

SOUTH AFRICA / JUDGMENT

Digital Experience (Pty) Ltd v Veira and Others (JR 2167/19) [2023]

ZALCJHB 335 (1 November 2023)

[2023] ZALCJHB 335

COURT

Labour Court Johannesburg

BEFORE

Motshegare

CASE / FILE NUMBER

JR 2167/19

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

case

No: JR

2167/19

In

the matter between:

THE

DIGITAL EXPERIENCE (PTY) LTD

Applicant

And

VEIRA,

JOSE JOAQUIM

First

Respondent

MADIA,

LERATO THANDY N.O

Second

Respondent

COMMISSION

FOR CONCILIATION, MEDIATION AND ARBITRATION

Third

Respondent

Heard:

4 July 2023

Delivered:

01 November 2023

JUDGMENT

MOTSHEGARE, AJ

Introduction

[1] This is an opposed application for condonation for the late filing of the record and reinstatement of the Applicant's review application, the Applicant having failed to deliver the record within sixty days, as prescribed by clause 11.2.2 of the Practice Manual of the Labour Court of South Africa[1] (Practice Manual) and the review application having been deemed withdrawn in terms of clause 11.2.3 of the Practice Manual.

[2] The primary relief sought by the Applicant is the following:

2.1 Condonation for its failure to file the record;

2.2 Reinstatement of the review application.

Background facts and narrative of the prosecution of the review

[3] As an opening remark, it is important to note that this section sets out the relevant background facts as contained in the pleadings and, for reasons set out below, as gleaned by the Court from an inspection of the Court file. The reason being that the affidavits filed in support of the Applicant's application are deposed to by the Applicant's erstwhile attorneys, Jansen van Vuuren Attorneys, without any supporting confirmatory affidavit by a representative from the Applicant's organisation. Accordingly, the Applicant's application is largely speculative and premised on assumptions. There is nothing that seems to suggest that any of the Applicant's attorneys attempted to obtain instructions directly from the Applicant, in the preparation of this application and the hearing.

[4] The Applicant delivered its review application and furnished security in respect of the arbitration award on 2 October 2019, in compliance with the provisions of section 145 of the Labour Relations Act[2] (LRA). At this stage, the Applicant was represented by Lee and McAdam Attorneys (Initial Attorneys). The Applicant's application is supported by the affidavit of Ross Atcheson, an official of CTL Management Forum (Atcheson), a duly registered employer's

organisation. Atcheson had represented the Applicant at the arbitration proceedings forming the subject matter of the review application.

[5] The following chronology of events regarding the record, is set out in the Applicant's founding papers, regards the record:

'2.11.1 It appears that a fax was sent to the Applicant's attorneys at that time that the record was available on the 14th of October 2019.

2.11.2 It also appears that a quote for transcription was sought by the previous attorneys of record on the 21st of October 2019.

2.11.3 This means the record was probably uplifted on the same day as it was a Monday, and a week after the notification.’ (own emphasis)

[6] What is not set out in the Applicant’s papers but is apparent from an inspection of the documents attached to the Applicant’s papers in replication,[3] is that:

6.1 Payment of a deposit for the transcription was made on 5 November 2019;

6.2 The transcript was ready for collection as of 3 December 2019 but only collected on 24 January 2020.[4]

[7] I pause to note that no explanation is tendered for this period (from 14 October 2019 to 24 January 2020) by the Applicant, save to indicate that “a large part of the 60 day period ran over the festive season”.[5]

[8] On 6 February 2020, the record and a combined notice in terms of Rule 7A (6), 7A (8)(b) and 7A (9) of the Rules for the Conduct of Proceedings in the Labour Court[6] (Rules) was delivered.

[9] On 7 October 2020, twelve months since the delivery of the review application and eight months following the delivery of the record, the First Respondent delivered an application for condonation for the late filing of the answering affidavit in the review.

[10] The Applicant delivered its answer to the First Respondent’s condonation application, together with its replying affidavit in the review, on 21 October 2020. The Applicant then seemingly did nothing further to prosecute the review application.

