



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


Signature

18 May 2026
Date

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT CAPE TOWN**

Case No.: C40/2020

In the matter between:

SANDRA NOELENE OPPERMAN

Applicant

and

DEPARTMENT OF HEALTH – WESTERN CAPE

First Respondent

**PUBLIC HEALTH SOCIAL DEVELOPMENT
SECTORIAL BARGAINING COUNCIL**

Second Respondent

T. ERASMUS N.O.

Third Respondent

Heard: 02 July 2025

Delivered: 18 May 2026

JUDGMENT

BANDERKER, AJ

INTRODUCTION

- [1] In *Lynch & Co v United States Fidelity & Fidelity Guarantee Co*, it was held per Fraser J as follows:

“ ‘ Dishonest’ is normally used to describe an act where there has been some intent to deceive or cheat. To use it to describe acts which are merely reckless, disobedient or foolish is not in accordance with popular usage or the dictionary meaning.”¹

In *Amcu obo Thlanganyane v Beesnaar NO* Sethene AJ held as follows:

“In dissecting the word dishonesty, actus reus (physical conduct) and mens rea (mental element) must be present. The presence of actus reus and mens rea denotes that a person purposefully acts with an intent to achieve a certain desired outcome for his or her benefit at the detriment of another (victim)”²

- [2] Applicant, an adult female was employed at the George Hospital, Western Cape, as an administrative clerk. Applicant, at the time of the incident which resulted in her dismissal, was in the employ of the First Respondent for more than 28 years and had an unblemished employment record.
- [3] It was alleged that on the 7th March 2019, the Applicant was performing her duties as an administrative clerk when a cellular phone was placed in front of her in the admissions area. It later emerged that the said cellular phone ('cell phone') belonged to a Mr Wagenaar who was on the relevant date and time delivered some item to the George Hospital. It appears that Mr Wagenaar

¹ *Lynch & Co v United States Fidelity & Fidelity Guarantee Co* [1971] 1 OR 28 at 37, 38

² *Amcu obo Thlanganyane v Beesnaar NO* (2023) 44 ILJ 2210 (LC) Judgment dated 6th July 2023

during the process of his delivery left his cell phone on the desk and area where the Applicant was performing duties.

- [4] It appears that the First Respondent has a procedure in place when valuables of patients are handed in and/or lost. The First Respondent's procedure entails such property to be placed in a safe for safekeeping. Ostensibly such property is/are returned to its rightful owners upon request and/or enquiry at the George Hospital.

ISSUES TO BE DETERMINED

- [5] The applicant filed an application for condonation for non-compliance with the rules of this Honourable Court for:
- (a) her failure to file her review application within the prescribed time period; and
 - (b) her condonation application served and filed on the 4th April 2024.³
- [6] It is common cause that on the 30th January 2020 the Applicant delivered an application to review the arbitration award dated 28th October 2019. Applicant asserts that the award falls to be reviewed and set aside, essentially as the arbitral award is one that no reasonable arbitrator could have reached.
- [7] Accordingly, Applicant asserts that she instructed her erstwhile attorneys or record, Jansen and Samson Attorneys to assist her in her review application. Applicant asserts further that after the erstwhile attorneys Messrs Jansen and Samson Attorneys proceeded to institute foregoing legal proceedings on her behalf she was unable to obtain satisfactory response from them. This despite, Applicant avers, paying Messrs Jansen and Samson Attorneys the sum of R90 000,00 for the review application (what that means).

³ See: Applicant's Application for Condonation, Record pp. 1

- [8] Applicant thereafter decided to terminate the mandate of Messrs Jansen and Samson Attorneys, after the matter had been dragging on for over four years. It is unclear whether Applicant received a proper account from Messrs Jansen and Samson Attorneys for the aforesaid sum so paid to the latter or whether she obtained any refund from Messrs Jansen and Samson Attorneys.⁴
- [9] Applicant hereafter instructed her present attorneys of record Messrs J Jacobs and Associates during September 2023 to represent her in the review application.⁵
- [10] The Respondent's opposition to Applicant's claim is that the Applicant has not complied with the rules as indicated in this Honourable Court's new Rules.⁶

APPLICABLE LEGAL PRINCIPLES

- [11] The crisp issue for determination herein is whether the condonation application served and filed by the Applicant approximately two (2) years after her last communication with the Respondent or this Honourable Court is deemed to be withdrawn in terms of Rule 37 (15) and whether the Applicant has complied with the requirements as set forth in terms of Rule 37 (16) of the New Labour Court rules.
- [12] When the condonation application was served and filed on the 17th April 2024, the Labour Court's Practice Manual was still applicable.⁷
- [13] In *Total Mashiane v Safety & Security Bargaining Council & Others*⁸ it was held that the Practice Manual was no longer applicable after 1 July 2024 and

⁴ See: Record p. 6, Applicant's Founding Affidavit, para 3.5 thereof

⁵ See: Record p. 6, Applicant's Founding Affidavit, para 3.6 thereof

⁶ See: Record p. 48, First Respondent's Answering Affidavit

⁷ See: Paragraph 11.2.7 of the Labour Court Practice Manual

⁸ See: *Total Mashiane v Safety & Security Bargaining Council* [2024] ZALCJHB 432 (13th November 2024) at para [5]

that the new Labour Court rules were applicable when the matter was heard on the 13th November 2024.

