

SOUTH AFRICA / JUDGMENT

Mudzwiri v Fidelity Security Services (Pty) Ltd (JS801/2018) [2021] ZALCJHB 352 (14 October 2021) [2021] ZALCJHB 352

COURT

Labour Court Johannesburg

BEFORE

Nindi

CASE / FILE NUMBER

JS801/2018

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

Source record

THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case

No: JS 801/2018

In

the matter between:

TSHIMANGADZO

RONALD MUDZWIRI Applicant

(Respondent)

And

FIDELITY

SECURITY SERVICES (PTY) LTD Respondent

(Applicant)

Heard:

1 July 2021

Delivered:

14 October 2021 (This judgment was handed down electronically by emailing a copy to the parties.)

JUDGMENT

NINDI AJ

[1] This is an application for condonation by the Respondent for the late filing of its response to the Applicant's statement of claim.

The

Facts

- [2] The Applicant served a statement of case on 5 November 2018. The Respondent's statement of defence was due on 19 November 2018, however, it was only filed on 21 February 2019, approximately 3 months late. Due to the late filing of their statement of response, the Respondent filed a condonation application on 18 March 2019. It is this condonation application that is before me for determination. Both parties addressed me and made submissions during the hearing which was conducted virtually in line with the Covid-19 Regulations and this court's directive.
- [3] The reasons proffered by the Respondent for the late filing of its response is that it was due to the backlog experienced by the Respondent. Furthermore, that various employees had to be located and consulted before the statement of response could be served. Some of these employees work outside of town.
- [4] The Respondent argues that it has excellent prospects of succeeding with its defence. Although the parties had entered into a settlement agreement in terms of which the Respondent had agreed to reinstate the Applicant on the same terms and conditions of employment, the Respondent alleges that the Applicant failed to report for duty in terms of the three settlement agreements concluded between the parties.
- [5] As the Respondent seeks an indulgence from the Court, it therefore bears the onus to satisfy the Court that condonation should be granted. The Respondent has to provide the Court with a full explanation for every period of the delay.

The test for condonation

- [6] The relevant legal principles to be applied in an application for condonation are well established. Each case must be determined on its own merits. This Court has a discretion to consider the facts of each case. In essence, it is a matter of fairness to both sides.[1] In *Melane v Sanlam Insurance Co Ltd*[2] it was held that:

‘... Among the facts usually relevant, are the degree of lateness, the explanation therefore, 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 will be no point in granting

condonation. What is needed is an objective conspectus of all the facts.’

- [7] In *NUM v Council for Mineral Technology*[3] the LAC added the following codicil to the Melane test:

“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.”

- [8] It has been held that the importance of the issue and strong prospects of success may tend to compensate for a long delay. In the same breath, this Court has conventionally applied the approach that in the absence of a satisfactory explanation for a delay, the applicant's prospects of success are ordinarily irrelevant.[4]
- [9] In *Collett v Commission for Conciliation, Mediation and Arbitration*[5] 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 is, an application for condonation should be refused.
- [10] The onus is on the party applying to court for condonation to satisfy the court that condonation should be granted. In employment disputes, there is an additional consideration which applies in determining whether the onus has been discharged, which is the requirement of expedition. The Constitutional Court in *Toyota SA Motors (Pty) Ltd v CCMA and Others*[6] emphasised that one of the fundamental purposes of the Labour Relations Act[7] (LRA) was to establish a system for the quick adjudication of labour disputes. When it assesses the reasonableness of a delay, the court must not lose sight of this purpose.
- [11] In summary, the Courts have endorsed the principle that where there is a delay with no reasonable, satisfactory and acceptable explanation, condonation may be refused without considering the prospects of success and to grant condonation where the delay is not explained, may not serve the interests of justice.[8]
- [12] 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 from the court and bears the onus to show good cause.
- [13] It is in this context that the application for condonation stands to be determined.

