



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

 Signature Date 07/09/2026

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR308/2021

In the matter between:

RAMAKGALA TSHEPISO MOROLONG

Applicant

And

NEO MOLOI

First Respondent

NATIONAL BARGAINING COUNCIL

FOR THE CHEMICAL INDUSTRY

Second Respondent

SASOL OPERATIONS

Third Respondent

Heard: 20 May 2026

Delivered: 07 September 2026

JUDGMENT

WHITEAR-NEL AJ

Background

- [1] This is an application for the review and setting aside of the arbitration award delivered by the first respondent on 14 December 2020 under case number GPCHEM 151-19/20, and for the condonation of the late filing of the review application.
- [2] The applicant contended that the first respondent had committed a gross irregularity in the proceedings by failing to apply his mind to the evidence before him, and that he had arrived at an unreasonable award.
- [3] The applicant was employed as a process Artisan-Grade 2 at the respondent's Cyanide premises in Midrand on 21 January 2008. He was dismissed for incapacity on 21 January 2019. At the time of his dismissal, he was earning R32 382,67 basic per month.
- [4] The applicant was diagnosed with a chronic allergic upper airway condition, which was aggravated by exposure to soot dust and ammonia gas. The medical practitioner stated that other gases could also aggravate his condition and that he would benefit from changing his working environment. The third respondent's Occupational Medical Practitioner also warned that the applicant should not be employed where irritating agents were present.
- [5] The third respondent made various efforts to accommodate the applicant in an alternative suitable position over the course of approximately one year, but to no avail. For some positions, the applicant had to apply but was not successful at the interview stage.
- [6] The applicant contended that the third respondent did not properly follow their ill health policy as well as schedule 8 of the Labour Relations Act¹ (LRA), which requires reasonable accommodation, and did not make adequate efforts to find him a suitable alternative position.

Condonation

¹ Act 66 of 1995, as amended.

- [7] The applicant received the arbitration award on 16 December 2020. The review application was served and lodged on 16 February 2021. The review application was therefore late by about 16 calendar days.
- [8] It is trite that for a condonation application to be granted, good cause must be shown. Good cause entails explaining the extent of the delay, the reasons for the delay, dealing with prospects of success, dealing with any prejudice to both sides which might be occasioned, and addressing any other factor which may be relevant to the granting or refusing of condonation.²
- [9] In this case, the aspects that attract the most attention are the reasons for the delay and the prospects of success. No potential prejudice was especially pointed out, nor were any other relevant factors mentioned.
- [10] As regards the delay, the applicant stated that when he received the award, his trade union was closed for the holidays. He instructed an attorney on 4 January 2021. At this stage, had the review application been served and filed, it would still have been in time. However, there was a delay, and the review application was only filed and served on 16 February 2021, some 15 calendar days late. The applicant provided no explanation for the delay between 4 January 2021 and 16 February 2021.
- [11] As regards the prospects of success, the applicant indicated that he believed he had been unfairly treated because he was required to apply for certain vacancies, whereas he should simply have been deployed to one of the vacant positions without having to go through the interview process. The third respondent pointed out that the applicant made no mention of this unfairness in the arbitration. At the arbitration, the applicant said he had not been adequately accommodated, but did not specifically mention the interviews. (His witness did, however, say, as an opinion, that the interviews were unfair). When evaluating the prospects of success in a condonation application, the court must assume that the applicant will be able to prove the case he makes out in the papers. The applicant must make out a *prima facie* case, which it will be presumed he can prove with evidence. This is self-evident since the

² See: *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A).

condonation application is only a preliminary step. On the applicant's version, I am satisfied that he has sufficient prospects of success for this factor not to bar him from being granted condonation.

- [12] In respect of the condonation application, the decision-maker must take a holistic view of the factors advanced in favour of condonation. In respect of the delay, it is true that generally the applicant must give an explanation for the full period of the delay.³ However, it is also true that the factors are inter-related. In *Melane v Santam Insurance Co Ltd*⁴ the court held that '*a slight delay and a good explanation may help to compensate prospects which are not strong*'. In the same way a slight delay (of only 16 days) might compensate for the absence of an explanation for the period between 4 January 2021 and 16 February 2021.

- [13] Condonation for the late filing of the review application is therefore granted.

Review Application

- [14] In his award of 10 December 2020, the commissioner found the applicant's dismissal for incapacity to have been fair. The issues to be determined were:

- '1) Whether the arbitrator's decision was substantively unreasonable such that a reasonable decision-maker could not have reached, and whether the first respondent meets the test laid down in *Sidumo and another v Rustenburg Platinum Mines Ltd and others* ((2007) 28 ILJ 2405 (CC));
- 2) Whether the third respondent reasonably and adequately complied with the provisions of Schedule 8, clause 10 of the Labour Relations Act, in providing alternative employment to the applicant, short of dismissal for incapacity due to ill health.'

- [15] The applicant's founding affidavit reads in part as follows:

³ *Minister of Agriculture and Land Affairs v CJ Rance (Pty) Ltd* [2010] 3 All SA 537 (SCA) at para 35, *Independent Municipal and Allied Trade Union obo Zungu v SA Local Government Bargaining Council and others* (2010) 31 ILJ 1413 (LC) and *Van Wyk v Unitas Hospital and another (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC).

⁴ 1962 (4) SA 531 (A) at 532 E to F.

