



- (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 1622/24

In the matter between:

JACOB MOGALE HLAHASOANE

Applicant

and

THE COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

First Respondent

COMMISSIONER MUSOLWA RAPALANE

Second Respondent

THE SOUTH AFRICAN POLICE SERVICE

Third Respondent

THE MINISTER OF POLICE

Fourth respondent

THE GUATENG PROVINCIAL

COMMISSION OF POLICE

Fifth Respondent

THE CHIEF EXECUTIVE OFFICER

OF POLMED MEDICAL AID SCHEME

Sixth Respondent

Heard: 21 October 2025

Delivered: 21 August 2026

JUDGMENT

MOGANE, AJ

Introduction

- [1] This is an application brought in terms of section 158 (1)(g), read together with section 145 of the Labour Relations Act¹ (the LRA), to have the condonation ruling issued by the second respondent under case number GATW1059-24 reviewed and set aside. The condonation ruling is dated 15 August 2024.

Background Facts

- [2] The applicant was employed by the third respondent on 23 June 2004 as a police officer. He resigned from his employment on 30 May 2015. In October 2016, the applicant was re-employed by the third respondent and was stationed at Muldersdrift Police Station.
- [3] Whilst on duty, the applicant was attacked by a mob. As a result of the attack, he sustained severe trauma and, amongst other injuries, his kidneys were affected, necessitating dialysis three days a week.
- [4] Following the incident, the applicant underwent various medical assessments and was eventually medically boarded by the third respondent. Dissatisfied with what had transpired, the applicant referred an unfair labour practice dispute to the first respondent.
- [5] On 15 August 2024, arbitration proceedings were convened and in those proceedings the applicant had to deal with an application for condonation for the late referral of his dispute. The condonation application, which was opposed, was decided on the papers.

¹ 1 Act 66 of 1995, as amended.

- [6] Thereafter, the second respondent issued a condonation ruling in terms of which the applicant's unfair labour practice dispute was not condoned and the condonation application was dismissed.
- [7] Aggrieved by the condonation ruling, the applicant launched the present review application seeking an order to review and set aside the condonation ruling issued by the second respondent.
- [8] It is this review application that this Court is called upon to determine. The review application is unopposed.

Grounds of review

- [9] It is trite that the grounds of review are to be set out in both the applicant's founding affidavit and supplementary affidavit².

Founding affidavit

- [10] The grounds of review in the founding affidavit are *verbatim* stated as follows:
- 10.1 The first ground: "*Unfair labour practice by my employer, SAPS.*"
- 10.2 The second ground is that: '*The ruling is about condonation, and I already filed condonation forms at the CCMA Pretoria.*'
- 10.3 The third ground is that: '*Captain Phiri and SAC Selinah of Muldersdrift Police Station made me sign all documents whilst I was hospitalised at Krugersdorp Hospital on 1 November 2023.*'
- 10.4 The fourth ground is that: '*The police failed to report my incident of 15 May 2022 on time to Compensation after I was attacked whilst officially on duty.*'
- 10.5 The fifth ground is that: '*The police made a serious mistake by placing me off duty in terms of the exit mechanism and exit rules 14.4(b) and 14(f), and refused to rectify it three times through the G.E.P.F.*'

² See: *De Beer V Minister of Safety and Security and Others* (2013) 32 ILJ (LC) at para 30.

- [11] Having regard to these grounds, it is my considered view that they do not address what the condonation ruling states. Instead, they provide a history of the matter.
- [12] The condonation ruling records that the applicant referred his dispute to the first respondent on 19 July 2024 and, in that referral, asserted that the dispute arose on 2 May 2022. The applicant further stated in his referral that he was constructively dismissed in November 2022. The second respondent therefore found that the referral was 719 days late, which was excessive. The applicant must accordingly convince this Court why the decision of the second respondent is unreasonable.
- [13] Van Niekerk J had the following to say in *Mooki v CCMA and Others*³:

‘In the present instance, the applicant’s grounds for review are not cast in terms that reflect the enquiry that the Court must undertake. In particular, the grounds articulated both in the founding and supplementary affidavits do not make out a case to the effect that the outcome of the proceedings under review was one that fell outside the band of decisions to which a reasonable decision-maker could come on available material...My conclusions in regard to all the grounds of review raised by the applicant, as would appear from those canvassed below, is that none of them properly found the basis for intervention by this court.’

