

SOUTH AFRICA / JUDGMENT

Baloyi v Omega Risk Solutions (Pty) Ltd and Others (JS207/22) [2025] ZALCJHB 271 (7 May 2025)

[2025] ZALCJHB 271

COURT

Labour Court Johannesburg

BEFORE

M T M Phehane

CASE / FILE NUMBER

JS207/22

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS207/22

In the matter between

PHANUEL BALOYI

Applicant

and

OMEGA RISK SOLUTIONS (PTY) LTD

First Respondent

CCMA, PRETORIA

Second Respondent

COMMISSIONER, ROLEN VELJOEN

Third Respondent

Heard: 9 October 2024

Delivered: 9 October 2024

Reasons:

7 May 2025 (This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing-down is deemed to be 10h00 on 7 May 2025.)

REASONS FOR ORDER

PHEHANE, J

Introduction

- [1] On 9 October 2024, an order dismissing the applicant's unopposed application to reinstate his lapsed referral was dismissed.
- [2] The brief reasons for the order appear below.

Background

- [3] The applicant was dismissed from the employ of the first respondent for operational requirements in November 2021. The applicant subsequently launched an unfair dismissal dispute under the auspices of the second respondent, and thereafter, he approached this Court on 15 March 2022 by way of a referral in terms of the now-repealed Rule 6 of this Court[1] to challenge his dismissal. The referral was unopposed.
- [4] The main action lapsed by operation of the law for non-prosecution on 15 September 2022. [2]
- [5] On 14 June 2024, the applicant delivered a default judgment application. On 27 June 2024, he was informed by the Registrar of this Court that it would seem, that the main action was archived for lack of prosecution. The applicant avers that the Registrar directed that he launch this revival application.
- [6] This revival application was launched on 12 July 2024, approximately 1 year and 10 months after the action lapsed.

Reasons for delay

- [7] The applicant, who was at all material times legally represented, avers that owing to his unemployment, he lacked funds to pay his attorneys to progress his action as he had no funds from 15 March 2022 until 6 March 2023, when he secured employment. This is a period of approximately one year.

- [8] The applicant further alleges that after securing employment, he had saved funds to pay his attorneys to prosecute his action. He approached his attorneys in May 2024, more than 12 months after he secured employment and after saving money, to progress his matter. This means, on his own version, he was saving funds for more than a year to pay his legal representatives to progress his action.
- [9] The applicant is at pains to state that he pursued the default judgment application without delay as he had saved money and approached his attorneys to represent him. That he was expedient in pursuing his default judgment application is irrelevant, as his main application had already, at that stage, lapsed by operation of the law for lack of prosecution, a fact he was oblivious to despite being legally represented.

Test to succeed in a condonation application

- [10] It is well established that a revival application is akin to a condonation application. To succeed in the grant of condonation, an applicant must show good cause for the delay.[3]
- [11] It is trite that an applicant for condonation must file an application as soon as they become aware that condonation is necessary.[4] The applicant in the present application did not do so, and the delay of close to two years in launching the revival application is unexplained. This delay is excessive given the ethos of the Labour Relations Act[5] that disputes must be resolved expeditiously.
- [12] In my view, not having funds and saving funds for a year after securing employment are not sound reasons for the delay.
- [13] The applicant ought to have approached a pro bono clinic for assistance while he was unemployed. He does not explain why he did not explore a contingency fee agreement with his attorney to progress his action while he was saving money to pay his attorney. If litigants were to wait until they have accumulated sufficient funds to progress the matters to pay their attorneys owing to unemployment, then the objective of the LRA relating to expedient dispute resolution would be undermined.
- [14] The applicant states that he has good prospects of success in the main application without further elaboration. It is trite that in the absence of good reasons for the delay, the prospects are immaterial. In the circumstances, I found that it was not in the interests of justice to grant condonation. Therefore, the reinstatement application was not successful, and the aforesaid order was accordingly made.

M. T. M. Phehane

Judge of the Labour Court of South Africa

- [1] GN 1665 of 1996: Rules Regulating the Conduct of Proceedings in the Labour Court (repealed, effective 17 July 2024).

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- [2] In terms of the provisions of item 16 of the now-repealed Practice Manual of the Labour Court of South Africa, where no further steps were taken within a period of six months of the last process filed, the referral is archived. See also: *E-Tradex (Pty) Ltd t/a Global Trade Solution v Finch and Others* (2022) 43 ILJ 2727 (LAC).
- [3] *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A).
- [4] See: *Rennie v Kamby Farms (Pty) Ltd* 1989 (2) SA 124 (A) at 129G, where the Court held as follows: ‘Whenever an appellant realises that he has not complied with a rule of court he should apply for condonation without delay’.
- [5] Act 66 of 1995, as amended.
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Prepared on 10 October 2026 · Esheria