

SOUTH AFRICA / JUDGMENT

Thobakgale and Others v Manganyi and Others (JR1465/18) [2024] ZALCJHB 435 (8 November 2024) [2024] ZALCJHB 435

COURT

Labour Court Johannesburg

BEFORE

Morgan

CASE / FILE NUMBER

JR1465/18

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR1465/18

In the matter between:

PHUMUDZO THOBAKGALE and 6 Others APPLICANTS and COMMISSIONER T G MANGANYI
FIRST RESPONDENT STATUTORY COUNCIL PRINTING, NEWSPAPER & PACKAGING
INDUSTRIES SECOND RESPONDENT SPRINT PACKAGING (PTY) LTD THIRD RESPONDENT

Heard: 4 October 2023

Delivered: 08 November 2024

Summary: Condonation application for the late filing of the Applicant's notice in terms of Rule 7A(8)(b) of the Labour Court Rules.

The judgment was handed down electronically and was circulated to the legal representatives of the parties. The date and time for the down is deemed to be Friday, 08 November 2024, at 13h00.

JUDGMENT: IN THE INTERLOCUTORY

APPLICATION FOR CONDONATION

MORGAN AJ

[1] Before me is an interlocutory application in the review application to condone the late delivery of the applicants notice in terms of Rule 7A 8 (b) of the Labour Court Rules, which states that the applicants stand by their prayers sought notice of motion delivered at the institution of the review application, prior to the receipt and delivery of the record for the arbitration held before the

commissioner (first respondent) appointed by the Statutory Council for the Printing Newspaper & Packaging Industry[1] (second respondent).

[2] A determination of this narrow issue (condonation for the late delivery of a notice) will determine how the main proceedings are to be handled. If I refuse the condonation, the review application will essentially end. If I grant an order to the contrary, that matter will proceed, and the review application will be heard and decided on its merits.

[3] In this judgment, I considered only facts[2] necessary to determine the issues relating to the condonation application before me, not those that may be relevant to the main

proceedings (review application).

[4] Rule 7A (8) provides that:

The applicant must within 10 days after the registrar has made the record available either- (a) by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit; or (b) deliver a notice that the applicant stands by its notice of motion.

[5] In brief, it is common cause in this matter that the registrar of the second respondent provided the record of the arbitration proceedings belatedly. As a result, the same was not filed in this court within the prescribed time periods set out in the Rules of Court. Further, once the record was delivered though belatedly, the applicants did not deliver the required notice in terms of Rule 7A(8)(b) timeously because they elected not to amend, add to or vary the terms of the notice of motion and/or supplement the supporting affidavit initially filed in term of Rule 7A(8)(a). Thus, the only required notice that ought to have been delivered was envisaged in Rule 7A(8)(b).

[6] Further, only the third respondent opposes the condonation application. The first and second respondents did not file any opposition notices or papers.

[7] The applicants have delivered the required notice belatedly in terms of Rule 7A(8)(b) and seek condonation for the late filing.

[8] The principles applicable to condonation are stated in a plethora in this Court's caselaw repository, and for the purposes of this matter, I will not restate them.

[9] For brevity and logic, I will not restate all the third respondent's submissions supporting its prayer for dismissing this interlocutory application, thus ending the main proceedings (review application).

- [10] I have considered points in limine, as well as all the submissions and grounds for opposition made by the third respondent in support of refusing the applicant's condonation application. The third respondent contends that this court should not grant the condonation application and, in effect, decline to entertain the review application for two reasons. The first reason is that it contends that the record of the arbitration proceeding delivered on 15 August 2018 is adequate. Second, in the alternative, due to the applicant's delay in filing their notice and failure to apply for condonation.
- [11] In short, all the grounds or reasons for advances do not hold any merit. In fact, in my view, they go against the foundational and fundamental values and legal principles which give effect to the constitutional rights to access justice by having their matter fully adjudicated and considered by a judge in a court of law and ensuring a fair hearing. Our courts have always cautioned against dismissing matters on technicalities. Courts should always strive to put substance over form rather than vice versa unless doing the latter would lead to an injustice (substantial) because the law is there to facilitate and ensure a just and equitable outcome and not the opposite.
- [12] In a case such as this, where it is most evident and common that low to middle-income earning employees, even when represented by a trade union, usually do not have the financial wherewithal to diligently pursue a case in which they may genuinely believe an injustice may have been committed against them, more so about the loss of employment and subsequent impairment of their financial ability to support themselves and those who are dependent on them for the time that they are dismissed and are left without a source of income and intend to challenge or test the lawfulness or fairness of their dismissal.
- [13] The least a court like this can do to ensure a just and equitable outcome is to allow the applicants to be heard in the main application and ensure that their right to a fair hearing is sufficiently afforded and met. In my view, the third respondent would lose nothing or suffer substantial prejudice if the condonation was granted and the matter was brought to finality. Hearing and deciding the merits of the review application would benefit both parties, as there would be finality and certainty in the matter.
- [14] In summary, the third respondent submits that the applicant's condonation application should not be granted because the record of the arbitration proceedings delivered is incomplete and will not aid the court in determining the review application, thus leading to an adverse outcome against the applicants. This, in my view, is putting the cart before the horse; the applicants' prospects of success in the review application are one of the factors to take into account when detaining an application of this nature (condonation application); however not determinative or weightier than the other factors one has to take into consideration.
- [15] In a matter such as this, where the issue involves an employment dispute which relates to the fairness of the termination of an employment contract and the alleged infringement of employment rights protected in the LRA and, by extension, the Constitution, 1996 are

implicated, the factors about the interest of justice and the substantial prejudice caused or one stands to suffer if the lateness for filing the required document is not condoned, thus effectively bringing an end to the proceedings before the main issues are even ventilated and considered, such these factors play a significant role and hold more weight over, more so when the party seeking the condonation's case is not entirely hopeless from a prima facie perspective. Moreso, when determining the outcome in an interlocutory application for condonation for the late delivery of a notice or document, not a pleading such as the one before me.