- [14] Considering what Van Niekerk J stated above, it is thus my view that the applicant’s grounds of review alone do not found a basis for the inquiry that this court must undertake. The applicant’s grounds in his founding affidavit are not well articulated.
- [15] Perhaps the applicant may be assisted by his supplementary grounds for review.

Supplementary affidavit and respondent’s argument

- [16] The applicant starts by giving a detailed history of the matter, which relates to how he was injured and what subsequently followed. He underwent various

³ (JR772/15) [2017] ZALCJHB 173 (3 February 2017) at para 9 and 10

assessments and was made to sign retirement forms whilst he was sick in hospital. He asserts that he did not understand what he was signing at the time. His wife signed at a later stage as a witness. He subsequently made representations after contacting his union. He did not receive an outcome and, based on that, he referred the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA) because he could no longer wait for the outcome of the representations.

- [17] According to the applicant, he referred his dispute on time but was then informed by an official at the CCMA that his referral was late and that it should therefore be accompanied by a condonation application.
- [18] According to the applicant, the second respondent thus failed in his assessment on the papers before him and thus the second respondent committed misconduct in relation to his duties, committed gross irregularity in the arbitration proceedings, exceeded his powers, the award was improperly obtained, committed errors of law, failed to apply his mind and made errors of fact.
- [19] The main thrust of the applicant's ground is that, at the time he referred the dispute, he was still awaiting the outcome of his representations. He therefore submits that this rendered the referral timeous and that the statement that the dispute arose on 2 May 2022 was an error which the second respondent ought to have realised.
- [20] The third respondent, on the other hand, stated that the applicant had 90 days within which to refer his dispute, as envisaged in section 186 (2)(b) of the LRA. The applicant's referral was therefore late because the applicant had stated in his referral form that the dispute arose on 2 May 2022.
- [21] The third respondent further stated that the applicant applied for ill-health retirement and that it was approved following various recommendations by doctors after examining him.

- [22] Furthermore, the applicant failed to indicate the degree of lateness. The applicant stated that he was unaware of the applicable time limits. This explanation was not sufficient, and the referral was more than 730 days late.
- [23] The third respondent further stated that the issue of the pension fund and medical aid was not regulated by the third respondent. Accordingly, the applicant was required to take those issues up with the relevant entities and not with the second respondent.

Evaluation

- [24] The complaint by the applicant that when he signed to be boarded off on ill-health, he was in hospital and therefore didn't understand what he was signing for is without merit. Since the arbitration was decided on papers, I had regard to the arbitration proceedings record relied on at the first respondent. The applicant avers that he was in hospital on 01 November 2023⁴ when he signed the statement accepting the medical boarding certificate, statement which indicates that he is accepting to be boarded off on ill health.
- [25] By the same token, he avers that he was not aware that the acceptance letter is the same as the one he signed on 11 September 2023⁵.
- [26] In my considered view that if he accepted to be medically boarded in September 2023, it is of no consequence that he signed the acceptance letter in November whilst in hospital. I say so because those letters are identical in words except that they are dated differently. Furthermore, and to make matters worse for the applicant, on 09 May 2023, the applicant was assessed by Dr. Z.A.E Motala and the said Dr. recommended in the psychiatric report as follows: *"permanent incapacity should be considered."*
- [27] On 27 July 2023, he was seen by Dr. Clementine Chawane and the report of the said Dr. stated: *"He is still not fit to return to work and it is less likely that he will improve from his condition which then renders him permanently incapacitated and he should thus be considered for permanent disability".*

⁴ Page 76 of the arbitration proceedings bundle.

⁵ Page 77 of the arbitration bundle.

