THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: C650/2022

In the matter between:

MATSHEDISO MOSES MOADIRA **Applicant**

and

MEC: CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, NORTH WEST PROVINCE **First Respondent**

ANNELIE BEVAN N.O. **Second Respondent**

GENERAL PUBLIC SERVICE SECTOR BARGAINING COUNCIL **Third Respondent**

Heard: 29 July 2026

Delivered: 3 August 2026

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 3 August 2026.

JUDGMENT

DE KOCK, AJ

Introduction

[1] There are four interrelated matters before this Court. The primary matter is an application, in terms of section 145 of the Labour Relations Act (LRA),[1] to review and set aside an arbitration award of the second respondent (the

[1] Act 66 of 1995, as amended.

commissioner) dated 28 June 2022 under case number GPBC 1368/2020, issued under the auspices of the third respondent (the GPSSBC). In that award the commissioner found that the applicant had not discharged the onus of proving that he had a reasonable expectation, within the meaning of section 186(1)(b) of the LRA, that his fixed-term contract of employment would be renewed, and she dismissed his unfair dismissal claim.

[2] The review is troubled by three preliminary difficulties, each of which must be determined before the merits can be reached:

(a) the review was launched outside the six-week period prescribed by section 145(1)(a) of the LRA, so that the applicant requires condonation for its late institution;

(b) the record of the arbitration proceedings was filed some ten months after the launch of the review, and the first respondent contends, by way of a point *in limine*, that the review has in consequence lapsed and is deemed to have been withdrawn; the applicant's answer is that the first respondent consented in writing to the late filing of the record, and he seeks declaratory relief to that effect, coupled, in the alternative and out of an abundance of caution, with an application for the reinstatement of the review; and

(c) the first respondent filed its answering affidavit late and, the applicant having objected, seeks condonation for that late filing.

[3] It accords with the logical sequence in which the issues arise to deal with the matters in the following order: first, the applicant's condonation for the late institution of the review; second, the first respondent's point *in limine* and the applicant's claim to declaratory relief, with which the reinstatement application stands or falls; third, the first respondent's condonation for the late filing of its answering affidavit; and fourth, if the review survives, the merits.

The parties

[4] The applicant is Mr Matshediso Moses Moadira, who was engaged by the first respondent as an Administrator appointed to implement an intervention at the Mahikeng Local Municipality in terms of section 139(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution).

[5] The first respondent is the Member of the Executive Council for the Department of Co-operative Governance and Traditional Affairs, North West Province (the Department). At the time of the events giving rise to the dispute the relevant provincial department was known as the Department of Local Government and Human Settlements; nothing turns on the change of name. The first respondent opposes all of the relief sought.

[6] The second respondent is Ms Annelie Bevan, cited in her capacity as the commissioner who issued the award under review. She has not participated in these proceedings and no relief is sought against her save the setting aside of her award.

[7] The third respondent is the General Public Service Sector Bargaining Council, under whose auspices the arbitration was conducted. It has not participated in these proceedings.

Background

[8] The material background is largely common cause and appears from the pleadings, the record and the award.

[9] During 2018 the Department invited former municipal managers and other suitably experienced professionals to register on a database, by lodging their *curricula vitae*, for placement in municipalities on an *'as and when required'* basis. The applicant, who has extensive experience in local government, duly registered.

[10] On 5 December 2018 the North West Provincial Executive Committee (the provincial EXCO) resolved to place the Mahikeng Local Municipality under administration by invoking section 139(1)(b) of the Constitution. The

expectation was that the intervention would endure for a minimum of six and a maximum of 12 months.

[11] The applicant was appointed as an Administrator to implement the intervention with effect from 28 January 2019, for a period of six months (to 31 July 2019), 'depending on the decision of the provincial EXCO on whether to extend the period of intervention'. He was remunerated at level 14, at a gross salary of R99 000 per month. Two other persons, Mr Mokgwamme and Ms Letlape, were appointed with effect from the same date, at level 13, as members of the intervention team. The applicant's terms of reference required him, among other things, to develop an action plan addressing the short, medium and long term *'to ensure a turnaround and sustainability post the intervention'*, and to submit monthly reports on the progress of the intervention to the provincial EXCO through the Department.

[12] On 1 August 2019 the Member of the Executive Council extended the applicant's contract by one month, to 31 August 2019. The contracts of Mokgwamme and Letlape were, however, extended to 31 December 2019. Each notice of extension recorded that, should the intervention not be approved by the Minister responsible for co-operative governance or the National Council of Provinces in terms of section 139 of the Constitution, the appointment would automatically terminate.

[13] The intervention did not end on 31 August 2019. The applicant continued to tender his services and submitted a close-out report on 11 September 2019. On 21 September 2019 he applied for annual leave, in response to which Mr Mashego, the Chief Director responsible for local governance, informed him by email of 23 September 2019 that he was no longer an Administrator as his contract had ended on 31 August 2019. The applicant's legal representatives thereafter sought reasons for the non-renewal, and on 5 November 2019 the Head of Department replied that the applicant's term had expired, that the appointment of an Administrator was the prerogative of government, and that no expectation of renewal had been created.

