THE LABOUR COURT OF SOUTH AFRICA,
JOHANNESBURG

Case no: JS 241/2019
Not Reportable

In the matter between:

HOLSTEIN MEATS (PTY) LTD **Applicant**

And

NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA obo NJOLI NTOMBI AND 8 OTHERS **Respondent**

Heard: **24 May 2023**
Delivered: **30 May 2023**

This judgment was handed down electronically by consent of the parties' representatives by circulation to them via email. The date for hand-down is deemed to be 30 May 2023.

JUDGEMENT

PRINSLOO J

Introduction

[1] The Applicant seeks an order for the rescission of a Court order granted on 12 February 2020 under case number JS 241/2019.

Background facts

[2] The Applicant had employed the individual respondents (the employees) and they were retrenched on 21 December 2018. The Respondent trade union (NUMSA) acting on behalf of the employees subsequently referred an unfair dismissal dispute

to the Commission for Conciliation, Mediation and Arbitration (CCMA). Conciliation failed and on 5 February 2019, a certificate of outcome was issued. NUMSA filed a statement of case with this Court on 10 April 2019.

[3] On 15 July 2019, NUMSA filed an application for default judgment as the Applicant did not give notice of its intention to oppose the matter. On the Applicant's own version they became aware of the application for default judgment in July 2019 and they instructed Mr Wilson from EBT Trust to attend to it and to oppose the application.

[4] The matter was enrolled for default judgment on 12 February 2020, on which date the Court (per Van Niekerk J) ordered that the employees' dismissal was procedurally unfair and that the Applicant compensate them in an amount equivalent to six months' salary, calculated at the salary they had received on the date of their dismissal.

[5] On 2 March 2020, NUMSA addressed a letter to the Applicant informing it that default judgment was granted in favour of the employees and that payment had to be made in accordance with the Court order. Mr Wilson was once again instructed, this time to *"do the necessary on our behalf and have the order rescinded"*.

[6] On 1 October 2020, NUMSA informed the Applicant's director, Ms Chettoa, that she had to appear in Court on 20 November 2020 for contempt of Court proceedings. The application for contempt was ultimately dismissed.

[7] On 4 December 2020, the Applicant filed an application for rescission of the judgment of 12 February 2020.

The applicable legal principles

[8] The rescission of court orders is provided for under section 165 of the Labour Relations Act[1] (LRA) and Rule 16A of the Rules of the Labour Court[2] (Rules).

[1] Act 66 of 1995, as amended.

[9] Section 165 provides as follows:

> 'The Labour Court, acting of its own accord or on the application of any affected party may vary or rescind a decision, judgment or order –
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> *(a)* erroneously sought or erroneously granted in the absence of any party affected by that judgment or order;
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> *(b)* in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission;
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> *(c)* granted as a result of a mistake common to the parties to the proceedings.'

[10] The wording of Rule 16A(1)(a)(i) – (iii) is identical to section 165 of the LRA and there is no need to set out both.

[11] In *Construction & Allied Workers Union and another v Federale Stene*[3] *(Federale Stene)* it was held that:

> 'Section 165(a) of the LRA is similar in its terms to rule 42(1)(a) of the Uniform Rules of the High Court. Commenting on the High Court rule Erasmus Superior Court Practice (Juta original service 1994) at B1-308 states the following:
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> "An order or judgment is erroneously granted if there was an irregularity in the proceedings, or if it was not legally competent for the court to have made such an order, or if there existed at the time of its issue a fact of which the judge was unaware, which would have precluded the granting of the judgment and which would have induced the judge, if he had been aware of it, not to grant

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[2] GN 1665 of 14 October 1996: Rules for the conduct of proceedings in the Labour Court.

[3] (1998) 19 ILJ 642 (LC) at para 4.

> the judgment…… The courts have ... consistently refused rescission where there was no irregularity in the proceedings and the party in default relied on the negligence or physical incapacity of his attorney."'

[12] In short: an order or judgment was granted erroneously if, as contemplated in section 165 of the LRA, at the time the order was granted, a fact existed of which the presiding judge was unaware but had he or she been aware of it, would have induced him or her not to grant the order or if it was not legally competent for the court to have made such an order or if there was an irregularity in the proceedings.

