



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

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: D258/2022

In the matter between:

CHARL SCHAANICK

Applicant

and

BLUROCK QUARRIES (PTY) LTD

First Respondent

SIZWE M NGUBANE

(In the capacity as a commissioner)

Second Respondent

COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION

Third Respondent

Heard: 12 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties and / or their legal representatives by email. The date and time for handing-down is deemed 14h00 on 14 May 2026.

JUDGMENT

ALLEN-YAMAN J

Introduction

- [1] Having initiated his review application outside of the time period allowed therefor, the applicant applied for condonation for such delay.
- [2] The first respondent delivered an answering affidavit in response to the review application itself, but did not deliver an affidavit in opposition to the condonation application. Mr Forster, who appeared on its behalf, argued that the condonation application had not been served on the first respondent, and for that reason the application should be dismissed.
- [3] In the service affidavits filed in substantiation of service of both the review and the condonation applications, the deponent thereto asserted that both applications had been served on the first respondent on 26 October 2022 by way of email. Neither affidavit recorded that the deponent thereto had telephoned the intended recipient thereof to confirm receipt. In addition, Mr Forster pointed out that unlike the email annexed to the service affidavit which evinced service on the third respondent, the email which appeared to have been transmitted to the first respondent did not reflect that the condonation application had been attached thereto.
- [4] In its answering affidavit in the review application, the first respondent took two preliminary points, one of which concerned the fact that the review application had been initiated outside the time period allowed without the applicant having applied for condonation. From this it is evident that the first respondent was then unaware of the applicant's condonation application. In his replying affidavit the applicant stated that his condonation application had explained the delay. From this exchange, it ought to have become apparent to both parties that the applicant had, in fact, initiated a condonation application, but that the first respondent was unaware thereof.

- [5] Be that as it may, the only possible outcome as a result of the failure on the part of the applicant to establish service of the condonation application would be the striking off of the application, and not the dismissal of the application itself. Given that an answering affidavit delivered by the first respondent would do no more than address the issues which Mr Forster raised in argument, no point would be served by delaying the matter any further. The issue of condonation will accordingly be dealt with on the basis of the applicant's papers alone.

Background

- [6] It is trite that an applicant asking this court to exercise its discretion in favour of granting it the indulgence of condonation is required to address the length of the delay, the reasons for the delay, and its prospects of success. In the final analysis, this court must be placed in possession of sufficient facts upon which to form the conclusion that the interests of justice are best served by the granting of the relief sought. Not one of the issues required to be dealt with by the applicant was addressed with sufficient particularity as to enable this court to do so.
- [7] In the main application the applicant sought to review a ruling in terms of which the second respondent refused to grant him condonation for the late referral of his dispute to the third respondent. The award was dated 11 November 2021 and was signed by the second respondent approximately one month later on 9 December 2021. Despite having been required to have particularised the length of the delay, the applicant alleged only that he received the ruling by email '*on or about February 2022.*' Given that the award was transmitted to him by email he would have been able to specify precisely when it was emailed to him within the month of February 2022, rather than having left the issue to be guessed at, with the entire month of February 2022 constituting the margin of error.
- [8] His review application was ultimately launched on 26 October 2022. The precise date on which he received the ruling not having been stipulated, the

precise length of the delay was also left unspecified. On this court's calculations, the longest possible period of the delay was approximately six months, with the shortest possible period being approximately five. In either event, the period of delay was not insignificant.

[9] The applicant's explanation for the delay was vague and lacked any substantiation. In summary he stated:

- Having received the ruling, he was dissatisfied and approached an attorney in Estcourt for assistance, at which time he was advised that he would need to apply to this court to review the ruling.
- Armed with this advice, he approached *'Europe Assist'* for assistance.
- He supplied *'Legal Assist'* with all the relevant documents.
- On 25 April 2022 *'Legal Assist'* advised him that an attorney in Pietermaritzburg would assist him.
- As the firm of attorneys was some 110 km away from his place of residence, and as he had no funds to travel there, he was then unable attend at their offices to consult with them.
- *'On or about late July 2022'* he managed to secure sufficient funds for the trip to Pietermaritzburg.
- His attorneys reported to *'Europe Assist'* regarding his prospects of success.
- Europe Assist approved funding for the litigation.
- His attorneys drafted the condonation and review applications.
- *'On or about the first week of August 2022'* he was contacted by his attorney who requested that he attend at their offices for a second consultation.
- Lack of funds prevented him from attending at this consultation until 29 September 2022, at which time he was given draft condonation and review applications.
- Pursuant to those draft affidavits having been amended that day, he was unable to commission the affidavits as a result of load shedding.
- The finalised affidavits were emailed to him the following day, whereafter he attended to the commissioning thereof.