[14] The applicant referred an unfair dismissal dispute to the GPSSBC. An initial referral was dismissed for want of jurisdiction on account of lateness; a fresh referral, accompanied by a condonation application, followed on 26 October 2020, and condonation was granted. Following the issue of a certificate of non-resolution, the dispute was referred to arbitration and was heard by the commissioner over several days between March 2021 and June 2022. From 1 June 2022 the applicant represented himself.

[15] The issue before the commissioner was whether the applicant had been dismissed within the meaning of section 186(1)(b) of the LRA, that is, whether he had a reasonable expectation that his fixed-term contract would be renewed on the same or similar terms, and whether the Department had failed to renew it. The applicant sought 12 months' compensation.

[16] Having found that the GPSSBC had jurisdiction (a finding not in issue in the review), the commissioner analysed the reasonable-expectation question against the established principles. She accepted, with reference to *SA Rugby Players Association and Others v SA Rugby (Pty) Ltd and Others* (*SA Rugby*),[2] that the onus rested on the applicant to prove a reasonable expectation of renewal and that the test is objective; and, with reference to *Mediterranean Woollen Mills (Pty) Ltd v SACTWU* (*Mediterranean Woollen Mills*),[3] that a reasonable expectation may arise notwithstanding a contractual term disavowing it, where assurances, established practice or the conduct of the employer objectively support such an expectation.

[17] The commissioner found, in essence, that the applicant's contract was clear that he was appointed for a fixed period and that nothing in it created an impression that the period would be extended to coincide with the intervention; that the whole-agreement clause precluded reliance on representations not recorded in the contract; that the applicant's placement on a panel, and his qualifications and experience, did not create an expectation of renewal because

[2] *South African Rugby Players Association (SAPRA) and Others v SA Rugby (Pty) Ltd and Others*; SA Rugby (Pty) Limited v South African Rugby Players Union and Another (CA10/2005) [2008] ZALAC 3; [2008] 9 BLLR 845 (LAC); (2008) 29 ILJ 2218 (LAC).

[3] *Mediterranean Woollen Mills (Pty) Ltd v South African Clothing and Textile Workers' Union* (143/96) [1998] ZASCA 11; 1998 (2) SA 1099 (SCA); [1998] 6 BLLR 549 (A); (1998) 19 ILJ 731 (SCA).

the appointment of the Administrator was the prerogative of the Member of the Executive Council; that the progress the applicant had made did not, objectively, found an expectation of renewal, particularly as the work not being completed within the contracted period could not itself create such an expectation; that his contract had been extended only once, and then only by a month, so that at most he might have expected a further month; that the extension of Mokgwamme's contract to December 2019, while his own had been extended only to August 2019, ought to have alerted him that his contract would not automatically be extended; and that his continued tendering of services after 31 August 2019, of which the Department was unaware, did not assist him. The commissioner concluded that the applicant had at most a subjective hope, rather than an objectively reasonable expectation, of renewal, that he had not discharged the onus resting on him, and she dismissed the claim.

The applicable legal principles

[18] The preliminary matters engage, in different ways, the provisions of the Practice Manual of this Court and the Court's discretion to condone non-compliance with prescribed time limits and, where a review has lapsed, to reinstate it. The governing principles may be set out once.

[19] In an application for condonation the applicant bears the onus of satisfying the Court that condonation should be granted. The factors relevant to the exercise of the discretion were classically stated in *Melane v Santam Insurance Co Ltd* (*Melane*):[4] the degree of lateness, the explanation for it, the prospects of success and the importance of the case. These factors are not individually decisive but are weighed together in what is, in essence, an enquiry into what is fair and just; the Constitutional Court in *Grootboom v National Prosecuting Authority and Another*[5] confirmed that the ultimate question is whether it is in the interests of justice that condonation be granted.

[4] *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C-F.
[5] *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) at paras 22-23 and 50-51.

[20] Two further principles bear emphasis. First, the explanation must cover the entire period of the delay; an unsatisfactory explanation for any material portion of the delay may in itself be fatal. Secondly, without a full, reasonable and acceptable explanation for the delay the prospects of success are not decisive, and where the delay is flagrant and the explanation lacking the prospects of success need not be considered at all (*Chetty v Law Society, Transvaal*;[6] *National Union of Mineworkers v Council for Mineral Technology*[7]). Conversely, strong prospects may compensate for a less-than-compelling explanation, and a weak explanation may be overlooked where the prospects are strong and the delay short.

