



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


Signature

25\04\2026
Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR 1654/21

In the matter between:

DAVID JIMMY PILUSA

Applicant

and

**THE SOUTH AFRICAN GOVERNMENT
BARGAINING COUNCIL, LIMPOPO**

First Respondent

COMMISSIONER JACQUES FM

VEREHOEF N.O

Second Respondent

BA -PHALABORWA MUNICIPALITY

Third Respondent

Heard: 29 May 2025

Delivered: 25 April 2026

Summary: Review application of a condonation ruling in terms of section 158(1)(g) read together with section 145 of the LRA – condonation/rescission ruling by the Commissioner – test on review – whether the Commissioner failed to act judicially in his exercise of his wide discretion to refuse condonation/rescission – the applicant failed to make out a case warranting this Court’s interference with the Commissioner’s exercise of his discretion – review application dismissed.

JUDGMENT

CITHI, AJ

Introduction

- [1] The Applicant instituted these review proceedings in terms of section 158, read together with section 145 of the Labour Relations Act¹ (LRA) seeking to review and set aside a condonation ruling dated 21 June 2021 issued by the Second Respondent (Commissioner) dismissing his condonation application for the late filing of his rescission application wherein the Applicant sought to rescind a ruling in terms of Rule 30(1)(a) of the Rules for the Conduct of Proceedings before the First Respondent (Bargaining Council) dismissing his referral arising out of his and/or his legal representative's failure to attend arbitration proceedings scheduled on 19 and 20 November 2020.
- [2] The Third Respondent (Municipality) opposes the review application.

Relevant chronology

- [3] The Applicant was employed by the Municipality in the capacity of an examiner /testing officer. In this role, his primary duties included, *inter alia*, the examination of driver applicants to ensure their competence to operate vehicles on public roads. The conduct of said examiners is strictly governed by the National Traffic Act² (the traffic Act). Section 18(3) states that an examiner must test an applicant in the prescribed manner, adhering to the codified K53 testing standard. Section 18(4) stipulates that an examiner may only authorise a license once they have satisfied themselves that the candidate is competent to operate the vehicle on national roads.

¹ Act 66 of 1995, as amended.

² Act 93 of 1996.

- [4] In terms of section 17(4) of the traffic Act, a driver's license shall not be issued to an applicant unless they have been found to be competent by an examiner. Undoubtedly, the position of an examiner is one of significant public trust, acting as the primary safeguard against the licensing of unskilled drivers. Thus, the Applicant's duty was not merely clerical; it was a statutory obligation under the traffic Act to ensure that only candidates who demonstrated objective competence were permitted to be licensed. Any failure to strictly adhere to these testing protocols represents a fundamental breach of the Applicant's duty of care towards the public and the subversion of the Municipality's mandate to ensure road safety.
- [5] The Applicant was charged with gross dereliction of duties stemming from an incident on 19 July 2019. During a driving test for a Code C1 license, the candidate, Ms. T.D. Chauke, physically knocked down a pole while under the Applicant's supervision. The Applicant's decision to issue a Code C1 driving license to Ms T.D. Chauke, notwithstanding her physical collision with a pole during the practical examination, constitutes a gross departure from the prescribed K53 testing standards and the traffic Act.
- [6] At the commencement of the disciplinary hearing, the Municipality amended the charge sheet by removing the descriptor 'gross' from the charge. Subsequently, the parties entered into a plea-bargaining agreement. In terms of the plea-bargain, the Applicant pleaded guilty to the charge of dereliction of duties. In consideration of this admission of guilt, the parties agreed to a composite sanction comprising a final written warning with a validity period of 12 months and a ten-day suspension without pay. Furthermore, the agreement provides for the Applicant's lateral transfer to an alternative position at the Municipality's discretion, subject to the *proviso* that such reassignment shall be executed without any diminution in remuneration or financial loss to the Applicant.
- [7] In terms of clause 10.3 of the collective agreement governing the Applicant's disciplinary process, the Presiding Officer is vested with the discretionary power to consider and approve a plea agreement. The clause further stipulates that while an approved agreement might mandate a sanction in

accordance with its terms, the absence of the Presiding Officer's approval necessitates that the disciplinary proceedings resume as if the employee had pleaded not guilty. In the present instance, the Presiding Officer, having evaluated the proposed agreement against the circumstances of the misconduct, exercised his discretion to reject the plea bargain. Consequently, the Applicant was invited to plead, and it is common cause that a plea of guilty was entered. Following a formal finding of guilt, the Presiding Officer directed the parties to submit their respective representations regarding an appropriate sanction.

