



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



7 September 2026

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2025-084497

In the matter between:

LABOUR ASSOCIATION WORKERS UNION

obo COLLEN FEBRUARY AND OTHERS

and

APL CARTONS (PTY) LTD

ELRIDGE EDWARDS N.O.

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Applicant

First Respondent

Second Respondent

Third Respondent

Heard: 2 September 2026

Delivered: 7 September 2026

JUDGMENT

DE KOCK, AJ

Introduction

[1] This is an application to reinstate a review application deemed withdrawn under rule 37(15) of the Rules of this Court, and to condone the late filing of the transcribed record and the sworn translations of it.

- [2] The review it seeks to revive is a review of an arbitration award of Commissioner Elridge Edwards dated 22 April 2025 under CCMA case WECT19021-24, holding that the CCMA lacked jurisdiction to arbitrate a claim brought under s 73A of the Basic Conditions of Employment Act (BCEA).¹
- [3] The applicant is a registered trade union, the Labour Association Workers Union (LAWU), acting for Mr Collen February and a number of others. It appears through its general secretary, Mr Haroun Abdul, who has conducted the matter throughout and who deposed to the founding affidavit in this application and to the affidavits in the review. He is not a lawyer. About ten of the individual applicants attended the hearing.
- [4] The first respondent, APL Cartons (Pty) Ltd, opposes the application. It is represented by Mr Stelzner SC, instructed by Murray Fourie & Le Roux Inc of Worcester, Mr Le Roux having appeared at the arbitration. The second and third respondents, the Commissioner and the CCMA, abide, save that the Commissioner has filed an explanatory affidavit dated 30 June 2025.

Background

- [5] The underlying claim rests on a deferred compensation scheme. The applicant says weekly deductions ran from 1996; the first respondent says the scheme terminated over the period 1998 to 2016. Mr Abdul told the Court that the scheme was administered by Sanlam, that the first respondent was its sole beneficiary, that in May 2021 a payment was made out of it to one former employee, and that it was when the other former employees learned of that payment that the present dispute was referred. The number of individual applicants is not settled on the face of the papers: the award is headed for LAWU on behalf of Mr February and 144 others, the first respondent's heads give 144 in one place and 114 in another, and the union's own emails of 1 and 2 November 2024 list names 1 to 151 and describe the matter as brought on behalf of 150 others. The founding affidavit says a list of applicants is attached; none is.

¹ Act 75 of 1997, as amended.

- [6] On 15 November 2021, under CCMA case WECT13778-21, the union signed an agreement to withdraw an earlier dispute, the stated reason being an absence of jurisdiction. Mr Abdul's account is that the withdrawal was on the advice of the commissioner then seized with the matter, who told him that the CCMA lacked jurisdiction and that the remedy lay with the long-term insurance ombud; that the ombud in turn found that Sanlam had paid the first respondent as beneficiary and that the matter was one for the CCMA. The present dispute was arbitrated before Commissioner Edwards at Worcester on 9 April 2025, and on 22 April 2025 he issued the award holding that the CCMA lacked jurisdiction. The award was emailed to the parties the same day.
- [7] The review was filed on 5 June 2025. The six-week period from 22 April 2025 expired on 3 June 2025, so the review was two days late. No condonation was sought when the review was launched. The amended notice of motion and amended founding affidavit filed on 21 November 2025 ask for condonation and attribute the delay to the technical failures of the Court Online platform from 27 May 2025 and to an eye operation undergone by Mr Abdul on 5 June 2025; the applicants' heads repeat that explanation.
- [8] On 20 June 2025 the Registrar gave notice under rule 37(9), addressed among others to Mr Abdul, that the CCMA had dispatched the record of the proceedings, including the recording, that the recording was to be downloaded within five days, and that the record was to be filed within 60 days. The CCMA's own notice of filing under rule 37(7), listing the award, a bundle of documents and the audio recording, is dated 24 July 2025; five weeks after the Registrar had notified the parties that the record had been received. Parts of the record were, on any view, not accessible: the first respondent's attorneys wrote to the CCMA on 14 August 2025 asking for parts of the record that had not been filed; on 20 August 2025 the CCMA said the outstanding documents had been uploaded the previous day; on 22 and 25 August 2025 the attorneys reported that they could not find them on Court Online, and the CCMA uploaded them again; and on 16 September 2025 the attorneys reported that they still could not find them and had received no

notice of filing from the Court, whereupon the CCMA sent the documents by email, the recordings being too large to send. The union, for its part, wrote to the CCMA on 24 September 2025 asserting that the record was incomplete.

