(1) Reportable Yes/~~No~~
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature 25/02/26
Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No. JS 606/23

In the matter between:

BRADLEY GRANT BELL **Applicant**

and

REGENESYS MANAGEMENT (PTY) LTD T/A

REGENESYS BUSINESS SCHOOL **Respondent**

Hears: **27 February 2025**

Delivered: **25 February 2026**

JUDGMENT

STEENKAMP, AJ

Introduction

[1] This is an opposed application which deals with three issues. The first is the Applicant's application for condonation for the late referral of his dispute to this Court, secondly, an order for the amendment of the citation of the Respondent, and finally, the special plea on jurisdiction raised by the Respondent.

[2] The central issue to be determined is the issue of condonation, as condonation is necessary in order to determine any, or all of the other preliminary matters before this Court.

[3] The Applicant further seeks an order from this Court, in essence, whether the conduct of the Respondent's attorney demonstrates dishonest or unethical conduct, and whether or not the matter ought to be referred to the Legal Practice Council ('*LPC*') for further investigation.

[4] There was no evidence before this Court to indicate that there was anything untoward in the manner that the Respondent's attorney has dealt with this matter. The Applicant's assertions in this regard are misplaced and demonstrate a lack of appreciation of the adversarial nature of litigation. It is not necessary for the purposes of this judgment, to elaborate on this matter any further.

[5] It is necessary to first address the question of condonation, as the determination of all other issues before the Court depends upon whether condonation for the late filing of the statement of claim is granted.

Background facts

[6] Save for the fact that the Applicant was employed by the Respondent and that the Applicant was dismissed by the Respondent on or about on or about 06 February 2023, there is very little that is common cause between the parties.

[7] This Court did not sit as a trial Court, and the facts in dispute have not been tested. That being said, for the purposes of the issues before this Court, particularly insofar as condonation is concerned, it is the timelines and process that bears scrutiny.

[8] The Applicant claims that he was unfairly suspended, and he referred an unfair labour practice dispute as contemplated in Section 186(2)(b) of the Labour Relations Act ('LRA') to the Commission for Conciliation, Mediation and Arbitration ('CCMA') on or about 23 January 2023 under case number: GAJB1398/23.

[9] A disciplinary enquiry was held on or about 30 January 2023, and the Applicant was dismissed with immediate effect on 06 February 2023.

[10] The Applicant referred an unfair dismissal dispute to the CCMA on or about 08 February 2023.

[11] The unfair dismissal dispute was set down for con/arb proceedings on 1 March 2023, and a certificate of outcome was issued under case number: GAJB3062/23, citing a dispute concerning dismissal related to misconduct.

[12] On 02 May 2023, the unfair dismissal dispute and the unfair labour practice dispute were consolidated under case number GAJB3062/23, and a ruling in this regard was issued.

[13] On or about 03 May 2023, the consolidated dispute was set down for arbitration on 31 May 2023. The Respondent applied for a postponement and same was refused on 30 May 2023.

[14] On 1 June 2023, the CCMA issued a notice of set down, enrolling the dispute for arbitration on 12 July 2023. On 12 July 2023, various preliminary issues were raised and a written ruling was rendered in terms whereof, legal representation was granted, the Respondent's request for a virtual hearing was granted, the Applicant was directed to re-apply for subpoenas and he was directed to lodge his application for disclosure in terms of Rule 29 read with Rule 31 of the CCMA Rules, if any, timeously and the matter was postponed. The parties were further directed to hold a pre-arbitration conference and to comply with the prescripts of Rule 20.[1]

[15] On 17 July 2023, a notice of set down, enrolling the arbitration for 28 and 29 August 2023 was issued by the CCMA. The matter ostensibly did not conclude on those days and a subsequent notice of set down enrolling the matter for 02 and 03 October 2023 was issued by the CCMA.