[21] A review application is, by its nature, an urgent application. That is reflected in the Practice Manual of this Court, which came into operation on 2 April 2013 and which, at the time this review was launched, governed the conduct of review applications (the Practice Manual). Four provisions are presently relevant. Clause 11.2.2 provides that, for the purposes of rule 7A(6), the record must be filed within 60 days of the date on which the applicant is advised by the registrar that the record has been received. Clause 11.2.3 provides that '[i]f the applicant fails to file a 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 an extension of time and consent has been given'; where consent is refused, the applicant may approach the Judge President for an extension. Clause 11.2.7 requires an applicant to ensure that all necessary papers are filed within 12 months of the launch of the application and that the registrar is informed in writing that the matter is ready for allocation, failing which the application 'will be archived and be regarded as lapsed unless good cause is shown'. Finally, clause 16.1 provides that the registrar will archive a file where, in a rule 7A application, a period of six months has elapsed without any steps being taken by the applicant from the date of filing or the date of the last process filed; and clause 16.3 provides that a file

[6] *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 765A-C.

[7] *National Union of Mineworkers v Council for Mineral Technology* (JA94/97) [1998] ZALAC 22; [1999] 3 BLLR 209 (LAC) at para 10.

placed in the archive 'shall have the same consequences as to further conduct by any respondent party as to the matter having been dismissed'.

[22] It is settled that an application to retrieve a file from the archive (that is, to reinstate a lapsed review) is, in substance, a species of condonation. In *Samuels v Old Mutual Bank* (*Samuels*)[8] the Labour Appeal Court held that an applicant seeking such relief must show good cause, which requires that the application be *bona fide*, that the applicant give a reasonable explanation covering the entire period of the default, that the applicant demonstrate reasonable prospects of success in the main review, and that it be in the interests of justice to grant the order.

Condonation for the late institution of the review

[23] Section 145(1)(a) of the LRA requires a review to be launched within six weeks of the date on which the award was served on the applicant. The award was transmitted to the applicant's erstwhile attorneys on 14 July 2022, but they were no longer acting for him, and it came to his attention on 22 July 2022. The six-week period accordingly expired at the beginning of September 2022. The review was launched on 7 December 2022, some 13 weeks, approximately three months, out of time. The first respondent's answering papers reckoned the delay at more than five months, but that computation runs from the date of the award itself, which is not what the section prescribes, and at the hearing it was common cause that the delay is properly reckoned at about 13 weeks. The delay is not trivial, but nor is it of the most extreme kind.

[24] The explanation for the delay is set out in the founding affidavit. In summary, the applicant received the award on 22 July 2022 and approached his legal expenses insurer, Legal Wise, on 26 July 2022. There followed a protracted process in which Legal Wise took time to appoint attorneys, a consultation with counsel took place on 23 September 2022 at which the applicant and counsel held differing views, counsel furnished an opinion on 14 October 2022, and

[8] *Samuels v Old Mutual Bank* (DA30/15) [2017] ZALAC 10; [2017] 7 BLLR 681 (LAC); (2017) 38 ILJ 1790 (LAC) at para 17.

Legal Wise thereafter repudiated cover. The applicant then approached his present attorneys, and the review was settled and served on 7 December 2022.

[25] The explanation is not a model of diligence, and the first respondent correctly points to periods within it that are thinly explained. Nonetheless, viewed as a whole, the delay is largely accounted for by the difficulties the applicant encountered in securing funded legal representation through his insurer and by the change of attorneys that those difficulties necessitated. The explanation is continuous and, for the most part, plausible.

[26] Condonation is not assessed in a vacuum: the prospects of success remain a material consideration. The review raises a serious and arguable question, namely whether the commissioner was correct in finding that no dismissal within the meaning of section 186(1)(b) of the LRA had been established, an issue which, for the reasons set out below, this Court must decide for itself on the correctness standard. The applicant's grounds are not frivolous. Weighing the modest delay, the continuous and largely acceptable explanation, the arguable merits and the importance of the matter to the applicant, who challenges the termination of a public appointment, the Court is satisfied that the interests of justice favour condonation. The late institution of the review is condoned.

<u>The point *in limine*: whether the review lapsed</u>

[27] The first respondent's point *in limine*, first raised in its answering affidavit of 9 December 2025 and pressed in its condonation application of January 2026, is that the review lapsed long ago. The contention rests on two legs: first, that the record was not filed within the 60 days contemplated by clause 11.2.2 of the Practice Manual, so that the applicant is deemed by clause 11.2.3 to have withdrawn the review; and secondly, that more than six months elapsed without any step being taken by the applicant, so that the file fell to be archived under clause 16.1, with the consequences for which clause 16.3 provides. The first respondent asked that the point be upheld and the matter struck from the roll. The applicant's answer is that the first respondent consented in writing to the late filing of the record and of his supplementary affidavit; he seeks declaratory

relief that the consent was given and that the review has not lapsed and has not been deemed to have been withdrawn or archived, and he brings the reinstatement application only in the alternative and, as he puts it, out of an abundance of caution.

