

SOUTH AFRICA / JUDGMENT

Piktup (Soc) Ltd v Mokele (JR646/23)

[2025] ZALCJHB 177 (2 May 2025)

[2025] ZALCJHB 177**COURT**

Labour Court Johannesburg

BEFORE

Daniels

CASE / FILE NUMBER

JR646/23

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Source record**THE****LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG****Not Reportable****Case****No: JR646/23****In****the matter between:**

PIKITUP
(SOC) LTD
Applicant
and
PUMLA
MOKELE
First Respondent
SOUTH
AFRICAN LOCAL
GOVERNMENT
BARGAINING COUNCIL
Second Respondent
NATASHA
MONI NO Third
Respondent

Heard:

20 February 2025

Delivered:

2 May 2025

Summary:

Application for condonation in terms of the Practice Manual.
Application to compel re security under section 145(7) of the LRA.

JUDGMENT**DANIELS J****Introduction**

- [1] There are three applications before the Court. The first is to extend the 60-day period in clause 11.2.3 of the Practice Manual. The second is to condone non-compliance with the 60 day period in clause 11.2.3 of the Practice Manual. The third is brought by the first respondent to compel the applicant to provide security, as contemplated in section 145(8) of the LRA.

Material

facts

- [2] The first respondent was dismissed by the applicant on 12 August 2021 for alleged misconduct. She referred a dispute to the South African Local Government Bargaining Council (the “Council”) for conciliation, and arbitration. When conciliation failed, the Council appointed the third respondent to arbitrate the dispute.
- [3] On or about 6 March 2023, the third respondent issued an arbitration award in which she found that the dismissal (of the first respondent) was both procedurally and substantively unfair. The applicant was required, in terms of the award, to reinstate the first respondent, retrospectively, and to pay her nineteen months’ salary as backpay.
- [4] On 14 April 2023, the applicant launched an application to review and set aside the arbitration award.
- [5] On 28 April 2023, the registrar informed the applicant that the record of the arbitration proceedings had been filed. However, upon uplifting the record, the applicant discovered that the record was incomplete because certain recordings were missing.
- [6] On 8 June 2023, the applicant’s attorneys contacted the first respondent’s attorneys and requested an extension of time to file the record. The attorneys refused to grant the indulgence.
- [7] On 20 June 2023, the registrar advised the applicant that the missing part of record had been filed. However, the applicant discovered that the compact disc (which allegedly contained the missing audio recordings) was damaged and could not be accessed.
- [8] On 26 June 2023, the registrar informed the applicant that yet another compact disc had been filed. Once again, the applicant found that it could not access the record from the compact disc.

- [9] On 14 July 2023, the applicant attended at the Bargaining Council and retrieved the missing record, this time with a USB drive. The record was delivered to the transcribers.
- [10] On 27 July 2023, the applicant launched an application in which it sought an extension of time, beyond the sixty day period prescribed by clause 11.2.3 of the Practice Manual, to file the record.
- [11] On 3 May 2024, the applicant launched a further application in terms of which it sought condonation for non-compliance with clause 11.2.7 of the Practice Manual.
- [12] The applicant filed the arbitration record on 2 October 2023.

Condonation application

- [13] Rule 7A(5) requires the registrar to make available to the applicant “the record”. Thereafter, the applicant is required to prepare the record, and deliver those parts of the record upon which it relies. In my view, it is plain from the language used, as well as the context, that the words “the record”, in Rule 7A(5), relate to the full and complete record. I cannot fathom how an applicant can be required to deliver the record, within 60 days, in circumstances where the complete record has not been filed.
- [14] It is trite that the 60-day period, in clause 11.2.3 of the Practice Manual, is calculated from the date on which the applicant is advised by the registrar that the record has been filed.[1]
- [15] The notice issued by the registrar, in terms of Rule 7A(5), on 28 April 2023, related to an incomplete record. The notices issued on 20 and 26 June, purported to contain the complete record, or the missing part of the record, but did not. In the circumstances, the complete record was, in fact, not filed by the Council in a manner accessible to the applicant.
- [16] In light of the above, the applicant requires no condonation. The record has not been filed late, and the review application has not been deemed to have lapsed. However, if I am incorrect in this regard, the application for extension must be granted. The applicant has diligently prosecuted the review application, and taken the necessary steps to proceed with it in timely and expeditious manner.

Non-compliance with clause 11.2.7

- [17] Clause 11.2.7 states that an applicant in a review application is required to ensure that “all the necessary papers” in the review are filed within twelve months of the date of the launch of the application and the registrar is informed in writing that the application may be enrolled for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed. In this matter, the Registrar has not archived the application. As previously mentioned, I am satisfied that the applicant diligently prosecuted the review application and took all the steps to proceed with the application in timely and expeditious manner. In the circumstances, condonation is granted for non-compliance with clause 11.2.7.

Application to compel security

- [18] The first respondent brings its own application to compel the applicant to furnish security. In my view, the application is misconceived. There is no stand alone requirement that security must be provided by an applicant in a review. The failure to provide security impacts only on whether the enforcement of the award is stayed, it being trite that an application to review and set aside an arbitration award does not stay the enforcement of the award.[2]
- [19] If the applicant seeks to stay the enforcement of the award, he or she may bring an application to stay the enforcement of the award under section 145(3), or provide security in accordance with section 145(7).
- [20] In the circumstances, the application to compel the applicant to provide security, is dismissed.

Costs

- [21] In labour disputes, costs do not follow the result. There are no exceptional circumstances which requires a cost order.

Conclusion

- [22] In the result, for the reasons set out above, I make the following order:

22.1 The application brought under JR646/23 is not deemed withdrawn in terms of clause 11.2.3 of the Practice Manual;

22.2 The applicant is granted condonation for non-compliance with clause 11.2.7 of the Practice Manual;

22.3 The Registrar is directed to enrol the review application for hearing on the opposed motion roll;

22.4 The application to compel the furnishing of security in terms of section 145(7) is dismissed;

22.5 There is no order as to costs.

Reynaud Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mr KT Mokatla

MMMG Attorneys

For the First Respondent:

Mr I Mureriwa

Machingura Attorneys

[1] SA Social Security Agency v Hartley & others

(2023) 44 ILJ 1334 (LC) at para 84

[2] Rustenburg Local Municipality v SALGBC and others [2017] 11 BLLR 1161 (LC) at para 12

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