[11] This matter was subsequently set down for hearing on 6 October 2021, on account of the First Respondent. In this regard, the First Respondent avers that he, on 10 November 2020, attended to having this matter set down for hearing, on account of the Applicant’s “failure to prosecute their review application”.[7] It is important to note that the Applicant’s response to the First Respondent’s claim does not address nor does it offer an explanation as to why it seemingly did nothing to progress the review application between 20 February 2020, the date by which the First Respondent ought to have delivered its answering affidavit in the review and 7 October 2020, when the First Respondent delivered its application for condonation for the late filing of said answering affidavit. The response proffered on behalf of the Applicant by its erstwhile attorneys, in reply to the averment that the Applicant had failed to prosecute its review application, is that:

‘2.1 I am not privy to these aspects as the previous attorneys of record were still mandated by the Applicant at that stage, but I must add that the Applicant did not stand idly by, even going so far as to terminate the mandate of their previous attorneys and appointing new attorneys.

2.2 In the circumstances, they have acted appropriately as a result.’[8]

[12] I pause to note the following, as regards the reply as quoted above:

12.1 The Applicant's legal representative conceded, during the hearing, that the contents of the above quoted paragraphs are speculative;

12.2 No attempt is made to explain what action/steps the Applicant took in the period when it "did not stand idly by" and prior to terminating the mandate of its Initial Attorneys. The Applicant simply fails to take the Court into its confidence in this regard. However, it is apparent from the Court file that the Applicant's erstwhile attorneys, the deponents to the condonation affidavits before this Court, came on record on either 23/27 September 2021. It, therefore, took the Applicant a period of twenty three months from the date on which the review application was filed, to terminate the mandate of the Initial Attorneys;

12.3 There is also no explanation tendered as to the steps/actions the Applicant took to progress the review application. During the hearing, when asked to shed more light as to the actions/steps taken by the Applicant following the filing of the record on 6 February 2020, the Applicant's legal representative indicated that he did not have a paper trail in this regard as same was not contained in the reinstatement papers. The Applicant's legal representative was simply not able to take the matter/point any further.

[13] According to the Applicant's Practice Note, dated 5 October 2021, the matter was set down for "... condonation of the late filing of the answering affidavit and the main application for review".[9] In those proceedings, on 6 October 2021, Phehane J issued, inter alia, the following order:

'1. The matter is postponed to allow the Applicant to bring an application to reinstate the review application within 10 days of this order.'

[14] The Applicant delivered its application for reinstatement on 20 October 2021, in compliance with Phehane J's order. Pleadings closed on 4 November 2021, when the Applicant delivered its replying affidavit.

[15] On 27 January 2022, a period of almost three months since pleadings closed, the Applicant's erstwhile attorneys served the First Respondent with a notice for a hearing date.[10] It is unclear from a perusal of the Court file as to whether this notice was filed. A further perusal of the Court file indicates that the Applicant only delivered an indexed and paginated copy of its reinstatement application and relevant index on 31 January 2022 and 14 February 2022, respectively.

[16] There is no explanation as to why the Applicant took a period of almost three months before requesting a hearing date for this application.

[17] On 23 February 2023, the parties were notified that the reinstatement application would be heard on 4 July 2023.

Applicable legal principles

The deeming provisions of the Practice Manual

- [18] The Practice Manual is not a substitute for the Rules. It is concerned, mainly, with how the Rules are applied in the daily functioning of the Court. It is intended to promote consistency in practice and procedure and to set guidelines on the standards of conduct expected of those who practice in this Court.[11]
- [19] In MJRM Transport Services CC v Commission for Conciliation, Mediation & Arbitration & others,[12] the status of the Practice Manual was summarized, inter alia, as follows:
- ‘The manual as it states in its 'Introduction' is not a substitute for the Labour Court Rules. Its purpose is to fill in gaps not adequately catered for in either the rules or the provisions of the LRA for the proper functioning of the court and the expeditious resolution of disputes. Inasmuch as its provisions call for flexibility in their application where required, litigants are nevertheless bound by them. To hold otherwise would lead to a dysfunctional court system, where parties can litigate in any manner that they deem fit, simply because it suits them to do so.’
- [20] Clause 11.2.2 of the Practice Manual provides that records must, for purposes of Rule 7A (6), be filed within sixty days of the date on which the applicant is advised by the Registrar that the record has been received.
- [21] If an applicant fails to file a record within the above prescribed time period, the applicant will, in terms of clause 11.2.3 of the Practice Manual, be deemed to have withdrawn the application, unless the applicant has, during that period, requested and been given consent by the respondent for an extension of the time. If consent is refused, the applicant may, on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time.
- [22] Clause 11.2.7 of the Practice Manual provides that “[a] review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive”.
- [23] In effect, the Practice Manual has clarified the time periods within which certain steps in the prosecution of a review application must be taken, which time periods are not contained in the Rules. Not only does the Practice Manual prescribe the acceptable time periods for performing such steps but attaches adverse consequences to non-compliance therewith by means of the deeming provisions in clauses 11.2.3, 11.2.7 and 16.3, in terms of which a review application is deemed withdrawn, lapsed or dismissed. These deeming provisions are intended to curtail the dilatory prosecution of a review.[13]

