



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 1753/2003

In the matter between:

THANDA REGENT BAEPANYE

Applicant

and

GENERAL PUBLIC SERVICE

First Respondent

SECTORIAL BARGAINING COUNCIL

GARIKUE KELEBOGILE Z.NO

Second Respondent

DEPARTMENT OF JUSTICE

AND CONSTITUTIONAL DEVELOPMENT

Third Respondent

Heard: 22 November 2025

Delivered: 05 August 2026

JUDGMENT

MOGANE, AJ

Introduction

- [1] This is an application brought in terms of section 145 of the Labour Relations Act¹ (the LRA) to have the arbitration award issued by the second respondent under case number GPBC1255/2022, reviewed and set aside. The said arbitration award sought to be reviewed and set aside is dated 29 June 2023.

Background Facts

- [2] The applicant was employed by the Third Respondent on a permanent basis as a court interpreter since 01 June 2006. At the time of his dismissal he was based at the Klerksdorp Magistrate's Court.

- [3] The applicant was charged by the Third Respondent for misconduct, and the charges were couched as follows:

Allegation 1: "It is alleged that you have committed an act of misconduct, i.e. unauthorised absenteeism, in that you have, without any reasonable cause, absented yourself from duty on or about 04 May 2020 to 18 May 2020 and from 25 May 2020 to 17 September 2020, which days are unaccounted for."

Allegation 2: "It is alleged that you have committed an act of misconduct as contemplated in the Code, i.e. 'Prejudice to the administration, discipline or efficiency of the Department, office or institution of the State,' in that for the period of May 2020 until September 2020, essential services from the Court were compromised, which led the Department to incur financial prejudice to source casual interpreters in your absence."

- [4] A disciplinary enquiry was held and the applicant was found guilty of the charges preferred against him and was dismissed on 17 July 2022. Aggrieved thereby the applicant referred his dismissal dispute to the First Respondent.

- [5] Arbitration proceedings were held on different dates and, after those proceedings, the Second Respondent, acting under the auspices of the Third Respondent, found that the dismissal of the applicant was substantively and procedurally fair.

¹ Act 66 of 1995, as amended

- [6] Aggrieved by the arbitration award, the applicant then launched this review application to have the Second Respondent's award reviewed and set aside. This Court is therefore, enjoined to decide upon this review application.

Foundations of Grounds of Review

- [7] Grounds of review are to be made in both the applicant's founding and supplementary affidavit². These judgments have supported this principle too.
- [8] Before I deal with the grounds of review as raised by the applicant, I am firstly enjoined to consider the issue of condonation.
- [9] It does appear, on perusal of the court file, that Daniels J, on 13 May 2025, ordered that the applicant is to file an application for condonation, the record and the supplementary affidavit within 10 days. It is trite that a review application is supposed to be launched within six weeks of receipt of the arbitration award.
- [10] As I have already stated elsewhere in this judgment, the arbitration award was issued by the Second Respondent on 29 June 2023. The applicant then launched his review application on 07 September 2023. It is thus apparent that, at the time this review application was launched, the old Rules of this Court³ were applicable.
- [11] On 14 July 2025, the applicant filed the applicant's condonation application for the late filing of the record and supplementary affidavit. The applicant, in its papers and submissions, articulated that it will deal with this application in three distinct periods, being, (a) first: the late filing of the notice in terms of Rule 7A(6) and the record proceedings; (b) second: the late filing of the notice in terms of Rule 7A(8)(b) and the supplementary affidavit; and (c) third: the late delivery of the condonation application.

² See: *De Beer Minister of Safety and Security and another* (2011) 32 ILJ 2506 (LJ). See also: *Brodie v Commission for Conciliation, Mediation and Arbitration and others* (2013) 34 ILJ 608 (LC) at para 33.

³ Rules for the Conduct of Proceedings in the Labour Court. Now 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.

Jurisdiction

- [12] It is important to take note of the fact that this matter remains unopposed. However, the fact that the matter is unopposed does not detract from the fact that this Court is inclined to raise and deal with an issue of law on its own. In this instance, that issue of law is jurisdiction. The question is, does this Court have jurisdiction to adjudicate over this matter? Simply put, is there a review application before this Court?
- [13] This review application before this Court has been filed within 10 weeks of the arbitration award and was not supported by any condonation application. It was thus filed four weeks late without being accompanied by any condonation application.

Condonation

- [14] It is settled that condonation is not there for the mere taking. A party that is seeking condonation and which seeks the Court to exercise its discretion in granting or refusing the condonation ought to and should make out a proper case showing sufficient cause. This entails giving a full and accurate account of the causes of delay⁴. This principle has been, on numerous occasions, echoed by different decisions of this Court⁵.
- [15] Snyman AJ said in *University of the Witwatersrand v Fikile Njatjazi*⁶ that the condonation requirements in the case of late filing of a review application are applied more stringently than would normally be the case in other legal proceedings. In *UNTU obo Mahabe v Woolfrey N.O*⁷ this Court held that:

⁴ See *Nair v Telkom SOC Ltd and Others* (JR59/2020) [2021] ZALCJHB 449 (7 December 2021) at para 19 where Sass AJ was correct in saying: "Significant with a determination of such applications is that condonation cannot be had for the mere asking, and a party is required to make out a case entitling it to the court's indulgence by showing sufficient cause, and giving a full, detailed and accurate account of the causes of the delay. In the end, the explanation must be reasonable enough to excuse the default."

