



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

28/08/2026

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 1710/21

In the matter between:

NORMAN NQATYELWA

Applicant

and

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Respondent

COMMISSIONER ERIC MYHILL N.O.

Second Respondent

METAL INDUSTRIES BENEFIT FUND

ADMINISTRATORS

Third Respondent

Heard: 22 April 2026

Delivered: 28 August 2026

JUDGMENT

MUNSAMY, AJ

Introduction

- [1] This is an application by Mr Norman Nqatyelwa, the Applicant, for the reinstatement of his review application, which was automatically archived and is deemed to have lapsed in terms of the erstwhile Practice Manual of the Labour Court of South Africa (Practice Manual).
- [2] The application is opposed by the Third Respondent, the Applicant's former employer. The essence of the Third Respondent's opposition is that the application is procedurally and fatally defective and, in any event, that the Applicant has failed to demonstrate good cause for the reinstatement of the review.

Factual Background

- [3] The material facts are largely common cause. The Applicant was employed by the Third Respondent in a junior-management position. Following a disciplinary enquiry in December 2018, he was dismissed for serious misconduct. The misconduct related to the transmission of an email containing expletive racial slurs directed at a colleague.
- [4] The Applicant referred an unfair dismissal dispute to the First Respondent the Commission for Conciliation, Mediation and Arbitration (CCMA). In an arbitration award issued in August 2021, the Second Respondent (the Commissioner) found that the Applicant's dismissal was both procedurally and substantively fair.
- [5] Aggrieved by this outcome, the Applicant sought to review and set aside the award. The timeline for the prosecution of this review application is central to the present matter:
- 5.1 The review application was due on 21 September 2021.
 - 5.2 It was filed late, on 21 October 2021, accompanied by an application for condonation.
 - 5.3 The record of proceedings was filed in a piecemeal fashion between December 2021 and January 2022.

5.4 The Third Respondent filed its answering affidavit on 18 February 2022.

5.5 The Applicant's replying affidavit was due by 25 February 2022. No replying affidavit was filed.

[6] Following the filing of the Third Respondent's answering affidavit, the Applicant took no further steps to prosecute the review application. Consequently, in terms of paragraph 11.2.7 of the erstwhile Practice Manual, the review application was deemed to have been archived and lapsed on 21 October 2022, being 12 months after its launch.

[7] On 22 March 2023, approximately five months after the review had lapsed, the Applicant filed the present application seeking its reinstatement. The matter was set down for hearing on the opposed motion roll for 22 April 2026.

The Third Respondent's Points *in Limine*

[8] The Third Respondent has raised three preliminary points, any one of which, it argues, is dispositive of the application.

[9] First, the absence of a notice of motion. It is a fundamental principle that an application must be brought by way of a notice of motion, which clearly and unambiguously sets out the relief sought. This is a requirement under the Rules for the Conduct of Proceedings in the Labour Court¹ (The Rules). The Applicant has merely filed what purports to be a founding affidavit without a corresponding notice of motion. The effect of this is that no specific relief has been placed before the Court for its determination. As was held in *Thompson v National Health Laboratory Services*,² such a failure renders the application defective. This point is well-taken. There is, in effect, no proper application before this Court.

[10] Second, the absence of a statement of legal issues. The Rules require that an affidavit in support of an application must set out the legal issues arising from

¹ 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.

² (JA 09/07) [2009] ZALAC 11 (18 September 2009).

the material facts to enable the other party to reply thereto. The Applicant's founding affidavit fails to do so. It is a trite principle that an applicant must make out its case in the founding affidavit. The failure to properly articulate the legal basis for the relief sought renders the application irregular and defective.

- [11] Third, the lack of a proper affidavit. The Third Respondent submits that the Applicant's founding affidavit does not comply with the Regulations Governing the Administering of an Oath or Affirmation (the regulations). Specifically, the certification by the Commissioner of Oaths fails to indicate whether the deponent is male or female. Based on the authorities of *Mogale v BMW Finance Services (South Africa) (Pty) Ltd*³ and *Mdakane and Others v Kwadukuza Municipality and Others*,⁴ such a failure gives rise to the irresistible inference that the deponent did not appear in person before the Commissioner. The consequence is that there is no valid affidavit before the Court to support the application.
- [12] This Court finds that the preliminary points raised by the Third Respondent are meritorious. The application is beset by a trifecta of procedural defects, each of which is fatal. The absence of a notice of motion means the Court has not been properly moved for any relief. The failure to comply with the regulations means there is no valid evidence under oath. On these grounds alone, the application stands to be dismissed.

The Merits of the Reinstatement Application

- [13] For the sake of completeness, this Court will proceed to consider the merits of the application, assuming for a moment that the aforesaid procedural defects could be overlooked.
- [14] The legal position regarding an archived review application is clear. As confirmed by the Labour Appeal Court (LAC) in *E Tradex (Pty) Ltd t/a Global Trade Solution v Finch and Others*⁵ and *Gololo v Limpopo Department of*

³ (5528/2020) [2024] ZALMPPHC 117 (11 September 2024).

