



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 1212/2019

In the matter between:

NOMALUNGELO G. WOLF

Applicant

and

STATE INFORMATION TECHNOLOGY AGENCY

First Respondent

(SOC) LTD

WILLEM KOEKEMOER N.O

Second Respondent

THE COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

Third Respondent

Heard: 13 March 2025

Delivered: 13 March 2025

Reasons: 07 September 2026

REASONS FOR ORDER

MAHOMED, AJ

Introduction

[1] This matter came before the Court on 13 March 2025, being an opposed application for the re-enrolment of a review application brought by the applicant, N. Wolf (the applicant), against the first respondent, State Information Technology Agency SOC Ltd (SITA), in terms of section 145 of the Labour Relations Act¹ (the LRA). The review application had earlier been struck from the roll, and its re-enrolment made subject to certain conditions, by order of Orton AJ dated 17 January 2024.

[2] At the hearing, the following order was granted:

- ‘1. The application for re-enrolment is dismissed, with no order as to costs.
2. The respondent's opposition to the application for re-enrolment is likewise not awarded any costs.
3. Prior to the respondent's attorneys and counsel being entitled to levy a fee for their appearance at the hearing, they are directed to show cause to the Taxing Master, when preparing their bill of costs, why they are entitled to charge a fee for the work done in respect of the hearing.’

Brief Background of Facts and Procedural History

[3] The applicant was employed by SITA. She was dismissed following a disciplinary enquiry. Dissatisfied with her dismissal and following an unsuccessful arbitration before the Commission for Conciliation, Mediation and Arbitration (CCMA) the commissioner having issued an award on 3 February 2019 upholding her dismissal the applicant launched an application to review and set aside that award, raising, among other grounds, the inconsistency and severity of the sanction of dismissal.

¹Act 66 of 1995, as amended.

- [4] The review has had an unusually protracted procedural history. At the inception of the matter, a case management directive was issued regulating the indexing and pagination of the record. It appears that only some of the bundles now before this Court were before the Court at that stage.
- [5] The matter first came for case management before Van Niekerk J on 11 March 2022. Condonation was granted on that occasion for the late filing of the review application itself. The applicant was further directed, within 21 days of that order, to file the missing portions of the record of the arbitration proceedings being the record of the hearing days of 1 March 2018 and 8 June 2018 by no later than 4 April 2022.
- [6] It is common cause that this was not done. It is further common cause, as emerged for the first time during argument at this hearing, that no arbitration hearing in fact took place on 1 March 2018 a date which nonetheless features, apparently mistakenly, in the applicant's founding and other affidavits. What was in fact filed, on 27 October 2022, was the transcribed record (three volumes) of the hearing of 8 June 2018 itself some seven months out of time, and unaccompanied by any application for condonation.
- [7] I pause to note a further, unexplained discrepancy: the applicant's re-enrolment application avers, at paragraph 9, that the missing record of 1 March 2018 was served on the respondent on 20 September 2022 a date which cannot be reconciled either with the fact that no such hearing exists, or with the applicant's own filing sheet, which reflects service only on 27 October 2022.
- [8] The review application again fell to be case managed, this time by Orton AJ, whose order is dated 17 January 2024. Orton AJ found that the papers were not in order and struck the review application from the roll, directing the applicant to bring an application for re-enrolment within 15 days of the date of that order that is, on or about 4 or 5 February 2024.
- [9] It is common cause that the application for re-enrolment was only served and filed on 12 February 2024, some seven days later. No application for

condonation for this further delay was included in the founding papers. A condonation application was raised for the first time in reply a course which, on well-established authority, is impermissible; an applicant must make out its case, including any case for condonation, in its founding affidavit.

- [10] For completeness, and because it formed part of the argument before me, I record that the bundle now before the Court comprises ten lever arch files, including two files described as “Index 1” and “Index 2”, and a further seven files of transcribed arbitration record correlating to hearing dates in August 2018 and January 2019, together with two further files duplicating certain of those dates. I have, in preparing this matter for hearing on the opposed motion roll, gone through this material well in excess of a thousand pages in its entirety. Much of it has limited bearing on the re-enrolment application, and does not obviously assist the review.

Re-enrolment

- [11] The question for determination was whether the applicant had shown actual, effective and substantial compliance with the orders of Van Niekerk J and Orton AJ, alternatively whether condonation ought to be granted for any non-compliance.
- [12] As to compliance with Van Niekerk A's order: no record of a hearing on 1 March 2018 exists, and none could therefore have been filed in compliance with that order; the applicant's own papers are simply incorrect on this score. The record of the hearing of 8 June 2018 was filed, but only in October 2022, some seven months late, and without any application for condonation, then or since the supplementary affidavit filed in September 2022 dealing only with the delay in obtaining that portion of the record and saying nothing of the 1 March 2018 date.
- [13] As to compliance with Orton AJ's order: the founding affidavit in the re-enrolment application contains no application for condonation for its own late filing. Even taking into account the belated attempt to explain the delay in reply, that explanation cannot cure the fundamental defect that a case —

including a case for condonation must be made out in the founding papers, not introduced for the first time once the applicant has seen the respondent's answer.

[14] Even if that were overlooked, I am not satisfied that the applicant demonstrated effective compliance with either order. Effective compliance requires proof annexed to the founding papers of what was in fact done. The applicant annexed only an email referring to three unspecified attachments, without identifying what those attachments were, still less annexing them, or even photographs of them, as proof of service. That falls well short of what is required.

[15] I have, in any event, had regard to the prospects of success on review, notwithstanding that counsel for the applicant did not, in argument, specifically address this requirement. It is nonetheless a matter this Court must consider on an application of this kind, and one which was in any event canvassed in the papers. I record, too, that the respondent did not assist the Court in this task: its answering papers were shoddy, untidy and, in material respects, unclear, and failed to engage with points that plainly required an answer. I have had regard to the papers, to the policies relied upon by the applicant, and to what was before the commissioner at the time the award was made on 3 February 2019, insofar as this bears on the applicant's principal contention that the sanction of dismissal was inconsistent and disproportionately severe. Having considered those prospects, they do not, in my view, outweigh the applicant's repeated and largely unexplained non-compliance with the rules, with the authorities on condonation, and with the orders of both Van Niekerk J and Orton AJ.

[16] For these reasons, the application for re-enrolment falls to be dismissed.

Costs

[17] As to the costs of the application for re-enrolment itself, I have had regard to the applicant's personal circumstances she has, on the uncontested evidence, been unemployed since her dismissal, has experienced significant ill-health,

and has faced considerable personal hardship in pursuing this matter and do not consider it in the interests of justice or fairness to burden her further with a costs order. No order is made as to those costs.

[18] As to the costs of the respondent's opposition to the re-enrolment application, I likewise decline to make any order in the respondent's favour. The respondent was, on its own representative's submission, not prepared for the hearing particularly in respect of the review, had the re-enrolment application succeeded and its own papers in opposing re-enrolment were, as I have noted, shoddy, untidy and unclear. In these circumstances it would not be appropriate to award it costs merely because the application before me has failed.

[19] Finally, and because of the manner in which the matter was prepared and presented on behalf of the respondent, I direct that, prior to the respondent's attorneys and counsel being entitled to levy any fee for their appearance at this hearing, they must show cause to the Taxing Master, when their bill of costs comes to be prepared, why they are entitled to charge a fee for the work done in respect of this hearing.

[20] It is for these reasons that the order set out above was granted.

N. Mahomed

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv TZ Muza

Instructed by: Mabapa Attorneys

For the Respondent: Adv T Mabuza

Instructed by: Mampuele Attorneys

LABOUR COURT