



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

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR 798/21

In the matter between:

ZAMOKWAKHE ENOCK KHUZWAYO

Applicant

and

**GENERAL PUBLIC SERVICE SECTOR
BARGAINING COUNCIL**

First Respondent

COMMISSIONER E MAREE

Second Respondent

**THE MINISTER FOR PUBLIC SERVICE
AND ADMINISTRATION**

Third Respondent

RHULANI MAKHUBELA

Fourth Respondent

Heard: 11 June 2026

Delivered: 21 August 2026

The judgment was handed down electronically by emailing a copy to the parties. The 21st of August 2026 is deemed to be the date of delivery of this judgment.

JUDGMENT

NAVSA, AJ

Introduction

- [1] The applicant (Mr Khuzwayo) seeks an order reviewing and setting aside a condonation ruling made by the second respondent (Commissioner) on 6 March 2021 in terms of section 158(1)(g) read together with section 145 of the Labour Relations Act¹ (the LRA).
- [2] The Commissioner did not grant Mr Khuzwayo's application for condonation of the late referral of his unfair labour practice dispute to the first respondent (the GPSSBC).
- [3] The third respondent (The Minister for Public Service and Administration) opposed the review application.

Relevant background facts

- [4] On 17 March 2020, Mr Khuzwayo lodged an internal grievance concerning the job evaluation for the post of Director: Human Resource Development Strategy.
- [5] On 13 August 2020, Mr Khuzwayo referred an unfair labour practice dispute to the GPSSBC concerning post grading and sought retrospective payment.
- [6] On 22 September 2020, Mr Khuzwayo received the outcome of his internal grievance regarding the job evaluation. Mr Khuzwayo was advised that the Director General had approved on 23 December 2019 that all job evaluation requests for filled posts be suspended until the implementation of the reviewed structure.

¹ No. 66 of 1995, as amended.

- [7] On 2 November 2020, Mr Khuzwayo resubmitted the same unfair labour practice dispute to the GPSSBC, without a condonation application.
- [8] In January 2021, Mr Khuzwayo then re-referred his unfair labour practice dispute to the GPSSBC, on this occasion, together with an accompanying condonation application.
- [9] On 6 March 2021, the Commissioner issued a condonation ruling in terms of which Mr Khuzwayo was not granted condonation. It is this condonation ruling which forms the subject matter of Mr Khuzwayo's review application.

The condonation application before the Commissioner

- [10] Mr Khuzwayo indicated, by way of background, that the dispute arose on 10 March 2020 and that the referral was late by some 213 days.
- [11] Mr Khuzwayo explained that the reason for such lateness included the initial referral in August 2020, and the resubmission of the referral in November 2020. He had not sought condonation at that stage (November 2020) as he was still awaiting the response of his internal grievance and did not want to prematurely refer his unfair labour practice dispute to the GPSSBC.
- [12] Under prospects of success, Mr Khuzwayo, placed reliance on the job evaluation and the job analysis conducted as the basis for his prospects of success in his unfair labour practice referral.
- [13] Concerning prejudice, Mr Khuzwayo, indicated that all internal procedures had been exhausted, and that the delayed outcome to the grievance that he had lodged was beyond his control.

The Commissioner's findings

- [14] The Commissioner, in determining whether Mr Khuzwayo's application for condonation should be granted, surveyed the arguments advanced by Mr Khuzwayo.

- [15] The Commissioner, in her analysis of the evidence and argument in the condonation application, found that the approximate 7-month period of delay was substantial and warranted a reasonable and satisfactory explanation.
- [16] The Commissioner noted that as the dispute, on Mr Khuzwayo's version, arose on 10 March 2020 that both the initial referral on 13 August 2020 and the resubmission of the referral in November 2020 should have been accompanied by a condonation application.
- [17] The Commissioner noted that it was only the re-referral in January 2021, that contained a condonation application for the first time.
- [18] The Commissioner found that the reason offered for the lateness by Mr Khuzwayo, that he wanted to avoid a premature referral on the basis that he was waiting to exhaust internal processes before referring his unfair labour practice dispute to the GPSSBC, to be premised on an incorrect argument, given that the unfair labour practice already arose on 10 March 2020.
- [19] The Commissioner, after having examined the relevant authorities, ultimately found that Mr Khuzwayo failed to provide a reasonable explanation for the full period of the delay, and that even though there was no need to consider prospects of success, that Mr Khuzwayo's dispute and the relief sought by him did not fall within the ambit of the definition of an unfair labour practice.
- [20] The Commissioner also found that she did not have the power to order the conducting of a job evaluation or for the employer to conduct such a process during the arbitration.
- [21] The Commissioner accordingly did not grant Mr Khuzwayo's application for condonation.

