

SOUTH AFRICA / JUDGMENT

# Ntikinca v Commission For Conciliation and Others (C202/2019)

## [2024] ZALCCT 7 (9 February 2024)

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## COURT

Labour Court Cape Town

## BEFORE

Rabkin-Naicker

## CASE / FILE NUMBER

C202/2019

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### Source record

THE LABOUR COURT OF SOUTH AFRICA,  
CAPE TOWN

Not Reportable  
case

no: C202/2019

In

the matter between:

PHUMLA  
NTIKINCA  
Applicant  
and  
COMMISSION FOR CONCILIATION  
MEDIATION  
AND ARBITRATION  
First Respondent  
COMMISSIONER  
L MARTIN  
Second Respondent  
PASSENGER  
RAIL AGENCY OF SOUTH AFRICA  
(SOC)  
LTD t/a METRORAIL – WESTERN CAPE Third  
Respondent

Heard:

11 October 2023

Delivered: 8 February 2024  
(This judgment was handed down electronically by emailing a copy to the parties. The 9 February 2024 is deemed to be the date of delivery of this judgment).

## JUDGMENT

RABKIN-NAICKER J

- [1] This is an opposed application for the re-instatement of a review. On the 21 April 2022, I ordered that the review be struck off the roll for want of jurisdiction and that the applicant apply to reinstate the review within 10 Court days of that Order.
- [2] The review application was issued on the 27 March 2019 and the Registrar informed the applicant that the arbitration record had been received on 11 April 2019. Applicant was obliged to file those portions of the record she intended relying on within 60 court days. This would have been on 4 June 2019. The transcript was only filed a year and a half later on 2 of October 2020.
- [3] In her application for reinstatement of the review, the applicant explains the excessive delay as follows:

*“The reasons for non-compliance*

10. After I have uplifted the record from court I went to the different transcribers to find out how much it will cost to transcribe the record. The amounts I was told were over twenty thousand rand which I basically did not have as I did not have any income. At that time, I was already unemployed without any form of financial support. I have tried to get assistance from family members who were promising to make contributions which did never materialized.
11. Around May 2019 I was then advised to approach other transcribers by the name of Digital audio recording who also gave me a quote of just less than twenty thousand rand. As I was pleading with them on the terms of how I can make payments, the assistant there advised that I approach Legal-Aid SA who might assist with the transcription costs.
12. I then immediately went to their offices where I met a paralegal officer who took my details and advised that they will capture same to the system thereafter I will receive a call for an appointment to meet the legal practitioner.
13. I explained to the paralegal officer that I need assistance to transcribe the record which needs to be taken back to court before the 14 June 2019 and was advised that I need to be patient as it only the practitioner who advise me on such issues when we have a consultation.

14. The consultation with the practitioner was conducted on the 13 June 2019 as it was the day that she is available. During the consultation I was advised that they firstly they to do a merit assessment on the matter then it will be decided if Legal-Aid will be able to assist me on the matter or not. They understand the time frames and I was I advised to contact the employer for an extension while they are dealing with the internal processes, which I did so. Attached hereto the request marked annexure A.
15. I was then called in for a follow consultation in July 2019 in order to clarify certain issues and also the internal process if followed after the agreement at the CCMA.
16. Then on that consultation I was told that Legal-Aid at moment is trying to secure a new service provider and the one which was used the contract has expired. When I asked how long the process was going to take, the practitioner was not sure as the process is being handled by the national office in Johannesburg. But she will keep me posted of the of the progress in the meantime.
17. On my side I will always call the offices of Legal-Aid at least twice a month for a follow up and will be told that the process is underway and this office is waiting for an instruction from national office for the approved service provider or transcriber. I will also send an email for an update.
18. In the new year of 2020 I also made follow telephone calls and was advised that the process of the service provider is about to be concluded. Then they will be issuing instructions to transcribe. Then it was the lock down due to Covid-19.
19. Around May 2020 I was advised that the service provider is busy with the transcript but due to the pandemic they are working on a number staff in order to avoid the spread of the various which is then add to delay in finalizing the recordings.
20. When the transcript was finalized in July 2020 the transcriber wanted proof of payment before they can release the hard copies. Then process of payment which is also done on the system, the service provider has not yet updated their details with the new tax clearance which Legal-Aid could process payment until the update is done.
21. Further another challenge that we have faced is the service provider at time is non-tax compliant and we made follow up, we were advised that there is error in the central data base as they have updated their information.
22. I submit that if the service provider is non-tax on our side we are unable to proceed with the financial process because the system refused us to create purchase orders or process payments for the service provider until the system is completely updated by the services provider.

