

SOUTH AFRICA / JUDGMENT

Mayekiso v Jamodien and Others (C201/2017) [2024]

ZALCCT 31 (10 July 2024)

[2024] ZALCCT 31

COURT

Labour Court Cape Town

BEFORE

Leslie

CASE / FILE NUMBER

C201/2017

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

Not

reportable

THE

LABOUR COURT OF SOUTH AFRICA

HELD

AT CAPE TOWN

Case

no: C201/2017

In

the matter between:

NOMZAMO

MAYEKISO

Applicant

and

COMMISSIONER

TARIQ JAMODIEN

First

Respondent

DEPARTMENT OF HOME

AFFAIRS

GENERAL

PUBLIC SERVICE

Second

Respondent

SECTORAL

BARGAINING COUNCIL

Third

Respondent

Date
of Hearing: 4 July 2024
Date
of Judgment: 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 for handing down judgment is 10 July 2024

Summary: (Application for reinstatement of
lapsed review application – no satisfactory explanation for
substantial delay – application
refused.)

JUDGMENT

LESLIE AJ

Introduction and

background

- [1] The applicant has applied to reinstate a review application under the above case number that was deemed to be withdrawn in terms of clause 11.2.3 of the Practice Manual of this court.[1] The application for reinstatement is unopposed.
- [2] Clause 11.2.2 of the Practice Manual provides that, for the purposes of Rule 7A(6), records must be filed within 60 days of the date on which the applicant is advised by the registrar that the record has been received.
- [3] Clause 11.2.3 provides as follows:
- “If the applicant fails to file a record within the prescribed period, the applicant will be deemed to have withdrawn the application, unless the applicant has during that period requested the respondent’s consent for an extension of time and consent has been given. 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. The application must be accompanied by proof of service on all other parties and answering and replying affidavits may be filed within the time limits prescribed by Rule 7. The Judge President will then allocate the file to a judge for a ruling, to be made in chambers, on any extension of time that the respondent (sic) should be afforded to file the record.”*
- [4] It is common cause that the applicant did not request consent from the respondents or approach the Judge President for an extension, as envisaged in clause 11.2.3.

- [5] At best for the applicant, the 60-day period for filing the record commenced on 24 April 2018. It was therefore due by 23 June 2018. The applicant's supplementary founding affidavit was delivered, together with the record, in terms of Rule 7A(8) on 4 February 2019. This means that the record was filed about 9 months after the 60-day period had elapsed.
- [6] It appears that the applicant, who is represented by her trade union, NEHAWU, was unaware that the application was deemed withdrawn. The review application was enrolled for hearing on 23 February 2023 (on an opposed basis). It was struck off the roll per Lagrange J on that date due to the fact that it was deemed withdrawn.
- [7] The applicant then took another 8 months to deliver this application for reinstatement (the court's stamp is dated 1 November 2022). It is worth noting that the original review application was also filed 26 months late.
- [8] The reinstatement application was called before Duba J on 21 June 2023. On that occasion, the matter was postponed to permit the applicant to supplement her founding affidavit in the reinstatement application. A supplementary affidavit was filed on 6 July 2023.

Legal principles

- [9] An application for revival or reinstatement involves the exercise of a discretion on the part of the court, akin to an application for condonation.[2] In order to show good cause, an applicant must put up a reasonable explanation which covers the entire period of the delay as well as showing reasonable prospects of succeeding in the main application.
- [10] In the oft-cited case of *Melane v Santam Insurance Co Ltd* 1962
- (4) SA 531 (A) 532C-F (which was relied on by the applicant in argument), the following was held:
- "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 thereof, 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 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."*
- [11] A poor explanation for delay obviates the need to enquire into prospects of success. As stated in *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC) at 211G-H:

“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.”

Analysis

- [12] In my view, the applicant’s explanation for the delay in filing the record (even ignoring for present purposes the applicant’s remissness in bringing her review application late and the further delay in applying for reinstatement) is unsatisfactory and porous.
- [13] It appears that, when the first and third respondents filed the record at court in April 2018, the audio recordings of the arbitration proceedings were omitted. The applicant followed up and, by May 2018, was advised that the audio recordings were not available.
- [14] In these circumstances, the applicant had more than one option available. With the assistance of her union, she could have engaged in a process of reconstruction with the other parties – as envisaged in *Lifecare Special Health Services (Pty) Ltd t/a Ekuhlengeni Care Centre v CCMA* (2003) 24 ILJ 931 (LAC) 936FF-937A. In that matter, Zondo JP held that an applicant for review faced with an incomplete record is under a duty to initiate a process between the parties and the arbitrator in question, and to endeavour to place as full a record as possible before the Court.
- [15] Alternatively, the applicant could have followed the directions provided in clause 11.2.4 of the Practice Manual, in terms of which the Judge President may be approached for a direction on the further conduct of the review application.
- [16] The applicant did neither. Her admitted failure to do so is not explained.
- [17] Instead, it appears that the applicant did not accept the advice of the first and third respondents that the audio recordings were lost. The only step taken by the applicant was, on her version, that she “appealed to NEHAWU head office in Johannesburg to confront the bargaining council over the deficiency of the record.” In her supplementary affidavit, the applicant marginally expands on this explanation by stating that a NEHAWU official, Mr Nanto, raised the matter with the council’s General Secretary and that he was “advised by the council that the matter is referred to the labour court and as a result thereof the council would only act on a request for reconstruction once it gets a court order that orders the council to convene such a process.”
- [18] Bearing in mind the lengthy period of the delay, it was incumbent on the applicant to place a full and coherent explanation before the court – to enable it to assess the true motivation for and reasons behind the delay. The explanation tendered is utterly devoid of any meaningful detail and, critically, dates.
- [19] For example, when did Nanto speak to the General Secretary? When and how was he advised that a court order was necessary before any reconstruction of the record could take place? Once he was so advised, what steps did he take to advance the matter (bearing in mind that

to date there has been no approach to the Judge President or the court to obtain such an order)? When and how did the applicant make the decision to proceed instead to simply deliver a supplementary affidavit, proceeding with the review notwithstanding the defective record? There has been no attempt to provide the court with any of the answers to these basic questions – even after the applicant was afforded an opportunity to supplement her founding affidavit in the reinstatement application.

- [20] Overall, my sense is that the applicant has assumed, quite wrongly, that reinstatement of the review application is merely there for the asking. Regardless, there is no full and acceptable explanation for what is, on any version, a lengthy delay. Review applications are inherently urgent by their nature. The applicant has not crossed the first hurdle in showing good cause. The explanation is wholly unsatisfactory and incomplete. It raises more questions than it answers. In these circumstances, it is neither necessary nor appropriate to engage on the applicant's prospects of success. The application for reinstatement falls to be dismissed.

Order

- [1] The application for reinstatement of the review application under the above case number is dismissed.
- [2] There is no order as to costs.

Leslie AJ

Acting Judge of the Labour Court of South Africa

Representatives - For the Applicant: T Maluleke (NEHAWU)

- [1] The Practice Manual was in effect at the time when the application was deemed withdrawn.
- [2] *Samuels v Old Mutual Bank* (2017) 38 ILJ 1790 (LAC).

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCCT/2024/31.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mayekiso-v-jamodien-and-others-unknown-topic-alcct-2024>

Prepared on 14 October 2026 · Esheria