- [10] The first difficulty with the applicant's explanation is its almost complete lack of particularity concerning the dates on which the activities described were undertaken. This court is accordingly left to speculate as to: when he consulted an attorney in Estcourt; when he approached what is presumed to be his legal insurers (whether Europe Assist or Legal Assist) for assistance in the prosecution of his claim; when exactly he met with his present attorneys of record for the first time; when his attorneys reported to his legal insurers; when funding for his review application was approved; or when he was requested to return to his attorneys for a second consultation.
- [11] Distinct from this, the applicant attributed the cause of a large part of the delay to his limited financial means, which he alleged prevented him from travelling from his home town of Estcourt to the offices of his attorneys in Pietermaritzburg. Whilst this court is not unsympathetic to the issue of financial constraints, in the present instance, the applicant's financial position did not in fact impede his ability to prosecute the review application timeously. As the review pertains to a ruling which was dealt with on the papers, armed with the relevant documents there was no need for the applicant to have physically consulted with his attorneys. In as much as he provided all the relevant documents to his legal insurers, and received the final affidavit by email, there is no reason why, if travelling to Pietermaritzburg had proven to be an obstacle to the timeous prosecution of his review, he could not have provided the documents to his attorneys electronically and consulted with them telephonically or *via* a virtual platform.
- [12] Finally, although on his own version he received the final affidavits *via* email on 30 September 2022, he provided no explanation whatsoever for the further delay until 19 October 2022 when these were eventually signed.
- [13] As regards the applicant's prospects of success, he failed to deal with this aspect in any meaningful manner, having alleged alternately that his prospects of success were '*good*' and '*excellent*' without providing any basis for such conclusions or even having referred this court to his own review application. Although this court was not obliged to do so, it has taken cognisance of the

applicant's founding affidavit in his review application (no supplementary affidavit having been delivered) together with the record in consideration of this issue.

[14] The ruling in question was one in which the second respondent refused to grant the applicant condonation for the late referral of his dispute to the third respondent. In his affidavit in support of that application for condonation, the applicant alleged that the referral had been made two days late. Had the second respondent found this to have been the correct factual position, it is doubtful that condonation would have been refused. Alive to the fact that the applicant had asserted a two day delay, the second respondent found otherwise,

- '8. According to the referral the dismissal was effected on the 21st July 2021 which after riots that emerged in the province in July 2021. Both referral forms and condonation application were signed by the Applicants on the 22nd July 2021 which was within the statutory timeframe as stipulated in the LRA that is 30 days within which to refer an unfair dismissal to the CCMA or Council.
9. If the Applicants were dismissed on the 21st July 2021 and had signed the form on the 22 July 2021, what necessitated a condonation application? The records in the case file indicate that the referral form and condonation application form were only submitted to the CCMA on the 14th October 2021. It is not clear or explained why the referral signed on the 22nd July 2021 was only submitted to the CCMA only on the 14th October 2021.'

On the basis of such findings, he concluded that the delay was both excessive and unexplained. With this, he found that consideration of the prospects of success were unnecessary, and declined to grant condonation.

[15] On the issue of the circumstances in which a court may interfere with the outcome of the exercise of a discretion by a lower court, in National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others 2000 (2) SA 1 (CC) the Constitutional Court held as follows,

*'A Court of appeal is not entitled to set aside the decision of a lower court granting or refusing a postponement in the exercise of its discretion merely because the Court of appeal would itself, on the facts of the matter before the lower court, have come to a different conclusion; it may interfere only when it appears that the lower court had not exercised its discretion judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it had reached a decision which in the result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles.'*¹

[16] In consideration of the allegations contained in the applicant's founding affidavit in his review application, this court is unable to conclude that the applicant would be likely to succeed in overturning the second respondent's ruling. The applicant did not address the issue of the second respondent's findings in relation to the period of the delay and, without any challenge to such findings, his findings that the delay was both greater than that which had been stated by the applicant and had been wholly unexplained, could not be interfered with on review. In addition, the record delivered by the applicant does not evince any fault in relation to the second respondent's factual conclusion. From the award itself, it is not apparent that the second respondent failed to exercise his discretion judicially, or was influenced by any wrong principle or factual misdirection. As nothing in the applicant's review application evinces any failure on the part of the second respondent to have reached a decision which could not have been reached by another court directing itself to the issues before him, it cannot at this stage be found that the applicant's prospects of success are *'good'*, let alone *'excellent'*.

[17] In the present application, the applicant did not deal with his own potential prejudice at all. He asserted that the first respondent would not be prejudiced by the granting of condonation as it was *'well aware'* that he intended to pursue the matter further. He did not, however, explain how such awareness was to have been imputed to the first respondent, it not having been self-evident that this was the case.

¹ At paragraph 11

[18] In the circumstances, the applicant failed on his own version to place any facts before this court which could have enabled it to have concluded that the interests of justice required it to exercise its discretion in favour of granting him condonation for the late initiation of his review application. Condonation will accordingly be refused.

Costs

[19] Albeit that the first respondent asked for an costs order consequent upon the dismissal of the application in its heads of argument, Mr Forster indicated upon the conclusion of the hearing that it did not persist with such request.

Order

1. Condonation for the late initiation of the review application is refused.
2. There is no order as to costs.

K. ALLEN-YAMAN J

Judge of the Labour Court of South Africa

Appearances

Applicant:

Mr P Blomkamp SC, instructed by Ganie & Co

First Respondent:

Mr J Forster, Forster Attorneys

LABOUR COURT