



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

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR180/23

In the matter between:

ANUSHA MANGARU

Applicant

And

TRANSNET NATIONAL PORTS AUTHORITY

First Respondent

TRANSNET BARGAINING COUNCIL

Second Respondent

ROHINI DEVY PADEYACHEE N.O.

Third Respondent

Heard: 1 October 2025

Delivered: 7 September 2026 (This judgment was handed down electronically by email to the parties. The 7th September 2026 is deemed the date of delivery of this judgment)

VARIATION JUDGMENT

SWIEGERS, AJ

Introduction

[1] The matter before the Court is an opposed motion in terms of Rule 7A, which

is the old Rules as they applied prior to 3 May 2024. Any references to the Rules of this Court in this judgment must be understood to be the Rules as they applied prior to their replacement on 3 May 2024.

- [2] The applicant seeks an Order whereby the arbitration award of the third respondent dated 31 July 2022 under case number TMBC22-22 is set aside with costs. The Applicant in the arbitration proceedings sought reinstatement with retrospective effect.
- [3] The first respondent opposes the review application and has also raised the issue that the applicant's review application was filed late and opposes the applicant's condonation application.

Background

- [4] The applicant seeks to review the arbitration award handed down by the third respondent on 31 July 2022, which found the applicant's dismissal to be substantively fair but procedurally unfair and awarded the applicant compensation in the amount of R25 675.15 and that such payment be made by the first respondent within 14 days from the date of the award. The applicant has taken the arbitration award on review without specifying whether the whole or a part of the arbitration award is subject to the review application.
- [5] The current review application was launched on 8 February 2023 seeking the setting aside of the arbitration award by the third respondent dated 31 July 2022. The applicant, simultaneously with the review application, also filed a condonation application for the late referral of the review application on 8 February 2023.
- [6] The first respondent filed its notice of intention to oppose the review application on 23 February 2022.
- [7] The Registrar of this Court issued the Rule 7A(5) Notice on 16 February 2022, requiring the second respondent to deliver the records to the Court and calling on the applicant to collect the record within 7 days from the date of the Notice.
- [8] The first respondent filed its opposing affidavit to the review application and

the condonation application on 20 September 2022.

- [9] The applicant filed the Rule 7A(6) Notice on 31 October 2023 where the records of the arbitration process that served before the third respondent were filed with the Registrar of this Court.
- [10] The applicant further filed a notice of intention to amend in terms of Rule 28 of the Uniform Rules on 28 March 2023. The first respondent objected to the notice of intention to amend on 3 April 2023.
- [11] The first respondent further filed a second answering affidavit on 24 July 2024 dealing with condonation.
- [12] On 22 August 2022, the applicant filed an application for reinstatement of the review application. The applicant, however, fails to seek reinstatement as a prayer and only seeks condonation for late filing.
- [13] Prior to any evaluation of the merits of the review application, it is appropriate to first deal with the application for condonation for the late referral of the applicant's review application.

Application for Condonation and Reinstatement

- [14] The applicant seeks condonation for the late referral of the review application, which the first respondent opposes. It is trite that Section 145(1)(a) of the Labour Relations Act 66 of 1995 ("the LRA") requires an applicant to launch review proceedings within 6 weeks from the date on which the applicant was served. The applicant does not state that she received the arbitration award after the date it was handed down on 31 July 2022. The applicant further does not deal with the reinstatement issue in what is purportedly an application for reinstatement at a time when the record was not filed within the 60 days and was not filed at the time of the reinstatement application being filed.
- [15] I deal with the condonation application for the late referral of the review application insofar as it relates to good cause for any prospects for reinstatement to be considered.