[28] The applicant, in my view, at all times applied to be boarded off sick and his doctors recommended that too.

[29] In *casu*, the applicant in both his founding and supplementary affidavit makes no mention of this. It is thus not the fault of the third respondent that he was boarded off sick. The applicant is thus looking at the ruling in a piecemeal fashion and not in the totality.

[30] In my view the applicant was not kept in the dark about the issue that he will be boarded off due to ill-health or incapacity. I say so because on 5 June 2023 there is a letter from one Captain AS Janse van Ransberg which letter indicates the application for ill – health retirement has been considered and in the said letter various documents, “*inter alia, his identity document was requested for such purposes*”.

[31] In *Goldfields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation Mediation and Arbitration and Others*⁶, the Labour Appeal Court held thus:

“In a review conducted under section 145(2)(a)(ii) of the LRA, the reviewing court is not required to take into account each factor individually, consider how the arbitrator treated and dealt with each of those factors and then determine whether a failure by the arbitrator to deal with one or some of the factors amounts to a process-related irregularity sufficient to set aside the award. This piecemeal approach of dealing with the arbitrator’s award is improper as the reviewing court must necessarily consider the totality of the evidence and then decide whether the decision made by the arbitrator is one that a reasonable decision-maker could make.”

[32] In *Academic and Professional Staff Association V Pretorius NO and Others*⁷ the court held as follows:

“The factors which the court takes into consideration when assessing whether grant condonation are: (a) the degree of lateness or non-compliance with the prescribed time frame; (b) the explanation for the lateness or failure to comply

⁶ [2014] 1 BLLR 20 (LAC) at para 18.

⁷ (2008) 29 ILJ 318 (C) para 17

with the time frame; (c) Prospects of success or *bona fide* defence in the main action; (d) the importance of the case; (e) the respondent's interest in the finality of the matter; (f) the convenience of the court; and (g) avoidance of unnecessary delay in the administration of justice."

- [33] It is also trite law that these factors are not individually decisive but are interrelated and must be weighed against each other. On weighing, for instance a good explanation for the lateness may assist the applicant in compensating for weak prospects of success. Similarly, strong prospects of success may compensate for an inadequate and long delay.
- [34] In *NUMSA and another v Hillside Aluminium*⁸, Murphy A.J held that an unsatisfactory explanation for the delay will normally be fatal to an application irrespective of the applicant's prospects of success.
- [35] The ground raised regarding the referral of the unfair labour practice being referred on time will be dealt with due regard being had to the applicant's referral forms to the first respondent and the condonation application that accompanied the referral.
- [36] On the material that was before the second respondent, the applicant stated that the date on which the dispute arose is 02 May 2023. That being the case, it is trite that in terms of section 191(1)(b)(ii) of the LRA, the referral must be made within 90 days of the date of the act or omission. The first respondent found that the referral was 730 days late and the explanation provided was not adequate. This is indeed excessively late and the finding by the first respondent is reasonable.
- [37] On the degree of lateness, the applicant furnished no reasons at all when regard is had to his condonation application. This is fatal to the applicant's review application. He ought to have stipulated, what the degree of lateness is.
- [38] The second respondent was never furnished with reasons why the review application was late. The applicant's assertion that he simply did not know

⁸ [2005] 6 BLLR 601 (LC).

that there is a time limit within which to submit forms, as he calls it, is unsustainable. Mind you, this is someone who has stated in his founding affidavit that he has completed forms for condonation at the CCMA in Pretoria. In any event, it is a well-established fact that ignorance of the law is not an excuse. This assertion can thus not assist the applicant. Various judgments of this court have pronounced on that aspect. If the applicant did not know the law, he should have sought legal advice.

