IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 232/2014

In the matter between:

LEHLOHONOLO LEPHOTO	**First Applicant**
PHILLIP MAJADIBODU	**Second Applicant**
DUMASILE FONGWANA	**Third Applicant**
XOYISILE YEKISO	**Fourth Applicant**
MARTINS MOFOKENG	**Fifth Applicant**
LUCAS MABASO	**Sixth Applicant**
SIYABONGA NDZIMEZWENI	**Seventh Applicant**
BRIGHT NOBHUNGA	**Eight Applicant**
VUSILE NOMAQXABA	**Ninth Applicant**

and

WBHO (PTY) LTD	**Respondent**

Heard: **18 May 2018**

Delivered: **21 August 2018**

JUDGEMENT

TLHOTLHALEMAJE, J:

Introduction:

[1] The applicants seek condonation for the late filing of a statement of claim. Other than several factors to consider in such applications, central to this application is whether the applicants should be absolved from the errors of their attorney of record in calculating the statutory timeframes within which statements of claim should be filed in accordance with the provisions of section 191(11)(a) of the LRA. The applicants' attorney of record attribute the delay purely to his mistaken but *bona fide* belief that his calculation of the time periods within which dispute were to be lodged was correct.

[2] The respondent opposed the application for condonation on the basis that the applicants' may not avoid the consequences of the delay in circumstances where they and their attorney of record were timeously warned of their non-compliance with the time frames, and where the attorneys of record as practitioners in this court ought to have been familiar with how to calculate *'days'* for the purposes of referring disputes.

Background:

[3] The individual applicants were charged for acts of misconduct during a protected national strike called by National Union of Mineworkers (NUM) that took place on 26 August 2013. Following internal disciplinary hearings, they were then dismissed on 15 October 2013. An alleged unfair dismissal dispute was referred to the Commission for Conciliation Mediation and Arbitration (CCMA) on 30 October 2013.

[4] A certificate of outcome declaring the dispute as unresolved was issued on 26 November 2013. In terms of the provisions of section 191(11)(a) of the LRA, disputes such as in *casu* ought to be referred to this Court within 90 days from the date that CCMA has certified the dispute as unresolved. The statement of claim was filed on 19 March 2014. Upon its receipt, the respondent on 7 April 2014 in its statement of response pointed out that referral was out of time, and that in the absence of an application for condonation, this Court would lack jurisdiction. It is common cause that no application for condonation was filed then.

[5] The parties concluded and signed a pre-trial minute on 2 February 2016. It was *inter alia* recorded that the *'Respondent contends that the Applicants' statement of case has not been delivered timeously'*[1]. One would have expected that the applicants' attorney of record, Mr AJ Masingi (of Masingi Attorneys), who was signatory to those minutes would have addressed the obvious concern there and then, having initially been made aware of the non-compliance with the time frames as early as 7 April 2014 when the same issue was raised in the statement of response. This however was not to be so.

[6] The matter was then enrolled for trial on 28 November 2016. Prior to the set-down date, Masingi filed a 'Practice Notice' wherein in respect of the anticipated preliminary point, he had stated that the statement of claim was filed within the prescribed time frames, and that there was no need to file a condonation application. Attached to Masingi's 'Practice Notice' was a founding affidavit in which he further reiterated that the statement of claim was filed on time, and that the respondent's preliminary point was 'misconceived and ill purposed'.

[7] The respondent's preliminary point was upheld by the Court (per Mooki AJ) and the matter was struck from the roll. For his troubles, Masingi was ordered to pay the wasted costs, on a scale as between attorney and own client.

[8] On 13 December 2016, the applicants' attorneys of record filed the overdue application for condonation. Mr Masingi deposed to the founding affidavit in which he took responsibility for the miscalculation of the computation of the applicable *dies*, which he contended was an honest mistake and was not as a result of wilful default on his part.

Applicable principles:

[9] The principles applicable in applications for condonation are trite. In accordance with the provisions of section 191(11)(b) of the LRA, the Court may on good cause shown, condone the non-observance of the time frames.

