



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: D549/2022

In the matter between:

NUMSA obo VEZUMUSA ZUMA

Applicant

and

SUMITOMO RUBBER SA (PTY) LTD

First Respondent

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

Second Respondent

ISAAC MUZIWAMANDLA SITHOLE NO

Third Respondent

Heard: 14 April 2026

Delivered: 24 June 2026

JUDGMENT

DE KLERK, AJ

Introduction

[1] This is an application wherein the Applicant seeks an order for the re-instatement of the review application in terms of Rules 35; 36; 37(15); 37(16) and 37(18) of the Rules Regulating the Conduct of the Proceedings of the Labour Court and a further order 'extending the time frame to file the record as soon as it is obtained from the Labour Court'.

Background

[2] The Applicant launched the review application on 14 October 2022. On 28 November 2022, the Second Respondent, the Commission for Conciliation, Mediation and Arbitration (CCMA) filed a notice in terms of rule 7A (3) of the now repealed Labour Court Rules¹ ('repealed rules'), confirming that the record of the proceedings was dispatched to the Registrar of this Court. On 29 November 2022, the Registrar notified the Applicant that the record had been filed and that it was available for collection.

[3] The Applicant was required to file the record within 60 days of the date on which it was advised by the Registrar that the record had been received.² Accordingly, the Applicant was required to have served and filed the record by no later than 28 January 2023.

[4] At the time of the hearing of this matter, the complete record of the arbitration proceedings had not been filed. However, the incomplete record had been served on the First Respondent on 2 May 2023 and again on 17 October 2024. The Applicant has not filed a supplementary affidavit.

[5] The Applicant has failed to comply with Rule 7A(6) and/or Clause 11.2.2 of the Practice Manual and the review application is accordingly deemed withdrawn.³

¹ Repealed and replaced with the Rules Regulating the Conduct of the Proceedings of the Labour Court.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.

² Rule 7A(6) of the Rules for the Conduct of Proceedings in the Labour Court and Clause 11.2.2 of the repealed Practice Manual of the Labour Court ('Practice Manual').

³ Clause 11.3 of the Practice Manual

The review application has also been archived due to the Applicants failure to comply with the Practice Manual, in particular Clauses 11.2.2; 11.2.7 and 16.1 read with 16.3.

- [6] The Applicant initiated this re-instatement application on or about 7 November 2024, approximately one year and 10 months after the review application was deemed withdrawn.
- [7] The First Respondent opposes the application and the relief sought by the Applicant.

Application

- [8] It is trite that an application to reinstate a review application that is deemed withdrawn, has lapsed and has been archived, must satisfy the requirements for a condonation application.⁴ It is trite that when considering an application for condonation, the following factors must be considered namely:

- 8.1 The degree of lateness;
- 8.2 The explanation given for the lateness;
- 8.3 The prospects of success; and
- 8.4 The importance of the matter/prejudice to the parties.⁵

- [9] The Labour Courts have consistently held that condonation is not merely for the asking.⁶ The Applicant is therefore required to make out a case in the papers for the relief sought.

Degree of lateness

⁴ See: *Overberg District Municipality v Independent Municipal and Allied Trade Union on behalf of Spangenberg and Others* (2021) 42 ILJ 1283 (LC) at para 40.

⁵ See: *Melane v Santam Insurance Company Ltd* 1962 (4) SA 531 (A).

⁶ See: *NUMSA and Another v Hillside Aluminium* [2005] 6 BLLR 601 (LC).

[10] On the Applicants own version, the delay is one year and 10 months. As a general benchmark, delays in excess of two months after the expiry of the time limit can generally be described as starting to become excessive.⁷ Accordingly, the delay is excessive.

Explanation for the delay

[11] The Applicant does not state when the record of proceedings was uplifted from the Registrar and/or when the transcripts were found to be incomplete but makes the allegation that ‘the CD was immediately sent to the transcribers for transcribing by the Applicant’s KZN Regional Office. The outcome of which the transcripts were found to be incomplete.’

[12] On 2 May 2023, the Applicant communicated with the First Respondent and advised them that the record was incomplete and couriered the incomplete record to the First Respondent. The Applicant further advised the First Respondent that the record had not been indexed as it was incomplete and once reconstruction of the record is done, same will be indexed.

[13] On the same day, the Applicant communicated with the Second Respondent and advised them that day 1 of the arbitration proceedings (Volume 1 of 10) was missing; the First Respondent has no objection to a reconstruction hearing being set down for the last week of May 2023 or any other date if necessary and for the notice of set down to be served on all parties.

[14] The matter had initially been allocated to Lerato Lenyehelo, who resigned from the Applicant’s employment in October 2023. Thereafter, the Applicant allocated the matter to the deponent on 8 November 2023.

⁷ 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.

- [15] On 8 November 2023, the deponent sent a follow up letter to the First and Second Respondents reiterating that the record was incomplete; that a telephonic follow up was done on 6 June 2023; called upon the Second Respondent to arrange for a reconstruction hearing and to inform the parties accordingly.
- [16] On 22 February 2024, the Applicant forwarded an email to Nunu Dlamini (Dlamini), a Senior Case Manager of the CCMA, Newcastle office wherein the Applicant stated that it had been communicating with Andile Bhengu (Bhengu) to no avail; reiterated that the record was incomplete and that in the event that the record could not be found that this must be communicated to the parties so that reconstruction of the record could be arranged.
- [17] Dlamini responded with a request for the specific dates that were missing and further advised the Applicant to proceed to the Second Respondent's KZN office as all recordings for the case under KNNC1367-21 have been inserted into the CCMA server under the Newcastle folder (2022).
- [18] On 26 February 2024, the Applicant responded to Dlamini's email and set out those parts of the record that were missing namely: 16 March 2022; 23 and 24 March 2022; 10 June 2022 and that the record that was received started from Volume 6, dated 6 July 22 to Volume 10. On 25 March 2024, a follow up email was sent to Dlamini requesting a response.
- [19] The Applicant thereafter instructed a Regional Legal Office, Njabulo Ncube (Ncube) to attend at the CCMA KZN office to retrieve the record.
- [20] On 2 July 2024, the Applicant sent an email to the Registrar of this court wherein the Applicant sought a copy of the Rule 7A(5) notice and provided reasons for such request, namely: to check what was filed by the CCMA in terms of the Rules; that the CCMA was not co-operating with the Applicant in providing the outstanding record; the Applicant did not have the bundle of documents that were used at the arbitration and that it might become necessary to reconstruct these