- [39] In my view, the second respondent came to the correct conclusion that the explanation provided by the applicant is inadequate. In actual fact, there is no explanation at all other than applicant asserting that he never knew of time limits.
- [40] It needs no repeating and it is well established that condonation is not there for the mere taking. Also, a party seeking condonation should give a full and accurate account of the causes of delay⁹. This principle has on numerous occasions been echoed by different decisions of this court¹⁰.
- [41] In this case before me, the applicant then makes the averment that the second respondent was just flipping through the pages and that if he had gone through the papers diligently, the second respondent would have realised that when the applicant referred the dispute at the first respondent, he would have realised that the referral was on time and there was no need for condonation. The applicant further said that even if he was late, (wrongly as he puts it), the applicant would have been late by 138 days, as opposed to 730 days.
- [42] This creates in my view, a problem for the applicant. The applicant, if he feels that way ought to have addressed all of this with the second respondent. The applicant cannot address this issue with this court. That assessment by the

⁹ In *Nair v Telkom SOC Ltd and Others* (JR59/2020) [2021] ZALCJHB 449 (7 December 2021) Sass AJ, at para 19 thereof, 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 indulgence by showing sufficient cause, and give a full, detailed and accurate account of the courses of the delay. In the end the explanation must be reasonable enough to excuse the default.

¹⁰ *Mulandzi V Old Mutual Life Assurance Company (South Africa) Limited*. 2017 (6) SA 90 (SCA) at para 6.

applicant is fundamentally flawed and should fail. The applicant cannot have mutually exclusive versions on when the unfair labour practice occurred. On one hand, he did not know the rules of the second respondent with regards to the time frames for referral and on the other hand he says his referral was on time. And on the other hand, he also says he has a condonation application at the CCMA in Pretoria.

[43] In a condonation application, the entire period of the delay ought to be explained. In *casu*, the applicant failed to provide an explanation for the delay. Therefore, this court has nothing to consider in terms of the explanation for delay other than the assertion by the applicant that he had no knowledge of time limits within which to refer a dispute to the second respondent.

[44] Borrowing from Prinsloo J in *Ntukwana v The Minister of Home Affairs and Others*¹¹ said:

“The approach that, in the absence of a satisfactory explanation for a delay, the applicant’s prospects of success are ordinarily irrelevant, has been conventionally applied ... and without a reasonable and acceptable explanation for a delay, the prospects of success are immaterial.”

[45] However, in the interests of justice, regarding prospects of success, the applicant mentioned that he wants the third respondent to pay all the benefits related to ill-health retirement, his salary and medical aid.

[46] The second respondent traversed this issue of prospects of success and came to a correct conclusion. The applicant wants to be paid whilst he was boarded on ill health. He was paid his benefits in a lump sum and in my view, the other extra payments that he requires, as the second respondent has articulated, can’t be adjudicated by him i.e. to be looked after by the SAPS and be paid for ill-health and psychiatric conditions. This is contained in the applicant’s referral form.

¹¹ (JR2511/2023) [2024] ZALCJHB 487 (5 December 2024) at para 14.

[47] The ground that the second respondent exceeded his powers ought to fail too. The applicant has failed to pinpoint to this court where or how the second respondent exceeded his powers.

[48] In *Williams v CCMA and Others*¹², Whitcher J had this to say:

“When considering applications for condonation, commissioners enjoy a white discretion. Accordingly, a reviewing court should be cautious when interfering with such rulings. The test for review is whether it can be said that the discretion was not exercised judicially: it has been exercised ‘capriciously, or upon a wrong principle, or in a biased manner, or for substantial reasons with no regard to the applicable principle for condonation principles.’”

[49] It is therefore my considered view that the second respondent did not commit any irregularity, applied his mind to the material before him, he did not exceed his powers, he did not fail to deal with the issues before him.

[50] The second respondent came to a decision that is correct, and therefore his award ought to be not interfered with.

[51] With regards to costs, I am inclined to follow section 162 of the LRA. According to this section, I have a discretion to make an order according to law and fairness. Fairness dictates that no order as to costs be issued.

[52] In the premises the following order is made:

Order

1. The application to have the second respondent’s condonation ruling reviewed and set aside is dismissed.
2. There is no order as to costs.

¹² (C 267/2024) [2025] ZALCCT 17 (7 March 2025)

C. Mogane

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Self-represented

For the Respondent : Unrepresented