[13] Rule 16A(1)(b) provides that the Labour Court may, on application of any party affected, rescind any order or judgment granted in the absence of that party, upon good cause shown. An application in terms of Rule 16A(1)(b) must be made within 15 days after acquiring knowledge of the order or judgment granted in the absence of the applicant party.

[14] The essence of the difference between these two provisions is that in applications in terms of Rule 16A(1)(a)(i), where an order was erroneously granted in the absence of a party, the applicant is not required to show good cause, whereas that is required if the application is brought in terms of Rule 16A(1)(b).

[15] In *Advance Warehousing (Pty) Ltd v Mashigo,*[4] the Labour Appeal Court (LAC) restated the principles applicable to an application for rescission and good cause, and held that:

> 'It is now trite that an applicant for rescission must show good cause.[5] This entails not only giving a full and reasonable explanation for its default, but disclosing a *bona fide* defence with good prospects of success in respect of the relief sought by the claimant, i.e., the order sought to be rescinded.'

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[4] Unreported judgment of the Labour Appeal Court, case no: JA9/16 handed down on 18 October 2017 at para 14.

[5] See *inter alia Superb Meat Supplies CC v Maritz* (2004) 25 ILJ 96 (LAC); *Edcon (Pty) Ltd v Commission for Conciliation, Mediation Arbitration and Others; In re: Thulare and Others v Edcon (Pty) Ltd* (2016) 37 ILJ 434 (LAC).

[16] In Herbstein & Van Winsen, it is explained that:[6]

> 'An applicant for the rescission of a default judgment must show good cause and prove that at no time did he renounced his defence, and has a serious intention of proceeding with the case. In order to show good cause, an applicant must give a reasonable explanation for the default, the application must be made *bona fide* and must show that a *bona fide* defence to the plaintiff's claim…
>
> When a defendant appears in order to have the judgment set aside he must, in addition to explaining the failure to deliver notice of intention to defend, place before the court sufficient evidence from which it can be inferred that there is a *bona fide* defence to the action. It is not sufficient for the applicant to state that there is a *bona fide* defence. In order to establish a *bona fide* defence, the defendant must set out averments which, if established at the trial, would entitle him to the relief asked for; it is not necessary to deal with the merits of the case or produce evidence that the probabilities are actually in the defendant's favour.'

[17] However, the explanation for default to be tendered does not change regardless of which legislative rubric the application is brought under or, for that matter, whether it has been brought under the common law.

The rescission application

[18] The Applicant applied for rescission in terms of Rule 16A(1)(a)(i), alternatively, rescission in terms of Rule 16A(1)(b).

[19] As already alluded to, the explanation for default to be tendered does not change regardless of which legislative rubric the application is brought under. The

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[6] A C Cilliers, C Loots, H C Nel, '*Herbstein and Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa'* (5th ed), Juta at 715 – 716.

Applicant's explanation for default is as follows: in July 2019, the Applicant became aware of the application for default judgment and Mr Wilson was instructed to attend to it and to oppose the application. On 2 March 2020, NUMSA informed the Applicant that default judgment had been granted and once again, Mr Wilson was instructed to do the necessary to have the order rescinded. On 1 October 2020, Ms Chettoa was informed about a contempt of Court application set down for 20 November 2020. The Applicant was under the impression that Mr Wilson opposed the default judgment and it came to the Applicant's knowledge only much later that Mr Wilson had invoiced them for several matters on which he had done no work. The Applicant was under the impression that the Respondent's case was dismissed and it is now facing a huge risk due to the "*neglect of our previous labour practitioner*".

[20] The Applicant explained that *"Mr Eric Wilson no longer represents us and since March 2020 we had never received any further correspondence and we were under the impression to believe that the matter has been dealt with".*

[21] On the Applicant's own version, they became aware of the fact that NUMSA had applied for default judgment in July 2019. Mr Wilson was instructed to attend to the matter and to oppose the application. In March 2020 when NUMSA informed the Applicant about the default judgment and that payment had to be made to the employees in terms of the Court order, it should have been clear to the Applicant that Mr Wilson had not opposed the application for default judgment. The Applicant was shocked to learn in October 2020 that NUMSA had approached this Court with a contempt of Court application.

[22] The Applicant's explanation for its default is sketchy and bereft of detail.