23. Only in August that it was done and we were able to receive the copies of the transcript. I submit that at that time Legal-Aid was working in two teams, because of the pandemic the practitioner was working one in the office one week out in order to curb the spread of the various.

24. Then we had to arrange for a consultation which was in September due to the availability and teams which cannot mix with each other in the office. Further the volume of the record is big which needed time to go through same.”

[4] Annexures to the above affidavit comprise an email written to the employer by the applicant asking for an extension to file the

transcript dated 13 June 2019. It states inter alia that:

*“I hereby request the extension to file Arbitration records due to the fact that I took this matter to legal aid to assist due to the fact that I could not afford There are processes followed by Legal Aid so I am waiting for those processes.”*

[5] There is also a confirmatory affidavit by applicant’s legal aid attorney of record. These two documents are the sum total of annexures to the founding papers in this reinstatement application. Dates given in the affidavit when these are specified, refer to a month and not a day. However, in submission before me on behalf of the third respondent, it is conceded that “in principle and on the face of it, the explanation for the delay is a reasonable one”. However, it is argued, correctly with respect, that the explanation is not sufficiently full or satisfactory. The third respondent also takes issue with the applicant’s failure to index and paginate the papers and to file heads of argument timeously.

[6] In seeking reinstatement of the review, the applicant refers to the content of the founding and supplementary affidavits in dealing with the prospects of success on review, which she describes as ‘good’. She adds inter alia that:

*“I submit to the court that nowhere I have lost interest on the matter as it the income I have to look after my family further considering the fact that I was allowed to move to the Western Cape Region since 2014 and with the understanding the transfer papers will be dealt with at the later stage. But the third Respondent use that to get rid of me on allegation of absconding.”*

[7] The applicant must establish ‘good cause’ in order for the Court to reinstate the review. This is the same test as that applied in an application for retrieval of a file which has lapsed. In *Samuels v Old Mutual Bank* (2017) 38 ILJ 1790 (LAC) ‘good cause’ was described as follows:

‘In essence, an application for the retrieval of a file from the archives is a form of an application for condonation for failure to comply with the court rules, time frames and directives. Showing good cause demands that the application be bona fide; that the applicant provide a reasonable explanation which covers the entire period of the default; and show that he/she has reasonable prospects of success in the main application, and lastly, that it is in the interest of justice to grant the order. It has to be noted that it is not a requirement that the applicant must deal fully with the

merits of the dispute to establish reasonable prospects of success. It is sufficient to set out facts which, if established, would result in his/her success. In the end, the decision to grant or refuse condonation is a discretion to be exercised by the court hearing the application which must be judiciously exercised.'

[9] In deciding this matter, I am cognisant of the status of the Court as one of equity and law. Given that the applicant has incorporated her grounds of review of the award in question by reference, and noting it was not necessary for her to deal fully with the merits of the review, I am inclined to grant the order sought by her. The third respondent has already filed answering papers in the review addressing, inter alia, the complex set of disputed facts that served before the Commissioner. I can see no overriding prejudice to the respondent should the matter, ripe for hearing, be set down for argument. The applicant, on the other, will have lost the opportunity for the review to be duly considered by the Court. In these circumstances, I am of the view that the interests of justice would be best served by the following order:

#### Order

1. The review of the Award under case number WECT781-18 is hereby reinstated.
2. The Registrar is directed to enroll the review for hearing;
3. There is no order as to costs.

HRabkin-Naicker

Judge of the Labour Court of South Africa.

#### Appearances:

For the Applicant: Legal Aid South Africa

For the Third Respondent: MacRobert Inc

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Prepared on 10 October 2026 · Esheria