- [16] In my view, the right to have a litigant's case or deference fully heard when the pleading has been delivered timeously or slightly out of time gives effect to the fundamental constitutional right to access court and a fair hearing. Moreso, when in real life and practicable time, the backlog on this court's roll in obtaining a hearing date is, in any event, much further than

one may desire due to the institutional administrative routes challenges experienced by this court, thus hampering or defeating the meticulous and well thought time frames envisioned by the Judge President and Rules board in the Rules of this court to ensure a speedy and cost-effective resolution of the delicate matters which come before this court. In short, even though the notice was

delivered timeously, thus doing away with the necessity of this hearing, the court allocation date for the review application hearing

would have been allocated a date not less than twelve months from the date of set down—a date inspired by the unfortunate backlog in this Court.

- [17] Therefore, absent of substantial prejudice being suffered by the third respondent in granting the condonation for late delivery of the notice required in Rule 7A(8)(b), I deem it appropriate and in the interest of justice and fairness that the condonation application before me be granted.

- [18] Lastly, this court cannot adjudicate review simultaneously with the condonation application as specific notices, heads of arguments, and practice notes required to be exchanged in the review application have not been delivered. Therefore, the review application is not ripe for hearing. This matter was adjudicated upon piecemeal because the third respondent insisted it be enrolled separately. After all, it believed it had a good defence against the condonation application and that it would have been deposited of the entire review application if its opposition to the condonation application and points in limine were upheld.

- [19] I would have preferred that both the condonation application and review application be argued in one hearing after all the notices and documents required to set down a review application were exchanged. This would have been the most practicable, speedy, and cost-effective way of addressing all the issues for adjudication in this matter. However, at this point, it no longer matters, and I don't take any issue with or criticise any of the parties for the piecemeal enrollment and adjudication of this matter.
- [20] About the parties' submissions and the above-stated principles, I am of the view that it is in the interest of justice that condonation or the late filing of the Rule 7A(8)(b) notice be granted and that this matter be case managed and heard before me, to ensure a speedy resolution and finality of the matter in line with object, spirit and purport of section 1 of the Labour Relation Act. Referring back to the roll for later allocation would, in my view, defeat or substantially prejudice the attainment of the object and purpose of the above section. On the premises, I make the following order:

ORDER

1. The condonation sought by the applicant is granted.
2. This matter is part heard and hereby case managed for the review application to be heard before me.
3. The parties are directed to file the relevant notices, documents and heads of argument together with their practice notes in accordance with the timelines and sequence per the Rules of the Labour Court as gazetted on 3 May 2024, No. 50608.
4. If the parties reach a settlement, either of the parties must notify the registrar of the settlement as soon as possible.
5. This matter is postponed to 24 January 2025 for hearing virtually at 9h00.
6. Costs are reserved.

LM. Morgan

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicants: Email: Mr J K Moyo (Union Official)
inquebeleaphambili.tradeunion@gmail.com For the Respondent: Instructed by: Email: Mr D Pretorius Fluxmans Inc dpretorius@fluxmans.com

- [1] The Statutory Council for the Printing Newspaper & Packaging Industry of South Africa was accredited to resolve disputes in the Industry by the Commission for Conciliation Mediation and Arbitration in June 2004.

[2] The relevant facts I considered were inter alia that: the applicants in this matter are Mr Thobakgale and six colleagues (applicants) who were employees of Sprint Packaging (Pty) Ltd a division of Bidvest Paper Plus (Pty) Ltd (third respondent). The applicants were dismissed for misconduct pursuant being found guilty on charges of recording incorrect times on the attendance register and fraudulent time keeping at the third respondent's

business. The applicants contend that their dismissal was substantially unfair in that they were not treated equally with other employees who were charged for the same alleged misconduct when the other 10 employees who were charged and found guilty on the same offence were not dismissed but rather given written warnings. They contend that the sanction imposed was motivated by their affiliation with and election to be represented by the trade union in the disciplinary enquiry. On 2 August 2018, the applicants launched their review application in this court. On 15 August 2018, the applicants filed the record of the arbitration proceedings. On or about 15 March 2020, the applicants delivered their notice in terms of Rule 7A (8)

(b) of the Labour Court Rules. The delay in filing the notice in terms of Rule 7A(8)(b) was for approximately 18 months after having filed the arbitration record.

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business.

The applicants contend that their dismissal was substantially unfair in that they were not treated equally with other employees who were charged for the same alleged misconduct when the other 10 employees who were charged and found guilty on the same offence were not dismissed but rather given written warnings. They contend that the sanction imposed was motivated by their affiliation with and election to be represented by the trade union in the disciplinary enquiry.

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Prepared on 13 October 2026 · Esheria