- [16] The current review application was only launched on 8 February 2022. While the applicant, in her condonation application, stated that the review application was 37 days late at the time it was launched, the calculation is patently incorrect. The 6-week period expired on 12 September 2022, and the period between the latter date and 8 February 2022 is 159 days. The calculation of the 6 weeks has been held to be the ‘civil’ method, with the first day included and the last day excluded, as held in *SA Transport & Allied Workers Union & another v Tokiso Dispute Settlement & others*.¹
- [17] In dealing with the question of condonation for the late filing of the review application as well as the late filing of the answering affidavit to the condonation application, it is apposite to mention that the condonation requirements are different to the two situations. Condonation for the late filing of the answering affidavit to the condonation application is dealt with in terms of Rule 12. However, condonation for the late referral of the review application itself is not dealt with in terms of the Rules of this Court but through Section 145(1A) of the LRA, which requires that good cause be shown for the late filing of a review application.
- [18] The test to allow condonation for late filing of a review application are strictly applied by this Court as held in *Makuse v Commission for Conciliation, Mediation and Arbitration and others*,² citing *Queenstown Fuel Distributors CC v Labuschagne NO & others*,³ “It follows from this that condonation for delays in all labour law litigation [is] not simply there for the taking. But this is particularly so when it comes to delays in the launching of section 145 review applications, especially in the context of individual dismissals. Here the courts have made it clear that applications for condonation will be subject to “strict scrutiny”, and that the principles of condonation should be applied on a “much stricter” basis.”
- [19] The Court accepts that review applications are often brought by the employer

¹ *South African Transport and Allied Workers Union (SATAWU) and Another v Tokiso Dispute Settlement and Others* [2015] ZALAC 12; [2015] 8 BLLR 818 (LAC); (2015) 36 ILJ 1841 (LAC) at para 17.

² *Makuse v Commission for Conciliation, Mediation and Arbitration and Others* [2015] ZALCJHB 265; [2015] 12 BLLR 1216 (LC); (2016) 37 ILJ 163 (LC) at para 5.

³ *Queenstown Fuel Distributors CC v J Labuschagne and others* [1999] ZALAC 24; [2000] 1 BLLR 45 (LAC); (2000) 21 ILJ 166 (LAC) at paras 24 – 25.

party. However, procedural fairness must apply to both an employer and an employee party. The Court also takes notice that the applicant was, since the filing of the review application, represented by legal practitioners. While the Court does assist an unrepresented layperson, that is not the situation *in casu*.

- [20] It is trite that Section 145(2) requires good cause to be shown, and the principle is well established in *Grootboom v National Prosecuting Authority and Another*,⁴ the Constitutional Court stated as follows: “[t]he interests of justice must be determined with reference to all relevant factors. However, some of the factors may justifiably be left out of consideration in certain circumstances. For example, where the delay is unacceptably excessive, and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of reasonable prospects of success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party. As a general proposition, the various factors are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice.”
- [21] The test, as confirmed in *Aspen Holdings Pty Ltd and Another v Phelane and Another*,⁵ is that (a) the applicant provides a satisfactory explanation for the delay and (b) shows the prospect of success in the main case. The applicant bears the burden of showing good cause. If an applicant resorts to a mere allegation of good cause, such allegation will not be deemed sufficient to assist this Court in exercising its discretion whether to grant condonation or not. In other words, as stated in *Standard General Insurance Co Ltd v Eversafe (Pty) Ltd and Others*,⁶ the applicant must “at least, furnish an explanation of his default sufficiently full to enable the court to understand how

⁴ *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) at para 51.

⁵ *Aspen Holdings Pty Ltd and Another v Phelane and Another* [2025] ZALAC 4; [2025] 4 BLLR 409 (LAC) at para 14.

⁶ *Standard General Insurance Co Ltd v Eversafe (Pty) Ltd and Others* 2000 (3) SA 87 (W).

it really came about and to assess his conduct and motives... Where there has been a long delay, the court should require the party in default to satisfy the court that the relief sought should be granted."

- [22] The applicant is obligated to provide a full explanation for the delay, as a lack of explanation would be fatal to a condonation application, regardless of the prospects of success, as held in *Hillside Aluminium*.⁷
- [23] The Labour Appeal Court in *Aspen Holdings Pty Ltd and Another v Phelane and Another supra* held that "...the applicant must also show that prospects of success exist in the main claim. The applicant has to satisfy the requirements of good cause by making out the case in the founding affidavit supporting the condonation application."⁸
- [24] The applicant has not reached the high watermark established by the jurisprudence that regulates the granting of condonation in terms of Section 145(1A) of the LRA. The applicant's estimation of the degree of lateness is incorrect, and there is no indication of how the applicant calculated that the review application was only 37 days late. The review application was brought before the new Rules became operational, and *dies non* did not apply at the time that the review application was filed. In any event, the "festive season" that colloquially refers to the December months was some 5 months from 31 July 2022 when the arbitration award was handed down. There are no detailed or satisfactory explanations tendered by the applicant to account for the period of delay.
- [25] The applicant's application for condonation also falls short of the express requirement stated in *Van Wyk v Unitas Hospital and Another*,⁹ where the Constitutional Court held that: "*An applicant for condonation must give a full explanation for the delay. In addition, the explanation must cover the entire period of delay, and, what is more, the explanation given must be reasonable.*"

