



**THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**

Not Reportable  
Case No: C 747/2021

In the matter between:

**HILTON LIKGALE**

**Applicant**

and

**STATUTORY COUNCIL FOR THE  
PRINTING INDUSTRY**

**First Respondent**

**COMMISSIONER LILLIAN GORDEMA N.O.**

**Second Respondent**

**ROTALABEL, A DIVISION OF BIDVEST (PTY) LTD**

**Third Respondent**

Heard: 27 June 2025

Delivered: 4 July 2025

---

**JUDGMENT**

---

**VENTER AJ**

### Introduction

- [1] The Applicant in this matter requests an order to reinstate or revive the main review application, which is considered withdrawn, lapsed, and archived under the then Practice Manual of this Court (clauses 11 and 16 of the Practice Manual).
- [2] The application is not opposed, although the Third Respondent was represented in court by Adv Bernstein, who confirmed that the application was not opposed.

### Background

- [3] The Applicant was initially represented by a labour consultant, Mr. Ronald Simons, but he gained employment elsewhere during August 2022. The Applicant was then without representation until the appointment of his current attorneys on 6 February 2023.
- [4] The arbitration award that forms the basis of the main application was issued on 21 November 2021, and the application for review was served and filed on 17 December 2021.
- [5] The Applicant received a notice in terms of Rule 7A(5) on 3 March 2022, which indicated that there were no CDs or documents available. He was subsequently informed by the Registrar, on 7 April 2023, that the record was received, albeit without the award and written reasons.
- [6] The Applicant avers that he was unable to comply with Rule 7A due to the aforementioned issue.
- [7] The current application for reinstatement of the review was filed on 24 October 2023. To revive the review, the Applicant had to submit an application for its reinstatement

### Practice Manual

- [8] The critical clauses in the then-applicable Practice Manual were:

#### Clause 11.2.2

For the purposes of Rule 7A (6), records must be filed within 60 days of the date on which the applicant is advised by the Registrar that the record has been received.

#### Clause 11.2.3

If the applicant fails to file a record within the prescribed period, the Applicant will be deemed to have withdrawn the application, unless the Applicant has during that period requested the Respondent's consent for an extension of time and consent has been given. If consent is refused, the Applicant may, on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time.

#### Clause 11.2.7

A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the Registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not be archived or be removed from the archive.

#### Clause 16.1

In spite of any other provision in this manual, the Registrar will archive a file in the following circumstances:

1. in the case of an application in terms of Rule 7 or Rule 7A, when a period of six months has elapsed without any steps taken by the applicant from the date of filing the application, or the date of the last process filed;
2. in the case of referrals in terms of Rule 6, when a period of six months has elapsed from the date of delivery of a statement of case without any steps taken by the referring party from the date on which the statement of claim was filed, or the date on which the last process was filed.

### The law on reinstatement applications

- [9] This Labour Appeal Court has held in *Macsteel Trading Wadeville v Van der Merwe NO & Others*<sup>1</sup> that the primary object of the Labour Relations Act, 66 of 1995 (the LRA) is to promote the effective and speedy resolution of labour disputes. Moreover, the Labour Appeal Court held in *E Tradex (Pty) Ltd v Finch & Others*<sup>2</sup> that compliance with the Practice Manual should be applied strictly and that the archiving of a court file does not refer to administrative action by the Registrar. Instead, it is the legal consequence of non-compliance with the Practice Manual. In the circumstances, due to clause 11.2.7, an application is archived and must be considered as having lapsed.
- [10] In *SAMWU obo Shongwe and Others v Moloi N.O and Others*<sup>3</sup> the Labour Appeal Court confirmed that the court has the discretionary power to dismiss a review for that reason, but that the power ought to be exercised with care and only in exceptional circumstances. The court also confirmed that all relevant factors had to be considered.
- [11] *City of Johannesburg Metropolitan Municipality and Others v Independent Municipal and Allied Trade Union and Others*<sup>4</sup>, is another example where the Labour Appeal Court confirmed that the court has discretion even when there was an inadequate explanation for the delay. The court clarified that it should consider whether there would be prejudice and how granting or denying the application would affect the parties.
- [12] An application to retrieve a file from archives is considered a form of condonation for failing to comply with court rules and deadlines. See *Samuels v Old Mutual Bank*<sup>5</sup> in this regard. It is therefore incumbent on an applicant to provide a reasonable explanation for the delay, that there are reasonable

---

<sup>1</sup> (2019) 40 ILJ 798 (LAC); [2018] ZALAC 50 at para 20.

<sup>2</sup> [2022] 43 ILJ 2727 (LAC); [2022] ZALAC

<sup>3</sup> (2021) 5 BLLR (LAC)

<sup>4</sup> (2017) 38 ILJ 2695 (LAC) at paras 55

<sup>5</sup> (2017) 38 ILJ 2695 (LAC) at para 17

prospects of success, that there is no prejudice and that it is in the interest of justice to grant the relief.