- [14] Rule 37 of the so-called new Labour Court Rules expressly provides as follows:

“The applicant must transcribe and make copies of the record and file only those portions of the record as may be necessary for the purposes of the review, and certify each copy as true and correct. If the applicant contends that the decision under review should be set aside because it is unreasonable or irrational in relation to the evidence that served before the decision-maker the complete record must be transcribed.”⁹

- [15] Rule 37 further provides:

“If the application fails to file a transcribed record within the prescribed period the Applicant will be deemed to have withdrawn the application, unless the Applicant has during that period requested the Respondent’s consent for extension of time and consent has been given. Any consent given must be expressed in writing and filed with the Registrar.”¹⁰

- [16] Rule 37 furthermore expressly provides that:

“If consent is refused, the applicant may on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time. The applicant must submit proof of service on all other parties, and answering and replying affidavits may be filed within the time limits prescribed by rule 35.”¹¹

⁹ See: Rule 37 (12) of the new Labour Court Rules

¹⁰ See: Rule 37 (15) of the new Labour Court Rules

¹¹ See: Rule 37 (16) of the new Labour Court Rules

- [17] In *Total Mashiane v Safety & Security Bargaining Council & Others*, the court held as follows:

*"It is noteworthy to mention, that unlike rule 37(12), rule 7A(6), did not specifically direct an applicant to file the complete record when attempting to have an award set aside on grounds that an arbitrator's decision was unreasonable. However, in keeping with the authorities raised by Ms Bismilla, it has always been the case that an applicant is obliged to file a complete record when attacking the award on grounds of reasonableness. The rational being that a reviewing court must have sight of the totality of the evidence before an arbitrator when deciding whether or not an applicant has met the threshold which warrants the reviewing court's intervention. Rule 37(12), which now specifically sets out an applicant's obligation to file the complete record in support of a finding that an arbitrator arrived at a decision no reasonable arbitrator could have arrived at, merely codified an existing and binding principle at the time."*¹²

- [18] Having considered the Notice of Motion and Condonation Application filed on the 17th April 2024, it is clear that the Applicant has failed to file the complete record within the 60-day period prescribed and has also not sought any indulgence from the Respondent in this regard or the Judge-President.
- [19] It is thus clear that the Applicant's Notice of Motion is not in compliance with Rule 37. The review application is deemed to have been withdrawn, and possibly archived.
- [20] The Applicant faces a further challenge though, in that she has failed to show good cause for the application to be revived.

¹² See: Rule 37 (12) of the Labour Court Rules

[21] In the Condonation Application, the Applicant seeks an order that this Honourable Court:

- (1) Condones the non-compliance with Rule 7A (b) of the Labour Court Rules; and
- (b) The Applicant's late filing or delivery of its Notice of Statement of Case be condoned as required in terms of Rule 7A (b).¹³

[22] Accepting that Applicant's review application was delivered late, the Condonation Application filed on the 17th of April 2024 should have been for the revival or reinstatement of her main application.

[23] In *Mayekiso v Jamodien & Others*, the Court held as follows:

*"An application for revival or reinstatement involves the exercise of a discretion on the part of the court, akin to an application for condonation. In order to show good cause, an applicant must put up a reasonable explanation which covers the entire period of the delay as well as showing reasonable prospects of succeeding in the main application."*¹⁴

[24] The Applicant has not, in my view demonstrated good cause for revival, there appears to be no explanation for the reason of lateness. It is furthermore difficult to assess the prospects of success preferred by the Applicant.

[25] Given the views express in the *Mayekiso v Jamodien & Others* case that an application for revival or reinstatement involves the exercise of a discretion on the part of the court akin to an application for condonation, the principles applicable to applications for condonation need to be considered in an application for revival or reinstatement. In this regard in *Melane v Santam Insurance Co Limited* the court enumerated the following factors as relevant

¹³ See: Applicant's Application for Condonation, Record pp 1 - 3

¹⁴ *Mayekiso v Jamodien & Others* [2024] ZALCCT 31(10 July 2024) para 9

for consideration viz the degree of non-compliance with the rules, the explanation therefor, the prospects of success on appeal, the importance of the case, the respondent's interest in the finality of his/her judgment, the convenience of the court, and the avoidance of unnecessary delay in the administration of justice.¹⁵ The list is not exhaustive as has been pronounced in various judgments subsequent.