Mr Khuzwayo's review grounds

- [22] Mr Khuzwayo seeks a review of the condonation ruling dated 6 March 2021, in terms of section 158(1)(g) read together with section 145 of the LRA.

- [23] Mr Khuzwayo asserts that the Commissioner erred in finding that he had failed to provide a reasonable explanation for the full period of the delay. The period between March 2020 and August 2020 was explained by Mr Khuzwayo having exhausted all internal remedies, namely the grievance procedure.
- [24] Mr Khuzwayo contends that the Commissioner misdirected herself in finding that he failed to provide a reasonable explanation for the full period of the delay, and in finding that the dispute does not fall within the ambit of the definition of an unfair labour practice dispute.
- [25] Mr Khuzwayo submits that the Commissioner failed to apply her mind, did not properly consider the evidence before her, handed down a condonation ruling that was not justifiable on the evidence, and reached a decision that a reasonable decision maker could not reach. In so doing the Commissioner committed a gross irregularity in the conduct of the proceedings.
- [26] Mr Khuzwayo's further review grounds centred around the Commissioner's failure to properly consider the facts around the referrals made in August 2020 and November 2020, and that the delay in referring the unfair labour practice dispute was due to him awaiting the outcome of the grievance.

Relevant legal principles

- [27] *Sidumo and another v Rustenburg Platinum Mines Ltd and others*² is the prevailing authority on when a decision of an arbitrator is reviewable in terms of section 145 of the LRA. The question to be asked being: Is the decision reached by the Commissioner one that a reasonable decision maker could not reach?
- [28] The Supreme Court of Appeal, Labour Appeal Court, and Labour Court, in its subsequent jurisprudence has clarified the review test.³

² (2008) 28 ILJ 2405 (CC) at page 59, paragraph 110.

³ *Herholdt v Nedbank Ltd (Congress of SA Trade Unions as Amicus Curiae)* (2013) 34 ILJ 2795 (SCA) page 2803 where the SCA clarified that a result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was placed before the arbitrator; See also *Gold Fields Mining SA (Pty) Ltd v CCMA* [2014] 1 BLLR 20 (LAC) at page 26 paragraph [20] which sets out the proper questions to be asked in terms of a review under section 145(2)(a)(i) and (ii) of the LRA; See also *Head of Department of Education v Mofokeng & Others* (2015) 36 ILJ 2802 (LAC) at

- [29] The failure by an arbitrator to apply his or her mind to issues which are material to the determination of a case will usually be an irregularity, but before such an irregularity will result in the setting aside of the award, it must in addition reveal either a misconception of the true enquiry or result in an unreasonable outcome.⁴
- [30] The Labour Appeal Court⁵ has emphasised that an arbitration award will be considered to be reasonable when there is a material connection between the evidence and the result. Conversely, an arbitration award will be deemed to be unreasonable if it is entirely disconnected from the evidence, unsupported by any evidence and involves speculation by the arbitrator.
- [31] Where an applicant seeks to review a condonation ruling, there is an additional obstacle.⁶
- [32] Condonation, it ought to be remembered, is a discretionary remedy with this Court required to be mindful of the narrow scope for interfering with the exercise of such discretion by a Commissioner based on the multi factor test applicable to condonation applications.⁷
- [33] In order to upset the Commissioner's exercise of a discretion on review an applicant would be required to show, *inter alia*, that the Commissioner committed a misdirection or irregularity, or that the Commissioner acted capriciously, on wrong principle, or in bad faith, or unfairly, or that in

paragraphs [30] to [33]; See also *Shoprite Checkers v Commission for Conciliation, Mediation and Arbitration & Others* [2015] 10 BLLR 1052 (LC) at paragraphs [9] and [10] which dealt with determining when a failure by a Commissioner to consider facts will be reviewable; See also *Democratic Nursing Organisation of SA on behalf of Du Toit & another v Western Cape Department of Health & Others* (2016) 37 ILJ 1819 (LAC) at paragraph [15]; See also *Makuleni v Standard Bank of South Africa* (2023) 44 ILJ 1005 (LAC) at paragraphs 2 and 3.

⁴ *Head of Department of Education v Mofokeng & Others* (2015) 36 ILJ 2802 (LAC) at paragraphs [30] to [33].