⁵ See: *Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited* 2017 (6) SA 90 (SCA) at para 6.

⁶ JR 1641/20 at para 17

⁷ (2025) 46 ILJ 1445 (LC) at para 11.

“The condonation requirements in the case of late filing of a review application are applied more stringently than would normally be the case in other legal proceedings.”

- [16] To an extent that the applicant, as he had grouped his lateness in terms of periods and that the third period explains the delay in launching this review application, that would not be sustainable. I will state *verbatim* what the applicant says in July 2025:

“The initial delay in bringing this application arose as a result of an agreement reached between the applicant and the third respondent. In terms of the agreement, both parties undertook to afford each other mutual indulgences with respect to the late filing of the record, supplementary affidavit and the third respondent’s answering affidavit. It was expressly understood that the third respondent would similarly be granted an indulgence for the late filing of its answering affidavit.”

- [17] This, and it is my considered view, is not a proper explanation for the delay in filing the review application four weeks out of the prescribed time. In fact, what is mentioned by the applicant is regarding the late filing of the record, the supplementary affidavit and the third respondent’s answering affidavit. It is obvious that the explanation provided has to do with the lateness of the record, supplementary and answering affidavit and not the review application itself.

- [18] All of these are post the launching of the review application. In *Groenewald and another v National Transport Movement*⁸, the Court said:

“When one considers the respondent’s application, there is absolutely no explanation for the delay in filing its statement of defence.”

- [19] Moshwana J in *National Union of Metal Workers of South Africa obo Matabane v Fabricated Steel Manufacturing (Pty) Ltd and others*⁹ said:

“Conspicuously absent in this matter are the facts to be investigated to determine whether the delay is reasonable or unreasonable...”

⁸ (JS805/20) [2024] ZALCJHB 35 (5 February 2024) at para 28.

⁹ (JR1343/10) [2017] ZALCJHB 42 (7 February 2017) at para 13.

[20] Furthermore, I agree with what Prinsloo J said in *SAMWU obo Moloisane and others v City of Tshwane Local Municipality*¹⁰ that:

“The LAC confirmed that where a party is out of time (even where an application is filed one day late) and has to take a jurisdictional step to apply for condonation but failed to do so, a court cannot come to the party’s assistance. The LAC held that in the absence of an application for condonation, the court cannot assist the party.”

[21] The Constitutional Court stated as follows in *Grootboom v National Prosecuting Authority and another*¹¹:

“[32] I need to remind practitioners and litigants that the rules and courts’ directions serve a necessary purpose. Their primary aim is to ensure that the business of our courts is run effectively and efficiently. Invariably this will lead to the orderly management of our courts’ rolls, which in turn will bring about the expeditious disposal of cases in the most cost-effective manner. This is particularly important given the ever-increasing costs of litigation, which if left unchecked will make access to justice too expensive.”

[33] Recently this court has been inundated with cases where there has been disregard for its directions. In its efforts to arrest this unhealthy trend, the court has issued many warnings which have gone largely unheeded. This year, on 28 March 2013, this court once again expressed its displeasure in eThekweni as follows:

“[26] The conduct of litigants in failing to observe Rules of this Court is unfortunate and should be brought to a halt. This term alone, in eight of the 13 matters set down for hearing, litigants failed to comply with the time limits in the rules and directions issued by the Chief Justice. It is unacceptable that this is the position in spite of the warning issued by this Court in the past. In [Van Wyk], this Court warned litigants to stop the trend. The Court said:

¹⁰ Unreported decision. Case number: JR850/19. Delivered: 9 September 2021 at para 24.

¹¹ (2014) 35 ILJ 121 (CC) at para 32.

“There is now a growing trend for litigants in this court to disregard time limits without seeking condonation. Last term alone, in eight out of ten matters, litigants did not comply with the time limits or the directions setting out the time limits. In some cases litigants either did not apply for condonation at all or if they did, they put up flimsy explanations. This non-compliance with the time limits or the rules of Court resulted in one matter being postponed and the other being struck from the roll. This is undesirable. This practice must be stopped in its tracks.”

[22] Prinsloo J also said in *Moloisane*¹²:

“It follows that if the court does not have jurisdiction to adjudicate the review application, it also has no jurisdiction to adjudicate an application to either dismiss or reinstate the same review application, save where it has jurisdiction.”

[23] I fully concur with Prinsloo J. Similarly, in *casu*, I do not have jurisdiction to adjudicate an application to condone the late filing of the record and the supplementary affidavit. All in all, I do find that this Court lacks jurisdiction to adjudicate this application.

[24] Considering that, in as far as costs are concerned, I am guided by section 162 of the LRA. I do not deem it fit and proper to issue a cost order:

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

Order

1. The review application is struck off the roll for lack of jurisdiction.
2. There is no order as to costs.

¹² Id fn 13 at para 26

C. Mogane

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Mr Goldberg of Goldberg attorneys Inc.

or the Respondent : No appearance.