- [8] In dealing with the question of sanction, the Presiding Officer concluded that the gravity of the misconduct warranted the ultimate penalty of dismissal. Consequently, the Applicant was summarily dismissed on 6 March 2020. The Applicant subsequently lodged an internal appeal against the dismissal; however, the appeal was dismissed on 3 June 2020 on the grounds that it was filed outside the seven-day period prescribed by the Disciplinary Code. Aggrieved by the termination of his employment, the Applicant referred an unfair dismissal dispute to the Bargaining Council on 2 July 2020.
- [9] The arbitration proceedings were scheduled on 19 and 20 November 2020. Despite due notice, it is common cause that neither the Applicant nor his representative appeared for the scheduled proceedings. Consequently, the Commissioner, exercising his discretion in terms of Rule 30(1) of the Bargaining Council Rules, dismissed the Applicant's referral on account of the non-attendance.
- [10] On 7 April 2021, the Applicant filed a rescission application in terms of Rule 32 of the Bargaining Council Rules, seeking to rescind the dismissal ruling dated 19 November 2020. The Applicant's rescission application was accompanied by a condonation application for the late filing of his rescission application. The rescission application was scheduled for argument before the Commissioner on 18 June 2021. The Applicant was represented by Adv L.P Pilusi and the Municipality was represented by Mr L.G Verveen, a practicing attorney.

- [11] On 24 June 2021, the Commissioner delivered his condonation/rescission ruling.

Condonation / Rescission Ruling

- [12] In the Ruling, the Commissioner observed that the Applicant filed his rescission application approximately 112 days outside the prescribed period of 14 days, as stipulated in Rule 32 of the Bargaining Council Rules. The Commissioner found this delay to be inordinate and accordingly required the Applicant to provide a full and detailed explanation accounting for the entire period of the delay. Upon consideration of the explanation tendered, the Commissioner concluded that the Applicant failed to furnish a satisfactory explanation for the excessive delay.
- [13] The Commissioner thereafter considered the Applicant's prospects of success in the rescission application. In this regard, the Commissioner noted that a medical certificate indicating that the Applicant was indisposed had been emailed to the Bargaining Council on 18 November 2020. However, the covering email failed to reference the relevant matter or case number and did not indicate that the Applicant was applying for a postponement of the arbitration scheduled on 19 November 2020. Importantly, the Commissioner observed that no explanation was advanced for the Applicant's representative's failure to attend the proceedings on 19 November 2020. The Commissioner consequently inferred that the Applicant's non-attendance at the arbitration proceedings was wilful.
- [14] The Commissioner further assessed the Applicant's prospects of success in respect of the substantive dismissal dispute. It was noted that the Applicant had pleaded guilty to dereliction of duties, arising from the unlawful issuance of a driver's licence to a candidate who ought to have been disqualified for having knocked down a pole during her driving test. The Commissioner concluded that the seriousness and gravity of the misconduct justified the ultimate sanction of dismissal. Ultimately, the Commissioner concluded that:

“Having had regard to the excessive delay (112 days), the non-satisfactory explanation for the delay and the employee’s poor prospects of success in the main unfair dismissal dispute, I find that it will not be in the interest of justice that condonation be granted. As such the application for rescission also has to be dismissed”.

[15] It is this condonation/rescission ruling that is the subject of the review application initiated by the Applicant.