[28] The relevant chronology is as follows. The review was launched on 7 December 2022. The third respondent dispatched the record to this Court, and the registrar gave notice of its receipt in terms of rule 7A(5) on 20 December 2022. Upon upliftment it appeared that the dispatched record was incomplete: it comprised the pleadings, the award and the documentary bundles, but the recordings of most of the arbitration hearing days were missing. The applicant's attorneys took the matter up with the third respondent in January 2023 and, in parallel, engaged the applicant's legal expenses insurer about the funding of the transcription. The first respondent delivered its notice of intention to oppose on 30 January 2023. On 24 February 2023 the applicant's attorneys wrote to the State Attorney, recording that the record dispatched by the third respondent was insufficient and that the outstanding portions had been requested from it, and sought consent to an extension of time for the serving and filing of the record *'until we have managed to secure the missing portions and/or to have them transcribed'*. Consent was given in a signed instrument, counter-signed for the first respondent by the State Attorney on or about 1 March 2023, recording the parties' agreement 'that the record of proceedings, in terms of Rule 7A(6) will be filed, once the complete record has been received'. In the meantime the third respondent had, by notice dated 28 February 2023, declared a *force majeure* occasioned by a cyber-attack on its information systems. The outstanding portions of the record were dispatched by the third respondent on 31 March 2023, under cover of a further rule 7A(5) notice.

[29] On 11 July 2023 the State Attorney wrote to the applicant's attorneys, referring to the extension *'which was granted'*, recording that more than four months had passed and the record had not been received, asserting *'Your review has lapsed'*, and recommending that the applicant *'do the necessary to reinstate'* the review. The applicant's attorneys replied on 18 July 2023 that the transcription was under way; the first respondent did not respond. The

transcribed record and the applicant's supplementary affidavit were served, under cover of a rule 7A(8) notice, personally on the State Attorney on 23 October 2023, as the date stamps on the papers attest, and were filed with the registrar on 27 October 2023. Indices were filed on 19 December 2023, and by letter of 19 January 2024 the applicant's Cape Town correspondent delivered a full set of paginated papers to the registrar and requested the enrolment of the matter. Thereafter the matter lay with the registrar. A notice of set-down for 19 November 2025 issued on 30 September 2025; in early November 2025 the matter was removed from the roll by the court and re-enrolled for 4 March 2026; and when the first respondent's counsel fell ill shortly before that date, this Court, by order of 2 March 2026, postponed the hearing and directed the filing of all outstanding papers within 15 days. The review was ultimately argued on 29 July 2026.

[30] The point *in limine* fails at its first leg. Clause 11.2.3 does not visit every late filing of a record with a deemed withdrawal. Its deeming is expressly qualified: the applicant is deemed to have withdrawn the application 'unless the applicant has during that period requested the respondent's consent for an extension of time and consent has been given'. That is precisely what happened here. The request was made during the currency of the 60-day period and consent was given; counsel for the first respondent expressly, and correctly, conceded at the hearing that the applicant complied with the consent mechanism of clause 11.2.3. The consent was never withdrawn. Nor were its terms open to misunderstanding: the parties agreed that the record would be filed *'once the complete record has been received'*, and the request for consent had made plain that the extension was sought both to secure the missing portions of the record and to have them transcribed. The complete record was received only at the end of March 2023, and the transcription, the funding difficulties attending which the applicant's attorneys had disclosed, followed. The record and supplementary affidavit were served and filed in October 2023, within the compass of the agreed extension. The deeming provision of clause 11.2.3 was accordingly never triggered: the review was at no stage deemed to have been withdrawn.

[31] The letters of 11 July 2023 do not assist the first respondent. Counsel for the first respondent, with proper candour, conceded at the hearing that they were wrong in law, and the concession was correctly made, on more grounds than one. The letters did not purport to withdraw the consent; they asserted, as an accomplished fact, that the review had lapsed. That assertion was bad on any reckoning. If the six-month period of clause 16.1 is computed from the consent of 24 February 2023, itself a process in the prosecution of the review, as the first respondent's counsel accepted, it would have run out only in late August 2023 at the earliest; if computed from the third respondent's dispatch of the outstanding record on 31 March 2023, the last process filed, only at the end of September 2023. In July 2023 there was accordingly nothing that could have lapsed, and the recommendation that the applicant *'reinstate'* the review proceeded from an error of law.

[32] Nor can the second leg, archiving under clause 16.1, carry the point. The clause is directed at an applicant who allows six months to pass without any steps being taken in the prosecution of the review. This applicant did not. The consent of 24 February 2023 and the third respondent's filing of the outstanding record on 31 March 2023 were processes in the review, and the months that followed were occupied by the very transcription for which the consent provided. To the extent that the interval between 31 March 2023 and the service of the record on 23 October 2023 marginally exceeded six months, the excess falls squarely within the agreed extension, which contemplated precisely that the record would follow once received and transcribed. A period of inactivity which the parties have, by a written consent sanctioned by the Practice Manual itself, agreed to abide cannot at the same time be counted against the applicant as a default triggering archiving.

