

SOUTH AFRICA / JUDGMENT

Nadasen v Laragh Courseware (Pty) Ltd (C14/25) [2025] ZALCCT 57 (22 July 2025) [2025] ZALCCT 57

COURT

Labour Court Cape Town

BEFORE

P Venter

CASE / FILE NUMBER

C14/25

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THE

LABOUR COURT OF SOUTH AFRICA,

HELD

AT CAPE TOWN

Case no: C 14/2025

Not

reportable

In

the matter between:

ROBIN

NADASEN

Plaintiff

And

LARAGH

COURSEWARE (PTY) LTD

Defendant

Date

heard: 25 June 2025

Date delivered: 22

July 2025

JUDGMENT**VENTER, AJ****Introduction**

- [1] The Plaintiff approached the court seeking an order condoning the late filing of his statement of claim and heads of argument.
- [2] The application is opposed by the Defendant.

Background

- [3] The Plaintiff was employed as a Graphic Designer from 1 November 2012 until his dismissal on 30 September 2024. The Plaintiff's

employment was terminated on 30 September 2024. It is common cause that the dismissal was due to operational reasons.

- [4] The Plaintiff referred a dispute to the Commission for Conciliation, Mediation and Arbitration (the CCMA) and a conciliation hearing took place on 3 October 2024. As the dispute remained unresolved, a certificate of non-resolution was issued on the same day.
- [5] The referral of an unfair dismissal dispute was filed at this court on 28 January 2025, approximately 26 days late. The Defendant filed a special plea concerning the Plaintiff's failure to apply for condonation for the late filing of the referral.
- [6] The Plaintiff's attorney later submitted an application for condonation on 6 March 2025 after realizing that the referral was actually late.

Relevant legal principles relating to condonation

- [7] The considerations regarding condonation have been settled and there are various decided cases in this regard. In *Melane v Santam*
- [1] the former Appeal Court confirmed the factors to be considered when deciding an application for condonation.
- [8] In *Steenkamp and others v Edcon Ltd* [2] the Constitutional Court confirmed that the granting of condonation must be in the interest of justice and the court referred to the Constitutional matter of *Grootboom v National Prosecuting Authority and Another* [3].

"[36] 'The standard for considering an application for condonation is the interests of justice. However, the concept 'interests of justice' is so elastic that it is not capable of precise definition. As the two cases demonstrate, it includes: the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success. It is crucial to reiterate that both Brummer and Van Wyk emphasise that the ultimate determination of

what is in the interests of justice must reflect due regard to all the relevant factors but it is not necessarily limited to those mentioned above. The particular circumstances of each case will determine which of these factors are relevant.

It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or the court's directions. Of great significance, the explanation must be reasonable enough to excuse the default.

The interests of justice must be determined with reference to all relevant factors. However, some of the factors may justifiably be left out of consideration in certain circumstances. For example, where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of reasonable prospects of success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party. As a general proposition the various factors are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice.

[37] All factors should, therefore, be taken into account when assessing whether it is in the interests of justice to grant or refuse condonation."

[9] In *Academic and Professional Staff Association v Pretorius NO and Others*,^[4] the court reiterated that the following factors should be considered:

"The factors which the court takes into consideration in assessing whether or not to grant condonation are: (a) the degree of lateness or non-compliance with the prescribed time frame; (b) the explanation for the lateness or the failure to comply with the time frame;

(c) prospects of success or bona fide defence in the main case; (d) the importance of the case; (e) the respondent's interest in the finality of the judgment; (f) the convenience of the court; and (g) avoidance of unnecessary delay in the administration of justice".

[10] With the aforementioned in mind, it is incumbent on this court to consider the relevant factors in their totality.

Degree of lateness

[11] The certificate of non-resolution was issued on 3 October 2024 and the referral was filed on 28 January 2025.

[12] Section 191(11) of the LRA states that the dispute must be referred to the court within 90 days of being certified as unresolved.

[13] The delay was therefore 26 days, which is not excessive.

Explanation for the delay

[14] The Plaintiff's case is simply that his attorney erroneously applied the dies non of 16 December 2024 to 15 January 2025. The referral was therefore filed outside the statutory period determined in section 191(5)(b)(i) of the Labour Relations Act, 66 of 1995 (the LRA). It appears that the Plaintiff's attorney was advised that the referral was late after the Defendant filed a special plea relating to jurisdiction (lack of condonation).

[15] The Plaintiff also stated that his attorney's office was closed during the festive period, which also contributed to the delay.

[16] The Defendant contends that the explanation was inadequate and unreasonable. It was determined that the attorney's

misunderstanding of the dies non period does not constitute a satisfactory explanation. Furthermore, the Defendant also claims that there was no evidence that the attorney's offices closed for the festive period and that the details provided are insufficient to support this argument.

