



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

Signature

Date

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, DURBAN

Case No. A2025-095833

Not Reportable

In the matter between:

NHLANHLA MACDONALD NDABA

Appellant

And

**SOUTH AFRICAN SOCIAL SECURITY
AGENCY**

First Respondent

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Second Respondent

YANDA NGWANE N.O.

Third Respondent

Date of Hearing 24 February 2026

Delivered: 10 September 2026

Coram: Tokota AJA, Moshwana AJA et Collis AJA

This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Labour Appeal Court website, and released to SAFLII. The date and time for hand-down is deemed to be at **10h00 on 10 September 2026.**

JUDGMENT

TOKOTA AJA

Introduction:

[1] The appellant was employed by South African Social Security Services (the respondent) as a Senior Grants Administrator effective from 1 June 2006. On 11 November 2020 he was dismissed for misconduct. His appeal to the Appeals Committee was unsuccessful. He referred a dispute of unfair dismissal to the Commission for Conciliation, Mediation and Arbitration (the CCMA) where he applied that the dismissal be declared both substantively and procedurally unfair. The third respondent (the Commissioner) found that the dismissal was both substantively and procedurally fair and dismissed the application. The appellant approached the Labour Court seeking an order reviewing and setting aside the arbitration award. The application was dismissed with no order as to costs. With leave of the Labour Court, the appellant is appealing against that order.

Factual Matrix:

- [2] The appellant was employed by the respondent on 1 June 2006. During 2019 he was stationed at the respondent's branch at Vulindlela Local Office in Pietermaritzburg, KwaZulu Natal. On 6 August 2019 Ms Mchunu visited the respondent's office to apply for a social grant of her grandson. She was attended by the appellant. The appellant processed Ms Mchunu's grant application on the system, and the application was declined for the reason, inter alia, that Ms Mchunu's son (the father of the grandson) was still alive and resided with the grandson.
- [3] Ms Mchunu was not happy with the outcome of her application. On 07 August 2019, she, accompanied by her niece Ms. Sithole, went back to the respondent's offices to complain about the manner in which she was dealt with by the appellant. On their arrival at the offices they were directed to the appellant's manager's office, Mr. Mdimba.
- [4] Mr Mdimba called the appellant to his office to discuss or enquire about Ms Mchunu's complaint. When the appellant was in Mr Mdimba's office, he refused to explain what had happened on 06 August 2019 and stated that he had dealt with Ms Mchunu the previous day. The appellant requested Mr Mdimba to tell the ladies to wait outside because he wanted to explain his side of the story in their absence. Mr Mdimba did not accede to the request and insisted that the appellant should state his version in their presence. The appellant repeated that he had finished things with them the previous day. Mr Mdimba implored upon him to listen to what Ms Mchunu had to say so that he could respond thereto. The appellant refused to listen and accused Mr Mdimba of not respecting him whereas he 'is also a man in his own household'.

- [5] The evidence which was accepted by the Commissioner was that as the appellant was not prepared to talk in the presence of the complainant, Mr Mdimba requested the ladies to leave the office to allow the two of them to have a word in private. He then got up, walked past appellant who was sitting down and went to open the door for them. As he held the door open and they approached, appellant shot up from his seat proceeded to the doorway. According to the ladies' evidence they just saw appellant suddenly appear and proceed to hit the manager. One of them went in between the two men to prevent the manager from hitting the appellant back.
- [6] The version of the witnesses slightly differs with regard to the alleged assault by the appellant. What is clear however, is that an altercation occurred between the appellant and Mr Mdimba which led to the belief by Mr Mdimba that he was being assaulted. The appellant denies that he assaulted Mr Mdimba but admits that there was a 'wrestling with the door' between them. I will deal with this later in the judgment.
- [7] Mr Mdimba confirmed that as the ladies were approaching the door, he saw the appellant appear near him. The appellant pushed, hit him in the chest and exited the office. He was surprised by the appellant's actions. After regaining his senses, he proceeded to the appellant's office and asked him to return to his office so that they could discuss the matter. The appellant told him that the premises were not his (Mr. Mdimba's) house so he would not be taking instructions from him. The appellant refused to return to Mr Mdimba's office as requested.
- [8] Soon after the incident Mr Mdimba and the ladies went to the nearest police station to lay charges of assault on Mr Mdimba. The police took statements from them, and these were used in the arbitration proceedings.