- [26] In *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* it was held:

*"This Court has held that the standard for considering an application for condonation is the interests 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 include but are not limited to 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."*¹⁶

- [27] In *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* it was held that an applicant for condonation must give a full explanation for the delay which must not only cover the entire period of the delay but must also be reasonable.¹⁷

- [28] The Applicant, in the present instance has not addressed any of the factors enumerated above, nor does the Applicant demonstrate any good cause why she ought to be granted the relief sought.

¹⁵ See: *Melane v Santam Insurance Co Limited* 1962 (4) SA 531 (A) at p. 532 C – F

¹⁶ See: *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC) at p 477 A - B

¹⁷ *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* (*supra*) at p 477 E - F

- [29] Mr Rodriques who appeared on behalf of the Respondent submitted that if the application is deemed to have been withdrawn, the review application may not be reinstated without an order of court granted on application by the Applicant, on good cause shown. In my view a perusal of Rule 37 (18) of the new Labour Court rules clearly provides that if an application for review is deemed to have been withdrawn, the Applicant's application for review cannot be reinstated without an order of court, granted to the Applicant on good cause shown. The rule clearly envisages that an Applicant set forth the criteria as enumerated above.
- [30] Applicant took the cell phone home and later went home with Mr Malgas where she collected the cell phone and handed it to Mr Malgas.
- [31] The Applicant clearly breached the rule of the employer in taking the cell phone home and proffered no explanation as to why she took the cell phone home. The Applicant's conduct as aforesaid was wholly in breach of the rule of the employer and thus I am of the view that the Applicant does not enjoy reasonable prospects of success herein.
- [32] The Applicant, in my view, has failed to demonstrate good cause as to why this Honourable Court should grant her the relief sought.

COSTS

- [33] It is trite law that the awarding of costs involves the exercise of discretion to be exercised judicially upon a consideration of the facts of each case and in essence the decision is a matter of fairness to both sides.¹⁸

¹⁸ See: *Erf One Six Seven Orchards CC v Greater Johannesburg Metropolitan Council (Johannesburg Administration)* 1999 (1) SA 104 (SCA) at p 109 A - B

- [34] In *Multi-Links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd* it was held as follows (in relation to costs *de bonis propriis* again legal representatives.

“It is true that legal representatives sometimes make errors of law, omit to comply fully with the Rules of Court or err in other ways related to the conduct of the proceedings. This is an everyday occurrence. This does not however per se ordinarily result in the court showing its displeasure by ordering the particular legal practitioner to pay the costs from his own pocket. Such an order is reserved for conduct which substantially and materially deviates from the standard expected of the legal practitioners, such that their clients, the actual parties to the litigation, cannot be expected to bear the costs, or because the court feels compelled to mark its profound displeasure at the conduct of an attorney in any particular context. Examples are, dishonesty, obstruction of the interests of justice, irresponsible and grossly negligent conduct, litigating in a reckless manner, misleading the court, and gross incompetent and a lack of care. See for instance Herbstein & Van Winsen: The Civil Practice of the High Courts of South Africa (5th Edition by Cilliers and Others) Vol 2 at p984. See also: Ward v Sulzer 1973 (3) SA 701 (AD) at 706 - 707.”

- [35] The Applicant launched the present application and has not demonstrated good cause to grant her the relief sought. The Applicant, in my view has not furnished a full and satisfactory explanation for the delay in launching the review application. The Applicant launched the present application on the 26th January 2020 and served on the offices of the State Attorney on the 30th January 2020. The Applicant failed to comply with Rule 7A (5) in that all relevant portions of the record was not filed and the relevant portions of the record of proceedings had not been delivered despite the matter being launched in January 2020. Applicant and her erstwhile attorneys of record did not file and application with supporting affidavit to the Judge President requesting an extension of time to have the full record of proceedings served and filed.

The Respondent has asserted that the above conduct of the Applicant and her erstwhile legal representatives has caused it prejudice in that it was unable to file an answering affidavit in response to the Applicant's Founding Affidavit.¹⁹

[36] Alarming when faced with the above assertion by the First Respondent, the Applicant's erstwhile attorneys of record, Messrs Jansen and Samson withdrew as the Applicant's attorneys of record. This, despite, it appears the Applicant having paid her erstwhile attorneys of record in excess of R80 000,00 to represent her in the review proceedings.

[37] Given the lack of particularity especially with regards to the lack of satisfactory explanation for the delay in launching the review application, I am of the view that it would be just and appropriate to award the Respondent costs herein.

[38] In the circumstances the following order is made.

Order:

1. The application to review and set aside the decision of the Third Respondent dated 28th October 2019 is dismissed.
2. The Applicant shall pay the First Respondent's costs herein.


BANDERKER AJ

Acting Judge of the Labour Court

¹⁹ See: First Respondent's Answering Affidavit in respect of Applicant's Application for Condonation, para 28 thereof