[1] At paragraph 13.1 of the signed Pre-Trial Minutes

'Good cause' was explained in *Melane v Santam Insurance Co. Ltd*[2] in the following terms;

> 'In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success and the importance of the case. Ordinarily these facts are interrelated, they are not individually decisive, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate prospects which are not strong. Or the importance of the issue and strong prospects may tend to compensate for a long delay. And the Respondent's interests in finality must not be overlooked"

[10] The Constitutional Court in *Brummer v Gorfil Brothers Investments (Pty) Ltd* has since pointed out that an application for condonation should be granted if it is in the interests of justice and refused if it is not. The interests of justice must be determined by reference to all relevant factors, including the nature of the relief sought, the extent and cause of the delay, the nature and cause of any other defect in respect of which condonation is sought, the effect on the administration of justice, prejudice and the reasonableness of the applicant's explanation for the delay or defect[3].

[11] It is further trite that the period of the delay is reckoned from the date when the certificate was issued, and that in the absence of a finding that there was

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[2]1962 (4) SA 531 (A) At 532b-E

[3] 2000 (5) BCLR 465 ; 2000 (2) SA 837 (CC) at para 3; See also *Ndlovu v S* 2017 (10) BCLR 1286 (CC); 2017 (2) SACR 305 (CC) (15 June 2017) at paras 22 – 23; *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as amicus curiae)* 2008 (2) SA 472 (CC) at 477A-B; *SA Post Office Ltd v CCMA* [2012] 1 BLLR 30 (LAC) at para [23], where Waglay DJP (as he was then) stated that;

> 'In my view, each condonation application must be decided on its own facts bearing in mind the general criteria. While the rules are there to be applied, they are not inflexible but the flexibility is directly linked to and apportioned in accordance with the interests of justice; prejudice; prospects of success; and finally, degree of delay and the explanation thereof. The issue of delay must be viewed in relation to the expedition with which the law expects the principal matter to be resolved'

good cause for the failure to refer the dispute within the prescribed period, the Court will have no jurisdiction to adjudicate the dispute[4]. Significant with a determination of such applications is that condonation cannot be had for the mere asking, and that a party is required to make out a case entitling it to the court's indulgence by showing sufficient cause, and giving a full, detailed and accurate account of the causes of the delay[5]. In the end, the explanation must be reasonable enough to excuse the default.[6]

Evaluation:

The delay:

[12] The period of delay is to be calculated from the date that the certificate was issued up to the date that the statement of claim was filed. Masingi in his founding affidavit averred that the statement of claim was filed 30 days out of time, whilst the respondent holds the view that the delay must be calculated from the date that the certificate of outcome was issued to the date that the condonation application was filed, and not from the date the statement of claim was filed. The approach of the respondent cannot be correct in the light of the decision in *F & J Electrical CC v Metal and Electrical Workers Union of South Africa obo Mashatola and others*[7]. The delay in this case as calculated from the date that the certificate of outcome was issued until the filing of the statement of case is effectively 12 days on a proper interpretation and calculation of 'days' as defined in the Rules and the Practice Manual. That delay on the whole can hardly be said to be excessive. This conclusion nonetheless does not put an end to the enquiry in this case.

[13] An important consideration however raised with the respondent's contentions that the delay was even longer is that it is trite that an application for condonation must be filed without delay and/or as soon as the applicant

[4] *F & J Electrical CC v Metal and Electrical Workers Union of South Africa obo Mashatola and others* [2015] 5 BLLR 453 (CC) at 461, para [30]
[5] *Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited* 2017 (6) SA 90 (SCA) at para 6
[6] *Ndlovu v S* at para 31 *supra* at fn 3
[7] Ibid

becomes aware of the necessity to do so[8]. This factor is obviously important in the consideration of whether the effective administration of justice was not adversely affected. Thus, where the applicant delays the filing the application for condonation despite being aware of the need to do so, or despite being put on terms, the Court may take a dim view, absent a proper and satisfactory explanation for the further delays.[9]

[14] What the above therefore implies is that it is required of the applicants to not only explain the delay in respect of the periods stipulated in section 191(11)(a) of the LRA, but also in respect of the delays in respect of the filing of the application for condonation after they became aware of the necessity to do so[10]. In this case, the application for condonation was filed some two years and seven months upon Masingi being made aware of the default. That delay is excessive in the extreme.