- [9] The first part of the transcription was filed on 21 November 2025 and the second on 28 November 2025, both in Afrikaans. On 21 November 2025 the first respondent served a notice under rule 37(15) and (16). This application was filed on 2 April 2026. Sworn English translations of both parts of the transcription were filed on 10 July 2026.
- [10] On 20 August 2026 the first respondent's attorneys filed the balance of the record, being the first respondent's own arbitration bundle and the points *in limine* papers. In the same letter they told the Registrar that the CCMA's filings of 24 July 2025; being its notice of filing, the award and its bundle '*are not to be found on court-on line, nor on caseline*', and asked the Registrar to follow the matter up. On 26 August 2026, a week before the hearing, the Registrar placed the CCMA's notice of filing, its bundle and the Commissioner's explanatory affidavit on the court file for the first time. Mr Stelzner accepted at the hearing that the whole of the CCMA's record reached the court file only a couple of weeks before the hearing.

Whether the review was deemed withdrawn

- [11] Rule 37(14) requires a transcribed record to be delivered within 60 days of the date on which the applicant is advised by the Registrar that the record has been received. Rule 37(15) deems an applicant who fails to do so to have withdrawn the application, absent the respondent's written consent to an extension. Rule 37(18) provides that an application so deemed withdrawn may not be reinstated without an order of court, on application by the defaulting party, on good cause shown. A 'day', for these purposes, excludes Saturdays, Sundays, public holidays and the period from 16 December to 15

January, and a period of days is calculated by excluding the first day and including the last.²

[12] Rule 37(13) ends with this proviso:

‘provided that, should it transpire that the person or body upon whom a notice of motion is served in terms of subrule (2) has failed to deliver a complete record, the 60-day period contemplated in subrule (14) will commence running only once a complete record has been delivered.’

[13] Neither party had addressed the proviso in its papers. The Court raised it at the outset of the hearing and heard both sides on it. The first respondent’s case is that the 60 days ran from the Registrar’s notice of 20 June 2025; that the union then had the recording, which is what it had to transcribe; that 60 days from that date expired on or about 11 September 2025; and that whatever had to be done thereafter to complete the record was done by the first respondent’s own attorneys because the union was not doing it. Mr Stelzner accepted the Court’s summary of that case as being that, no matter what happened after the fact, the period ran from 20 June 2025. He relied, in addition, on two documents from the union’s own papers: the founding affidavit, which under the heading ‘degree of lateness’ says that the 60-day period ‘*expired on or about 19 August 2025*’, and the CCMA’s notice of 24 July 2025, annexed to it, which records dispatch of the record to the Registrar and the union’s obligation under rule 37(10).

[14] The union’s case is that the 60-day period ‘*never even started running*’, because the record was incomplete by mutual admission, the first respondent’s attorneys having said so on 14 August 2025 and the union on 24 September 2025, and because the CCMA placed a complete record on the court file only in the last days before the hearing. Mr Abdul referred the Court to a judgment of the Labour Appeal Court, which he called ‘*Maxfield*’, for the proposition that time limits in the Practice Manual must not be applied

² Rule 1 of the Rules for the Conduct of Proceedings in the Labour Court, GN 4775, GG 50608, 3 May 2024.

mechanically. He gave no citation, the case is not referred to in the union's papers, and the Court has not been able to identify it. It is not relied on.