[33] There remains clause 11.2.7. All of the papers that lay within the applicant's power were filed within 12 months of the launch of the review: the record and supplementary affidavit in October 2023, and the indices on 19 December 2023, within days of the anniversary. The written request to the registrar to enrol the matter followed on 19 January 2024, some six weeks beyond the 12-month mark. To the extent that clause 11.2.7 required that request to be made within

the 12 months, the shortfall is modest, is explained by the completion and pagination of the papers over the year-end period, and constitutes good cause within the meaning of the clause. That the request sought enrolment on the unopposed roll, when a notice of opposition had been delivered, is of no moment: no answering affidavit then existed, and the registrar in any event enrolled the matter on the opposed roll. The applicant cannot be blamed for what followed. Once the registrar had been informed that the matter was ready, the allocation of a date lay in the registrar's hands; the applicant's attorneys verified the readiness of the court file when the set-down for 19 November 2025 issued, and the removal of the matter from that roll was the doing of the court, not of the applicant. The first respondent, which filed nothing at all between its notice of opposition of January 2023 and its answering affidavit of December 2025, is not well placed to contend otherwise.

[34] It follows that the point *in limine* must be dismissed. The review application never lapsed, was never deemed to have been withdrawn and was never archived, and the applicant is entitled to declaratory relief to that effect. The reinstatement application, brought as it was out of an abundance of caution, is thereby rendered unnecessary, and no order need be made on it. Had it been necessary to determine it, the Court would in any event have been satisfied, for the reasons already given, that good cause was shown on the *Samuels* standard: the application is *bona fide*, the explanation covers the material periods of the default, the delay after January 2024 lay with the registrar and not with the applicant, and the review raises an arguable case.

<u>Condonation for the late filing of the first respondent's answering affidavit</u>

[35] The first respondent filed its answering affidavit in the review on 9 December 2025, very substantially outside the ten-day period contemplated by rule 7A(9). It also filed its answer to the reinstatement application and a replying affidavit in its own condonation application late, on 16 March 2026. The applicant objected to the late filing of each, and the first respondent has brought substantive applications for condonation, deposed to by its attorney and supported by a confirmatory affidavit.

[36] The lateness of the answering affidavit is, on any measure, extreme, being in excess of two years. The explanation tendered is that the filing of the record and supplementary affidavit did not come to the attention of the attorney dealing with the matter, and that the first respondent laboured under the impression that the applicant had abandoned the review; it was only when the set-down notice of 30 September 2025 issued that its representatives learned that the record had been filed, whereafter counsel located the record (four lever-arch files exceeding 1 500 pages) at court in early October 2025, copies were made and delivered to counsel by 20 October 2025, a draft answer was produced on 10 November 2025, and the settled affidavit was filed on 9 December 2025. That explanation cannot be accepted at face value. The rule 7A(8) notice, the transcribed record and the supplementary affidavit were served personally on the State Attorney on 23 October 2023; the date stamps on the papers say as much, and service was not seriously disputed at the hearing. The answering affidavit was due within ten days thereafter. The office of the State Attorney is a professional litigation office, not a lay litigant, and an internal failure to route served process to the responsible attorney explains little and excuses less; counsel for the first respondent properly accepted as much. What the explanation does establish is that the default was one of inattention rather than of defiance, and that once the true position was appreciated the first respondent moved with reasonable expedition.

[37] Several considerations nonetheless weigh in favour of granting condonation. First, the first respondent is not *dominus litis*; its late answer did not hold up the enrolment of the review, which from January 2024 awaited the registrar's allocation of a date, and the removal of the matter from the roll of 19 November 2025 was the doing of the court. Secondly, the first respondent's prompt notice of intention to oppose of 30 January 2023, and its stance in correspondence, demonstrate that it always intended to oppose the review; its exclusion from the hearing would elevate form over substance. Thirdly, a review is in any event determined on the founding papers and the record, so that refusing condonation would not relieve the Court of the substance of the enquiry, while depriving it of full argument on both sides. Fourthly, the matter is of some importance and

involves public funds, and it is in the interests of justice that it be determined on a complete conspectus of both parties' cases.

[38] The affidavits filed on 16 March 2026 stand on a different and firmer footing. The matter had been set down for hearing on 4 March 2026. Shortly before that date the first respondent's counsel fell ill, and this Court, by order of 2 March 2026, postponed the matter and directed the parties to file all outstanding pleadings, heads of argument and practice notes within 15 days, that is, by 23 March 2026. The affidavits filed on 16 March 2026 fell within the period so allowed. To the extent that they were nonetheless delivered outside the periods prescribed by the Rules, the delay is negligible, is adequately explained and caused no prejudice.

[39] In the exercise of its discretion the Court is satisfied that condonation for the late filing of the first respondent's answering affidavit, and of its further affidavits filed on 16 March 2026, should be granted. The indulgence is, however, an extensive one, sought by an organ of state whose own default put the applicant to the trouble and expense of opposing it. As appears from the treatment of costs below, fairness requires that the first respondent bear the applicant's costs occasioned by these condonation applications.