The explanation:

[15] Masingi attributed the delay to his misreading of the Practice Manual of this Court, which defines *"a day"* as any day other than Saturday, Sunday and public holiday. He averred that he mistakenly thought that the statement of claim was filed within the prescribed time periods on his calculation of *'court days'*, and that there was no need to seek condonation.

[16] In regards to the subsequent delays in bringing the application for condonation, he again contended that he genuinely believed that the statement of case was not out of time, and it was only on 28 November 2016 (when the matter came before the Court) that the calculation of *'days'* was clarified, and he had immediately launched this application.

[17] The respondent's contention was that the delay was inordinate and that the explanation in that regard was not satisfactory in view of the fact that the applicants were at all material times, represented by attorneys who ought to

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[8] See *All Round Tooling (Pty) Ltd v NUMSA* (1998) 8 BLLR 847 (LAC); *Rennie V Kamby Farms (Pty) Ltd* 1989 (2) SA 124 (A) At 129G where it was held:

> 'whenever an appellant realises that he has not complied with a rule of court he should apply for condonation without delay.'

[9] See *Commissioner for Inland Revenue v Burger* 1956 (4) SA 446 (A) At 449G

[10] *Mulaudzi* at para [26].

have been aware of the rules governing conduct of proceedings in this Court is on point. In my view, it would be excusable if an attorney miscalculated the applicable time frames on some reasonable grounds other than an incorrect interpretation of *'day'* as defined in the Rules of this Court[11], and similarly in Paragraph 3 of the Practice Manual of this Court. The attempts by Masingi to attribute blame to the manner with which *'day'* is defined in the Rules of this Court or the Practice Manual is not only lame but also ridiculous.

[18] It nonetheless gets worse for Masingi and the individual applicants in that despite the claim that his belief was *bona fide, albeit* mistaken, when the statement of response was filed, the issue of non-compliance with the time frames was raised. However, no action was taken to correct the defect. Similarly, the same issue was raised with him at the convened pre-trail conference, and again, no action was taken. Equally puzzling is the contention that any confusion surrounding the definition of *'day'* was clarified by Mooki AJ on 28 November 2016 when the matter was heard. Even then, it is not correct that Masingi had filed this application immediately. It took him a further 11 days to do so, and for which no explanation was proffered.

[19] In regard to a further delay of two years and seven months, Masingi's explanation that he still belaboured under the mistaken belief that his calculations were correct cannot be equated to a *bona fide* mistaken belief. This is so in circumstances where on no less than two occasions, he was made aware that the statement of claim was out of time. Any reasonable practitioner in the face of an insistence by an opponent that there was non-compliance with the statutory time frames would have reflected on the matter and acted diligently. Even if ultimately Masingi was to be proven to be correct, there was still an obligation on him to nonetheless have acted on the side of caution, and to have filed the application. Where ultimately the Court would have found that the application for condonation was unnecessary as he had

[11] **1. Definitions**.-
"day" means any day other than a Saturday, Sunday or public holiday, and when any particular number of days is prescribed for the doing of any act, the number of days must be calculated by excluding the first and including the 1st day;

always maintained, he would then have had a strong argument for costs against the respondent.

[20] In the end, the explanation proffered by Masingi for the delays in referring the dispute, and the further delays when it became apparent that a condonation application was necessary is neither reasonable nor acceptable, as his belief that he was correct in his calculations cannot be viewed as *bona fide*. His failure to further explain the delay between Mooki AJ's order and the date on which the application was ultimately filed is further indicative of his lackadaisical approach to this matter.