- [15] Neither case can be accepted. The first respondent's reading cannot be reconciled with its own conduct. Its attorneys asked the CCMA on 14 August 2025 for parts of the record that had not been filed; the CCMA's own notice of filing is dated 24 July 2025, five weeks after the Registrar's notice; and the first respondent's heads record that as at 27 March 2026 those items were '*still not part of Court record*' and that as at 20 August 2026 its own arbitration bundle was still not part of the record. The record delivered as at 20 June 2025 was not a complete record, and the proviso says what follows from that.
- [16] But the union's reading goes too far in the other direction. The proviso is directed at a failure by '*the person or body upon whom a notice of motion is served in terms of subrule (2)*', that is the CCMA to deliver a complete record. What the CCMA had to deliver, it delivered to the Registrar: the recording by 20 June 2025 and the balance of its documents, on its own account, by 19 August 2025. What went wrong after 19 August 2025 was that the documents could not be found on Court Online, and that the CCMA's filings of July 2025 did not reach CaseLines until the Registrar placed them there on 26 August 2026. That was a failure of the Court's platforms, not a failure by the CCMA to deliver, and the proviso does not speak to it. Nor did any of it impede the union in doing what rule 37(14) required of it. The recording was received and accessible from 20 June 2025; the union downloaded it, had it transcribed, and filed the transcription. Mr Abdul did not suggest that any part of the recording was missing. His complaint was that the CCMA's documentary bundle, and a certificate, were not on the court file, and that complaint, while justified, does not bear on the transcription. The union's own founding affidavit, deposed to before the point was raised, fixes the expiry of the period at about 19 August 2025, which is consistent with the union having had what it needed from 20 June 2025.
- [17] The Court accordingly holds that a complete record was delivered by the CCMA on 19 August 2025, and that the 60-day period contemplated in rule

37(14) commenced on that date. Computed under rule 1, it expired on 12 November 2025. The first part of the transcription was delivered on 21 November 2025 and the second on 28 November 2025, seven and twelve days late respectively. There was no written consent by the first respondent to an extension; on the contrary, it served notice under rule 37(15) on the day the first part was filed. The review was therefore deemed to have been withdrawn, and rule 37(18) applies. The union's application, which seeks condonation and reinstatement, is correctly treated as one for reinstatement under that subrule, and the Court so treats it.

- [18] Two things should be said about that finding. The first is that the default it rests on is a short one; days, not months. The second is that the question whether a transcription in Afrikaans required a sworn English translation before it could count as delivery of the 'transcribed record' does not arise on this finding and is not decided. The translation, and the time it took, are relevant to the explanation for the delay and to nothing else.

Reinstatement

The test

- [19] An applicant seeking reinstatement must show good cause. The test is settled: the application must be *bona fide*; the applicant must give a reasonable explanation covering the entire period of the default; must show reasonable prospects of success in the main application; and must show that it is in the interests of justice to grant the order (*Samuels v Old Mutual Bank*).³

The explanation for the delay

- [20] The founding affidavit, supplemented by what Mr Abdul told the Court, explains the default in filing the transcription. In July 2025 the union paid a first typist, whose Afrikaans transcript proved unusable; it then engaged a second typist in Worcester, who completed the work on 21 November 2025; the first volume was uploaded that day and the second on 28 November 2025, after the first

³ [2017] ZALAC 10; [2017] 7 BLLR 681 (LAC); (2017) 38 ILJ 1790 (LAC) (25 January 2017) at para 17; applied in *Mogale and Another v Tshifhiwa NO and Others* [2024] ZALCJHB 468 (18 November 2024) at paras 21 and 23.

respondent's attorneys pointed out the omission. Mr Abdul was in theatre for eye surgery on 19 August 2025, the day on which, on the Court's finding, the period began to run. The Court accepts that a default of seven to twelve days, in those circumstances, is adequately explained.

- [21] The explanation for what followed is less complete. The application for reinstatement was brought only on 2 April 2026, more than four months after the first respondent's rule 37(15) notice of 21 November 2025. Mr Abdul says that the first respondent's attorneys notified him on 2 March 2026 that an English translation was required, that he approached the Department of Justice and then a translation firm on 31 March 2026, obtained a quotation on 14 April 2026, paid it in two instalments in April and May 2026, resolved a dispute about value-added tax, and uploaded the translations in July 2026; that he did not know, as a layperson, that an Afrikaans record had to be translated; and that the union is small and had to find the money. What is not explained is why, having been served with a notice on 21 November 2025 stating that the review was deemed withdrawn, the union did nothing about reinstatement until April 2026. Nor is there an explanation for why nobody else at the union could attend to the matter during the periods of Mr Abdul's incapacity. The Court does not, however, regard the explanation as so poor that the application must fail on that ground alone. If the prospects of success in the review were good, the Court would be slow to shut out a claim of this age and this kind on the explanation.