⁷ *National Union of Mineworkers of South Africa and Another v Hillside Aluminium* [2005] ZALC 25; [2005] 6 BLLR 601 (LC).

⁸ *Aspen supra* f(n) 5 at para 15.

⁹ *Van Wyk v Unitas Hospital and Another* [2007] ZACC 24; 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC) at para 22.

- [26] The applicant's application for condonation contains bald and very scant grounds for condonation. The reason for lateness submitted by the applicant is limited to a single short paragraph in which she states that it was the festive season and that she was suffering from depression and could not make a rational decision. The attached letter from her doctor, Dr Laurél King dated 24 January 2023, was not supported by any affidavit. The letter further does not describe any depression on the part of the applicant but rather anxiety. The letter further does not contain any diagnosis that the applicant was not able to tend to her affairs due to anxiety, and the applicant makes no further submissions in this regard. The applicant further does not state any reason why she was able to depose to the founding affidavit for the review application and the condonation application on 1 February 2022 and no time prior thereto, as the letter of Dr King is silent on this point.
- [27] The applicant also sparsely deals with her prospects of success in a single paragraph in her founding affidavit for condonation, stating that she has good prospects for success considering her mental state when she was dismissed, and the third respondent erred in her finding that the first respondent violated their policies and was less guilty of the violation by awarding compensation.
- [28] It must be pointed out that the matter is riddled with procedural irregularities that do not assist the Court in dealing with the dispute. The first respondent's answering affidavit to the condonation is also late, and the reason for lateness is blamed on the applicant for filing a notice of intention to amend on 28 March 2022 in terms of Rule 28 of the Uniform Rules. The first respondent objected thereto and "waited" to see what the applicant would do before the first respondent would serve the answering affidavit.
- [29] The applicant and the first respondent are both represented by legal practitioners in these proceedings and greater care should be taken when dealing with matters by the legal practitioners entrusted by clients. Legal practitioners must make every effort to properly conduct proceedings within the prescriptive ambit of the Rules of this Court. Failure to do so is a disservice to their clients and frustrates the process when the Court is called upon to untangle multiple procedural defects simultaneously.

- [30] This Court, in terms of the Rules, is not obligated to observe the Uniform Rules, as such Rules only relate to the conduct of proceedings in the High Court. Rule 11(3) allows the Court to adopt any procedure it deems necessary where the Labour Court Rules are insufficient, such discretion of the Court was confirmed in *Liquid Telecommunication (Pty) Ltd v Carmichael-Brown*¹⁰ where van Niekerk J (as he then was) held: “*What I wish to emphasise is that this limited application of Rule 11 is not the gateway to the wholesale importation and application of the Uniform Rules, and thereby the creation of a parallel system of procedure in this court. In the present instance, for example, the thrust of the excipient’s complaints is that the respondent has failed to comply with the provisions of Uniform Rule 18, which regulates generally pleadings in the High Court.*”
- [31] Having to decide whether or not the Court must use its discretion regarding the amendment and appropriateness of invoking Rule 28 of the Uniform Rules seems to have become moot in any event as the applicant took no steps subsequent to the first respondent’s objection. The application for amendment in any event does not address the applicant’s non-adherence to file the record within 60 days from the date of the Rule 7A(5) Notice.
- [32] The requirements that the applicant needs to meet for condonation to be granted do not depend on whether or not such application is opposed. While the first respondent seeks condonation for the late filing of the answering affidavit, the same will only become relevant if the applicant establishes a reasonable explanation for the delay in filing the review application and further properly deals with the prospects of success. The applicant has failed to provide a reasonable explanation for the delay and the degree of lateness which would satisfy the established principles that govern condonation applications.
- [33] In *Grootboom*,¹¹ it was also held that: “*In this court the test for determining whether condonation should be granted or refused is the interests of justice. If it is in the interests of justice that condonation be granted, it will be granted. If*

¹⁰ *Liquid Telecommunication (Pty) Ltd v Carmichael-Brown* [2018] ZALCJHB 153; [2018] 8 BLLR 804 (LC); (2018) 39 ILJ 1779 (LC) at para 14.