[21] The next issue for consideration is whether Masingi's ineptitude should be visited upon the individual applicants. It is trite that there are limits to which litigants may be absolved from the negligence, tardiness or ineptitude of their chosen representatives[12]. This principle was reiterated in *NUM v Council for Mineral Technology*[13], where the Labour Appeal Court held that courts have traditionally demonstrated their reluctance to penalise a litigant on account of the conduct of its legal representative, but have emphasised that there is a

[12] See *Buthelezi & others v Eclipse Foundries Ltd* (1997) 18 ILJ 633 (A) at 638I–639A); *Saloojee and Another, NNO v Minister of Community* Development [1965] 1 All SA 521 (A) at 527 where in was held:

> "There is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of this Court. Considerations *ad misericordiam* should not be allowed to become an invitation to laxity. In fact this Court has lately been burdened with an undue and increasing number of applications for condonation in which the failure to comply with the Rules of this Court was due to neglect on the part of the attorney. The attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of a failure to comply with a Rule of Court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the circumstances of the failure are. (Cf. *Hepworths Ltd. v. Thornloe and Clarkson Ltd.,* 1922 T.P.D. 336; *Kingsborough Town Council v. Thirlwell and Another, 1957* (4) S.A. 533 (N)). A litigant, moreover, who knows, as the applicants did, that the prescribed period has elapsed and that an application for condonation is necessary, is not entitled to hand over the matter to his attorney and then wash his hands of it. If, as here, the stage is reached where it must become obvious also to a layman that there is a protracted delay, he cannot sit passively by, without so much as directing any reminder or enquiry to his attorney (cf. *Regal v. African Superslate (Pty.) Ltd.,* supra at p. 23 i.*.) and expect to be exonerated of all blame; and if, as here, the explanation offered to this Court is patently insufficient, he cannot be heard to claim that the insufficiency should be overlooked merely because he has left the matter entirely in the hands of his attorney. If he relies upon the ineptitude or remissness of his own attorney, he should at least explain that none of it is to be imputed to himself. That has not been done in this case. In these circumstances I would find it difficult to justify condonation unless there are strong prospects of success (*Melane v. Santam Insurance Co. Ltd*., 1962 (4) S.A. 531 (A.D.) at p. 532)."

[13] [1999] 3 BLLR 209 (LAC)

limit beyond which an applicant cannot escape the results of his representatives lack of diligence or the insufficiency of the explanation tendered.[14]

[22] In this case, and in the absence of any confirmatory affidavits from any of the individual applicants, it is not clear as to what role they had played in ensuring that their matter was properly and timeously prosecuted. It is therefore safe to conclude that they appear to have washed their hands of their case and left it to Masingi. To that end, there is no reason for them to be absolved from the tardiness of their chosen representative.

[23] In *NUM v Council for Mineral Technology*[15], it was held that in considering whether good cause has been shown, and notwithstanding the well-known approach that all factors to be considered are interrelated as enunciated in *Melane*[16], without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without good prospects of success, no matter how good the explanation for delay, an application for condonation should be refused. In *SA Post Office Ltd v CCMA,* it was stated that this principle is not inflexible, and that it applied where other factors do not in themselves raise issues that could necessitate the court's interference to grant the indulgence sought[17].

[24] In *Grootboom v National Prosecuting Authority and Another*, Zondo J held that:

> "Although the existence of the prospects of success in favour of the party seeking condonation is not decisive, it is an important factor in favour of granting condonation.

[14] *NUM v Council for Mineral Technology supra* at fn 13 at 211I-212A. See also *Superb Meat Supplies CC v Maritz* (2004) 25 ILJ 96 (LAC) at 100I-101A, where it was held that;

> 'It has never been the law that invariably the litigant will be excused if the blame lies with the attorney. To hold otherwise might have a disastrous effect upon the observance of the rules of this court and set a dangerous precedent. It would invite or encourage laxity on the part of practitioners. The courts have emphasized that the attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of a failure to comply with a rule of court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the circumstances of the failure are.'