bundles; to ensure compliance with the time frames in Clause 11.2 of the Practice Manual and a possible enforcement of compliance by the CCMA in terms of Rule 7A(4). There was no response from the Registrar.

- [21] On 17 October 2024, the Applicant served the Rule 7A(6) notice on the First Respondent wherein it stated that the Applicant is only in a position to file Volumes 2, 3, 4, 5, 6, 7, 8 and 9 of the transcribed record and that volume 10 and further documents were still missing and that the Applicant was still pursuing the CCMA in that regard.
- [22] On 9 October 2024, a consultation was arranged to be held in Ladysmith on 24 October 2024 with the Applicant's member, Mr Zuma, whom the Applicant was representing in the review application. Mr Zuma advised the deponent that he had contacted Ncube on several occasions after the review had been filed to enquire about the progress of his matter and he was advised that it was progressing well and that at some stage, he was advised that there was a problem with the record but that the Applicant was dealing with it. Mr Zuma also used the shop stewards to enquire about his matter which led to the Local Secretary of the Applicant to enquire about the matter on 9 October 2024.
- [23] On 24 October 2024 and after the aforesaid consultation, a further email was sent to Dlamini; Bhengu and Cedric Mabaso at the CCMA wherein the Applicant stated that various requests had been made for the missing portion of the record; that the Applicant was in possession of all other evidence save for the evidence of 16 March 2022 and requested a contact person at the Ladysmith office of the CCMA.
- [24] On 30 October 2024 a follow up email was sent to Dlamini; Bhengu and Cedric Mabaso and a response from Bhengu advised the Applicant to contact Cedric Mabaso.

[25] In the matter of *Independent Municipal and Allied Trade Union on behalf of Zungu v SA Local Government Bargaining Council and others*⁸, the Court held as follows:

‘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.’

[26] The Applicant has failed to give an explanation for the following periods, namely: 29 November 2022 to 2 May 2023; 2 May 2023 to 8 November 2023; 8 November 2023 to 22 February 2024; 22 February 2024 to 25 March 2024; 25 March 2024 to 2 July 2024; 2 July 2024 to 7 November 2024.

[27] The Applicant was aware of the available remedies it had in terms of the applicable rules and practice manual and chose not to utilize these rules to either compel the CCMA to file the missing portions of the record and/or to reconstruct the record. The Applicant also did not request an extension of time from the First Respondent and/or approach the Judge President regarding the filing of the record.

[28] There is no explanation from the Applicant as to why it did not utilize these remedies despite it being aware of the remedies.

[29] In *Zono v Minister of Justice and Correctional Services; In Re: Minister of Justice and Correctional Services v Zono and Others*,⁹ the Applicant in that case failed to file the record and was aware of the deadline, failed to seek

⁸ (2010) 31 ILJ 1413 (LC) at para 7.

⁹ [2020] 11 BLLR 1160 (LC) at para 21.

an extension of time within which to file the record and seek a directive from the Judge President, the court held that:

'in terms of the practice manual, a review application is to be treated with the same degree of urgency and diligence as an urgent application. What the facts disclose in the present instance is an approach that displays no sense of urgency or even any sense of concern that the applicant was in breach of its obligations.'

(Own emphasis)

[30] It is also trite that employees are not entitled to rely on the tardiness of their representative. Although the delay was caused by the negligence of the representative, there are limits to which applicants can rely on such negligence even when they are personally innocent of any tardiness.¹⁰

[31] Accordingly, the Applicant has failed to provide a proper explanation for the delay.

Prospects of success

[32] In its grounds of review, the Applicant has made bold and unsubstantiated allegations that the arbitrator committed reviewable irregularities. There are no specific allegations as to what these irregularities are which the arbitrator is alleged to have committed. It is trite that an applicant cannot make out a case for review in the supplementary affidavit. The grounds of review must be made out in founding papers and supplemented and/or varied and/or added to in the supplementary affidavit.

[33] Accordingly, the Applicant has failed to establish reasonable prospects of success.

Importance of the matter and prejudice

¹⁰ See: *PPWAWU and Others v AF Dreyer and Company (Pty) Ltd* [1997] 9 BLLR (LAC).

[34] The matter is of importance to both the Applicant and the Respondent. The Applicant's member has been dismissed from his employment since 3 November 2021 and the Respondent seeks finality in the matter.

[35] There is potential prejudice to both parties. The Applicant will be deprived of prosecuting his review and should the Applicant be successful in his review, the Respondent will be prejudiced as its main witness is no longer employed by the Respondent.

[36] Having considered all the above requirements, it considered to be in the interests of justice to dismiss the application as the Applicant has failed to make out a case for the relief sought.

[37] In the premise the following order is made:

Order

1. The application is dismissed with no order as to costs.

MG De Klerk

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: C Luthuli from MC Luthuli Attorneys

For the Respondent: I Lawrence from Edward Nathan Sonnenbergs

LABOUR COURT