[24] It is also noteworthy that section 145 (5) of the LRA provides that, subject to the Rules, a party who brings a review application

under section 145 of the LRA must apply for a date for the matter to be heard within six months of delivery of the application, and the Labour Court may, on good cause shown, condone a late application for a date for the matter to be heard. Accordingly, the date by which the Applicant was required to have applied for a hearing date expired in April 2020.

The test for deciding whether to reinstate a review application deemed withdrawn

[25] It is now established in this Court that an application for reinstatement of a review application deemed to have been withdrawn in terms of clause 11.2.3 of the Practice Manual is, in essence, an application for condonation for the non compliance.[14]

[26] The Applicant, in the circumstances, must show good cause why the record of the proceedings under review was not filed within the prescribed time limit. Condonation is not there merely for the asking, nor are applications for condonation a mere formality.[15] Parties seeking condonation seek an indulgence from the Court for their non compliance and must, therefore, make out a case for the indulgence sought and bear the onus to satisfy the court that condonation should be granted.

[27] The principles of condonation were established in *Melane v Santam Insurance Co Ltd*, [16] where the Court held that:

‘In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. 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. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent's interest in finality must not be overlooked.’

[28] An application for condonation should be granted if that is in the interests of justice and refused if it is not. The interests of justice must be determined by reference to all relevant factors including the nature of the relief sought, the extent and cause of the delay, the nature and cause of any other defect in respect of which condonation is sought, the effect on the administration of justice, prejudice and the reasonableness of the applicant's explanation for the delay or defect.[17]

[29] Moreover, it has been held that:

‘... Two principal requirements for the favourable exercise of the court’s discretion have crystalized out. The first is that the applicant should file an affidavit satisfactorily explaining the delay. In this regard it has been held that the defendant must at least furnish an explanation of his default sufficiently full to enable the court to understand how it really came about, and to assess his conduct and motives. A full and reasonable explanation, which covers the entire period of delay, must be given. If 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, especially in a case where the applicant is the dominus litis. It is not sufficient for the applicant to show that condonation will not result in prejudice to the other party. An applicant for relief under this rule must show good cause; the question of prejudice does not arise if it is unable to do so. The court will refuse to grant the application where there has been a reckless or intentional disregard of the rules of court, or the court is convinced that the applicant does not seriously intend to proceed. The applicant must be bona fide and not made with the intention of delaying the opposite party’s claim. The second requirement is that the applicant should satisfy the court on oath that he has a bona fide defence or that his action is clearly not ill-founded, as the case may be. Regarding this requirement it has been held that the minimum that the applicant must show is that his defence is not patently unfounded and that it is based upon facts (which must be set out in outline), which, if proved would constitute a defence.’[18] (own emphasis)

[30] The above requirements have, however, long been qualified by the principle that a bona fide defence and good prospects of success are not sufficient in the absence of a reasonable explanation for the default.[19] The Labour Appeal Court (LAC) in *National Union of Mineworkers v Council for Mineral Technology*[20] (Mintek) endorsed this principle by stating that “there is a further principle which is applied and that is that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused”.

[31] In *Colett v Commission for Conciliation, Mediation and Arbitration and others*,[21] the LAC confirmed that “... without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without good prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused”.

[32] Also of importance, are the respondent's interests in finality, which ought not to be overlooked, the convenience of the court and the avoidance of unnecessary delays in the administration of justice.[22]

[33] Furthermore, in *Overberg District Municipality v Independent Municipal & Allied Trade Union on behalf of Spangenberg & others*[23] (Overberg) the Court, dealing with an application for the reinstatement of a review application deemed withdrawn, stated that:

[31] ... If effect is to be given to the deemed status of the review application, it seems the correct approach is that the application must be reinstated and that a condonation application for the non compliance alone cannot be brought because an interlocutory application relating to a non existent review application makes no sense. It appears that most judgements favour the approach that a reinstatement application has to be brought together with the condonation application.

[32] However, even though this approach seems to be formally correct, when it comes to deciding whether or not to reinstate the review application that decision will always be inextricably linked with whether or not the non compliance with the manual should be condoned. It is difficult to envisage how any review application could be reinstated, unless the act of non compliance is also condoned.

