



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR 630/2023

In the matter between:

THE DEPARTMENT OF MILITARY VETERANS

Applicant

and

PUBLIC SERVICE ASSOCIATION

First Respondent

LEBOGANG PORTIA THINDISA

Second Respondent

**MOHAU NTAOPANE N.O
GENERAL PUBLIC SERVICES SECTOR**

Third Respondent

BARGAINING COUNCIL

Fourth Respondent

Heard: 12 June 2025

Delivered: 30 July 2025

This judgment was handed down electronically by consent of the parties' representatives by circulation to them via email. The date for hand-down is deemed to be 30 July 2025.

JUDGMENT

PRINSLOO J

Introduction

[1] The Applicant filed an application to review and set aside a rescission ruling issued under case number GPBC2145/2019. The review application was filed outside the prescribed period of six weeks, and for this, the Applicant seeks condonation.

[2] The First Respondent, acting on behalf of the Second Respondent (Respondent), opposed the application for review and condonation.

[3] The matter was set down for hearing on 11 June 2025.

[4] The state of this matter is lamentable, and I deem it necessary to set out the pertinent and concerning issues. The application is one for the review of a rescission ruling, and in the founding affidavit, mention is made of certain annexures, for example, annexure 'A' is the rescission ruling, annexure "B" being the application for rescission of the default arbitration award, and three more annexures are referred to. However, a perusal of the application reveals that none of what is referred to in the founding affidavit is attached; instead, a document, comprising 120 pages and titled 'Service level agreement entered into by and between the Department of Cooperative Governance and Out the Box Foundation', is attached as the only annexure.

[5] The Applicant, represented by Ms Sithembe from the State Attorney, served the Respondent with the indexed and paginated bundle on 10 November 2023. Mr Mphahlele, representing the Respondent, perused the bundle and on 14 November 2023, he addressed an email to Ms Sithembe, stating that the incorrect annexures were attached, as the attached annexure did not relate to this matter. Ms Sithembe

was requested to correct the mistake and to serve the correct documents. A month later, on 14 December 2023, Ms Sithembe responded to Mr Mphahlele that *'the contents of your email are noted and will attend to same'*.

[6] The notice of set down was sent to the parties on 25 January 2025, informing them that the matter was set down for hearing on 11 June 2025. When the matter was heard, the same incorrect annexure was attached to the founding affidavit. This, notwithstanding Ms Sithembe's undertaking in December 2023 to attend to the correction thereof and notwithstanding the fact that the parties were notified almost six months in advance of the hearing date.

[7] This shocking state of affairs persisted, even on the date of the hearing, and the Applicant did not bother to take any steps to ensure that the correct documents were before this Court and could not be less interested in placing this Court in a position to peruse the application and to comprehend the Applicant's case.

[8] As already alluded to, the application for review was filed late, and the Applicant seeks condonation for that. In the founding affidavit, it is explained that the rescission ruling was received on 6 April 2022, the State Attorney was instructed on 25 April 2022, and counsel was briefed on 10 May 2022. The review application had to be filed by 18 May 2022. The condonation application covers the period up until 7 September 2022, when the application for review was finalised.

[9] It is evident from the notice of motion that it was only signed on 21 April 2023 and from the Court stamp that the review application was only filed with the Registrar on 19 May 2023. Evidently, there was no explanation for the period from 7 September 2022 until May 2023, and this issue was raised in the Respondent's answering affidavit. The Applicant filed a replying affidavit, clearly being alerted to the fact that the period of the delay is not explained, but instead of explaining the delay and placing facts before this Court to enable the Court to understand the reasons for the delay, the Applicant merely submitted that *'..the miscalculation of the decree (sic) of lateness happened as the results (sic) of delay between signing and filing of the founding affidavit by the deponent and it was never done deliberately to mislead court'*.

[10] As I was of the view that the delay and the conduct in this matter called for an explanation, I stood the matter down to 12 June 2025 to afford Ms Sithembe an opportunity to file an affidavit to provide an explanation to this Court. The affidavit was filed, but it appeared not to address the material issues and Ms Mabuza, counsel for the Applicant, pleaded for another opportunity to file an improved affidavit to present a better explanation.

[11] I am not inclined to accede to Ms Mabuza's request – I already afforded the Applicant's attorney an opportunity to file an affidavit, which was a lenient indulgence, given the horrific state of the application and considering that the Respondent previously raised the same issues with the Applicant's attorney. Furthermore, as will be fully dealt with *infra*, the Applicant and the State Attorney were aware since April 2025 that it was necessary to supplement the papers, yet they showed no interest in doing so then – that is certainly not a reason to grant the indulgence now, given the disinterest and conduct of the responsible officials. The issues were not new; there was sufficient time to attend to them and to cure the defects, yet nothing was done, and this Court already extended a lifeline to the Applicant by standing the matter down and affording an opportunity to file an explanatory affidavit.