Grounds of review

[16] The Applicant assailed the Commissioner’s ultimate conclusion on numerous grounds including, *inter alia*, that the Commissioner failed to take into account that his absence on 19 November 2020 was not wilful; that the explanation proffered for his non-attendance of the arbitration proceedings on 19 November 2020 was reasonable; that the Commissioner misunderstood the enquiry relating to the rescission application and his prospects of success were not properly considered. Ultimately, the Applicant contends that the condonation/rescission ruling is susceptible to review and setting aside

General principles applicable to granting a condonation application

[17] It is trite that the granting of condonation by the Bargaining Council fundamentally involves the exercise of judicial discretion.³ This means that the Bargaining Council is not obliged to grant condonation simply because an application is lodged. Put differently, condonation is not there for the taking.⁴ A party seeking condonation before the Bargaining Council must make out a case for the indulgence sought and bears the onus to satisfy the commissioner that condonation should be granted.

[18] In general, the commissioner is required to exercise his/her discretion having regard to the extent of the delay, the explanation provided for that delay, the prospects of success and prejudice to both parties and the circumstances presented in the application and then make a fair and just decision. This

³ *Nature’s Choice Products (Pty) Ltd v Food and Allied Workers Union and Others* (2014) 35 ILJ 1512 (LAC) para 11; *Bosch v Seynhaeve NO* (159/2023) [2024] ZALCCT 25 (27 June 2024) at para 17.

⁴ *NUMSA and Another v Hillside Aluminium* [2005] 6 BLLR 601 (LC); *Grootboom v National Prosecuting Authority and Another* [2014] 1 BLLR 1 (CC).

discretionary power allows the commissioner to balance the need for procedural fairness and the expeditious resolution of labour disputes with the specific context of each individual case.

- [19] The LAC has indeed, to some extent, refined the approach commissioners ought to adopt in assessing the factors relevant to the consideration of a condonation application such as those mentioned in *Melane v Santam Insurance Co Ltd*⁵ (*Melane*), which emphasized the significance of a satisfactory explanation for the delay and prospects of success as being weighty factors in assessing whether condonation should be granted. The LAC has held that if there is an inordinate delay that is not explained, the applicant's prospects of success become immaterial.
- [20] Further in this regard, a good explanation cannot save the condonation application if the applicant's prospects of success are poor.⁶ In essence, while the *Melane* principle suggests a weighing up of all factors, the LAC has established a hierarchy where a reasonable and acceptable explanation for the delay or prospects of success can, circumstances depending, serve as crucial thresholds for granting a condonation.
- [21] A commissioner's exercise of discretion in granting or refusing a condonation application may confer or deprive the Bargaining Council of jurisdiction to entertain disputes that are referred outside the prescribed timeframes. Consequently, if this discretion is improperly exercised and condonation is granted in error, it may result in the Bargaining Council hearing a case that lacks the necessary procedural compliance. Similarly, the improper exercise of this discretion may undermine the Bargaining Council's statutory obligations to provide fair and effective dispute resolution – effectively preventing it from hearing matters that it is legally entitled and obligated to adjudicate upon.

Test applicable in a review of condonation ruling

⁵ 1962 (4) SA 531 (A).

⁶ See: *Novo Norsdisk (Pty) Ltd v CCMA and Others* [2011] 10 BLLR 957 (LAC) at para 28; *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC); *Colett v Commission for Conciliation, Mediation and Arbitration* [2014] 6 BLLR 523 (LAC); and *Moila v Shai NO and Others* [2007] 5 BLLR 432 (LAC).

[22] This Court is generally reluctant to substitute its own discretion for that of the commissioner unless there is a compelling reason to do so. In *Cowley v Anglo Platinum and others*⁷, the threshold for this Court to interfere with a commissioner's wide discretion in granting condonation was explained in the following terms:

'When a commissioner is endowed with a discretion this court will be very slow to interfere with the exercise of that discretion. The commissioner's exercise of discretion will be upset on review if the applicant shows, inter alia, that the commissioner committed a misdirection or irregularity; or that he/she acted capriciously, or upon a wrong principle, or in bad faith, or unfairly, or that in exercising the discretion the commissioner reached a decision that a reasonable decision-maker could not reach. If it is clear that the commissioner exercised such discretion judiciously and fairly after taking into consideration all the relevant facts this Court will not interfere with the exercise of such discretion.'