<u>The merits of the review</u>

[40] The preliminary issues having been resolved in the applicant's favour, the review is properly before the Court, and its merits, which were fully argued, must be determined. The applicable test comes first.

[41] The test to be applied requires care, because the issue the commissioner had to decide was whether the applicant had been dismissed at all. Under section 186(1)(b) of the LRA a dismissal includes the case where an employee reasonably expected the employer to renew a fixed-term contract on the same or similar terms and the employer did not do so. Whether a dismissal of that kind took place is a jurisdictional fact, for the bargaining council has jurisdiction to entertain an unfair dismissal dispute only if there was a dismissal. The existence of a dismissal is therefore not reviewed on the reasonableness standard laid down in *Sidumo and Another v Rustenburg Platinum Mines Ltd*

and Others (*Sidumo*);[9] it falls to be determined objectively, on the correctness standard. In *SA Rugby*, itself a case concerning a reasonable expectation of renewal, the Labour Appeal Court held that whether there had been a dismissal goes to the jurisdiction of the CCMA, and that the question on review is not whether the commissioner's finding was reasonable but whether, objectively, the jurisdictional facts existed.[10] The Constitutional Court has recently affirmed the distinction in *Maleka v Boyce NO and Others*:[11] a reviewing court must decide for itself whether, objectively, a dismissal as defined in the LRA took place, and it is only once a dismissal has been established that the fairness of the dismissal is assessed on the *Sidumo* standard. The Labour Appeal Court has applied the same approach to the very question that arises here: in *Cape Peninsula University of Technology v Kabengele and Others* (*Kabengele*),[12] a section 186(1)(b) case, it reaffirmed that a finding on the existence of a dismissal is reviewed *'on objectively justiciable grounds, on the basis of correctness'*, and that where the founding papers impugn the award as incorrect, the circumstance that the grounds of review were framed with reference to the *Sidumo* standard is no obstacle. Both parties' heads of argument in this matter approached the review on the *Sidumo* standard, but both counsel accepted at the hearing, correctly, that the correctness standard governs, and the founding papers in any event impugn the award as incorrect. No question of fairness arises unless a dismissal is established, the commissioner having found that there was none. What this Court must decide, for itself and on the evidence that served before the commissioner, is whether the applicant objectively had a reasonable expectation that his fixed-term contract would be renewed.

[42] The onus rests on the employee to prove the reasonable expectation, and the enquiry is objective: whether a reasonable employee, in the circumstances prevailing at the time, would have expected the employer to renew the contract

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[9] *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] ZACC 22; [2007] 12 BLLR 1097 (CC); 2008 (2) SA 24 (CC); (2007) 28 ILJ 2405 (CC) at para 110.
[10] *SA Rugby supra* fn 2 at paras 39-41 and 44.
[11] *Maleka v Boyce NO and Others* (CCT 175/23) [2026] ZACC 7; 2026 (5) BCLR 453 (CC); (2026) 47 ILJ 839 (CC); [2026] 6 BLLR 519 (CC) at paras 54-55 and 58.
[12] *Cape Peninsula University of Technology v Kabengele and Others* (CA22/2022) [2024] ZALAC 51; (2024) 45 ILJ 1973 (LAC); [2024] 6 BLLR 553 (LAC) at paras 8 and 13-14.

on the same or similar terms. A reasonable expectation may be founded on an express or implied prior promise, an established practice of renewal, or the surrounding circumstances, including assurances given and the conduct of the employer (*SA Rugby*; *Mediterranean Woollen Mills*; *Dierks v University of South Africa*[13]). A term of the contract disavowing any expectation of renewal is not, in itself, decisive, but where such a term is present the employee must place cogent facts before the tribunal to show that an expectation was nonetheless objectively reasonable.

[43] The applicant's case, in his affidavits and in argument, is that he had a reasonable expectation that his contract would be renewed to 31 December 2019, alternatively to the completion of the intervention, and that the commissioner was wrong to find otherwise. He relies, in essence, on the following: that the intervention was, from the outset, planned to endure for a minimum of six and a maximum of 12 months, a fact admitted on the pleadings; that he was the Administrator through whom the intervention was implemented, under terms of reference requiring an action plan addressing the short, medium and long term *'to ensure a turnaround and sustainability post the intervention'* and the submission of monthly reports; that Mr Mashego assured him, when the contract was to be signed and in answer to his question how a technically bankrupt municipality could be turned around in six months, that he should not worry as the arrangement existed in case people did not perform, evidence which was not challenged in cross-examination; that the extension notices linked automatic termination to a single contingency, the non-approval of the intervention, which never eventuated; that the contracts of the two members of his support team, who reported to him, were extended to 31 December 2019 while his own was extended by one month, a differentiation he queried without receiving an answer; that the intervention in fact continued beyond August 2019, as did his own work, including a close-out report submitted on 11 September 2019, without anyone telling him to stop until 23 September 2019; that his performance was never placed in issue; and that the non-renewal was wrongly treated as a matter of unfettered prerogative when no evidence was

[13] *Dierks v University of South Africa* (1999) 20 ILJ 1227 (LC) at 1246.

led that the Member of the Executive Council ever considered and decided against renewal.