[23] The Applicant knew and understood well enough that the application for default judgment, of which the Applicant was aware since July 2019, would proceed to Court and that it could have consequences for the Applicant, that is why Mr Wilson was instructed to attend to the matter and to oppose the application. Since July 2019, the Applicant did not follow up with Mr Wilson regarding the steps he took to oppose the application for default judgment.

[24] In March 2020, NUMSA informed the Applicant about the default judgment and that payment had to be made to the employees in terms of the Court order. By then it should have been clear to the Applicant that Mr Wilson had not opposed the application for default judgment and this should have raised some red flags, but instead, Mr Wilson was once again instructed 'to do the necessary' to have the order rescinded. This is indicative of the fact that the Applicant understood well enough that the Court order had to be rescinded or else the Applicant could face serious consequences.

[25] On the Applicant's own version, they had not received any further correspondence from Mr Wilson since March 2020, but the Applicant was shocked to learn in October 2020 of NUMSA's contempt of Court application.

[26] The Applicant's explanation that they were under the impression that the matter has been dealt with, is far-fetched. No follow-up was made since July 2019 and when it became clear in March 2020 that the default judgment application was not opposed and that as a result of the failure to oppose it, a Court order was issued, no issues were raised with Mr Wilson, no explanation was demanded from him as to how it was possible that a judgment could have been obtained if the application was opposed, but instead Mr Wilson was once again instructed to attend to the rescission of the Court order.

[27] The Applicant had not received any further correspondence from Mr Wilson since March 2020, there was no communication on the progress of the rescission application and no follow up was made to ascertain the status of the matter. The Applicant could not, in view of the aforesaid, objectively and reasonably be under the impression that the 'matter has been dealt with'. All the facts point in a different direction. The Applicant, after instructing Mr Wilson, did not act like a litigant who took a serious interest in the litigation, who wanted its defence to be placed before the court and who wanted to ensure that instructions were carried out. Instead, the Applicant merely instructed Mr Wilson, did nothing further to ascertain what the status of the matter was, but effectively went to sleep, assuming that the matter was attended to and laboured under an impression that the matter was dealt with. Nothing in the facts before this Court shows how that impression could have been

created, as it was evident as far back as March 2020, that the default judgment was not attended to and that trouble was nearing and that serious consequences could follow.

[28] This is a case where the Applicant seeks to blame its representative, Mr Wilson, for the position it finds itself in. The Applicant instructed Mr Wilson and even when it became clear in March 2020 that he had not carried out the instruction he was given, the Applicant once again instructed him to apply for rescission, made the election to continue to make use of his services and notwithstanding his poor track record, took no steps to ensure that this time around the instruction was carried out.

[29] *In Waverley Blankets Ltd v Ndima and others; Waverley Blankets Ltd v Sithukuza and others,*[7] the LAC held that:

> 'Although the employees were not to blame for this state of affairs, it has frequently been emphasized by our courts - including this court - that an attorney's neglect of his client's affairs may be so inexcusable that condonation may, despite the blamelessness of his client, be refused. In my view, this is precisely such a case. The attorney displayed such gross ineptitude in dealing with the appeal that this court cannot extend any indulgence to the employees.'

[30] In *Superb Meat Supplies CC v Maritz,*[8] the LAC held that:

> 'In this court and the Supreme Court of Appeal there have been frequently repeated judicial warnings that 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. It has never been the law that invariably a 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

[7] (1999) 20 ILJ 2564 (LAC) at para 10.

[8] (2004) 25 ILJ 96 (LAC) at para 16.

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.'

[31] *In casu,* the Applicant chose Mr Wilson as its representative and despite the knowledge and the clear indications that he had not opposed the application for default judgment, notwithstanding the instruction to do so, the Applicant once again instructed Mr Wilson to file the rescission application. That exceeded the limit beyond which the Applicant can escape the consequences of the choices it had made to persist with its instructions to Mr Wilson or Mr Wilson's lack of diligence.

[32] It is evident from the undisputed facts before me that the Applicant was aware of the fact that an application for default judgment was filed with this Court and its failure to oppose it and to participate in the litigation that flowed from the application, constitutes wilful default. The explanation tendered by the Applicant is inadequate and lacking essential details and is not convincing to show that the Applicant's default was not wilful.

Rule 16A(1)(a)(i)

[33] The Applicant seeks rescission on the ground that the Court order was erroneously sought or granted in its absence. The Applicant has to provide a reasonable explanation for its default and has to show that the order was erroneously granted.