[16] On 03 October 2023, the Respondent's legal representative raised an objection to the jurisdiction of the CCMA to arbitrate the dispute, reason being that the Applicant's dispute was one of automatically unfair dismissal. The ruling issued by the CCMA pursuant to the jurisdictional objection being raised, mentions that the Respondent's legal representative did raise this objection "before" but that the objection was deferred, in order for the parties to present evidence in the main dispute. Be that as it may, on 03 October 2023, a ruling was issued declaring that the CCMA lacked jurisdiction to arbitrate the dispute, and that the Applicant may refer the dispute to this Court. The consolidation ruling was also rescinded, and the CCMA was directed to enroll the unfair labour practice dispute before a different arbitrator.

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[1] Of the CCMA Rules

[17] On 20 October 2023, the Applicant served his statement of claim on the Respondent (*'the initial statement of claim'*). It is not clear when the initial statement of claim was filed with this Court, as the copy thereof contained in the Court file bears an original Court stamp dated 11 June 2024. It thus leads to the inescapable conclusion that the statement of claim was only filed some 8 months after having been served on the Respondent. There was no application for condonation that accompanied the initial statement of claim.

[18] On 30 October 2023, the Respondent delivered its statement of response and it was filed with this Court on 31 October 2023. The Respondent raised several special pleas to the initial statement of claim, to wit, non-joinder of the legal entity that employed the Applicant; lack of jurisdiction due to the lateness of the referral to this Court which the Respondent calculated at 140 days, and lack of jurisdiction due to no facts being pleaded to establish on which grounds the Applicant's dismissal was automatically unfair.

[19] On 1 November 2023, the Applicant served a "*response*" to the Respondent's statement of response. In this "*response*" the Applicant "*corrected*" the citation of the Respondent. The Applicant also replied to the other special pleas of the Respondent. In relation to condonation, he stated that the Respondent was mistaken in calculating the *dies* from the date that the unfair dismissal dispute was conciliated, but that it ought to have calculated the dies from the date that the jurisdictional ruling was rendered on 12 October 2023, and the referral to this Court was accordingly not late. On the score of pleading insufficient facts to sustain his claim of automatically unfair dismissal, the Applicant advanced that the Respondent was "*not correctly representing*" the Applicant's position. The Applicant, although not in eloquent terms, in essence alleged that the Respondent has taken up a position inconsistent with what it argued at the CCMA in respect of jurisdiction.

[20] The Applicant proceeded to file a second statement of claim on 07 November 2023 (*'the further statement of claim'*), and without having complied with Rule 22(4) of the now repealed rules[2] (*'old rules'*), he amended the citation of the Respondent. The further statement of claim was not served on the Respondent and was only filed with the Registrar of this Court.

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

[21] On 11 November 2023, the Applicant filed a "*pre-trial report*". This was not a pre-trial minute as contemplated in Rule 4(a) and (b) of the old rules.

[22] The interlocutory applications were enrolled for hearing on 30 April 2024, on which date, the Court removed the matter from the roll to give the Applicant an opportunity to apply for condonation.

[23] The Applicant filed his condonation application on 3 May 2024, which was duly opposed by the Respondent.

Legal Framework

[24] Section 191(5)(b) of the LRA stipulates that:

> 'the employee may refer the dispute to the Labour Court for adjudication if the employee has alleged that the reason for dismissal is –
>
> (i) Automatically unfair'

[25] Section 191(5)(b) must be read with subsection (11)(a) which stipulates that:

> The referral, in terms of subsection (5)(b), of a dispute to the Labour Court for adjudication, must be made within 90 days after the council or (as the case may be) the commissioner has certified that the dispute remains unresolved.'

[26] It is apposite to state that compliance with Section 191(11)(a) is peremptory, and non-compliance with the statutory time-period may only be condoned on good cause shown.[3]

[27] It is trite that the 90-day period is triggered by the issue of a certificate of non-resolution by the conciliating body, and any erroneous referral to arbitration and/or jurisdictional ruling does not interrupt or stay the running of the statutory time-period for referral of a dispute to this Court. The 90-day period contemplated in Section 191(11)(a) must accordingly be calculated from date of the certificate of non-resolution.