[12] I will deal with the application on the papers as they are before me. The first issue to be decided is whether the Applicant should be granted condonation for the late filing of its review application.

The principles applicable to the grant of condonation

[13] The relevant legal principles to be applied in an application for condonation are well established. This Court is required to exercise a discretion, having regard to the extent of the delay, the explanation for the delay, the prospects of success and the relative prejudice to the parties that would be occasioned by the application being granted or refused. The interest of justice will ordinarily reflect regard to all these factors.

[14] In *Melane v Santam Insurance Co Ltd*¹, it was held that:

‘...Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation... What is needed is an objective conspectus of all the facts.’

[15] In *A Hardrodt (SA) (Pty) Ltd v Behardien and others*² (*Behardien*), the Labour Appeal Court (LAC) restated the guidelines laid down in *Queenstown Fuel Distributors CC v Labuschagne NO and others*³ as *inter alia* that there must be good cause for condonation in the sense that the reasons tendered for the delay have to be convincing. In other words, the excuse for non-compliance with the six-week period must be compelling. The onus is on the applicant to satisfy the court that condonation should be granted.

[16] The courts have held and emphasised that in applications to review and set aside arbitration awards, an applicant must necessarily act with the degree of diligence required by the Rules of this Court and the Practice Manual⁴, thus giving effect to the statutory imperative of expeditious dispute resolution. Although the Labour Court Rules were amended and the amended Rules are now applicable, and the previous Rules and the Practice Manual were repealed, this application was filed in 2023 and will be decided in terms of the previous Rules and the provisions of the Practice Manual, which applied at the time.

[17] In *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*⁵, the Constitutional Court emphasised that one of the fundamental purposes of the Labour Relations Act⁶ (LRA) was to establish a system

¹ 1962 (4) SA 531 (A) at 532 C - F.

² (2002) 23 ILJ 1229 (LAC) at para 3.

³ (2000) 21 ILJ 166 (LAC).

⁴ Practice Manual of the Labour Court of South Africa, effective 2 April 2013. It has been repealed with effect from July 2024.

⁵ (2016) 37 ILJ 313 (CC).

⁶ Act 66 of 1995, as amended.

for the simple, quick, cheap and informal adjudication of labour disputes. When it assesses the reasonableness of a delay, the court must not lose sight of this purpose.

[18] Condonation for delays in all labour law litigation is not simply there for the taking. The starting point is that an applicant in an application such as the present seeks an indulgence and bears the onus to show good cause and a proper case should be made out before the indulgence can be granted.

[19] It is in this context that the application for condonation stands to be determined.

The degree of lateness and the explanation tendered

Degree of lateness

[20] The first issue to be considered is the degree of lateness.

[21] *In casu*, the rescission ruling was received on 6 April 2022, and the review application had to be filed by 18 May 2022. The State Attorney was instructed on 25 April 2022, and counsel was briefed on 10 May 2022. The condonation application, which is included in the Applicant's founding affidavit, covers the period up until 7 September 2022, which appears to be the date when the application for review was finalised.

[22] However, the notice of motion was only signed on 21 April 2023, and the Court stamp indicates that the review application was only filed with the Registrar on 19 May 2023.

[23] In *Mbatha v Lyster and others*⁷, the LAC held that in terms of Rule 7A(1), an applicant in a review application is obliged to '*deliver a notice of motion to the person or body and to all other affected parties*'⁸. It follows, reading Rule 7A together with the effect of the definition of '*deliver*' in Rule 1, that an application is made within six

⁷ (2001) 22 ILJ 405 (LAC).

⁸ *Ibid* at para 16.

weeks of the publication of the award only if it is delivered to all the respondents and filed with the Registrar of the Labour Court within such period.

[24] *In casu*, this application was thus filed on 19 May 2023, more than one year after the expiry of the prescribed six-week period. The delay is indeed material, given the fact that a review application has to be filed within six weeks. Considering the context within which labour litigation takes place and the system that is designed to ensure the effective and expeditious resolution of labour disputes, the aforesaid delay is no doubt inordinate. The Practice Manual for the Labour Court expressly stated that a review application is, by its nature, an urgent application. Section 145(5) of the LRA provides that an applicant for review must apply for a date for the matter to be heard within six months of the delivery of the application. A delay of 12 months is not insignificant, but rather concerning in view of the fact that the Applicant has been legally represented and is not acting as a layperson without means.

[25] I have to consider the reasonableness of the delay by having regard to the explanation for the delay. As the LAC has held, the explanation has to be compelling and convincing.