[34] I already found that the explanation for the Applicant's default was not reasonable. The remaining question is whether the order was erroneously sought or granted.

[35] The Applicant submitted that the employees were not unfairly dismissed, but were retrenched in terms of section 189 of the LRA, which *"retrenchment were (sic) guided by experts in terms of joint consensus seeking consultations".* As such, the

employees erroneously sought the default judgment as they are not entitled to the relief and the judgment was erroneously granted, without having regard to all the facts, which in essence is that the employees were not unfairly dismissed.

[36] The Applicant has to show that at the time the order was granted, a fact existed of which the presiding judge was unaware but had he been aware of it, would have induced him not to grant the order, or that there was an irregularity in the proceedings, or that it was not legally competent for the court to have made such an order.

[37] The Applicant did not allege an irregularity in the proceedings or that it was not competent for the court to have made the order or that a fact existed, of which the presiding judge was unaware, which would have induced him not to grant the order. The Applicant has not pointed to any fact which would have induced the presiding Judge not to grant the order, had he been aware of the fact. The only issue raised is the Applicant's view that the employees were not unfairly dismissed.

[38] The Applicant's complaint is effectively that the employees were not unfairly dismissed and therefore they are not entitled to any relief, based on a finding that they were unfairly dismissed. This does not constitute a ground for rescission in terms of the provisions of Rule 16A(1)(a)(i) and the Applicant failed to make out a case for rescission in terms of the said rule.

Rule 16A(1)(b)

[39] In the alternative, the Applicant seeks rescission on the ground that the Court order was granted in its absence. An application in terms of Rule 16A(1)(b) must be made within 15 days after acquiring knowledge of the order or judgment granted in the absence of the applicant party.

[40] It is common cause that on 2 March 2020 NUMSA informed the Applicant about the Court order that was obtained on 12 February 2020, that a copy of the order was provided and that payment in accordance with the Court order was

demanded. It is the Applicant's version that Mr Wilson was instructed to do the necessary to have the Court order rescinded.

[41] The application for rescission had to be filed within 15 days, thus by no later than 23 March 2020. The rescission application was only filed on 4 December 2020, thus more than eight months late.

[42] In the notice of motion, the Applicant included a prayer for condonation to be granted for the late filing of the rescission application *"in as far as it is necessary".* Condonation is obviously necessary.

[43] One would look in vain for any averments in the Applicant's founding affidavit to specifically support an application for condonation. The Applicant made a belated attempt to state that there were regular feedback sessions with Mr Wilson in its replying affidavit. However, it is trite that the Applicant's case must be made out in the founding affidavit and that the case cannot be made out in reply. Those averments are in any event vague and contain no detail and are contradictory to the statement in the founding affidavit that the Applicant had no communication with Mr Wilson since March 2020. Even if this Court were to take a lenient approach and consider the facts presented in respect of the rescission application for purposes of condonation, the application still falls hopelessly short of the mark for the reasons set out *infra.*

<u>The test for the grant of condonation</u>

[44] The relevant legal principles to be applied in an application for condonation are well established.

[45] This Court has a discretion, which must be exercised judicially on a consideration of the facts of each case and in essence, it is a matter of fairness to both sides.[9]

[9] D Harms, 'Civil Procedure in the Superior Courts', (LexisNexis) at B27.6.

[46] In *Melane v Santam Insurance Co Ltd,*[10] it was held that:

> '…. 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, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation… What is needed is an objective conspectus of all the facts.'

[47] In this Court, however, the principles have long been qualified by the rule that where there is an inordinate delay that is not satisfactorily explained, the applicant's prospects of success are immaterial.

[48] This Court has conventionally applied the approach that in the absence of a satisfactory explanation for a delay, the applicant's prospects of success are ordinarily irrelevant.[11] This principle was confirmed in *National Education Health and Allied Workers Union on behalf of Mofokeng and others v Charlotte Theron Children's Home,*[12] where the LAC held that without a reasonable and acceptable explanation for a delay, the prospects of success are immaterial.