...

[39] On the approach adopted, as one pre condition for reinstatement, the court needs to be satisfied that the non-compliance with the manual which led to the application being deemed inactive, should be condoned. If that conduct should be condoned, its dilatoriness up to the point the application was deemed inactive will be excused. Further, if it is to ultimately succeed in reinstating the application it ought to demonstrate it acted promptly in launching

the reinstatement application and set out what provisional steps it has taken in a bona fide attempt to ensure the expeditious finalisation of the review if reinstatement is permitted. To the extent that those further steps

would also need to be condoned if the application is brought back to life, the court must determine if they should be. If not, that will sometimes prevent the reinstatement of the application, just as the failure to obtain condonation for the initial non-compliance would. However, if the dilatoriness relates to some step that is not a pre-condition for pursuing a review, such as the late filing of a replying affidavit, then that ought not be an obstacle to reinstating the review application, even if that step is not condoned.[24] (own emphasis)

[34] It is in this context that the Applicant's application is to be considered.

Evaluation

[35] The Applicant's review application was deemed withdrawn on account of it having filed the record of the review proceedings outside of the sixty day period stipulated in clause 11.2.2 of the Practice Manual.

[36] The Court is required to evaluate whether the review application ought to be reinstated and whether the late filing of the record after the review was deemed withdrawn, should be condoned.

Degree of lateness

[37] On the Applicant's papers, it appears that the Applicant was notified of the availability of the record on 14 October 2019.[25] Accordingly, and as correctly recorded by the parties, the sixty day period within which the record was due to be filed expired on 10 January 2020. The Applicant delivered the record on 6 February 2020. In its founding papers, the Applicant states that the record was delivered sixteen days late.[26]

[38] The degree of the delay is an important factor to consider, and it is prudent that the length of the delay is properly calculated.

[39] On a proper calculation, based on the facts, the record was in fact filed eighteen court days after the expiry of the sixty day period.

[40] Notwithstanding this, one cannot ignore the fact that the application for reinstatement and condonation for the late filing of the record was only delivered on 20 October 2021 and set down for hearing on 4 July 2023.

[41] The question is whether the degree of lateness is calculated as of 6 February 2021, when the record was filed by the Applicant or

ought to be calculated as of 20 October 2021 onwards, when the Applicant delivered the application for the reinstatement of its

review application.

[42] The correct approach, in my view and having considered the applicable legal principles, is that in calculating the degree of lateness, one cannot look only at the eighteen days, as suggested by the Applicant's legal representative during the hearing. The Applicant is required to explain the period of the delay before and after the deemed withdrawal. This is more so when having regard to the manner in which the Applicant has conducted the prosecution of the review application.[27]

[43] Therefore, the degree of lateness ought to at least be calculated from 11 January 2020, when the review was deemed withdrawn and up to either 20 October 2021, being the date on which the Applicant delivered this application or 4 July 2023, being the hearing of this application. The filing of the record is, accordingly, nothing less than twenty one months late. This is an inordinate delay.

Explanation for the delay in filing the record

[44] The purported explanation for the delay is set out comprehensively under the heading 'Background facts and narrative of the prosecution of the review'.

[45] In essence, the explanation tendered on behalf of the Applicant is that the Applicant's erstwhile attorneys do not know the reason for the Initial Attorneys having delivered the record late.[28]

[46] Regrettably, there is also no explanation offered as to why the Applicant's erstwhile attorneys did not notice, at the time of their appointment, that the record had been filed late or why it did not notice the other apparent defaults earlier.[29]

[47] I have already indicated that it does not appear that there was any attempt to obtain this information or instructions in this regard

from the Applicant directly. The manner in which the application is drafted suggests that the Applicant took the view that condonation was a foregone conclusion. It is inconceivable that the Applicant would not have been able to shed light on this important aspect. Whether such an explanation would have been acceptable would have been left to this Court to determine. However, nothing was offered. It has to be accepted that the Applicant was seemingly satisfied with what was submitted on its behalf by its elected representative.