[26] As the Applicant seeks an indulgence from the Court and bears the onus to satisfy the Court that condonation should be granted, it is incumbent on the Applicant to provide the Court with a full explanation for every period of the delay. It is not sufficient simply to list significant events that occurred during the period in question, as that does not assist the court in properly assessing the reasonableness of the explanation.⁹

[27] The explanation tendered for the delay, as it appears from the founding affidavit, only covered the period until 7 September 2022, and there was no explanation for the period from 7 September 2022 until 19 May 2023.

[28] In the explanatory affidavit filed by Ms Sithembe, she explained the further eight months' delay as follows:

⁹ See: *Independent Municipal & Allied Trade Union on behalf of Zungu v SA Local Government Bargaining Council and Others* (2010) 31 ILJ 1413 (LC).

Explanation for the delay

[29] Counsel finalised the review application and it was emailed to Ms Sithembe in September 2022, and it was emailed to 'the client' on 29 September 2022 for 'inputs and commissioning' in order to file it with the Labour Court. No response was received. Ms Sithembe stated that '*numerous follow ups and phone calls were made to the client and there was no response*' and those were made by way of emails and calls. Ms Sithembe did not attach any emails as proof of the 'numerous follow-ups' nor did she provide any details as to the phone calls that were allegedly made.

[30] Ms Sithembe's explanation is further that:

'On 17 February 2023 I send a reminder email marked extremely urgent to the client and client responded with the signed affidavit through an email on 20 February 2023. Client had to be pursued again to deliver original documents for filing with the Labour Court. Numerous reminders were made to the client through emails send to client on 3 April 2023 and client made a promise through an email to deliver the original affidavit in a week and was not received. The original affidavit was only delivered after numerous follow ups were made again, in May 2023. The review application was then filed late with the Labour Court as a result of non-corporation (sic) from the client.'

Once again, Ms Sithembe did not attach any of the 'numerous follow-up' emails, nor did she provide any details as to the other 'follow-ups' that were allegedly made.

[31] Be that as it may, it appears from this explanation that the delays which occurred for the entire month of October, November and December 2022 and January, March and May 2023 remained unexplained.

[32] This difficulty was picked up by counsel after she was notified in April 2025 of the set-down date of the review application. Ms Sithembe explained that in April 2025:

'Counsel advised that we need to account for the late filing of the review application as same was not done. I then advised client and provided counsel with reasons for late filing on my side through phone call and email. Emails

communications (sic) were also send to counsel. I then made follow up with the client to provide reasons for the late filing on his side and advised client that we should provide reasons for the late filing on his side and advised client that we should have those reasons urgently and before the hearing. The intention was to file the supplemented founding affidavit before the hearing date. Numerous follow up were made to client and there was no response. The practice note was received from counsel on 2 June 2025. The intention was to file the supplemented founding affidavit including condonation application with the practice note, however no response was received from client.'

The responsible official Ms Sithembe communicated with is Mr Mphuti Peter Matli, of the Applicant's employee relations and wellness division.

[33] Ms Sithembe attached an email dated 3 June 2025, which was sent to counsel, Ms Mabuza and Mr Matli, stating that:

'Kindly provide information or explanation for the period between receiving the application and filing of the review application. We need to urgent (sic) file the condonation application this week and if possible request for matter to be removed from the court roll. According to my records counsel send (sic) me the application on 28 September 2022 and it was emailed to you on 29 September 2022 and was never received back up until a reminder was made on 17 February 2023. Thereafter the sighed (sic) affidavit was emailed to me on 20 February 2022 and original document were send to me in April 2023. Kindly engage counsel urgently so that she may finalise the condonation application.'

[34] The question is whether the reasons set out *supra* constitute a comprehensive, convincing and compelling explanation.

[35] In my view, it does not at all. The Applicant should provide a full explanation for every period of the delay, and it is not sufficient to simply list significant events that occurred during this period. There is no explanation tendered for the period between September 2022, when the application was drafted, and May 2023, when it was filed with the Registrar. What had been presented to the Court is not an

explanation but rather a vague statement of events, without any supporting proof, and a clear accusation that the 'client' is responsible for the delay.

[36] In fact, the impression created is that neither the State Attorney nor the Applicant had any interest in ensuring that this matter was pursued timeously and in compliance with the applicable prescripts. This is a concerning state of affairs given the fact that the default arbitration award, which was awarded in favour of the Second Respondent, will no doubt have severe financial consequences for the taxpayers of this country. This is a matter which should be brought to the attention of the Applicant's Minister and Director General, and the management in the office of the State Attorney.

Prospects of success and prejudice

[37] Having considered that the period of the delay in the filing of the review application is material and the explanation tendered wholly inadequate, it leaves the issue of prospects of success.

[38] The Applicant's case is that this dispute has its genesis in the advertisement for the position of Director: Financial Accounting. The Second Respondent, Ms Thindisa, was employed as Deputy Director: Cost and Management Accounting as from March 2014, and she applied for the advertised position in 2015. She was not shortlisted or interviewed for the position because she did not meet the requirements. Upon finding out that someone else had been appointed, Ms Thindisa referred an unfair labour practice dispute to the Fourth Respondent.