Degree of Lateness and Explanation for the delay

- [14] The Respondent filed their statement of response 3 months late.
- [15] The Applicant alleges that the statement of claim was faxed and emailed to both the Respondent's Human Resources Officer ("HR") and its Industrial Resources Manager ("IR Manager"). The Respondent on the other hand, alleges that the statement of claim was faxed to HR and not emailed to the IR Manager. It was then placed on the desk of the Respondent's IR Manager; however, the IR Manager was out of the office at the time. HR failed to email the statement of claim to the IR Manager. The Applicant has provided proof of fax delivery receipt and a copy of the email forwarded to the Respondent. I am more inclined to believe the Applicant's version that the statement of case was properly delivered on the Respondent.

- [16] In general, and by its very nature of its security services, the Respondent has approximately 40 000 employees and 30 or 40 matters set down at the CCMA. The IR Manager alleged that the months of November and December are usually the busiest months which culminate, for most workers, with end of year leave. During this time, the IR Manager failed to notice the statement of case that had been placed on his desk and only got wind of it in January 2019.
- [17] The statement of case refers to various employees of the Respondent and consequently, these employees had to be located and consulted prior to the service of the statement of response. Once the relevant information had been collated, only then did the Respondent approach its attorneys with instructions to respond to the statement of claim.
- [18] I am therefore satisfied that the explanation provided for the delay is persuasive and comprehensive as it covers every period of the delay.

Prospect of Success

- [19] As outlined above, I am satisfied with the explanation provided regarding the reasons for the delay. I now turn to deal with the issue of prospects of success.
- [20] It is the Applicant's case that he has entered into three settlement agreements with the Respondent in an attempt to put this matter at rest and for him to be reinstated retrospectively. There is a dispute on whether the terms of the settlement agreements were honoured by both parties. The Applicant contends that he reported for duty in terms of the settlement agreements while the Respondent denies that the Applicant reported for duty in terms of any of the three settlement agreements. There is a clear dispute of fact that should be ventilated further before the court.
- [21] To this effect and without prolonging on this issue unnecessarily further, my finding is that the Respondent has demonstrated a reasonable prospect of success insofar as its response to the claim is concerned. The Applicant will, through his version at the appropriate trial, have such an opportunity to deal with the defence put forward by the Respondent.

Prejudice

- [22] In respect of prejudice, the Respondent submitted that they would be severely prejudiced if the application is not granted as they were not in wilful default of the required time periods. The Respondent's case is that the prejudice they stand to suffer outweighs any possible prejudice the Applicant may suffer. It claims that the Applicant will suffer no prejudice as the Applicant will still be granted an opportunity to place its version of events before the court.
- [23] In considering the facts of this matter and the legislative framework provided above, I am of the view that the Respondent has provided a satisfactory explanation for their delay and that there will be no prejudice suffered by the Applicant from his part. The Respondent acted as expeditiously as they could once they became aware of the service of the statement of claim.

In the premises, I make the following order:

1. The Application for condonation for the late filing of the Respondent's statement of response is granted.
2. There is no order as to costs.

NINDI AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: Mr Tshililo Khomola

Instructed by: Khomola Attorneys

For the Respondent: Mr Carell Crafford

Instructed by: Crafford Attorneys

[1] Civil Procedure in the Superior Court, Harms at B27.6.

[2] 1962 (4) SA 531 (A) at 532 C - F.

[3]

[1999] 3 BLLR 209 LAC at 211 G – I.

[4] NUM v Council for Mineral Technology [1999] 3 BLLR 209 (LAC).

[5]

(2014) 6 BLLR 523 (LAC).

[6]

(2016) 37 ILJ 313 (CC).

[7] Act 66 of 1995 as amended.

[8] Unreported: T Lempe & 70 others v Distell Ltd Case No – J 235/2014 (delivered 30 April 2019), at paragraph 11.

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/ZALCJHB/2021/352.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mudzwiri-v-fidelity-unknown-topic-alcjhb-2021>

Prepared on 14 October 2026 · Esheria