[44] The first respondent supports the award. It contends that the contract and the extension notice are clear: the appointment was for a stated fixed period, extended once, in terms, from 1 to 31 August 2019; that the whole-agreement clause precluded reliance on extraneous representations; that the six-to-twelve-month window fixed the possible duration of the intervention, not of any individual's engagement, the appointment of an Administrator being the prerogative of the Member of the Executive Council, exercised as and when required from a panel; that the extension of the support staff's contracts to December 2019, against the extension of the applicant's by one month only, ought to have alerted the applicant that his own contract would not be renewed; that the applicant's continued attendance after 31 August 2019 was of his own volition; and that, at its highest, any expectation the applicant held was of renewal for a further month, matching the only extension he had ever received. The award, it submits, considers each of these matters and is correct.

Evaluation

[45] Having considered the evidence that served before the commissioner, the Court is satisfied that the applicant did not, objectively, have a reasonable expectation of renewal. The Court's reasons, taking the applicant's contentions in turn, follow.

[46] First, as to the period of the intervention: the fact that the provincial executive had obtained approval for an intervention of between six and 12 months did not translate into a corresponding period of appointment for the members of the intervention team. The applicant's contract was, on its terms, for a fixed and defined period, and its whole-agreement clause excluded reliance on representations not recorded in it. The applicant's argument that the period of the intervention cannot be severed from the period of his employment is not without force, but the Court is unable to accept it. The approval of an intervention of up to 12 months fixed no more than the outer limit of the intervention; it did not fix, or objectively signal, the period for which any

individual member of the intervention team would be engaged, that being a distinct matter which, on the evidence, lay in the hands of the Member of the Executive Council.

[47] The conditional termination proviso in the extension notices does not carry the construction the applicant places upon it. The proviso addressed one specific contingency, the non-approval of the intervention, upon which the appointment would end automatically, that is, without more and regardless of its stated term; it did not convert the stated term into a term co-extensive with the intervention, and the notice of extension stated its period in unambiguous terms, from 1 to 31 August 2019. Nor does the reporting obligation advance the matter: the duty to report monthly attached to the office while it endured, and says nothing, objectively, about how long the office would endure.

[48] The objective facts, as they unfolded, point in the same direction. When the intervention continued beyond 31 July 2019, the applicant's contract was not extended to match it: it was extended by a single month, at a time when the contracts of the other members of the team were extended to December 2019. And when the intervention endured beyond his contract, the Department did not revert to the applicant but appointed another Administrator, as, on Mr Mashego's evidence, it was entitled to do in the exercise of the prerogative of the Member of the Executive Council. The relationship between the period of the intervention and the period of the applicant's engagement, as it played out in fact, was one of divergence, not coincidence, and a reasonable employee in the applicant's position would have appreciated as much.

[49] Secondly, as to the assurance of Mr Mashego: the Court accepts that the exchange occurred. The applicant testified to it in chief, he was not challenged on it in cross-examination, and Mr Mashego, though he later testified, was not asked about it. The enquiry, however, is into what the exchange, objectively construed, conveyed. On the applicant's own rendition it was not a promise of renewal: it was an explanation of why a fixed term had been stipulated, namely that the arrangement existed in case members of the intervention team did not perform. At its highest it conveyed that non-performance would preclude

renewal; it did not convey that satisfactory performance would secure renewal, still less renewal for any defined period.

[50] Most tellingly, when the commissioner invited the applicant to explain the basis of his expectation, he grounded it not in the assurance but in his own qualifications and standing, agreeing with the proposition, put to him by the commissioner, that his expectation rested on the fact that *'no one can beat [his] qualification'*; and it was his own evidence under cross-examination that a six-month turnaround was *'totally unrealistic, unreasonable and improbable'*. That characterisation cuts both ways: an employee who appreciates that the task exceeds the term may well hope for renewal, but the hope does not thereby become an objectively reasonable expectation that the employer, in whose prerogative the appointment remained, would renew. In so concluding the Court does not treat the whole-agreement clause as decisive: consistently with *Mediterranean Woollen Mills*, a contractual disclaimer is but one factor in the objective enquiry, and the assurance has been weighed on its own terms; even leaving the clause entirely out of account, it cannot sustain the expectation contended for.

[51] The authorities are to the same effect. In *SA Rugby* the Labour Appeal Court, on the same enquiry, confirmed that the test is objective and that the onus lies on the employee, and cautioned that an expectation asserted on flimsy grounds, without more, will not suffice (paras 44 and 46). The applicant's expectation, resting as it ultimately did on his own view of his qualifications, is of that character. That Court treated express terms providing for automatic termination, and disavowing any expectation of renewal, as of critical importance, and did so in the case of professional employees (paras 46-47); the clear fixed term and the express one-month extension here are entitled to no less weight. And it held that a statement by the national coach that the players were part of his plans was insufficient to found a reasonable expectation (para 52); the remark attributed to Mr Mashego, which explained why a fixed term was stipulated rather than promising renewal, can bear no greater weight.