- [9] The appellant's account of events to a large extent is consistent with the respondent's witnesses' version. He testified that Mr Mdimma occupied the salary level 12 Office Manager position. On 6 August 2019 he assisted Ms. Mchunu with her application for a social grant for her grandson. He perused Ms. Mchunu's file, asked her some questions. He advised her that her son needed to come to their offices the following day. After processing the application, it was declined and a letter came out from the system. The letter being in English he explained the contents thereof in Zulu to Mrs. Mchunu and made her affix her thumbprint as acknowledgment of receipt of the explanation given in Zulu. He noticed that Ms. Mchunu was not happy after receiving the letter, so he told her to return with her son for another application to be done.
- [10] He testified further that on the following day he was called by Mr Mdimma to his office. In the office there were two ladies seated at his table, and he took a seat next to Mr. Mdimma. After Mr. Mdimma's introduction of the ladies he told Mr. Mdimma that he knew Ms. Mchunu and had dealt with her the preceding day and told her to return that day with her son. The second lady was introduced as Ms. Sithole, Ms Mchunu's niece. He suggested to Mr. Mdimma that the ladies be excused so that he could explain the events of the previous day without their audience. Mr. Mdimma refused and insisted that he should do so in their presence.
- [11] The appellant testified that he repeatedly requested Mr. Mdimma to respect him and excuse the ladies as he could not deal with the matter in the presence of outsiders. But his pleas fell on deaf ears. He stated that his request was based on the Basic Conditions of Employment Act provisions requiring that procedurally, employees be treated with respect. He wanted Mr. Mdimma to call

them back inside after hearing his side of the story first. Since he did not want to cause a commotion he walked towards the door, but Mr. Mdimma rushed and blocked it. They wrestled with the door. Whilst he pulled the door to open it Mr. Mdimma pushed. As he was pulling the door, he pulled Mr. Mdimma but did not have physical contact with, push, grab or hit him. He pulled the door handle, and Mr. Mdimma was pulled with the door.

[12] After the door was opened, he walked out and returned to his workstation. As he sat at the workstation Mr. Mdimma came and asked him to go to his office to talk. He testified that at the backdrop of all the pushing and pulling of the door, Mr. Mdimma's request sounded impossible, in fact he could not believe it. He was shocked. That morning he left work to take his daughter to a doctor after receiving a call from her school. He refused to go back to Mr Mdimma's office. On 23 August 2019 he was suspended from work. On 14 October 2019 he was served with a notice to attend disciplinary hearing. He was charged with six counts of misconduct. These were subsequently withdrawn.

[13] On 09 June 2020 the appellant was served with a new notice to attend a disciplinary enquiry. In this new notice, the following charges were preferred against him. It was alleged that on or about the 7th of August 2019 and at or near Vulindlela Local Office he displayed an act of insubordination it being alleged that he assaulted Mr Mdimma with an intention to cause him bodily harm by grabbing him by his clothes and hitting him with a fist (Charge 1).

Further it was alleged that on or about the same date and at the same place he contravened the Code of Conduct and Ethics together with the culture of diligence in that he assaulted Mr Mdimma with an intention to cause him bodily harm by grabbing him by his clothes and hitting him with a fist (Charge 2).

On charge 3 it was alleged that on or about the same date and at the same place he brought the name of SASSA into disrepute by assaulting a SASSA official, Mr Mdimba with an intention to cause him bodily harm by grabbing him by his clothes and hitting him with a fist.

[14] The appellant attended the disciplinary enquiry and pleaded not guilty to all three allegations levelled against him. At the end of the disciplinary enquiry, he was found guilty on charges 1 and 2. He was then dismissed on 11 November 2020.

[15] After an unsuccessful appeal to the Appeals Committee within the department, on 30 August 2021, the appellant referred a dispute of unfair dismissal to the CCMA. The dispute was set down for a conciliation hearing which remained unresolved and a Certificate of Outcome reflecting same was issued on 22 September 2021. The conciliation having failed, the dispute was referred to arbitration. At the arbitration the Commissioner found that the appellant's dismissal was substantively fair. The Arbitration award was rendered on 16 October 2022.

[16] On 11 November 2022, the appellant launched review proceedings wherein he sought to review and set aside the arbitration award. The Labour Court dismissed the application with no order as to costs but granted leave to appeal to this Court.