[48] While the courts have traditionally demonstrated their reluctance to penalise a litigant on account of the conduct of his representative,

there has been an emphasis that there is a limit beyond which a litigant cannot escape the results of his representative's lack of diligence or the insufficiency of the explanation tendered.[30] The Appellate Division in *Saloojee and Another, NNO v Minister of Community Development*[31] had this to say, as regards litigants who wash their hands off their matters, as the Applicant in this matter seemingly has:

'... The attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of a failure to comply with a Rule of Court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the circumstances of the failure are. (Cf. *Hepworths Ltd v Thornloe and Clarkson Ltd.*, 1922 T.P.D. 336; *Kingsborough Town Council v Thirlwell and Another*, 1957 (4) SA 533 (N)). A litigant, moreover, who knows, as the applicants did, that the prescribed period has elapsed and that an application for condonation is necessary, is not entitled to hand over the matter to his attorney and then wash his hands of it. If, as here, the stage is reached where it must become obvious also to a layman that there is a protracted delay, he cannot sit passively by, without so much as directing any reminder or enquiry to his attorney [...] and expect to be exonerated of all G blame; and if, as here, the explanation offered to this Court is patently insufficient, he cannot be heard to claim that the insufficiency should be overlooked merely because he has left the matter entirely in the hands of his attorney. If he relies upon the ineptitude or remissness of his own attorney, he should at least explain that none of it is to be imputed to himself. That has not been done in this case. In these circumstances I would find it difficult to justify condonation unless there are strong prospects of success. ...' (some references omitted; own emphasis added)

[49] The Applicant in these proceedings washed its hands off its review application. The explanation tendered on its behalf by its various

elected attorneys is fraught with assumptions and is entirely speculative. The First Respondent has also submitted that the Applicant has failed to provide a proper explanation and that its whole explanation is based on speculation.[32] The Applicant's representative unfortunately did not take the matter further in the Applicant's heads of argument and during the hearing. Instead, the argument was focused substantially on the Applicant's prospects of success.

[50] There is, in essence, no explanation tendered for the delay. In the alternative, the purported explanation tendered on behalf of the Applicant is simply not adequate. The Applicant has failed to provide a full and reasonable explanation which covers the entire period of delay and the Court has not been placed in a position where it can determine how the delay came about.

[51] In the circumstances, I cannot justify the granting of condonation for the late filing of the record, nor the reinstatement of the Applicant's review, in the light of the manner in which the Applicant has prosecuted the review.

Prospects of success and prejudice

[52] In the authorities referred to, the following principles are clear, as far as prospects of success and prejudice are concerned:

52.1 The failure to provide a reasonable and acceptable explanation for the delay renders prospects of success immaterial;

52.2 It is not sufficient for the applicant to show that condonation will not result in prejudice to the other party. The question of prejudice does not arise if an applicant is unable to show good cause.

[53] Having found that there is, in essence, no explanation tendered for the inordinate delay or that the purported explanation tendered for such inordinate delay is not compelling or adequate, the prospects of success are immaterial and the issue of prejudice does not arise. Accordingly, these factors need not be considered.

Conclusion

[54] The applicant and not its various legal representatives, as the dominus litis in these proceedings, has failed to prosecute its review application with the required urgency stipulated by the LRA and further expounded upon by the provisions of the Practice Manual.

[55] On an objective conspectus of all the facts, I find that the Applicant has failed to show good cause why the review application should be reinstated, or condonation be granted for its failure to file the record. The interests of justice neither favour the reinstatement of the review nor the condonation of the late filing of the record.

[56] In the premise, I make the following order:

Order

1. The application to reinstate the review application is dismissed.
2. The application to condone the late filing of the record is dismissed.
3. There is no order as to costs.

N Motshegare

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: JD Crawford

Instructed by: Crawford & Associates Attorneys

For the Respondent: Adv Khanyeza (Pro Bono)

Instructed by: SASLAW

- [1] Practice Manual of the Labour Court of South Africa, effective 1 April 2013.
- [2] Act 66 of 1995, as amended.
- [3] Replying Affidavit at pg 55 56.
- [4] During the hearing, the Applicant's legal representative was not able to assist the Court in determining when the transcript was collected. In this regard, the Applicant's legal representative indicated that it was 'plausible' the Applicant's erstwhile attorneys were contacted by the transcribers on 24 January 2020 and collected the transcript on the same day. The Applicant's representative went further to say that the Applicant should not be blamed for this level of uncertainty around the attorney trying to establish when the record was filed, but not being able to get a clear answer.
- [5] Founding Affidavit pg 9 at para 3.3.
- [6] GN 1665 of 14 October 1996: Rules for the conduct of proceedings in the Labour Court.
- [7] Answering Affidavit pg 36 at para 9.
- [8] Replying Affidavit pg 47 at para 2.
- [9] Applicant's Practice Note, dated 5 October 2021 at para 3.1.
- [10] Condonation Application Bundle pg 64 66.
- [11] See introductory clause of the Practice Manual.