[17] The Defendant also objects to the attorney taking an additional two weeks after realizing there was a mistake and that the matter was not handled diligently. According to the Defendant, there is no explanation for the period from 18 February 2025 to 5 March 2025, and an attorney's negligence or ignorance does not justify the failure to apply for condonation. The Defendant referred to the decision in *Saloojee and Another NO v Minister of Community Development (Saloojee)* [5] where an applicant was held accountable for the lack of diligence on the part of its former attorneys of record.

[18] It is trite that applicants should not merely rely on the negligence or tardiness of a legal representative and that there are limits to which reliance can be placed on the negligence or tardiness of a legal representative. Employees are therefore not entitled to merely rely on the tardiness of their legal representative. [6]

[19] The court is not convinced that the Plaintiff was negligent himself, as it is very unlikely that he would have known that the dies non period was not correctly applied. The court is not satisfied that he went beyond the limits of reliance on his attorney's conduct, and this is compounded when one considers the short delay and the period when the delay occurred.

[20] The overall impression is that it would not be in the interest of justice to penalise the Plaintiff under these circumstances.

[21] The explanation for the delay, as per the founding affidavit, is therefore reasonable. It should also be recognised that the dies non period was previously not applied in the Labour Court, and the rules were amended not long before this dispute was referred to it.

Prospects of success

- [22] The Plaintiff disputes the reason for dismissal and the selection criteria. He also submits that alternative options were not fully explored and that he has reasonable prospects of success.
- [23] The Defendant denies the allegations in this regard and argues that the Plaintiff has previously agreed that there was a fair reason to dismiss him and that he fully understood the reason for dismissal.
- [24] The above clearly demonstrates that there are disputed facts and the parties should be given an opportunity to properly present their respective cases. On face value, the Plaintiff made out a prima facie case and should be granted a fair opportunity to contest his dismissal.

Prejudice

- [25] The Plaintiff submits that he will forfeit his right to have his dispute determined. He is not employed and the potential prejudice he may suffer outweighs any possible prejudice on the part of the Defendant.
- [26] The Defendant argues that it was necessary to draft a special plea and that unnecessary costs were incurred. It is also submitted that the current application would not have been necessary if the Plaintiff had only followed the rules and that he should not benefit from being an individual employee who is seemingly unemployed.
- [27] The Defendant also emphasised the need for labour disputes to be finalised in an expeditious manner.

Late filing of heads of argument

- [28] The Plaintiff avers that the delay was also minimal and was due to a bona fide mistake made by his attorney. It is also argued that heads of argument are for the convenience of the court and that there is no prejudice.
- [29] The Defendant objects and mentions that the delay is another example of the Plaintiff and/or his attorney's disregard for the rules of the court.
- [30] The court's overall impression is however that the delay was marginal, that there is a reasonable explanation and that prejudice clearly favours the Plaintiff.

Conclusion

- [31] The period of delay is not excessive, and the explanation is reasonable. The Plaintiff has shown prima facie prospects of success, and it would not be in the interest of justice to penalise the Plaintiff in this matter for the incorrect interpretation of court rules by his legal representative. The court is therefore satisfied that the Plaintiff has established that it is in the interest of justice for condonation to be granted, that there is good cause for granting condonation, and that a proper case has been made out for it.

Costs

[32] The court has a wide discretion in terms of section 162(1) of the LRA. The court is mindful of the dictum of the Constitutional Court in *Zungu v Premier of the Province of Kwa-Zulu Natal and Others* [7] when it comes to the issue of costs in employment disputes.

[33] The Defendant acted bona fide in opposing the application and the Plaintiff was responsible for the fact that condonation was required. In these circumstances, the court does not intend to make any costs order.

Order

[34] In the premises, I make the following order:

1. The application for condonation for the late filing of the referral and the late submission of heads of argument is condoned.
2. There is no order as to costs.

PIETER VENTER

ACTING JUDGE OF THE LABOUR COURT

APPEARANCES

For the Plaintiff: Adv Viljoen on instruction of Preshnee Govender Attorneys

For the Defendant: Adv Myburgh on instruction of Bagraims Attorneys

[1] 1962 (4) SA 531 (A). Also see *Brummer v Gorfill Brothers Investments (Pty) Ltd and Others* (2000) ZACC 3; 2000

(5) BCLR 465 at para 3.

[2] (2019) 40 ILJ 1731 (CC)

[3] (2014) 2 SA 68 (CC)

[4] (2008) 29 ILJ 318 (LC) at par 17

[5] 1965 (2) SA 135 (A).

[6] See *Superb Meat Supplies CC v Maritz* (2004) 25 ILJ 96 (LAC) as well as *PPWAWU and Others v AF Dreyer and Co (Pty) Ltd*.

[7]

(2018) 39 ILJ 523 (CC).

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