Condonation for the late filing of respondent's answering affidavit:

[17] Before dealing with the merits it is appropriate to start with condonation. The respondent delayed the delivery of the answering affidavit by two and half months. The deponent to the answering affidavit made a terse explanation for

the delay. He stated that he was the only official with a delegation to depose to litigation papers in Vulindlela local office. He was not involved in the whole process and had to rely on other officials and documents in order to file an answering affidavit. He stated that he made enquiries from the State Attorneys' office and was advised that the issue of the delay happened inadvertently due to unavailability of the attorney of record who had taken maternity leave from the end of February 2023 and only returned during the first week of July 2023.

- [18] On 02 June 2023, respondent's advocate consulted with the Senior Manager: Legal Services, Ms Z. Maqina and the Manager: Labour Relations, Ms N. Mkhize, which consultation he could not attend due to competing priorities. In order to be able to depose to an answering affidavit he had to peruse all records pertaining to the matter including volumes of the record of the arbitration.

Condonation argument

- [19] It was submitted on behalf of the appellant that only two factors were considered by the Court a quo in determining the respondent's condonation application, viz. prejudice and the interests of justice. It was contended that this amounted to a piecemeal approach, which the Courts have held, is incompatible with the exercise of a true discretion. Accordingly, so the argument went, having failed to take all the relevant factors into account, the Court a quo could not have correctly ascertained what the interests of justice required in this particular instance are. It was contended further that it is glaring from the respondent's condonation application that the respondent did not give a reasonable explanation for the delay and that it failed to give a full explanation for the entire period of delay as required by the law. It was

contended that the Court a quo failed to exercise judicial discretion judiciously when it granted condonation.

Argument on merits:

[20] Whilst I am dealing with the argument advanced by the appellant I deem it expedient to deal with it on the merits as well. On the merits, it was contended that the Court a quo failed to have regard to the sworn statements of the respondent's witnesses. Counsel for the appellant submitted that the gravamen of the appellant's argument was predicated on, inter alia, the assertion that there were two mutually destructive versions placed before the Commissioner. The contention was that there were no independent witnesses called by the respondent to support its defence. Further, so it was contended, in order to determine the appellant's guilt on a balance of probabilities, the Commissioner had to consider the complete body of evidence that was placed before her, including the sworn statements, which she failed to consider.

[21] Counsel contended that the Commissioner was enjoined to make credibility findings by taking into account, inter alia, the factors identified by the Court in the *Stellenbosch Farmers' Winery* judgment. He contended that the material question which was raised by the appellant but was ignored by the Commissioner and the Court *a quo*, is why the appellant would jump up and assault Mr Mdimma when Mr Mdimma was finally acceding to his request. Let alone that the appellant let Mr Mdimma pass by him only to attack him whilst he was opening the door seconds later.

[22] The Court a quo, so the argument went, did not take into account the sworn statements of the respondent's witnesses and the material contradictions arising therefrom. It was contended that the Court a quo was quick to find that

Ms Mchunu and Mr Mdimma had no reason to lie and falsely implicate the appellant.

- [23] Counsel contended that the Court a quo erred in finding that Mr Mdimma spoke with candour in that his evidence was at variance with the evidence that was placed before the Court. From the transcribed record it is clear, so it was argued, that Mr Mdimma denied the appellant's version that after Mr Mdimma told him why he was called, the appellant refused to listen to the clients' side of the story or to address the complaint in front of the clients and asked Mr Mdimma to send the clients outside. The appellant contended that this evidence is important in that his repeated request was what ultimately led to Ms Mchunu and Sithole being excused by Mr Mdimma.

The Commissioner's findings:

- [24] The Commissioner held that as much as there were contradictions in the respondent's testimony as regards the area in which Mr. Mdimma was allegedly hit, the affected body part is not one of the elements of assault in our law which defines assault as the unlawful and intentional application of force to a person. The testimony of the respondent revealed that whilst the appellant sat Mr. Mdimma stood up to open the door for the ladies to exit. The appellant quickly stood up and hit Mr. Mdimma with his hands. Whether with one hand or two, and whether he first grabbed him or pushed him is immaterial, the evidence reveals that force was applied to the person of Mr. Mdimma.