Prospects of success

- [22] This is where the application fails, and the weakness is structural rather than a matter of degree. The award rests on three findings, each of which goes to the CCMA's jurisdiction and each of which would dispose of the matter on its own. The first is that LAWU did not establish its authority to represent the individuals on whose behalf it referred the dispute: it conceded that it had no mandate from those still employed, whom it had included in the referral without their knowledge, and it produced nothing to show that the 76 original applicants were its members. The second is that the same dispute was resolved when the union withdrew it under WECT13778-21 on 15 November 2021, and that the correct course, if the withdrawal agreement was defective, was to approach this Court

to set it aside rather than to refer afresh. The third is that LAWU failed to demonstrate that the claim falls within the scope of s 73A of the BCEA.

[23] The ruling under review is a jurisdictional ruling, and on review of a jurisdictional ruling the question is whether the commissioner was right or wrong, not whether the outcome was reasonable (*Madondo v Safety and Security Sectoral Bargaining Council and Others*).⁴ If the CCMA in fact lacked jurisdiction, the manner in which the Commissioner reached that conclusion will not assist the applicant. To show prospects, the union must therefore show a *prima facie* case that the Commissioner was wrong about its authority, about the withdrawal agreement and about s 73A; all three, since any one of them suffices to sustain the award.

[24] The founding affidavit engages with none of them. Its prospects section is directed entirely at the conduct of the hearing: that the Commissioner arrived an hour late, that he allowed an attorney to appear without a formal application under CCMA rule 25, that he proceeded without a certificate of non-resolution, that he rushed the proceedings and that he refused closing argument. Mr Abdul pressed the last of these at the hearing, saying that the Commissioner told the CCMA's case management on 20 April 2025 that he had already made up his mind and would not read the union's written closing submissions. Those are complaints about the conduct of the hearing. They are not answers to a want of jurisdiction. On the certificate point the first respondent has an answer in any event: once 30 days have elapsed since referral, a certificate is not a precondition to arbitration. And on the complaint that the hearing was rushed, the Commissioner's explanatory affidavit records, without contradiction on affidavit, that he reminded Mr Abdul of his right to apply for a postponement and that Mr Abdul confirmed he would not be applying for one.

[25] The applicants' heads do rather better, though not by much. Section 6, headed 'Jurisdiction (section 73A of the BCEA)', asserts in two sentences that the Commissioner erred in finding no jurisdiction because of a prior voluntary withdrawal, and that the dispute concerns a deferred compensation scheme

⁴ [2015] ZALCD 9; (2015) 36 ILJ 2314 (LC) (28 January 2015) at paras 47 and 48, following *Asara Wine Estate and Hotel (Pty) Ltd v Van Rooyen and Others* (2012) 33 ILJ 363 (LC).

established in 1996 which falls within the statutory ambit of s 73A. At the hearing Mr Abdul added that the withdrawal of 15 November 2021 was on the advice of the commissioner then seized with the matter, and relied on a judgment of this Court, which he called '*Nkapai*', for the proposition that a CCMA withdrawal form is not a settlement agreement and does not bar a fresh referral of the same dispute. Again, no citation was given, the case is not in the union's papers, and the Court has not been able to identify it; it is not relied on. Even taking the point at its highest, it engages only the second finding.

[26] The third finding was the subject of the first respondent's principal submission on the merits. Section 73A of the BCEA came into operation on 1 January 2019; the scheme, on the papers, was terminated by 2016; a claim which arose by 2016 could not, it was submitted, be brought under a provision that did not then exist. Mr Abdul conceded the commencement date. His answer, given in reply, was that the claim is not for the deductions as such but for money which the first respondent received from Sanlam as the sole beneficiary of the scheme and has failed to pay over to the former employees. If that is the claim, the failure to pay on which it rests post-dates 1 January 2019, and the commencement argument may not be the complete answer the first respondent says it is. The Court does not decide that question, because it does not need to and because it was not argued on either side with reference to authority. What matters for present purposes is that the claim so characterised was not how the referral was framed, is not developed in the founding affidavit in this application or in the heads, and, although the award records (para 24) that the applicants averred that the respondent had received payouts from the fund in 2021 and paid some former employees but not others, nothing in the review papers engages the Commissioner's third finding on that footing. Prospects on a review must be shown on the case that was before the arbitrator and on the grounds pleaded in the review. They cannot be built on a characterisation offered for the first time from the bar in reply.