[49] The onus is on the applicant seeking condonation to satisfy the court that condonation should be granted. In employment disputes there is an additional consideration which applies in determining whether the onus has been discharged, as was held in *National Union of Metalworkers of SA on behalf of Thilivali v Fry's Metals (A Division of Zimco Group) and others*[13]:

> 'There is, however, an additional consideration which applies in employment disputes in determining whether an applicant for condonation has discharged this onus. This is the fundamental requirement of expedition. The

[10] 1962 (4) SA 531 (A) at 532 C - F.

[11] See *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC).

[12] (2004) 25 ILJ 2195 (LAC) at para 23.

[13] (2015) 36 ILJ 232 (LC)

> Constitutional Court has, as a matter of fundamental principle, confirmed that all employment law disputes must be expeditiously dealt with and any determination of the issue of good cause must always be conducted against the back drop of this fundamental principle in employment law.'

[50] The fundamental requirement of expedition is not to be ignored. In *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others*[14] (*Toyota*), the Constitutional Court emphasised that one of the fundamental purposes of the LRA was to establish a system for the quick adjudication of labour disputes. When it assesses the reasonableness of a delay, the court must not lose sight of this purpose.

[51] In summary: the Courts have endorsed the principle that where there is a delay with no reasonable, satisfactory and acceptable explanation for the delay, condonation may be refused without considering prospects of success and to grant condonation where the delay is not explained, may not serve the interests of justice. The expeditious resolution of labour disputes is a fundamental consideration.

[52] Condonation for delays in all labour law litigation is not simply there for the taking. The starting point is that an applicant seeking condonation seeks an indulgence and bears the onus to show good cause.

The degree of lateness

[53] The first aspect to be considered is the degree of lateness.

[54] The application for rescission was filed more than eight months late.

[55] The delay is no doubt material given the context within which labour litigation takes place and the system that is designed to ensure the effective and expeditious resolution of labour disputes.

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[14] (2016) 37 ILJ 313 (CC).

Explanation for the lateness

[56] As the Applicant seeks an indulgence from the Court and as it bears the onus to satisfy the Court that condonation should be granted, it is incumbent upon the Applicant to provide the Court with a full explanation for every period of the delay. It is not sufficient simply to list significant events that occurred during the period in question as that does not assist the Court properly to assess the reasonableness of the explanation.[15]

[57] The explanation for the delay has to be compelling, convincing and comprehensive and should cover every period of the delay. In the founding affidavit, the Applicant explained that it became aware of the Court order on 2 March 2020 and instructed Mr Wilson to apply for rescission. On 1 October 2020, the Applicant became aware of a contempt application, set down for 20 November 2020. When the Applicant became aware of the contempt application, it was realised that Mr Wilson was not attending to the Applicant's instructions. Briel Incorporated Attorneys were instructed and consulted on 9 November 2020. The rescission application was filed on 4 December 2020.

[58] It is evident that the explanation tendered for the period of delay is bereft of any detail and lacks particularity. Material periods of the delay remained completely unexplained and the Applicant tendered no version as to what happened during those periods. For instance, there is no explanation for the period between March 2020 and 1 October 2020, apart from the fact that the Applicant was under the impression that Mr Wilson was handling the matters. There is no explanation as to why, when the Applicant became aware of the contempt application on 1 October 2020, it took another two months to file the application for rescission. The Applicant's attorneys might have attended to the opposition of the contempt application, but that could hardly have taken up the entire period of two months for which the explanation tendered is sketchy.

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[15] See *Independent Municipal & Allied Trade Union obo Zungu v SA Local Government Bargaining Council and others* (2010) 31 ILJ 1413 (LC).

[59] The Applicant had to provide an explanation for every period of the delay to enable this Court to assess the reasonableness of the delay and the explanation for it. The Applicant dismally failed to do that and the explanation tendered is inadequate, sketchy, bereft of any substance and detail and far from compelling, convincing or comprehensive and does not place this Court in any position to understand the reasons for the delay.

Prospects of success

[60] Having found that the delay is inordinate and the explanation tendered not compelling or adequate, it leaves the issue of prospects of success.

[61] In the authorities referred to *supra,* the Courts have endorsed the position that the failure to provide a reasonable and acceptable explanation for the delay renders prospects of success immaterial.

[62] *In casu* and in light of the said authorities and given the fact that the Applicant had not provided a comprehensive, compelling or convincing explanation for a material period of delay, the prospects of success are immaterial, and thus need not be considered.