- [25] In her evaluation of evidence the Commissioner found that the respondent's witnesses were amenable to concessions where they may have observed differently but the same could not be said of the appellant who was not prepared to make concessions. The Commissioner found that the appellant

kept changing his version as he went along and failed to admit facts that were evinced by his own evidence.

[26] The Commissioner held that 'In his statement to the police, he said he "pushed him", but before me he insisted that he was referring to the door, which Mr. Mdimba was pushed by as he pushed it. In the disciplinary hearing he stated that he pushed with "minimal force", and before me he explained that that referred to the amount of force which it took to get the door open with Mr. Mdimba blocking it. With his mouth he said the action did not require much effort or force but on the same breath labelled it 'wrestling with the door' which was so shocking he couldn't return to Mr. Mdimba's office when asked to. His body and hand demonstrations also painted a picture of a physically demanding exercise of pushing and pulling. Even to a blind person with nowzies benefit of the sight of Mr. Ndaba's demonstration, or confessions of "minimal force".'

[27] The Commissioner found that on his own version there was only one glaring conclusion that could be drawn on how someone managed to leave a room whilst or after their manager (who is not slightly build for that matter) blocked the door with their body, it is that force was used. She found that in fact, the appellant's version suggested an even graver offence - one involving the use of a potentially dangerous instrument. She concluded that his evidence was unreliable and rejected it.

[28] The Commissioner concluded by finding that the respondent had proven on a balance of probabilities that the appellant was guilty.

She found that the appellant committed 'gross insubordination in that the challenge to Mr Mdimba's authority was carried out not only by verbally disrespecting a superior, this

was a manager levels above him, in front of clients and the refusal to obey and challenge to authority was carried out with the use of violence.’

The Labour Court:

[29] The Labour Court considered the submissions relating to the late filing of the respondent’s answering affidavit and concluded that there was no serious prejudice to the appellant. It stated that the appellant sought a deprivation of legal costs or for the respondent to pay his costs. It held that it did not deem it appropriate to determine the exercise of its discretion on whether a party should or should not be granted or denied costs. Accordingly, condonation for the late filing of the respondent’s answering affidavit was granted.

[30] On the merits the Labour Court held that the evaluation of evidence and the reasoning of the Commissioner could not be faulted. It held that there was no merit in the application and that the findings of the arbitrator fell within the bands of reasonableness.

Discussion:

[31] Before discussing the merits of the matter I deem it necessary to start with the condonation. It is by now well established that condonation of the non-observance of the Rules of Court is not a mere formality.¹ In all cases some acceptable explanation for any delay in seeking condonation must be given.

[32] In *Department of Transport and Others v Tasima (Pty) Limited; Tasima (Pty) Limited and Others v Road Traffic Management Corporation and Others*² the Constitutional Court expressed the view that the explanation that was

¹ See: *Meintjies v H D Combrinck (Edms) Bpk* 1961 (1) SA 262 (A) at 263H-264B; *Saloojee and another NNO v Minister of Community Development* 1965 (2) SA 135 (A) at 138E-F; *Turnbull-Jackson v Hibiscus Coast Municipality and others* 2014 (6) SA 592 (CC) at para 26.

² 2018 (9) BCLR 1067 (CC) at para 158.

proffered by the department for the delay of five years in bringing the counterapplication of the review of its decision was not convincing. Khampepe J described it as follows³:

‘The explanation provided by the Department was both *porous and lacked the markings of good constitutional citizenship*. But this is not the end of the inquiry. The delay cannot be “evaluated in a vacuum.” It must now be determined whether there are sound reasons for overlooking the delay.’ [Emphasis added] Cases of *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae Road Accident Fund and Another v Mdeyide*⁴ and *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae* and others are instructive in this regard.⁵

[33] It is correct, as contended by Counsel for the appellant, that when an application for condonation for the delay is considered, a full explanation that covers the “*entire period*” must be provided.⁶ However, each case has to be decided in accordance with its own circumstances. The overarching consideration is the interests of justice.

Factors that the Court weighs in that enquiry include: the length of the delay; the explanation for, or cause of, the delay; the prospects of success for the party seeking condonation; the importance of the issues that the matter raises; the prejudice to the other party or parties; and the effect of the delay on the administration of justice. It should be noted that although the existence of prospects of success in favour of the party seeking condonation is not

³ Ibid at para 159.

⁴ 2011 (2) SA 26 (CC) at para 8.