[28] The Applicant commenced proceedings in this Court under the regime of the old rules. The old rules were supplemented by the practice manual, and the requirements set out in both the rules and the practice manual were binding upon

[3] Section 191(5)(b) of the LRA

the parties until the implementation of the new rules governing proceedings in this Court, which came into force on 17 July 2024.

[29] The conduct of the parties up until the commencement of the new rules must accordingly be assessed against the old rules and the practice manual. Where the rules are referred to further in this judgment, these references are to the old rules which applied to the steps taken by the Applicant leading up to the hearing of the interlocutory disputes. Any steps taken after commencement of the new rules are irrelevant for determination of the issues before this Court as it falls outside of the period under scrutiny.

[30] In accordance with the old rules, a party referring a dispute to this Court for adjudication, must '*deliver*' a statement of claim to all parties cited, and must file same with the registrar. The meaning of '*deliver*', is defined in Rule 1, where it is recorded that ''*deliver*' *means serve on other parties and file with the registrar*'. (own emphasis). A document or pleading will not meet the requirement of delivery if the pleading was served on a party but not filed with the Court, and conversely, if the pleading was filed with the Court but not served on a party.

[31] Failure to serve on a cited party or to file with the registrar of this Court, results in defective delivery and consequent non-compliance with Rule 6(1)(c).[4]

[32] Insofar as amendment to citation of a party to a dispute before this Court is concerned, the provisions of Rule 22(4) applied, which stipulated that:

> 'If a party to any proceedings has been incorrectly or defectively cited, the Court may, on application and on notice to the party concerned, correct the error or defect and may make an order as to costs.'

[33] The principles and requirements for the granting of condonation for non-compliance with statutory time periods and/or the rules of this Court are trite.[5]

[34] Furthermore, condonation is not there merely for the asking. An applicant for condonation must make out a cogent and compelling case to excuse non-compliance.[6]

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[4] See also Vilakazi v Commission for Conciliation, Mediation and Arbitration and Others (2024) 45 ILJ 369 (LC) at para 9

[5] Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A) at [532]; Gaosubelwe & Others v Pie Man's Pantry (Pty) Ltd (2009) 30 ILJ 347 (LC) at [24]

[6] Saloojee and Another, NNO V Minister of Community Development 1965 (2) SA 135 (A)

[35] Counsel for the Respondent referred the Court to the matter of in *Government Printing Works v Public Service Association and Another*[7] ('*Government Printing Works*') wherein the LAC considered the Labour Court's refusal to grant condonation for a statement of response that was filed 84 days out of time, which the LAC remarked was an excessive period of delay. The LAC held that when considering condonation for non-compliance with procedural rules in labour matters, judicial discretion must be exercised fairly, balancing the interests of both parties and the objectives of the LRA, which prioritizes the prompt resolution of employment disputes. The critical factors for determining whether condonation serves the interests of justice include: the relief sought, the length and reason for the delay, the impact on justice and other litigants, the adequacy of the explanation, the significance of the issue, and the likelihood of success. These factors require holistic evaluation, with none being determinative on its own. Importantly, while Courts previously might have dismissed prospects of success in cases of substantial, unexplained delay, the LAC affirmed that prospects of success must always be considered unless other factors collectively make the application untenable. This approach underscores that the ultimate consideration is whether granting condonation aligns with the interests of justice.

[36] In *Government Printing Works*, the LAC held that whilst the delay was excessive and the explanation offered was unsatisfactory, an analysis of the merits revealed compelling prospects of success, and that factor together with the importance of the matter but an examination of the merits revealed that the appellant had strong prospects of success. Ultimately, the importance of the matter and good prospects of success dictated that it would be in the interest of justice and fairness to grant condonation on the facts of that particular case.