Prejudice

[63] The Applicant submitted that it would be prejudiced as the Court order should not have been granted. Furthermore, the Respondent failed to serve the Court order upon the Applicant and failed to correspond with it, which resulted in the Applicant believing that the matters were resolved.

[64] This is not correct. On the Applicant's own version. NUMSA informed it on 2 March 2020 of the Court order and demanded payment, upon which the Applicant instructed Mr Wilson to apply for the rescission of the Court order. The Applicant could not have been under the impression that the matter was resolved, since it had no further correspondence from Mr Wilson since March 2020 and did not bother to

take any steps to find out what the status of the case was until October 2020, when it became aware of a contempt application.

[65] The result of the refusal to condone the late filing of the rescission application will be that the Applicant will be denied the opportunity to pursue its defence before Court. However, it is evident that the Applicant has not taken the steps required to ensure that its defence was placed before this Court, but instead, it took a backseat and now blames Mr Wilson for failing to do what he was instructed to do.

[66] The notion that litigants will be denied access to a court to ventilate their case cannot be examined within a paradigm that ignores the interests of the adversary, nor of the ordinary dynamics of litigation, more especially, because the reality is that litigation is a process in which adversaries make choices. If the consequences of choices that are made, or the consequences of inaction and tardiness are that opportunities to pursue the matter or to put up a defence are forfeited, it does follow that there is a failure of justice. The litigation system affords litigants a process within which they must navigate their own routes and it is no failure of justice if their journey culminates in a dead end.[16]

[67] *In casu,* the employees obtained a Court order in their favour in February 2019 and more than three years later, they are still denied the relief they were granted.

[68] The Constitutional Court, in the opening paragraph of *Toyota*[17] held that:

> 'Time periods in the context of labour disputes are generally essential to bring about timely resolution of the disputes. The dispute-resolution dispensation of the old Labour Relations Act was uncertain, costly, inefficient and ineffective. The new Labour Relations Act (LRA) introduced a new approach to the adjudication of labour disputes. This alternative process was intended to bring about the expeditious resolution of labour disputes which, by their nature,

[16] *Edcon Ltd v Steenkamp and others* (2018) 39 ILJ 531 (LAC) at para 34.

[17] *Toyota* at para 1.

> require speedy resolution. Any delay in the resolution of labour disputes undermines the primary object of the LRA. It is detrimental not only to the workers who may be without a source of income pending the resolution of the dispute but, ultimately, also to an employer who may have to reinstate workers after many years.'

[69] This Court has a discretion, which must be exercised judicially on a consideration of the facts of each case and in essence, it is a matter of fairness to both sides. While the refusal to condone the late filing of the rescission application will result in the Applicant being denied the opportunity to put forward its defence before this Court, the employees' prejudice outweighs the Applicant's prejudice. It is evident that the Applicant has not regarded the litigation seriously and did not pursue its defence diligently. If the Court order were to be rescinded, the Applicant will file a statement of response, the parties will have to conclude a pre-trial and the matter will in all probability not be enrolled for trial for the next two years, due to the procedural issues that must first be attended to as well as the notorious backlog experienced in this Court due to limited resources. The prejudice the further delay will cause is obvious.

[70] I have to endorse the aim of the LRA, namely to resolve labour disputes speedily and without delay. Granting condonation in a case like this would not be in the interest of justice as it would undermine the statutory purpose of expeditious dispute resolution.

[71] In *Grootboom v National Prosecuting Authority and another,*[18] the Constitutional Court has held that:

> '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

[18] (2014) 35 ILJ 121 (CC) at para 51.

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.'

[72] On an objective conspectus of all the facts, the Applicants did not discharge the onus to show good cause and for the above reasons, it will not be in the interests of justice that condonation be granted for the late filing of the rescission application.

Costs

[73] In so far as costs are concerned, this Court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness. As the employees are represented by a trade union, it will serve no purpose to make an order for costs.

[74] In the premises, I make the following order:

Order

1. The application for rescission in terms of Rule 16A(1)(a)(i) is dismissed;

2. The application for condonation for the late filing of the rescission application filed in terms of Rule 16A(1)(b) is dismissed;.

3. There is no order as to costs.

Connie Prinsloo

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Advocate K Slabbert
Instructed by:	Briel Inc Attorneys
For the Respondent:	Mr Mnyandu from NUMSA