⁵ *Quest Flexible Staffing Solutions (Pty) Ltd (A Division of Adcorp Fulfilment Services (Pty) Ltd) v Lebogate* (2015) 36 ILJ 968 (LAC); See also *Bestel v Astral Operations Ltd & others* [2011] 2 BLLR 129 (LAC)

⁶ *Duma v CCMA and others* (JR1041/14) [2020] ZALCJHB 154 (25 August 2020) at paragraph 5.

⁷ *Lunguza Lilian and 33 Others v CCMA & others* (J215/21) [2025] ZALCJHB 454 (29 September 2025) at paragraph 19.

exercising their discretion the Commissioner reached a decision that a reasonable decision maker could not reach.⁸

- [34] If a Commissioner has exercised such discretion judiciously and fairly after considering all relevant factors, then this Court will not interfere with the exercise of such discretion.⁹

Evaluation

- [35] In terms of section 191(1) of the LRA the referral of an unfair labour practice dispute must be made within 90 days of the act or omission which allegedly constitutes the unfair labour practice.
- [36] Section 191(2) of the LRA allows the council or the Commission to permit the employee to refer the unfair labour practice dispute after the 90-day period has expired, on good cause shown.
- [37] Mr Khuzwayo's unfair labour practice dispute arose on 10 March 2020. Both Mr Khuzwayo's initial referral on 13 August 2020 and resubmitted referral in November 2020 already fell outside of the prescribed time frames in section 191 of the LRA, and neither were accompanied by a condonation application.
- [38] The ultimate referral by Mr Khuzwayo in January 2021 was 213 days, or approximately seven months, late.
- [39] The Commissioner found that this period of delay was substantial and warranted a reasonable and satisfactory explanation. The Commissioner was not satisfied with the explanation tendered by Mr Khuzwayo that he was awaiting the outcome of his grievance before referring his unfair labour practice dispute.
- [40] On 22 September 2020, Mr Khuzwayo received the outcome of his grievance and any period of delay in bringing his unfair labour practice referral, post September 2020, would have required further explanation.

⁸ *Duma v CCMA and others* (JR1041/14) [2020] ZALCJHB 154 (25 August 2020) at paragraph 5; See also *Cowley v Anglo Platinum & others* [2016] JOL 35884 (LC) at paragraph 21.

⁹ *Duma v CCMA and others* (JR1041/14) [2020] ZALCJHB 154 (25 August 2020) at paragraph 5.

- [41] There was also nothing that prevented or precluded Mr Khuzwayo from referring his unfair labour practice dispute to the GPSSBC timeously, even though the internal grievance process was still ongoing.
- [42] Notwithstanding the Commissioner's view that Mr Khuzwayo's failure to provide a reasonable explanation for the full period of the delay was sufficient justification for dismissing his condonation application, the Commissioner still considered Mr Khuzwayo's prospects of success in the unfair labour practice dispute.
- [43] The Commissioner, in being thorough, found that there were no prospects of success as the referral did not fall within the ambit of the definition of an unfair labour practice and that the relief sought was not competent. The dispute, as framed, is not one that is arbitrable in terms of the LRA.
- [44] It was ultimately Mr Khuzwayo's failure to provide an explanation for the full period of the delay and to establish prospects of success that meant that Mr Khuzwayo had failed to show good cause for condonation to be granted.
- [45] The Commissioner properly applied her mind to the determination of whether good cause existed to grant condonation in terms of section 191(2) of the LRA. The Commissioner's ruling considered the interests of justice and is reasonable.
- [46] Mr Khuzwayo failed to explain, on review, why the Commissioner's ruling was not made judicially, was biased, was influenced by wrong principles, capricious, or was materially influenced by a sufficient misdirection to justify that the Commissioner acted improperly or unreasonably.¹⁰
- [47] Mr Khuzwayo's grounds of review accordingly have no merit. The Commissioner's condonation ruling demonstrates that she exercised her discretion judiciously and fairly after considering all relevant factors and that it is reasonable.

¹⁰ *Duma* supra note 6 at paragraph 5.

Costs

[48] With reference to the issue of costs, this Court has a broad discretion to make costs orders in accordance with the requirements of law and fairness.

[49] In the Court's view, the interests of justice will best be served by making no order as to costs.

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

Order

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

ZM Navsa

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Kietzmann & Weideman Attorneys

For the Third Respondent: Advocate M H Mhambi

Instructed by: The State Attorney

LABOUR COURT