

THE LABOUR COURT OF SOUTH AFRICA,

HELD AT JOHANNESBURG

Case no: JR 483/14

In the matter between:

**SAMWU obo K SHONGWE & 45
OTHERS**

Applicants

and

**COMMISSIONER LUCKY MOLOI
(N.O.)**

First Respondent

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

Second Respondent

THE CITY OF JOHANNESBURG

Third Respondent

In Chambers: 07 August 2019

Delivered: 13 August 2019

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

LAGRANGE J

[1] The applicants in this application were the applicants in the review application and the respondent was the third respondent in that application.

[2] The applicants claim *inter alia* that the court erred in refusing to condone the late filing of the Rule 7A(8) application based on the patently contradictory findings in paragraphs [38] and [44] of the judgement. In paragraph [38] the court held that, the effects of leaving the manifestly incorrect ruling of the commissioner intact outweighed the failure of the applicants to provide an explanation for the extraordinary delay, but in

paragraph [44] it held that, despite the merits of the review, the dilatory prosecution thereof could not be excused.

[3] Although it is clear the ratio of the court is the second finding on the Rule 7A(8) condonation application, and that it appears paragraph [38] was inserted in error, I accept that this is a case in which the balance between the merits of the review and the other factors to be considered in weighing up the condonation application is such that it there is a reasonable prospect another court could reach a different conclusion.

[4] In the circumstances, the following order is made:

Order

[1] The applicants are granted leave to appeal against the court's findings that:

1.1 The condonation for the late filing of the Rule 7A(8)(b) notice is dismissed.

1.2 the review application is dismissed.

[2] Costs shall be costs in the appeal

Lagrange J
Judge of the Labour Court of South Africa