[23] In sum, to succeed in a review application impugning a condonation ruling, the applicant party must demonstrate that the commissioner, in exercising their discretion, failed to act judicially. This can be shown by proving that the commissioner acted arbitrarily, capriciously, *mala fide*, or based on a wrong appreciation of the law. Furthermore, the applicant must illustrate that the commissioner did not properly consider all the relevant factors - reaching a decision that no reasonable commissioner could have reached⁸, or committed a material error of law and/or facts that prejudiced the applicant. Ultimately, the applicant bears the onus of proving that the commissioner's exercise of discretion was flawed to the extent that it warrants the intervention of the reviewing Court.

Analysis

[24] The central issue for determination is whether the Commissioner's exercise of discretion in refusing condonation for the late filing of the Applicant's rescission application was so flawed as to warrant judicial intervention. Based

⁷ [2016] JOL 35884 (LC) at para 21.

⁸ See: *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* (2007) 28 ILJ 2405 (CC) at para 110.

on the evidence before the Commissioner, the Applicant remained evasive regarding the exact date he became aware of the dismissal ruling. However, he did concede to receiving the ruling in November 2020. To calculate the period of delay, the Commissioner reasonably assumed receipt occurred on the final day of that month, 30 November 2020. While the Applicant contends that he immediately instructed his representative, Mr Ramphele, to file a rescission application, Mr Ramphele failed to do so for reasons that remained unexplained. Further in this regard, the Applicant failed to provide a plausible explanation for his belief that Mr Ramphele would – or even could – have launched a rescission application within the 14 – day period without the Applicant first deposing to a founding or confirmatory affidavit. In my view, the alarm bells ought to have rung before the expiry of the 14-day period, during which Mr Ramphele failed to make contact to depose to either a founding or confirmatory affidavit. The Applicant remains silent on the reasons for this period of inactivity, failing to provide a satisfactory explanation for why the first enquiry was made only on 17 December 2020.

[25] Furthermore, the Commissioner's scrutiny of the annexures attached to the Applicant's founding affidavit revealed that the Applicant personally contacted the Bargaining Council via email on 17 December 2020 to enquire about a future hearing date despite claiming to have instructed his representative to bring a rescission application. Most critically, the Commissioner noted that the Bargaining Council explicitly informed the Applicant on 21 December 2020 that no rescission application had been received.

[26] The Commissioner made a crucial observation that the Applicant failed to explain his inactivity between 21 December 2020 and 18 February 2021, specifically regarding his failure to follow up with Mr Ramphele or instruct another representative to file the application or file the rescission application personally. Furthermore, despite a follow-up on 18 February 2021, the Applicant offered no justification for waiting until 10 March 2021 to request relevant documents from the Bargaining Council. In my view, the Applicant's request to the Bargaining Council on 10 March 2021 was superfluous as he

was already in possession of the dismissal ruling and medical certificate which were critical documents he needed to file the rescission application.

- [27] Moreover, the Applicant demonstrated a laissez-faire approach even after receiving the documents on 10 March 2021. He only approached a legal representative on 28 March 2021 and ultimately filed the rescission application on 7 April 2021. Having been aware of the necessity of this application since 21 December 2020, the Applicant ought to have acted with a degree of urgency.
- [28] In my view, the Commissioner's assessment of the explanation proffered for the 112-day delay is beyond reproach. The Commissioner correctly identified material lacunae in the Applicant's timeline. It is trite that an applicant seeking condonation must provide a full account for the entire period of the delay. Accordingly, the Commissioner's conclusion that the explanation was unreasonable is both rational and supported by evidence.
- [29] In dealing with the prospects of success, the Commissioner evaluated the Applicant's merits in respect of both the rescission application and the underlying dismissal dispute. Concerning the rescission application, the Commissioner noted that while a medical certificate was transmitted to the Bargaining Council on 18 November 2020, it failed to specify the parties or the relevant case number. Critically, the Commissioner observed that no explanation was tendered as to why Mr Ramphele failed to attend the arbitration proceedings on 19 November 2020 to formally move an application for postponement or file a substantive application on 18 November 2020 seeking postponement or inform the Municipality about the Applicant's predicament.
- [30] Section 138(5)(a) of the LRA empowers a commissioner to dismiss a matter should a party fail to appear in person or be represented at the proceedings. In my view, the Commissioner's finding that the Applicant's prospects of success in the rescission application were unconvincing cannot be viewed in isolation. It was inextricably linked to the unsatisfactory explanation for Mr Ramphele's absence and the vague nature of the medical evidence provided.