[15] *Supra* fn *13* at para 10

[16] *Supra* fn 2

[17] *Supra* fn 3 at para [22]

> 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."[18]

[25] Inasmuch as the initial delay in referring the dispute is not excessive, the subsequent delay upon Masingi and by implication, the applicants being made aware of the need for this application is excessive in the extreme, and the explanation in that regard as already pointed out is far from being reasonable, acceptable or satisfactory. In line with the authorities referred to in this judgment, the overall concept of interests of justice, and the objective overall discretion to be applied, I will address the question whether the applicants have established reasonable prospects of success that are sufficient to outweigh the failure to explain the subsequent delay in bringing the condonation application. This approach is premised on the fact that it is not uncommon for the courts to condone non-compliance with time frames even if the delay is inordinate and the explanation is poor.

Prospects of success:

[26] In respect of the prospects of success, it was held in *Gaoshubelwe and Others v Pieman's Pantry (Pty) Ltd*, that this meant that all what needs to be determined is the likelihood or chance of success when the main case is heard[19]. A similar approach was followed in *Seatlholo & others v*

[18] (2014) 1 BLLR 1 (CC); 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); (2014) 35 ILJ 121 (CC) at paragraphs 50 - 51
[19] 2009 30 ILJ 347 (LC) at para 27

Entertainment Logistics Service (A division of Gallo Africa Ltd)[20]*,* where it was held that the test is whether the applicants would succeed in the main action if the facts pleaded by them in their condonation application were established at trial. Equally so, the prospects of success do not entail an applicant having to prove on a balance of probabilities that he or she would succeed when the merits of the case are heard[21].

[27] In *Mulaudzi*[22] however, the Supreme Court of Appeal has since been held that it is advisable in such applications, to set forth briefly and succinctly such essential information as may enable the court to assess an applicant's prospects of success. The court was therefore bound to make an assessment of an applicant's prospects of success as one of the factors relevant to the exercise of its discretion, 'unless the cumulative effect of the other relevant factors in the case is such as to render the application for condonation obviously unworthy of consideration.' This would be in circumstances where there was flagrant breach of the rules, excessive delays, and where no acceptable explanation was forthcoming.

[28] It was common cause that the individual applicants were dismissed for acts of misconduct during a protected strike. Masingi in his founding affidavit merely contended that the individual applicants have demonstrable prospects of success, based on the record of the internal disciplinary proceedings, which indicated that *'there was no credible and admissible evidence linking all the applicants to the commission of the offences'*.

[29] The difficulty with Masingi's contentions despite based being based on the individual applicants' instructions is that no confirmatory affidavits were filed in

[20] (2011) 32 ILJ 2206 (LC) para 24

[21] *Production Institute of South Africa (PTY) Ltd v CCMA & others* (Case No: JR1974/2009) at para 12; See also *SA Democratic Teachers Union v Commission for Conciliation, Mediation & Arbitration & others* (2007) 28 ILJ 1124 (LC) at para 38, where it was held that;

> 'A commissioner in considering prospects of success does not have to pronounce on the merits of the case. All that the commissioner needs to do is to investigate whether on the averments made by the applicant there is a *prima facie* case, that there is a chance of succeeding when the main case is heard. In other words to establish whether there is a reasonable prospect of success on the merits, it suffices if an applicant can show a prima facie case through setting out averments which, if established at the proceedings of the main case, would entitle the applicant to some relief. The applicant need not deal fully with the merits of the case'

[22] *Supra* fn 5 at para [34]

that regard. Other than that omission, despite Masingi making reference to a record of the internal disciplinary enquiry, such a record was not attached to the founding affidavit. Despite it not being the function of this Court, I had trawled through the applicants' supposedly indexed and paginated bundles, and was unsuccessful in finding the record of disciplinary proceedings Masingi had referred to.

[30] On the other hand, the respondent's detailed contentions are that the misconduct in question was of a serious nature, in that the individual applicant failed to adhere to picketing rules; failed to comply with an order issued by this court on 29 August 2013; blockaded access to the respondent's construction site with the intention to stop non-striking employees, subcontractors and clients from accessing the site; were insolent and disrespectful towards management and had uttered racists remarks; had arranged transport to convey locked out employees with the intention to commit acts of intimidation, violence or the like on subcontractors, and non-striking employees, and that the internal disciplinary hearings were conducted in an open and fair manner before an independent chairperson of the hearings. It was contended that in the circumstances, the dismissals were substantively and procedurally fair.