- [12] (2017) 38 ILJ 414 (LC); [2017] 1 BLLR 40 (LC) at para 14. See also *Samuels v Old Mutual Bank* (2017) 38 ILJ 1790 (LAC); [2017] 7 BLLR 681 (LAC) at para 15, where the LAC confirmed that the provisions of the Practice Manual are binding and that this Court's discretion in interpreting and applying the provisions of the Practice Manual remains intact, depending on the facts and circumstances of a particular matter before the Court.
- [13] *Overberg District Municipality v Independent Municipal & Allied Trade Union on behalf of Spangenberg & others* (2021) 42 ILJ 1283 (LC);
- [2020] ZALCCT 38 at para 24. In this judgment, Lagrange J undertakes a comprehensive analysis of the conflicting decisions of this Court on the interpretation of the deeming provisions in terms of clause 11.2.3, 11.2.7 and 16.3 of the Practice Manual.
- [14] *Minister of Justice And Correctional Services v Mashiya and Others* [2015] ZALCJHB 68 at para 16; *Tadyn Trading CC t/a Tadyn Consulting Services v Steiner and Others*
- [2016] ZALCJHB 42; [2014] 5 BLLR 516 (LC); *Overberg District Municipality v Independent Municipal & Allied Trade Union on behalf of Spangenberg & others* (2021) 42 ILJ 1283 (LC);
- [2020] ZALCCT 38 at para 40.
- [15] *Van Niekerk J in Zono v Minister of Justice and Correctional Services In re: Minister of Justice and Correctional Services v Zono and Others* [2020] ZALCJHB 215; [2020] 11 BLLR 1160 (LC) 11 at para 17. See also *National Union of Mineworkers of South Africa and Another v Hillside Aluminium*
- [2005] 6 BLLR 601 (LC); [2005] ZALC 25 at para 6 and para 20 and *Grootboom v National Prosecuting Authority and another* [2014] 1 BLLR 1 (CC); [2013] ZACC 37 at para 23.
- [16] 1962 (4) SA 531 (A);
- [1962] 4 All SA 442 (A) at 532 B-E.
- [17] *Brummer v Gorfil Brothers Investments (Pty) Ltd and others*
- [2000] ZACC 3; 2000
- (2) SA 837 (CC);
- [2000] ZACC 3; 2000
- (5) BCLR 465 at para 3.
- [18] *Floorworx Africa (Pty) Ltd v Mazars (Gauteng) Inc and Others*
- [2023] ZAGPPHC 498;
- [2023] JOL 59895 (GP) at para 48. See also *Orthotouch (Pty) Ltd v Delta Property Fund Limited* (42987/2019)

[2021] ZAGPJHC 122 (19 July 2021) at para 11 12.

[19] Chetty v Law Society, Transvaal 1985

(2) SA 756 (A) at 765.

[20]

[1998] ZALAC 22;

[1998] JOL 3074 (LAC) at para 10.

[21] (2014) 6 BLLR 523 (LAC);

(2014) 35 ILJ 1948 (LAC) at para 38.

[22] See S v Di Blasi 1996

(1) SACR 1 (A);

[1995] ZASCA 111 at 3 g.

[23]

(2021) 42 ILJ 1283 (LC);

[2020] ZALCCT 38.

[24] At para 31, 32 and 39. See also at para 28, where Lagrange J refers to various decisions of this Court wherein it was held that an application for reinstatement for a deemed withdrawn review ought to be supported by a condonation application for the late filing of the record.

[25] Founding Affidavit at para 2.11.1.

[26] Supra at para 2.14.

[27] See Orthotouch (Pty) Ltd v Delta Property Fund Limited [2021] ZAGPJHC 122 at para 13 16 and Overberg at para 36 38.

[28] Founding Affidavit pg 9 at para 3.4 and para 4.

[29] I note in passing that the review had also not only been deemed to have lapsed and archived in terms of clause 11.2.7 of the Practice

Manual by or around October 2020, but that the date by which the Applicant was required to have applied for a hearing date in terms of section 145 (5) of the LRA had also expired in or around April 2020.

[30] Mintek supra at para 10.

[31] 1965

(2) SA 135 (A); [1965] 1 All SA 521 (A) at para 141 D H.

[32] First Respondent's Heads of Argument, filed on 23 March 2022 at para 8.7.

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