Given the discretionary power afforded by section 138(5)(a) of the LRA read together with Rule 30(1)(a) of the Bargaining Council Rules, the Commissioner's weighing of these factors in assessing the Applicant's prospects of success in the rescission application does not manifest a misdirection that would warrant interference on review. It is no misdirection at all.

- [31] With regard to the prospects of success in the dismissal dispute, the Commissioner found that the Applicant pleaded guilty to a charge of gross dereliction of duties and that the gravity of his conduct warranted dismissal. In his papers, the Applicant assailed this conclusion on the basis that he pleaded guilty to dereliction of duties and not gross dereliction of duties after the Presiding Officer rejected the plea agreement. Accordingly, the Applicant argued that a sanction short of dismissal ought to have been imposed.
- [32] In my view, the Applicant's argument is without merit for two reasons: firstly, the seriousness of the misconduct is not determined by the label attached to it, but rather by its impact on the employment relationship. A presiding officer is required to assess the seriousness of the conduct with reference to the facts presented, rather than the terminology used. In this matter, there can be little doubt that the Applicant's conduct - namely, issuing a driver's licence to a candidate who had hit a pole - constituted a serious breach of his statutory obligation in terms of sections 18(3) and 18(4) of the Traffic Act.
- [33] By issuing a driver's licence to a candidate who was not fit to drive on national roads, in my view, the Applicant committed a material breach of his obligation to act as a gatekeeper of road safety. The Presiding Officer, to his credit, remained alive to the gravity of the Applicant's misconduct. In my view, the Presiding Officer correctly saw through and rejected the contrived efforts intended to secure a more lenient sanction. Secondly, and in any event, on the objective facts, the Commissioner's conclusion that the Applicant pleaded guilty is beyond reproach and cannot be faulted. This finding is supported by the transcript of the *in-limine* proceedings on 18 June 2021, during which the Applicant's own representative, Adv Pilusi, conceded that a guilty plea to

dereliction of duties was entered despite the Presiding Officer's rejection of the plea agreement.

[34] Ultimately, I am of the view that the Commissioner's exercise of discretion to refuse condonation was fundamentally guided by a studious consideration of the relevant factors and a balanced assessment of the evidence. By carefully weighing the degree of lateness against the merits of the explanation and the broader interests of justice, the Commissioner ensured that his ruling was neither arbitrary nor capricious. The resulting conclusion is not only supported by the objective evidence on record but also demonstrates a rational and proper application of the mind, falling squarely within the proper exercise of discretion and reasonableness of the decision reached.

[35] In conclusion, the Applicant has not disclosed grounds justifying this Court's interference with the Commissioner's exercise of his discretion to refuse condonation and subsequently dismissing the rescission application for lack of jurisdiction. The ruling shows that the Commissioner exercised his discretion judicially in dismissing the Applicant's condonation/rescission application. Accordingly, the conclusion reached by the Commissioner is a decision which could have reasonably been made by a commissioner properly exercising her/his discretion on the same facts.

Costs

[36] 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*⁹. 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 litigation was initiated in good faith. Consequently, I find that a costs order is not warranted in the circumstances of this case.

[37] Accordingly, the following order is made:

Order

⁹ [2018] 4 BLLR 323 (CC).

1. The application for review of the Commissioner's condonation/ rescission ruling is dismissed; and
2. No order as to costs.

D Cithi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : MM Baloyi from MM Baloyi Attorneys

For the Third Respondent : Adv M.S Mononyane

Instructed by : Verveen Attorneys