[31] A worrying factor with this application is that as already indicated, the individual applicants appear to have washed their hands off this matter and left it to Masingi to deal with. No attempt was made to confirm Masingi's averments by way of confirmatory affidavits. Despite Masingi's averments in regards to the prospects of success lacking in detail, and notwithstanding the respondent's detailed response in regards to prospects of success, similarly, no attempt was made to file a replying affidavit.

[32] In the end, even on the less stringent the test as set out in *Gaoshubelwe, Seatlholo, Production Institute of South Africa (PTY) Ltd v CCMA & others* and *SA Democratic Teachers Union v Commission for Conciliation, Mediation & Arbitration & others* as referred to elsewhere in this judgment, I am not satisfied that the applicants have established demonstrable prospects of success, and it is apparent that the founding affidavit coupled with the

statement of case contain bare averments and denials. My conclusions in this regard are further fortified by the following considerations;

32.1 I have further in the interests of completeness, had regard to the statement of case, and significantly, the applicants alleged an automatically unfair dismissal for which no basis was laid.

32.2 In the alternative, they had contended that the dismissal was not a fair sanction, and it is not stated in what material respects that was the case.

32.3 They further appear to have disputed the evidential material used against them in the form video footage, its authenticity, accuracy and reliability. Even then, it is not stated on what basis there was a dispute in that regard.

32.4 In the founding affidavit in respect of this application, Masingi had averred that the applicants would be prejudiced if condonation was not granted on the grounds that they were entitled to compensation for their alleged unfair dismissal. Even if that was the relief that they sought, they are not entitled to it as of right.

Other considerations and conclusions:

[33] The respondent contends that it would suffer prejudice if condonation were to be granted because of the lengthy period it had taken for the applicants to comply with the Rules of this Court. Masingi on the other hand averred that there was no prejudice to the respondent if condonation were to be granted, whilst the individual applicants would suffer substantial prejudice if condonation were to be refused as they were entitled to compensation for unfair dismissal.

[34] Within the context where Masingi, and by implication, the individual applicants, were made aware on no less than two occasions that there was a need to file the condonation application and they had simply failed to do so for over two years and seven months, and where upon a court order, they had

still failed to act with the necessary haste, and further where the applicant's papers do not reveal any prospects of success at trial, it is my view that any prejudice to be suffered by the individual applicants is purely of Masingi's making, coupled with their own lack of interest in the matter as already indicated elsewhere in this judgment.

[35] It may have been argued that the prejudice to be suffered by the respondent is far outweighed by that to be suffered by the applicant, and that this could be mitigated by an adverse cost order. In considering this argument, I have also taken into account that the parties had completed a pre-trial minute and the fact that the matter may be ready to be heard. However, these considerations become irrelevant in circumstances where on the papers, the applicants have not shown good cause or more particularly, some prospects of success on the merits. In effect, no purpose would be served in granting condonation simply because a matter is ready to run. The issue is whether good cause has been shown and in this case, it clearly was not.

[36] In circumstances where the delay in bringing this application was excessive and where the applicants failed to correct the defect timeously when made aware of it, the poor explanation for the delay and the weak prospects of success, it would neither be in the interests of justice or effective administration of justice to grant condonation.

[37] In respect of costs, it is trite that this court takes into account the requirements of law and fairness when making such an award. I am mindful of the fact that Masingi as attorneys of record was ordered by Mooki AJ to pay the wasted costs on a punitive scale when the matter was initially enrolled on 28 November 2016. In my view, to the extent that the application for condonation is to be dismissed for the reasons given, and notwithstanding Masingi's clear dilatoriness, it would not be fair to make any further cost orders.

[38] Accordingly, the following order is made;

Order:

1. The application for condonation for the late filing of the individual applicants' statement of claim is dismissed.

2. The individual applicants' claim is dismissed.

3. There is no order as to costs.

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E Tlhotlhalemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:	M.J. Letsoalo
Instructed by:	J Masingi Attorneys
For the Respondent:	D. Whittington
Instructed by:	Fluxmans Incorporated Attorneys