⁵ See also: *Mohlomi v Minister of Defence* (CCT41/95) [1996] ZACC 20; 1996 (12) BCLR 1559; 1997 (1) SA 124 at para 11.

⁶ See: *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC) at para 22; *Laerskool General Hendrik Schoeman v Bastian Financial Services (Pty) Ltd* 2012 (2) SA 637 (CC) at para 15; *SA Express Ltd v Bagport (Pty) Ltd* 2020 (5) SA 404 (SCA) at para 34.

decisive, it is a weighty factor in favour of granting condonation. In *Khumalo and Another v MEC for Education, KwaZulu-Natal*⁷, the Constitutional Court emphasised that an important consideration in assessing whether a delay should be overlooked is the nature of the decision. This was said to require, “analysing the impugned decision within the legal challenge made against it and considering the merits of that challenge.

[34] I agree that the explanation for the delay is weak and does not delve into details. However, regard being had to the lack of prejudice to the other party, prospects of success by the respondent, the effect of the delay on the matter, the right of access to court in terms of s.34 of the Constitution, fairness to both parties and in light of the view I take, I agree that it was in the interests of justice to condone the late filing of the respondent’s answering affidavit.

[35] On the merits, the nub of the appellant’s argument is that, despite the contradictions in the evidence of the respondent’s witnesses the Labour Court preferred their evidence and rejected that of the appellant.

[36] In my view, the evidence of the witnesses to a large extent complemented each other. The evidence as a whole is not disputed in material respects. The so-called contradictions are those nitty gritty issues relating to how the assault was perpetrated on Mr Mdimba. It has been argued that Ms Mchunu made a statement which conflicted with her oral evidence. The fact that she might have said the appellant hit Mr Mdimba with a fist or that he pulled or pushed him by clothes cannot mean that there was no assault. The appellant himself had made a statement to the police stating that he ‘pulled’ Mdimba and his oral

⁷2014 (5) SA 579 (CC) at para 57. See also *Gqwetha v Transkei Development Corporation Ltd and others* 2006 (2) SA 603 (SCA) at para 33.

evidence is to the same effect. The denials by the appellant were consistent with the evidence of the respondent's witnesses as will be demonstrated hereunder.

[37] It is common cause that on 6 August 2019 Ms Mchunu was attended to by the appellant. She was not satisfied with the explanation proffered for the rejection of her application for the social grant of her grandson. It is common cause that on the following day she came to the offices to complain. It is common cause that the appellant was called by his superior to come and explain. It is common cause that he refused to proffer an explanation in the presence of the complainant. It is common cause that the refusal to explain resulted in the 'wrestling' between the appellant and his superior.

[38] It is common cause that the 'wrestling' involved the closing of the door either because the ladies had to leave or the appellant wanted to leave the office of Mr Mdimba. The reason for the struggle over the door is immaterial. It is common cause that the appellant disobeyed the instructions of his superior. He was at level 7 and Mr Mdimba was at level 12. He disobeyed the instruction to explain what happened the previous day. It is common cause that he disobeyed the instruction to report at the office his superior after the ladies had left that office. The statements of the ladies were more detailed than the oral evidence as to the happenings of the incident. This is not uncommon.

[39] The appellant testified that seeing that Mr Mdimba was persisting that he should make his statement in the presence of the ladies he decided to leave. That conduct itself amounts to insubordination. He testified that went towards the door, and Mr Mdimba ran and blocked the door with the full body and he

pushed the door. It was then that they ‘wrestled with the door’. He grabbed the door handle, pushing it, trying to pull it. He pulled the door, and also ‘*pulled*’ Mr Mdimba. His evidence is recorded as follows: ‘As I have said, I went towards the door, he ran and he blocked the door with the full body, and he pushed the door. Then we wrestled with the door, grabbing the door handle, pushing it, trying to pull it. Then I pulled the door, *even him I pulled*, that is how it happened.’ [Emphasis is mine]. From this piece of evidence, it is clear therefore that the witnesses were correct when they said he pulled Mr Mdimba by his clothes otherwise how else could he pull him.

[40] Mr Mdimba testified that he believed that he was being assaulted hence he went to lay a charge at the police station. In my view their evidence amounted to saying the same thing despite being observed and/or perceived differently. It is in the nature of things that two individuals can observe the same thing but perceive it differently. Besides, human intellect is fallible and a room for minor shortcomings in evidence must always be reserved when relating events that took place three years ago.