[27] That leaves the first finding, and it is the one the first respondent presses hardest. Nothing in the founding affidavit or the heads engages it. Mr Abdul's explanation at the hearing, that employees still in service, bound by the closed-shop agreement with another union, were deliberately excluded from the

referral, does not meet the Commissioner's finding that the union produced nothing to show that the original applicants were its members, and that some of those it purported to represent said on affidavit that it did not. On a jurisdictional review the union would have to show that finding to be wrong. It has not attempted to.

[28] The Court is therefore unable to find that the review has reasonable prospects of success. Two sentences of assertion in heads of argument, unsupported by anything in the founding affidavit, silent on the first finding altogether and answering the third only by a characterisation of the claim that was never pleaded, do not suffice.

[29] Two matters in the papers should be corrected, since both sides overstate same. The first respondent says that the confirmatory affidavits do not refer to or confirm the contents of the main affidavit. They do: each of the three records that the deponent has read the affidavit of Mr Abdul and confirms its contents as far as they apply to him. The fair criticism is that the founding affidavit does not cross-refer to those affidavits, not that they fail to confirm it. The applicant, for its part, attributes the principles governing condonation to *'the Constitutional Court in Melane v Santam Insurance Co Ltd; Melane v Santam Insurance Co Ltd'* is a decision of the Appellate Division of 1962.⁵

The state of the record

[30] Whatever the outcome, the state of this record calls for comment. A review filed in June 2025 reached a hearing in September 2026 with the CCMA's own bundle placed on the court file only on 26 August 2026, with the first respondent's arbitration bundle filed by its own attorneys on 20 August 2026, and with the parties still at odds about when the record became complete. The Registrar's rule 37(9) notice issued before the CCMA's notice of filing. That is not what the Rules contemplate, and it is not attributable to one side alone.

[31] Much of the delay was driven by a question neither side addressed as one of law: whether a record transcribed in Afrikaans required a sworn English translation at all. The arbitration was conducted in Afrikaans between

⁵ 1962 (4) SA 531 (A).

Afrikaans-speaking parties in Worcester. The first respondent insisted on translations; the applicant, at considerable cost and delay, provided them. The applicant's reliance on *Van Straaten v Wehnke NO and Others* is, in this connection, closer to the mark than it may appear: that judgment holds that a transcription produced from an electronic record is sufficient however it was created, that the Court should be slow to uphold technical points which obstruct access to justice for impoverished litigants, and that prohibitive transcription costs engage s 34 of the Constitution.⁶ What *Van Straaten* does not do is supply prospects of success where there are none, and the applicant's heads describe it a little loosely as concerned with '*transcription formatting*'.

Conclusion

[32] The review was deemed withdrawn on 12 November 2025, and the application for its reinstatement must be decided on good cause. The default in delivering the transcription was short and is explained; the delay in bringing this application is only partly explained. The application fails on prospects. The founding affidavit engages none of the three jurisdictional findings on which the award rests; on a jurisdictional ruling the test is correctness; procedural complaints about the conduct of the hearing do not answer a want of jurisdiction; and the finding on the union's authority, which is on its own sufficient to sustain the award, has not been challenged at all. In those circumstances it would not be in the interests of justice to reinstate the review.

Costs

[33] The first respondent seeks costs on scale B, and meets the obvious objection directly: it contends that the usual rule that a union and an employer in a continuing relationship each bear their own costs does not apply here, there being no relationship between these parties, the first respondent being party to a closed-shop agreement with another union and not recognising the applicant; it characterises both the referral and this application as vexatious; and it points to the death of a witness and to the age of the company and Sanlam records

⁶ [2023] ZALCJHB 269; (2024) 45 ILJ 180 (LC) (12 September 2023) at paras 20 and 31. The judgment says nothing about translation and nothing about the 60-day period.

that would have to be found if the matter went further. At the hearing Mr Stelzner left the question in the Court's hands.

