



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

Signature Date

THE LABOUR COURT OF SOUTH AFRICA, GQBERHA

Not Reportable

CASE NO: PR15/2023

In the matter between:

BABALWA MPLATYI

Applicant

And

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

First Respondent

COMMISSIONER KHOSINATHI TERRENCE

MKHWANAZI N.O

Second Respondent

STANDARD BANK OF SOUTH AFRICA LIMITED

Third Respondent

Heard: 30 April 2026

Delivered: 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 is deemed to be 14h00 on 29 July 2026.

JUDGMENT

LALLIE J

- [1] This application was brought by the third respondent in the review application. It seeks an order to have the review application dismissed. The application is opposed by the applicant in the review application. In this judgment the parties will be referred to in the way they appear in the review application.
- [2] The third respondent approached this court in terms of rule 41 read with rule 35 of the Labour Court Rules seeking relief that is not specifically provided for in the rules. The factual background to this matter is that the applicant was employed by the third respondent. She brought an unfair labour practice dispute to the second respondent, the Commission for Conciliation and Arbitration (the CCMA) in 2021 alleging that the third respondent had committed an unfair labour practice against her. She was dismissed by the third respondent before the finalisation of the unfair labour practice dispute. She subsequently referred an unfair dismissal dispute to the CCMA in 2022. The 2 disputes were consolidated and arbitrated. On 21 December 2022 the second respondent (the commissioner) issued an arbitration award in which he dismissed both disputes. On 1 February 2023 the applicant launched an application in this court seeking an order reviewing and setting aside the arbitration award. The third respondent submitted that the review application should be dismissed owing to the applicant's inordinate delay in its prosecution.

- [3] The facts the third respondent relied on are that after the filing of the review application it filed its notice of intention to oppose it on 3 March 2023. On 28 August 2025 the applicant delivered an application to compel the CCMA to file the record of the arbitration proceedings. On 12 September 2025 the CCMA scheduled a meeting to reconstruct the missing portions of the record for 26 September 2025. At the reconstruction meeting the representative of the third respondent handed over to the applicant the audio recordings of the missing parts of the record. On 8 October 2025 the CCMA filed a notice of compliance in terms of rule 37(7) read with rule 37(2)(b) of the Labour Court Rules. The third respondent submitted that as of 5 March 2026 when its head of argument were filed the applicant had not taken a further step other than filing the review application on 1 February 2023.
- [4] The third respondent relied on the maxim '*vigilantibus non dormientibus lex subvenit*' in support of its argument that the applicant's failure to prosecute her review application expeditiously may non-suit her and effectively dispose of it. It was argued on behalf of the third respondent that the maxim should be applied in this case as this court did in *BP Southern Africa (Pty) Ltd v National Bargaining Council for Chemical Industry and Others*¹. In *BP Southern Africa (Supra)* the court referred with approval to *Sishuba v National Commissioner of the South African Police Service*² when the court re-affirmed its power to dismiss a claim owing to unreasonable delay in its prosecution.
- [5] The applicant denied having sat on her rights and doing nothing from 1 February 2023 when she filed her review application. It is common cause that after the delivery of the applicant's review application on 1 February 2023 the

¹ (2010) 31 ILJ 1337 (LC) at para 10.

² (2007) 28 ILJ 2073 (LC).

CCMA was required to deliver to the registrar of the Labour Court (the registrar) the record of the arbitration proceedings within 10 days in term of the old labour Court Rule 7A(2)(b) which was applicable at the time. The CCMA failed. The CCMA instead delivered an incomplete record which the registrar informed the applicant of its availability on 16 March 2023. The applicant, as early as 19 June 2023, took active steps to pursue her review application by filing a notice of filing the incomplete record, a notice of the CCMA's non-compliance with its obligation and a notice of intention to apply for condonation of the anticipated late filing of the record and supplementary affidavit. On 30 November 2023 she sought a directive from the office of the Judge President on how to further conduct her review application. The CCMA did not react to the notice to deliver the record the applicant served on it on 20 July 2025. On 22 August 2025 the applicant sent the CCMA a further notice of its failure to deliver a full record to the registrar. The CCMA responded to the second notice by inviting the parties to a meeting to reconstruct the missing portions of the record on 26 September 2025. Before the reconstruction meeting set the applicant had taken active steps to pursue her review application. As the delay in filing the record was due to the CCMA's failure to file a full record and to respond promptly to the applicant's reminders for the delivery of the record the applicant cannot be justifiably accused of sitting on her rights between her filing of the review application and the reconstruction meeting.

- [6] It is common cause that the representative of the third respondent handed the applicant the missing parts of the record at the reconstruction meeting. The reconstruction meeting was chaired by the commissioner. The applicant

submitted that the parties were informed that the reconstruction record would be filed at the Labour Court but she never received a notice from the registrar informing her that the record had been filed. The applicant submitted that she should not be faulted for waiting for the registrar to inform her of the availability of the record.

[7] The application before me was filed on 2 October 2025 on the fourth court day from 26 September 2025 the date on which the reconstruction meeting was held and the applicant received the missing portions of the record from the third respondent. The period the applicant waited for the registrar to inform her that the CCMA had filed the reconstructed record was reasonable. In terms of the Rule 37(9) it is the registrar who must notify the parties that the record has been received and that it may be uplifted by the applicant. Rule 37(2) (b) and (13) of the Labour Court Rules refer to delivery of 'a complete record' when referring to the record the CCMA is required to deliver to the registrar for purposes of review applications.

[8] I have carefully considered the submissions on behalf of both parties including the authorities they relied on. I agree that the third respondent had the right to bring this application. I, however, am not satisfied that it made out a case for the relief it sought. The applicant was failed by the CCMA which did not perform its duty in terms of rule 37 to deliver to the registrar a complete arbitration record timeously and ignoring the applicant's reminders. The CCMA's conduct cannot be imputed on the applicant. The efforts the applicant made to obtain a full record of the arbitration proceedings under review refute the third respondent's contention that she was indolent or that the delay in prosecuting her review application was unreasonable. The circumstances

surrounding the delay do not warrant denying the applicant her constitutional right to be heard. The application to dismiss her review application can, in the circumstances, not succeed.

[9] In bringing this application the third respondent was asserting its right to have the review application completed within reasonable time. The applicant did not act unreasonably in opposing it in an attempt to protect her right to have her review application heard. In the circumstances fairness requires that a costs order should not be made.

[10] In the premises, the following order is made:

1. The application to dismiss the review application is dismissed.
2. There is no order as to costs.

MZN Lallie

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate Y.S Mfeya

For the Respondent: Mr D. Cithi of Tabacks Attorneys Inc

LABOUR COURT