'It is apparent from the arbitration award that the commissioner found my [applicant's] dismissal to be substantively fair because he relied more on the process that was followed during the enquiry to which when a thorough reading of the award is done, one can safely note that the third respondent whilst they claim to have looked for suitable and/or alternative employment for me, they were not open enough and they subjected me to serious injustice, especially when they made me to apply for a position they had advertised, made me to apply, they interviewed me knowing very well that they could have simply re-deployed me to that vacant position. The commissioner in arriving at this conclusion, failed to apply his mind to relevant evidence.'

[16] And:

'Due to the commissioner's gross irregularities (whether alone or in tandem) having regard to his reasoning and based on the evidence before him, it cannot be said that his decision (ie: that the applicant's dismissal was fair) was one that a reasonable decision-maker could reach.'

[17] It is common cause that the type of incapacity experienced by the applicant was an upper respiratory tract irritation, and that he had contracted the condition at work. Doctors advised that he should not continue working in the workplace, which was causing the irritation.

[18] Schedule 8 of the LRA is relevant. It provides as follows:

'... In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability.'

[19] The schedule provides further that:

'... particular consideration should be given to employees ... who are incapacitated by work-related illness. The courts have indicated that the duty on the employer to accommodate the incapacity of the employee is more onerous in these circumstances.'

[20] As the commissioner said in his award, the question in this case is how far must an employer go to accommodate an employee who has been declared medically unfit (for his original position).

- [21] Schedule 8 only requires the employer to ascertain whether it is possible to secure alternative employment for the applicant. There is no guarantee of alternative placement, nor any directive that the employer must provide accommodation for the employee.
- [22] At the same time that the employer is seeking suitable alternative employment for the employee, it must also be mindful of its own operational requirements. No reasonable person would seriously suggest that an incapacitated employee should be accommodated by placing him in a position for which he is patently not suited. It goes without saying that the employer can only place the employee in a position for which he is suited and qualified.
- [23] Hence, it is entirely understandable that an employer may require an employee to undergo an interview process for a particular job vacancy. This would be to objectively evaluate whether the contemplated reasonable accommodation was suitable for the employee and aligned with the employer's operational requirements. Obviously, if there was a vacancy in a position very similar to that which the employee held, the interview process would not need to be resorted to, and the employee could simply be deployed to the alternative position.
- [24] Turning now to the facts of this case and the commissioner's award, it was common cause that the applicant had been temporarily accommodated for about a year while the third respondent sought alternative employment for him.
- [25] The applicant was offered numerous positions with the third respondent during the course of that year, which he declined. Some were declined because they were operator positions, some because they were not Process Artisan positions, and some were not suitable because the applicant would still have been exposed to the soot, gas, chemicals, etc. that his doctors had warned him about. Some positions the applicant had to apply for, and he was not successful at the interview stage. The third respondent investigated various opportunities but found them in close proximity to the contaminated areas, this was between August and September 2018. The applicant

attempted to obtain employment at Wax Solvents in December 2018 but could not identify a suitable position to apply for. Later in December 2018, a stakeholder meeting was held to discuss the applicant's prospects, to no immediate avail. In January 2019, a request for a placement at FT 3 was submitted, but it was unsuccessful. The following month, a request for a placement at Prillan Plant was unsuccessful, and requests for placements in Polymers and Monomers (between Feb and March 2019) were unsuccessful as well. In March 2019, a feedback meeting was held, during which it was reported that the applicant had declined an opportunity for the Operator's position. In addition, a request for a placement at the Chlorine satellite area was made, but it was found to be in an area where ammonia gas was present. By May 2019 – July 2019 a stakeholder meeting had referred the matter to the regional ill health forum, and the applicant had unsuccessfully applied for some other positions (Wax and Solvents, Praline, FT 3, Mail and Messaging). In July/August 2019, the applicant applied again to Monomers but was unsuccessful. The applicant was finally dismissed in November 2019.

[26] The first respondent in his award found that:

'[The third respondent] was accommodative of the applicant's plight, due to the fact that alternative positions for the applicant were considered but no suitable vacancy was available.'

[27] And:

'Based on the evidence presented, it does appear that all the necessary internal processes were followed in terms of taking the applicant's case to be considered for alternative positions by internal and regional forums respectively, but to no avail, hence the incapacity enquiry.'

[28] The commissioner applied his mind to the evidence. He did not misconstrue the nature of the enquiry which was before him. There was no disconnect between his reasoning and the case's outcome. His decision fell within the band of reasonableness described in *Sidumo and another v Rustenburg Platinum Mines Ltd*⁵. The arbitrator did not fail or make an error in respect of

⁵ (2007) 28 ILJ 2405 (CC).

his task, and the award is capable of justification. The arbitrator's award is thus unassailable.⁶

[29] In the premise the following order is made:

Order

1. The review application is dismissed.
2. There is no order as to costs.

N. Whitear-Nel

Acting Judge of the Labour Court of South Africa

⁶ See: *Mineral Sands Resources Pty Ltd v CCMA* (Unreported decision. Case number C611-16), *Anglo Platinum Pty Ltd (Bafokeng Rasemone Mine) v De Beer and others* (2015) 36 ILJ 1453 (LAC) and *Sasol Mining (Pty) Ltd v Ngqeleni NO and others* (2011) 32 ILJ 723 (LC).

Appearances:

For the Applicant : Mr Ramafalo of Ramafalo M Attorneys

For the Respondent : Ms Rheeder of Johanette Rheeder Incorporated

LABOUR COURT