- [13] In *Govender and Others v CCMA and Others*<sup>6</sup> the Labour Appeal Court considered the prospects of success and confirmed that the principles to be applied echo those of a condonation application. It was emphasised that a party is obligated to bring an application as soon as possible once they realize they have not complied with the time frame. Problems with a missing record were also to be considered, and it was held that it would be unfair to blame a party under those circumstances. Additionally, the court highlighted that excellent prospects of success generally lead to the granting of condonation even if the delay is substantial.
- [14] It is therefore incumbent on this court to consider the abovementioned principles to ensure that the application complies with the requirements of an application for condonation.

#### Analysis of application

##### Length of delay

- [15] The application for review was filed on 17 December 2021, and the Registrar ultimately informed the Applicant on 7 April 2023 that the record had been received. The current application was filed on 24 October 2023.
- [16] The Applicant submitted that he filed a notice in terms of Rule 7A(8)(b) on 18 July 2022, although he was not in possession of the complete record at that time. The notice was filed about eight court days late, and the delay was not excessive.

##### Reason for delay

- [17] The Applicant provided a detailed explanation for the delay, and it is unnecessary to restate the entire uncontested version, except to emphasize some key points.

---

<sup>6</sup> (2024) 5 BLLR 453 (LAC)



- [18] The Applicant explained that the review application was launched on 17 December 2021 and that he was contacted by an official from the Third Respondent during January 2022, who informed him that the audio recordings would be filed. When this did not materialise, his former representative sent an email to the Third Respondent inquiring about the matter. The Registrar informed him on 3 March 2022 that the CDs were not filed, and he subsequently uplifted the record (without the CDs).
- [19] After some correspondence from his side, he received a second notice in terms of Rule 7A(5) on 7 April 2025. He was informed that three CDs were now filed. Unfortunately, some of the CDs were inaudible, and several correspondences were exchanged between his representative and the Third Respondent in an attempt to obtain better copies of the CDs.
- [20] He filed his supplementary affidavit on 8 August 2022, and the transcripts were also served on the Respondents on 11 September 2022. He continued to do his best to obtain better copies of the CDs.
- [21] The Applicant had to secure the services of a new legal practitioner and initially appointed a Mr. de Wet. However, his insurance company (FNB Law) informed him on 5 November 2022 that the legal practitioner was not on their approved panel of attorneys. He was obliged to approach his current legal practitioner, who was instructed on 29 January 2023.
- [22] On 3 March 2023, his legal practitioner received audio recordings for the outstanding dates.
- [23] The arbitration bundles were subsequently received by his legal practitioner on 21 April 2023, and he was then able to obtain a quotation for the typing of the record.
- [24] The transcribed record was received on 8 May 2023, and he filed his supplementary affidavit on 4 July 2023.
- [25] It appears that the main reason for the delay is the First Respondent's failure to file the complete record and the subsequent unwillingness of the Third Respondent to take part in the reconstruction of the record.
- [26] The explanation is reasonable and demonstrates good cause. The Applicant has not abandoned his matter and was faced with circumstances largely out of his control. It should also be considered that the application was not opposed, and the court had only one version before it.

### Prospects of success

- [27] The Applicant argued that he had reasonable prospects of success in the main application and that the Second Respondent erred by misconstruing the nature of his illness and incapacity, as well as her refusal to accept that he suffered from a stroke.
- [28] The Applicant submitted that he is a disabled person with severe speech impediments and that he is bound to a wheelchair. He was unable to find alternative employment, and the possible dismissal of the application would eliminate any chance to persuade the court of the unfairness that occurred. He also argued that he would suffer insurmountable prejudice, whereas the Respondents were not prejudiced by the delay.

### Evaluation

- [29] The Constitutional Court held in *Grootboom v National Prosecuting Authority and Another*<sup>7</sup> that the concept of the “interest of justice” is wide and that all abovementioned factors should be considered in its totality.
- [30] Having regard to all the circumstances of this matter and the authorities, the court is satisfied that the Applicant has shown a reasonable explanation for the delay in prosecuting his matter, that he has reasonable prospects of success and that prejudice favours him.

### Conclusion

- [31] For all the reasons set out above, this court concludes that the Applicant has shown good cause why the main review application must be reinstated by this court.
- [32] In the premises, I make the following order:

---

<sup>7</sup> (2013) BCLR 65 (CC)

Order

1. The application for reinstatement of the review is granted and the review application is reinstated.
2. There is no order as to costs.

**Venter AJ****Acting Judge of the Labour Court of South Africa**Appearances:

For the Applicant: Mr Christo Muller  
Instructed by: Turner Ntshingana Kirsten Ravens Inc

For the Respondent: Adv Jolene Bernstein  
Instructed by: Fluxmans Inc