[41] I conclude therefore that the Commissioner did not err when she found that Mr Mdimba was assaulted by the appellant. Despite his assertion that he was not angry and had a smiling face I find that strange and inconsistent with his conduct. The Commissioner was correct in finding that the respondent’s witnesses were credible when they said that he was angry. Assault by its very nature is egregious. It is recognised in the law of delict as *actio iniuriarum*. It is defined as an infringement of the right to bodily integrity (physical and psychological)⁸. In *Minister of Justice v Hofmeyer*,⁹ the court stated:

⁸ JC Van der Walt and JR Midgley *Principles of Delicts*, 3ed at 111 paras. 78

‘One of an individual's absolute rights of personality is his right to bodily integrity.

¹⁰The interest concerned is sometimes described as being one in *corpus*, but it has several facets. It embraces not merely the right of protection against direct or indirect physical aggression or the right against false imprisonment. It comprehends also a mental element.’

[42] The definition of assault is the same under both civil law and criminal law. In criminal law, assault is defined as the offence consisting of unlawfully and intentionally applying force, directly or indirectly, to the person of another, or *inspiring a belief in another person that force is immediately to be applied to the person threatened*. [Emphasis is mine] Mr Mdima testified that he believed that he was being assaulted. I agree with the Commissioner that this was a gross insubordination and the dismissal was warranted.

[43] The test for review is now axiomatic. It is whether the decision reached by the commissioner is one that a reasonable decision maker could reach.¹¹ The argument of contradictions is a far cry in this matter. The technique that was espoused by the SCA in *Stellenbosch Farmers' Winery Ground Ltd and Another v Martell et Cie*¹² to resolve factual disputes identifies three considerations, they being (a) credibility of the witnesses, (b) their reliability, and (c) the ‘probabilities. The Commissioner dealt with credibility of the witnesses at length and came to the conclusion that the evidence of the appellant was not truthful and rejected it as being unreliable. The Labour Court held that such decision was reasonable. I am unable to find fault in the decision of the Labour Court in dismissing the application. Accordingly, the appeal falls to be dismissed

⁹ *Minister of Justice v Hofmeyer* [1993] ZASCA 40; 1993 (3) SA 131 (A) at 145H-1.

¹⁰ CR Snyman Criminal Law 5ed at 455

¹¹ *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* 2007 28 ILJ 2405 (CC) para 110.

¹² 2003 (1) SA 11 (SCA) at para 5

[44] Before concluding this judgment, there is one matter to which reference must be made. That is the delay of almost nine months between arguments before this Court and the delivery of two judgments including this one. This delay, coming on top of the other delays usually experienced by litigants in resolving their disputes in Labour matters, is most regrettable. This is contrary to the objects of the Labour Relations Act 66 of 1995 which makes it obligatory for expeditious resolution of Labour disputes. In terms of the Constitution everyone has the right to have any dispute that can be resolved by the application of law decided in a fair manner. It is only fair to resolve Labour disputes expeditiously. Section 237 of the Constitution¹³ provides that “[a]ll constitutional obligations must be performed diligently and without delay.” Courts are endowed to dispense with justice without delay.

[45] This matter was initially assigned to another judge as the scribe. Up to the time of writing this judgment we have not been favoured with any explanation as to what caused this inordinate delay. My brother, Moshoana AJA, and I then decided, in the interests of justice, to write the two judgments. The delay is therefore not directly attributable to us. We are not necessarily running away from the responsibility to constantly remind our colleague to write the judgments, and we assure the parties that we were always promised that the judgments would be forthcoming. I must therefore sincerely apologise to the parties for this inordinate delay.

Costs:

[46] It is now trite that the general rule is that in labour disputes costs do not follow the results. Courts, however, still have a discretion in this regard. I do not see my way clear in deviating from the general rule.

¹³ Act 108 of 1996

Order:

[47] In the result, the following order will issue’.

1. The appeal is dismissed with no order as to costs.

B R Tokota
Acting Judge of the Labour Appeal Court

G N Moshwana *et C.* Collis AJJA concurs

Appearances:

For the Appellant: Mr Mhlana

Instructed by: Mhlana Incorporated

For the Respondent: Adv. C M Kulati

Instructed by: The State Attorney Durban