- [34] Costs in this Court are governed by s 162 of the Labour Relations Act (LRA)⁷, which permits an order for costs 'according to the requirements of the law and fairness'. The rule of practice that costs follow the result does not apply. The norm, as the Labour Appeal Court put it in *Member of the Executive Council for Finance, KwaZulu-Natal v Dorkin NO*,⁸ is that costs orders are not made unless those requirements are met, and the Court must strike a fair balance between not unduly discouraging workers, employers and unions from approaching it and not allowing them to bring frivolous cases that should not be brought. The Constitutional Court in *Zungu v Premier of the Province of KwaZulu-Natal and Others*⁹ set aside costs orders made in this Court and in the Labour Appeal Court for no better reason than that the party had lost; the discretion must be exercised judicially, and reasons must be given.
- [35] Against an order stand the considerations that would ordinarily weigh with the Court, and the Court has given them weight: the applicant is a small union funded by member subscriptions; the record in this matter was never properly assembled, and not solely through the applicant's fault; the applicant's default in the period that mattered was one of days; and the elderly former employees behind the claim are not the ones who should pay for the way it has been conducted.
- [36] They are outweighed. First, the reason for the Court's customary restraint is absent. The practice of leaving a union and an employer to bear their own costs rests on the continuing relationship between them and the need not to sour it. There is no such relationship here. The first respondent does not recognise the applicant, it is party to a closed-shop agreement with another union, and the persons for whom the applicant acts left its employ years ago. Second, the applicant is not a novice litigant. It is a registered trade union; its general

⁷ Act 66 of 1995, as amended.

⁸ [2007] ZALAC 41; (2008) 29 ILJ 1707 (LAC) at para 19.

⁹ [2018] ZACC 1; (2018) 39 ILJ 523 (CC); [2018] 4 BLLR 323 (CC); 2018 (6) BCLR 686 (CC) (22 January 2018) at paras 23 to 26.

secretary, on the Commissioner's finding, which is not challenged, has appeared at the CCMA for many years; and it has pursued this dispute in one forum or another since 2021. Third, and decisively, the applicant persisted in the face of repeated and specific warning. It was told on 21 November 2025 that the review was deemed withdrawn; on 2 March 2026 that no sworn translation had been filed and that the first respondent would ask the Court to confirm the withdrawal; and in the first respondent's practice notes of 27 March and 10 April 2026 and its answering affidavit of 10 April 2026, in detail, why the review could not succeed. It filed no reply. It came to court with a founding affidavit that engaged none of the three jurisdictional findings on which the award rests, heads of argument that engaged one of them in two sentences, and a finding on its own authority to bring the claim that it did not challenge at all. A party that brings an application for an indulgence in that state, after those warnings, puts its opponent to the expense of a full opposed hearing for no purpose that its papers could serve. The conduct of a party in proceeding with a matter is a consideration that s 162 permits the Court to take into account, and it tells against the applicant here.

[37] The Court does not find that the application was vexatious in the sense of having been brought to harass; Mr Abdul's sincerity was evident. But sincerity is not a substitute for prospects, and fairness has a claim on both sides. The first respondent has been called on to answer the same claim before the CCMA in 2021 and again in 2025, before the ombud, and now twice in this Court, in its answering affidavit and at a full hearing, each time at its own expense. It is entitled to have the expense of this application met. The order is made against the applicant union, which brought the application and conducted it, and not against the individuals on whose behalf it purported to act. The first respondent asks for costs on scale B, and the Court sees no reason to depart from that.

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

Order

1. The application for the reinstatement of the review application under case number 2025-084497, deemed to have been withdrawn in terms of rule 37(15) of the Rules of this Court, is dismissed.
2. The applicant, the Labour Association Workers Union, is ordered to pay the first respondent's costs of the application on scale B, including the costs of counsel.



C de Kock

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: H Abdul

From: LAWU

For the First Respondent: RGL Stelzner SC

Instructed by: Murray Fourie & Le Roux Inc