¹¹ *Grootboom supra* f(n) 4 at para 50.

it is not in the interests of justice to do so, it will not be granted. The factors that are taken into account in that enquiry include:

- (a) the length of the delay;*
- (b) the explanation for, or cause for, the delay;*
- (c) the prospects of success for the party seeking condonation;*
- (d) the importance of the issue(s) that the matter raises;*
- (e) the prejudice to the other party or parties; and*
- (f) the effect of the delay on the administration of justice.”*

[34] Due to the applicant’s poor explanation for the delay in filing her review application, it is unnecessary to consider the condonation for the late filing of the first respondent’s answering affidavit opposing condonation.

[35] In the unreported judgment of *Lunguza and Others v Commission for Conciliation, Mediation and Arbitration and Others*,¹² it was held that: “As mentioned, the founding papers are far from comprehensive. The delay is not minor or trivial. Despite this, as explained in paragraph 11 above, the explanation is so vague that, in my view, it amounts to no explanation at all. It was further held that “*The applicants are required to show that they have reasonable prospects of success in reviewing the condonation ruling of the second respondent. Instead, as reflected in paragraph 12, the applicants do not explain why the ruling was not made judicially, was biased, was influenced by wrong principles, capricious, or was materially influenced by a misdirection to such a degree to justify the conclusion that the decisionmaker acted improperly or unreasonably. [23] In the final analysis, on the papers, the period of the delay is not minor, the explanation is so vague as to be non-existent, and the prospects of success are non-existent. There is no need to consider further factors, which are barely addressed by the applicants in any event.*”

[36] The applicant does not deal in any meaningful manner with the multiple charges against her for which she has been found guilty. The charges ranged

¹² *Lunguza and Others v Commission for Conciliation, Mediation and Arbitration and Others* [2025] ZALCJHB 454 at paras 20 – 21.

from insubordination, dishonesty and absenteeism. The applicant does not deal with the various charges that she was found guilty of in an extensive arbitration award and relies solely on a medical condition which does not accord with the letter attached by her doctor. There is no detailed challenge to the arbitration award, which does not assist the application regarding her prospects of success.

- [37] The condonation application's lack of any details regarding the explanation for lateness and prospects of success amounts to such explanations being non-existent, which negatively impacts the good cause to be considered in the reinstatement application.
- [38] The applicant launched an application for reinstatement and condonation on 22 August 2022 following the first respondent requesting the archiving on 7 August 2022 in terms of paragraph 11.2.2 and 11.2.3 of the Practice Manual. The applicant does not address the reinstatement aspect at all, and a generalised condonation application is before the Court. The applicant has failed to provide any explanation why the records were only filed some months after the 60-day period had expired.
- [39] The applicant's application for reinstatement predates the actual filing of the record, which only took place on or about 31 October 2023, while the reinstatement application was filed on 22 August 2022. The applicant did not seek an extension of time periods, and by the time the reinstatement application was filed, the period of 60 days to file the record had already lapsed.
- [40] The applicant has not shown any good prospects of success or satisfactory reasons why a reinstatement of the review application should be granted. The applicant has failed to show good cause for the late filing of the review application, which nullifies any good cause prospects in the reinstatement application.
- [41] In *Tradex (Pty) Ltd t/a Global Trade Solution v Finch*¹³ in which the Labour Appeal Court held that a case that is archived "...acquires a peculiar status

¹³ *E Tradex (PTY) Ltd t/a Global Trade Solution v Finch and Others* [2022] ZALAC 106; (2022) 43 ILJ 2727 (LAC).

which requires the delinquent party to justify why it should be reinstated and thereafter be entertained by a court in the wake of a lack of expeditious prosecution.”

