JA 155/23) [2025] ZALAC 12 (30 January 2025) at para 19.

[29] From these excerpts, the following general principles, which will guide the remainder of this judgment, emerge:

- 29.1 this Court has a discretion to grant condonation, which discretion must be exercised judicially, on consideration of all the facts. The way the Court exercises its discretion must be fair to both sides;
- 29.2 in exercising this discretion, this Court will have consideration to the degree of lateness, the explanation thereof, the prospects of success and the importance of the case. All these facts are ordinarily interrelated, and an objective conspectus of all the facts is needed;
- 29.3 without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial;
- 29.4 if there are no prospects of success, there will be little point in granting condonation;
- 29.5 the main requirements for a party seeking condonation in terms of Rule 42 of the Rules to deal with are the explanation for the delay and the prospects of success. In terms of Rule 42, the onus is on the party seeking condonation to show good cause why condonation should be granted; and
- 29.6 the interests of justice are paramount.

Analysis

[30] The impugned arbitration award was served on 27 August 2019. That being the case, the Applicant's review application was due on or before 8 October 2019. It is common cause however that the Applicant's review application was delivered on 20 August 2020. The Applicant's review application was accordingly delivered more than 10 months outside of the six weeks period prescribed in section 145 (1) of the LRA.

- [31] The 10 months delay in filing the review application is inordinate and the Applicant is required to provide an explanation that is reasonable and acceptable covering the entire period of the delay.
- [32] The Applicant's explanation for the delay is principally premised on the advice that the outcome of his criminal proceedings bore a direct and material relevance to the contemplated review application - in that both matters were founded upon the same underlying facts. On this basis, the Applicant contended that his review application was only ready to be launched upon the finalisation of the criminal proceedings. In the absence of such finalisation, the review application would not have been ready for hearing.
- [33] The explanation proffered by the Applicant, that he had to await the outcome of his criminal case before instituting review proceedings is flawed and, does not constitute a reasonable explanation for the excessive delay. The approach adopted is manifestly erroneous and fails to satisfy the requirement for a *bona fide* explanation, particularly as the outcome of the criminal matter is immaterial to the reasonableness of the Commissioner's Award.
- [34] The strategy adopted appears to be the result of a deliberate tactical decision by the Applicant (on the advice of his attorneys) to prioritise the criminal proceedings, only intending to pursue the review application should those proceedings yield a favourable outcome. In my view, such a calculated election is inconsistent with the requirement for a *bona fide* explanation for the delay and does not constitute a valid explanation for a delay in instituting his review application timeously.
- [35] Furthermore, this tactical legal manoeuvring undermines one of the primary objects of the LRA, which is to have labour disputes resolved expeditiously. It is my considered view that the approach adopted by the Applicant which resulted in the inordinate delay has the potential of damaging the interests of the administration of justice. The Applicant's chosen course of action has occasioned a degree of uncertainty which is manifestly prejudicial to the Municipality. To the extent that the Applicant may suffer prejudice should condonation be refused, such prejudice is attributable to his elective legal

strategy to defer the institution of these review proceedings pending the finalisation of his criminal matter.

[36] It is noteworthy that, notwithstanding the conclusion of the Applicant's criminal proceedings on 25 March 2020, the review application was only instituted on 20 August 2020. The Applicant has failed to furnish any satisfactory or reasonable explanation for the delay during the intervening period. In the absence of such explanation, the delay is both unreasonable and remains unaccounted for.

[37] In the circumstances, I am of the view that the explanation proffered by the Applicant amounts to no explanation at all. Thus, given the absence of a reasonable and bona fide justification for the inordinate delay, the Applicant's prospects of success become immaterial, and the application for condonation for the late filing of the review application ought to be dismissed on this basis alone.

[38] In any event, I am of the view that even if a favourable view is taken of the Applicant's explanation, a reading of the record and assessment of his prospects of success demonstrates that the Commissioner's ultimate finding - that the Applicant was guilty of misconduct and that the dismissal was substantively fair - is objectively justifiable on the evidence that was adduced during the arbitration proceedings, for the reasons set out below.