⁴ (2026/040712) [2026] ZALCD 11 (2 MARCH 2026).

⁵ (2022) 43 ILJ 2727 (LAC).

Economic Development, Environment and Tourism and Others,⁶ the archival of a review application under paragraph 11.2.7 of the erstwhile Practice Manual is a matter of status, which occurs automatically by operation of law. It is not an administrative act by the Registrar. The inaction of the delinquent party causes the application to acquire the status of being lapsed. To revive it, an applicant must bring a substantive application and demonstrate good cause for its reinstatement.

- [15] An application for reinstatement is akin to an application for condonation. The overarching test is whether it is in the interests of justice to grant the relief. To determine this, the Court must consider a number of interrelated factors, including the explanation for the default, the prospects of success in the main application, the question of prejudice, and the applicant's *bona fides*.

Analysis

The Duty as Dominus Litis and the Explanation for the Delay

- [16] As the party who initiated the review application, the Applicant was *dominus litis*. The primary responsibility to prosecute the matter diligently and to finality rested squarely on his shoulders. The record demonstrates a patent disregard for this duty. After the Third Respondent filed its answering affidavit in February 2022, the Applicant allowed more than a year to pass before taking any further steps. This period of inactivity is what led directly to the lapsing of his review application.
- [17] The explanation proffered for this inordinate delay is that he was unable to secure legal representation. This explanation is vague, unsubstantiated, and wholly insufficient. The Applicant fails to provide a full and satisfactory account covering the entire period of his default. He provides no particularity regarding his alleged attempts to secure assistance.
- [18] Furthermore, the Applicant is not a lay litigant unfamiliar with legal processes. It is common cause that he was employed as a trade union official and is

⁶ (2025) 46 ILJ 1895 (LAC).

experienced in labour matters. His attempt to shift blame for his own inaction is not made in good faith and falls far short of the standard required by this Court. A reasonable explanation is a prerequisite for the Court's indulgence. The Applicant has failed to provide one.

Prospects of Success

[19] It is an established principle that where the explanation for the delay is absent or unreasonable, the prospects of success are ordinarily immaterial. However, even on this front, the Applicant's case is weak.

19.1 The underlying review application was itself filed 30 days late, requiring condonation for which no compelling explanation was advanced.

19.2 The misconduct for which the Applicant was dismissed was exceptionally serious. The use of racial slurs in the workplace constitutes a grave offence that invariably ruptures the employment relationship.

19.3 The Third Respondent's submission that the record filed by the Applicant was insufficient to sustain a review appears well-founded.

19.3 Ultimately, the Applicant would have to demonstrate that the Commissioner's decision was one that no reasonable decision-maker could have reached. Based on the nature of the misconduct, this is a formidable hurdle which the Applicant appears unlikely to overcome.

[20] I find that the Applicant has not demonstrated that he enjoys reasonable prospects of success in the main review application.

Prejudice and the Interests of Justice

[21] The Applicant has not alleged any prejudice he would suffer should the application be refused. The prejudice to the Third Respondent, however, is manifest. The Applicant was dismissed in December 2018, more than seven years ago. The Third Respondent has been forced to defend this matter for

years, incurring significant legal costs and facing the uncertainty inherent in protracted litigation.

- [22] One of the core principles of the Labour Relations Act⁷ (LRA), as emphasised by the Constitutional Court in *Toyota SA Motors (Pty) Ltd v CCMA and Others*,⁸ is the expeditious resolution of labour disputes. Granting this application would breathe life into a long-dormant and meritless review, undermining this fundamental principle. Finality in litigation is not merely a convenience; it is a constitutional imperative. The Third Respondent is entitled to finality.
- [23] Balancing all the relevant factors, the interests of justice weigh heavily against the revival of this matter. The prolonged and unexplained delay, the poor prospects of success, and the significant prejudice to the Third Respondent lead to the ineluctable conclusion that good cause has not been shown.

Costs

- [24] The ordinary rule in this Court is that costs do not follow the result. However, the Court may make a costs order where the requirements of law and fairness so dictate.
- [25] In this matter, the Applicant has pursued an application that was not only procedurally and fatally defective but also substantively devoid of merit. He has demonstrated a consistent pattern of delay and a disregard for the Rules of this Court. It would be unfair to expect the Third Respondent to bear the financial burden of opposing such a hopeless application. A costs order is therefore warranted.

- [26] In the circumstances, the following order is made:

Order

⁷ Act 66 Of 1995, as amended.

⁸ (2016) 37 ILJ 313 (CC).

1. The application for the reinstatement of the review application under case number JR1710/21 is dismissed.
2. The Applicant is ordered to pay the Third Respondent's costs.

K. R. Munsamy

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: In person

Instructed by:

For the Respondent: T. Makoaba

Instructed by: CDH INC.

LABOUR COURT