[39] The arbitration was set down for 22 January 2021. On 19 January 2021, the Applicant's representatives who were handling the matter, Mr Rakau Malau and Ms Nosiphiwo Magana, tested positive for COVID-19 and had to be in quarantine for a period of ten days. On 20 January 2021, the Applicant informed the GPSSBC of the situation and requested a postponement. There was no response, and it appeared that the GPSSBC did not receive the Applicant's request for a postponement. As a result, the arbitration proceeded, and a default award was issued on 2 February 2022.

[40] The Third Respondent (arbitrator) found that the Applicant acted unfairly by failing to shortlist Ms Thindisa for the position of Director: Financial Accounting, and he ordered that she be promoted to the said position.

[41] The GPSSBC transmitted the default award to the email address of Mr Rakau, who had passed away on 25 January 2021 due to COVID, and it was sent to the incorrect address of Ms Magana. The Applicant only became aware of the default award on 10 May 2021, whereupon an application for rescission was made. The rescission application was refused.

[42] The Applicant seeks the review of the rescission ruling on the basis that the arbitrator failed to consider the explanation tendered and the steps taken to request a postponement for the arbitration of 22 January 2021, which resulted in the default award being granted. The Applicant submitted that it has very good prospects of success as Ms Thindisa did not meet all the requirements for the advertised position, and it was unreasonable to issue an award that she be appointed when she did not have senior management experience at the time she applied for the position. The Applicant seeks an order that the matter be remitted to the GPSSBC for determination by another arbitrator.

[43] On the issue of prejudice, the Applicant submitted that Ms Thindisa will not suffer any prejudice if the matter is remitted to the GPSSBC for a hearing *de novo* in that she did not meet the requirements for the position and will have another opportunity to present her case, whereas the Applicant never got the opportunity to respond to Ms Thindisa's allegations and the merits of the case was never fully ventilated.

[44] Ms Thindisa opposed this application and submitted that she is indeed prejudiced in that her career advancement is stifled.

[45] In my view, the prejudice to the Applicant outweighs Ms Thindisa's prejudice. If she did not meet the requirements at the time the position was advertised, she could not have been appointed in the first place. If she indeed met the requirements,

same will become evident in a process where the Applicant is also afforded an opportunity to state its case, and she will get what she deserves.

[46] I cannot lose sight of the fact that this is a matter where an appointment was made in a government department, which is regulated by specific prescripts and legislation which apply to the appointment of candidates to positions, more specifically positions at the senior management level, and compliance with those prescripts is vital. Furthermore, this matter may have severe financial implications, which will affect every taxpayer, and therefore it is important that the correct decision be taken.

[47] The LAC has recently granted condonation where an application was materially late and the explanation lacking. In *Government Printing Works v Public Service Association and another*¹⁰, it was held that:

[39] Considering the Act, the basis for the claim and what appears on the papers, the only conclusion is that the appellant's prospects of success are excellent. It must also be accepted that the full ventilation of the dispute is important to the appellant and, given the legislative framework and the rationale behind the registration obligation, to broader society. The appellant's concern that it will be forced to contravene the Act by employing Mr Mojananga as a security service provider cannot be ignored.

[40] On balance, the appellant has succeeded in proving that there is good cause to grant the indulgence sought. The uncontested prospects of success, in particular, coupled with the importance of the issue, are such that these factors compensate for the excessive delay and complete inadequacy of part of the explanation. Considering the relevant factors in their totality, the interests of justice and fairness are best served by granting condonation.'

[48] In my view, the full ventilation of the dispute is important not only to the Applicant but to the broader society, given the legislative framework applicable to appointments in government departments. Considering the matter holistically, the

¹⁰ (2025) 46 ILJ 915 (LAC).

interests of justice and fairness will be best served by granting condonation for the late filing of the review application.

[49] It is unfortunate that this Court is not in a position to decide the review application, due to the state of the application, as already alluded to.

[50] As I am inclined to grant condonation for the late filing of the review application, the review application is to be enrolled for hearing. As an alternative, the parties may consider invoking the provisions of Rule 47 of the Labour Court Rules.¹¹

[51] I reiterate: the manner in which this matter was handled remains an issue of grave concern, and the State Attorney should see to it that the file is in order as a matter of priority.

[52] In the premises, I make the following order:

Order

1. The late filing of the review application is condoned;
2. There is no order as to costs.

Connie Prinsloo
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Advocate T Mabuza

Instructed by:

State Attorney Pretoria

For the First and Second Respondent:

Mr W Mphahlele of the PSA

¹¹ GN 4775 of 2024: Rules Regulating the Conduct of the Proceedings of the Labour Court (effective 17 July 2024).