38.1 Management Representatives are not permitted to conduct driving tests when Examiners are on duty;

38.2 On 16 November 2016, the Applicant scheduled Lekitlane and Morero to conduct testing on 18 November 2016 at the Stillfontein Licence Department;

38.3 On 18 November 2016, the Applicant inexplicably allocated an R701 form to himself to conduct a driving test for Mokoena between 10h00 and 11h00;

- 38.4 In terms of the SLA between the Municipality and the Provincial Government, Management Representatives must first obtain permission from the Directorate before conducting driving tests. Such request can only be made in situations of emergency;
- 38.5 The SLA further provides that the Assistant Director (Muntu) was the only person authorised to write a letter requesting permission for Management Representatives to conduct driving tests. It is common cause, however, that the Applicant wrote the letter himself on 18 November 2016 requesting permission to operate on transaction 718, without Muntu's knowledge or consent;
- 38.6 Mokoena's driving test was scheduled within two days of her discussion with Shadrack and the Applicant;
- 38.7 The truck allegedly used during Mokoena's test was not booked for testing at the Stillfontein Licence Department on that day. The owner of the truck, Kameta, stated in her statement that she is based in Orkney and that the truck in question was used to provide lessons at her private testing grounds on 18 November 2016;
- 38.9 Mokoena and Kameta are not acquainted. Consequently, Mokoena could not have borrowed or hired the truck from Kameta on 18 November 2016. On the other hand, The Applicant and Kameta have known one another for over two decades and are members of the same religious congregation. Accordingly, the Applicant's inclusion of Kameta's vehicle details on the testing sheet on 18 November 2016 transcend mere coincidence; and
- 38.10 On the objective evidence before the Commissioner, Mokoena did not know the Applicant prior to the incident. Consequently, she had no apparent motive to fabricate a version against the Applicant. Furthermore, her testimony is bolstered by the fact that it involves an admission of her own participation in potentially criminal conduct. On the balance of probabilities, it is highly improbable that a witness would falsely implicate themselves in such a manner.

- [39] Based on the above chronology and evidence that was before the Commissioner, the Commissioner's finding, on a balance of probabilities, that the licence issued to Mokoena on 18 November 2016 was irregularly issued is not unreasonable or untenable¹⁰. On the evidence before the Commissioner, it was a reasonable and not untenable finding, on a balance of probabilities, that a monetary payment was made in order to procure the issuance of the licence on that date - without the requisite physical testing having been conducted.
- [40] The established facts, in my view, corroborate the Municipality's version of events and reveal conduct that is improper and fairly warranting of dismissal. Such conduct, which is characterised by malfeasance, constitutes a gross abuse of power and strikes at the heart of the trust relationship inherent in the employment relationship.
- [41] In these circumstances, the conclusion reached by the Commissioner that the Applicant was guilty of misconduct and dismissal was an appropriate sanction cannot be faulted. That conclusion is, in my view, eminently reasonable and accords with the evidence presented. Thus, the Applicant's prospects of success in the main review application are extremely poor. I am of the view that it is therefore not in the interests of justice to grant condonation in this matter. The application for condonation having been refused, the door to the merits of the reinstatement application remains closed. This Court, therefore, lacks the jurisdiction to consider the relief sought by the Applicant in the reinstatement application.

Costs

- [42] In the exercise of my discretion under section 162 of the LRA, I have taken into account the principles of law and fairness as articulated by the Constitutional Court in *Zungu v Premier of the Province of KwaZulu – Natal*¹¹. I am of the view that there is no reason to depart from the general rule in labour matters that a losing party should not be mulcted in costs, provided the

¹⁰ *Mashele v South African Reserve Bank and Others* [2026] 1 BLLR 57 (LAC) and the authorities cited therein on the threshold required for the review Court to interfere with factual findings.

¹¹ [2018] 4 BLLR 323 (CC).

litigation was initiated in good faith. Consequently, I find that a costs order is not warranted in the circumstances of this case.

[43] Accordingly, the following order is made:

Order:

1. The condonation application for the late filing of the Applicant's Review Application is dismissed; and
2. There is no order as to costs.

D. Cithi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Adv L Hollander

Instructed by : Theron, Jordaan & Smit

For the First Respondent : Adv T Segage

Instructed by : De Swardt Myambo Hlahla Attorneys