

SOUTH AFRICA / JUDGMENT

Gololo v Limpopo Department Economic Development Environment and Tourism and Others (JA80/2024) [2025] ZALAC 30; (2025) 46 ILJ 1895 (LAC) (9 May 2025)

[2025] ZALAC 30

COURT

Labour Appeal Court

BEFORE

Savage, Tokota, Mahalelo

CASE / FILE NUMBER

JA80/2024

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THE

LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case

no: JA80/2024

In

the matter between:

GOLOLO
MAMPE NORAH
Appellant
and
LIMPOPO
DEPARTMENT: ECONOMIC DEVELOPMENT,
ENVIRONMENT
& TOURISM
First Respondent
LIMPOPO
ECONOMIC DEVELOPMENT AGENCY
Second Respondent
GREAT
NORTH TRANSPORT (SOC) LTD
Third Respondent

Heard:

8 May 2025

Delivered:

9 May 2025

Coram:

Savage JA, Tokota and Mahalelo AJJA

JUDGMENT

SAVAGE, JA

Introduction

- [1] This appeal is against the order of the Labour Court handed down on 27 September 2023, which found that the dispute referred by the appellant, Ms Norah Mampe Gololo, to the Court for adjudication was deemed to have been withdrawn.[1] The appeal is not opposed.

Background

- [2] On 11 September 2019, the Labour Court granted the appellant leave to amend her statement of claim, which had been filed in terms of Rule 6 of the then-Labour Courts Rules[2], by no later than 20 September 2019. The appellant filed her amended statement of claim on 23 September 2019 and on 29 January 2023, sought condonation for its late filing. Between 23 September 2019 and 29 January 2023, the applicant pursued a related but different matter in the Labour Court.
- [3] In spite of the fact that the third respondent, Great North Transport (SOC) Ltd, on 19 May 2021 had taken issue with the appellant's failure to apply for condonation for the late filing of her amended statement of claim, the appellant waited a further 620 days thereafter before she filed her application for condonation. The third respondent did not oppose the appellant's application for condonation, and at the hearing of the matter, agreed to an order being granted by the Labour Court to this effect.
- [4] Despite the delay in filing the condonation application, the matter was not archived by the Registrar. The Labour Court, however, found that the matter had been deemed to have been withdrawn in accordance with paragraph 16.1 of the then-Practice Manual of the Labour Court[3] which provides that:

‘In spite of any other provision in this manual, the Registrar will archive a file in the following circumstances:

...

- in the case of referrals in terms of Rule 6, when a period of six months has elapsed from the date of delivery of a statement of case without any steps taken by the referring party from the date on which the statement of claim was filed, or the date on which the last process was filed...’

Evaluation

- [5] In *Lebelo and Others v City of Johannesburg*[4], the Labour Court found that the expiry of the six month period in paragraph 16.1 did not lead to an automatic dismissal of a claim but that it entitled a party to approach the Registrar to seek that a file be archived once the six month period had elapsed and that only thereafter will a matter be considered to have been dismissed or withdrawn.
- [6] In *November and Others v Burma Plant Hire (Pty) Ltd*[5] (November), the court held differently, finding that an unfair dismissal claim is automatically dismissed when the prescribed six-month time period set out in paragraph 16.1 expires; and that the court then lacks jurisdiction to determine the dispute referred to it. The court noted in that matter that the respondent party would nevertheless be entitled to seek, in terms of the then-Rule 11, an order that the claim be finally dismissed.
- [7] Paragraph 16.1 entitles the Registrar to archive a matter. In the current matter, the Registrar did not do so. Since the matter had not been archived, it remained alive, and the Labour erred in finding that, without notice to the appellant, it was deemed to have been withdrawn. This is so since paragraph 16.1 does not provide that when the six-month period has elapsed, a matter is automatically dismissed or deemed to have been withdrawn, even if no steps have been taken by the Registrar and the

applicant has received no notice of this. In finding differently, the decision in November is wrong, and in the current matter, the court a quo erred in making the order that it did.

- [8] This position is further bolstered by a complete reading of the Practice Manual, particularly at paragraph 11.2.7, which provides for the automatic archival of review applications where all the necessary documents in the application are not filed within a 12-month period from the date on which the application was launched. In contrast to paragraph 16.1, paragraph 11.2.7 does not require any action on the part of the Registrar for the matter to acquire the status of 'archived', rather, it is the inaction on the part of a delinquent party within the stipulated time period which changes the status of their application to one which is archived, and requiring court intervention to resuscitate it.[6]

- [9] Although not operative when the matter was determined by the Labour Court, Rule 7(2) of the current Labour Court Rules[7] addresses the same issue, providing that:

‘...

- (2) If in a period of 3 months from the date on which the initiating document is filed, no further documentation is filed or other action taken by the initiating party, the file will automatically be closed and archived, provided that the registrar has afforded the initiator 15 days' notice in writing of the closure and archiving. Any file that is archived may be retrieved only in terms of an order of court, on good cause shown.’

- [10] Rule 69(2) states that:

‘(2) Subject to rule 7, the registrar must archive a file in the following circumstances:

- (a) in the case of any motion proceeding, when a period of 6 months has elapsed without any steps taken by the applicant from the date of the filing of the application, or the date of the last process filed;
- (b) in the case of referrals for adjudication, when a period of 6 months has elapsed from the date of delivery of the statement of claim without any steps taken by the referring party from the date on which the statement of claim was filed, or the date on which the last process was filed;
- (c) When a party fails to comply with a direction issued by a judge within the stipulated time limit.'

[11] What is contemplated by new Rule 7 is that a matter will not be archived by the Registrar without notice to the referring party.

[12] The file in the current matter had not been archived by the Registrar, and there was no basis on which to infer that, despite this, the matter was deemed to have withdrawn. The appeal must therefore succeed, and there is no reason in law or fairness why a costs order should follow, given that the appeal was not opposed.

[13] The following order is therefore made:

Order

1. The appeal succeeds.
2. The order of the Labour Court is set aside, and the matter is remitted back to the Labour Court for determination.
3. There is no order as to costs.

SAVAGE JA

Tokota and Mahalelo AJJA agree.

APPEARANCES:

FOR THE APPELLANTS: M Scheepers

Instructed by Lebea Inc.

FOR THE RESPONDENTS: No appearance

[1]

Reasons

for the order made were given on 2 February 2024.

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

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- [3] Practice Manual of the Labour Court of South Africa, 2013 (repealed, effective 17 July 2024).
- [4] (J2055/14) [2022] ZALCJHB 92 (17 March 2022) at paras 8 - 9.
- [5]
- (2020) 41 ILJ 1177 (LC) at para 26.
- [6] See: E Tradex (Pty) Ltd t/a Global Trade Solution v Finch and Others (2022) 43 ILJ 2727 (LAC) at paras 9 – 11.
- [7] GN 4775 of 2024: Rules Regulating the Conduct of the Proceedings of the Labour Court (effective, 17 July 2024)
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