- [42] The archiving is not automatic and must be done by the Registrar of the Court. The question of automatic archiving has been the subject of many judgments of this Court, and clarity was given in *Gololo v Limpopo Department Economic Development Environment and Tourism and Others*¹⁴ where prior notice is required in certain instances. The Labour Appeal Court held that automatic archiving occurs in terms of paragraph 11.2.7 of the Practice Manual regarding automatic archiving in review applications where all documents are not filed within 12 months from the filing of the review application. The Court held that archiving in terms of paragraph 16.1 requires the Registrar to archive the file with notice to parties. The Labour Appeal Court does not deal with whether or not paragraph 11.2.3 of the Practice Manual, which states that the review application will be deemed withdrawn if the record is not filed within 60 days from the date of Rule 7A(5) Notice.
- [43] In *Sidas Security v Commission for Conciliation, Mediation and Arbitration and Others*,¹⁵ the Court explained the position as follows: *“The deemed withdrawal of a review application in terms of paragraph 11.2.3 of the Practice Manual is automatic and occurs ipso jure (by operation of law) and no pronouncement to this effect is necessary although it may be convenient or even good practice for the Registrar to notify the parties of this event.”* It further held that *“by way of further amplification, if a review application is deemed to have been withdrawn then there are no proceedings pending before the Court or, expressed differently, there is no longer a lis before it. Absent an application for the reinstatement of the review application, the Court would have no jurisdiction to entertain the review application and what is more any steps taken by the parties in respect of a review application which is deemed to have been withdrawn will have no legal significance because the parties would effectively be litigating, as it were, in a vacuum.”*

¹⁴ *Gololo v Limpopo Department Economic Development Environment and Tourism and Others* [2025] ZALAC 30; (2025) 46 ILJ 1895 (LAC); [2025] 9 BLLR 925 (LAC).

¹⁵ *Sidas Security v Commission for Conciliation, Mediation and Arbitration and Others* [2021] ZALCPE 10; (2022) 43 ILJ 934 (LC).

- [44] The above is the crux of the situation that the applicant finds herself in. The reinstatement application precedes the filing of the record. At the time the record was filed, the review application was already deemed withdrawn in terms of paragraph 11.2.3 of the Practice Manual. The Court, in terms of the established principles, does not accept that the record was filed on 31 October 2023, as the review application was already deemed withdrawn, as no further steps, save for an application for reinstatement, were permissible. The applicant, as stated, failed to address the same after the record was “filed” on 31 October 2023. The applicant created the proverbial chicken and the egg problem by bringing the reinstatement application at a point in time prior to the record being filed. The archiving is as a direct result of the failure to file the record within the 60 days, and there is no application for extension of time periods or agreement between the parties prior to the 60-day period expiring.
- [45] Paragraph 11.2.3 clearly sets out what the applicant should have done in order to seek an extension of time with the Judge President, absent consent by the first respondent. The applicant failed to do so.
- [46] The portion of this judgment that deals with the condonation application for late filing of the review application was done in order to review as a whole the reinstatement application and the explanation of the delay and the prospects of success to properly evaluate the reinstatement application. There is no indication that reinstatement would be just and equitable with regard to the late filing of the review application and lack of prospects of success. The applicant has failed to avail herself of the clear course of action that paragraph 11.2.3 of the Practice Manual regarding extension of time for filing of the record.

Costs

- [47] With the question of costs, the Court has wide discretion. In the current matter, the Court weighs the interests of justice. While the applicant’s application was fraught with procedural irregularities, the Court cannot find that the applicant acted vexatiously or with *mala fides*. It will not be in the

interest of justice to mulct the application for costs.

[48] The following order is therefore made:

Order

1. The applicant's application for reinstatement of the review application is dismissed.
2. There is no order as to costs.

S Swiegers

Acting Judge of the Labour Court of South Africa

APPEARANCE:

For the Applicant:

L. Matoko, Instructed by Munyaitshilidzi Attorneys.

For the First Respondent:

Adv M. L. Mosa, Instructed by M B Mabunda Inc.

LABOUR COURT