[52] Thirdly, the contention that the applicant's contract was inseparable from those of Mokgwamme and Letlape is not borne out by the record and, in any event,

tells against the applicant rather than for him. Mr Mashego testified expressly that each member of the intervention team was appointed as an individual, and that the extension of one member's contract did not entail the extension of another's. The Court accepts that evidence. Moreover, the fact that the support staff's contracts were extended to December 2019 while the applicant's was extended only to August 2019 should, if anything, have alerted the applicant to the real possibility that his own contract would not be renewed on the same footing. The applicant says he queried the differentiation and received no answer; but an unanswered query is not an assurance, and the objective message of the differentiation remained what it was.

[53] Fourthly, the arguments concerning the prerogative of the Member of the Executive Council, its rationality and the alleged hearsay character of Mr Mashego's evidence do not assist the applicant. In substance they seek to recast the enquiry as one into the fairness or rationality of the decision not to renew; but the question is the section 186(1)(b) question, namely whether the applicant objectively had a reasonable expectation of renewal, and not whether the decision not to renew was rational in the administrative-law sense. Mr Mashego was the Chief Director responsible for local governance and testified to the appointment process within his own knowledge; his evidence on that process was admissible, and the fact that the Member of the Executive Council was not called does not render it inadmissible or oblige the Court to reject it. On the substantive question that evidence, which the Court accepts, tells against a reasonable expectation rather than for it: the engagement and renewal of members of the intervention team lay in the prerogative of the Member of the Executive Council, and the applicant had been placed on a panel from which appointments were made as and when required.

[54] *Kabengele*, on which the applicant relied, does not assist him. A reasonable expectation was established there because the employee had been engaged on a succession of fixed-term contracts over several years and, of particular significance, the Head of Department had assisted him in seeking a further extension (para 18); the expectation so found was of renewal for a further year, and the compensation was fixed by reference to that measure (paras 20-21).

The present matter has neither feature. The applicant was appointed once and extended once, by a single month; and, far from being encouraged towards renewal, he received an extension markedly shorter than those granted to the members of his own team. The circumstances that founded the expectation in *Kabengele* are, here, absent.

[55] Standing back and weighing these matters together, and bearing in mind that the onus rested on the applicant, the Court is not satisfied that a reasonable employee in the applicant's position would objectively have expected the Department to renew his contract so as to coincide with the intervention. What the applicant established was, at most, a subjective hope of renewal, founded on his assessment of his own qualifications and of the progress he had made. That does not meet the objective standard the authorities require. The applicant was accordingly not dismissed within the meaning of section 186(1)(b) of the LRA, the commissioner's conclusion was correct, and the review falls to be dismissed.

<u>Costs</u>

[56] Both parties sought costs. In this Court costs do not follow the result as a matter of course. Section 162 of the LRA confers a discretion to make orders as to costs according to the requirements of the law and fairness, and the Constitutional Court has cautioned that a costs order in this Court requires a considered exercise of that discretion rather than the application of the ordinary rule.

[57] The first respondent's condonation applications stand on their own footing. The applicant was put to the expense of opposing indulgences occasioned entirely by the first respondent's own default, a default in excess of two years by a professional state litigation office upon which the papers had been personally served. The opposition was reasonable, and it would be unfair for the applicant to carry its cost. The first respondent must accordingly pay the applicant's costs occasioned by those applications. As for the remainder of the proceedings, the requirements of the law and fairness are best served by no further order: the applicant is an individual who pursued what he believed, on substantial

grounds, to be a legitimate grievance concerning a public appointment, the first respondent succeeded on no preliminary point, and the parties' procedural conduct on both sides has been considered above.

Order

[58] In the result, the following order is made:

1. The applicant's application for condonation for the late institution of the review application is granted.

2. The first respondent's point *in limine*, that the review application lapsed and is deemed to have been withdrawn, is dismissed.

3. It is declared that the first respondent consented in writing to the late filing of the record and of the applicant's supplementary affidavit, and that the review application has not lapsed, has not been deemed to have been withdrawn and has not been archived.

4. No order is made on the applicant's application for the reinstatement of the review application, that application being unnecessary.

5. The first respondent's application for condonation for the late filing of its answering affidavit, and of the further affidavits filed on 16 March 2026, is granted.

6. The first respondent is to pay the applicant's costs occasioned by the condonation applications referred to in paragraph 5 of this order.

7. The review application is dismissed.

8. Save as set out above, there is no order as to costs.

[redacted]

C. de Kock
Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Mr T Mokwayi
Instructed by:	Phatshoane Henney Attorneys
For the First Respondent:	Adv K Allen
Instructed by:	The State Attorney