[37] The late filing of a statement of case by an applicant was also dealt with by the LAC in *Aspen Holdings Pty Ltd and Another v Phelane and Another*[8] ('*Aspen*'). Therein, the LAC overturned the order of condonation granted to an applicant for the late filing of his statement of claim by the Labour Court. In this matter, the LAC set aside the Labour Court's decision to grant condonation for the applicant's late filing of his statement of claim. The Labour Court had previously determined that the delay was not substantial and found no evidence of *mala fides* on the part of the employee or his legal representative. Despite the inadequacy of the

[7] (JA35/24) [2024] ZALAC 63; [2025] 2 BLLR 112 (LAC); (2025) 46 ILJ 915 (LAC)
[8] (JA 71/23) [2025] ZALAC 4; [2025] 4 BLLR 409 (LAC) at paras 25 – 27, reported after the Government Printing Works judgment of the LAC *ibid*

employee's explanation for the delay, the Labour Court did not regard this as a determinative obstacle to condonation. Moreover, the Labour Court relied on its assessment of the employee's prospects of success in the primary dispute, noting allegations of ongoing harassment, discrimination, and victimisation related to participation in cultural ceremonies as additional grounds supporting the granting of condonation.

[38] Before the LAC, the employer asserted that the employee failed to provide a reasonable or adequate explanation for the delay in filing, nor did he present grounds sufficient to excuse the consequences of his representative's negligence. The employer further argued that, absent such an explanation, the employee's prospects of success were irrelevant. In response, the employee maintained that the employer's position amounted to an effort to preclude judicial scrutiny of the dispute, particularly in light of the alleged constitutional violation.

[39] In delivering the judgment that set aside the decision to grant condonation, Acting Judge President Mohlahleni (as he then was) for the LAC observed that, in the condonation proceedings before the Court *a quo*, the employee was obliged to account for two separate periods of delay. The first was a period of 41 days between the issuance of the certificate of non-resolution and the point at which the appellant raised the exception. The second was a period of 36 days from when the employee became aware of the necessity to apply for condonation until the date the application was submitted. The judgment of the LAC records that the Labour Court only considered the explanation provided for the initial period and failed to address the absence of any explanation for the subsequent delay. The LAC stressed that "*the failure to explain the further delay after the applicant became aware of the need to apply for condonation is fatal.*" This omission rendered the Labour Court's decision to grant condonation improper, thereby warranting intervention by the LAC.

[40] Regarding prospects of success, which was central to the Labour Court's decision to grant condonation in *Aspen*, it was stated that the employee "*failed to provide a reasonable and acceptable explanation for the delay.*" The LAC endorsed the principle set out in *NUMSA and another v Hillside Aluminium* and the statement by the Apex Court in *Grootboom*:

> '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."[9]

[41] Finally, the LAC concluded in *Aspen*:

> 'The refusal to condone the late filing of the statement of case will result in the employee being denied the opportunity to pursue his dismissal dispute before the Labour Court. It, however, is evident that the employee has not pursued this matter diligently and tendered no reasonable explanation as to the delay and, more importantly, why he did not file the condonation application, for the entire period, as soon as he became aware of the need to apply for condonation. On this basis, the appeal stands to succeed.'

Analysis

[42] *In casu*, the certificate of outcome of the conciliation was issued on 01 March 2023, which triggered the 90-day time period for referral to this Court.

[43] Accordingly, the Applicant ought to have filed his statement of claim by 30 May 2023.

[44] The Applicant then proceeded to serve a statement of claim on the Respondent on or about 20 October 2023. This was 143 calendar days after the time-period for referral lapsed. There is controversy regarding whether or not the referral was indeed made on 20 October 2023, as the Court stamp indicates that the statement of claim was only filed with the Registrar on 11 June 2024. Considering the fact that delivery of any process is only complete once the pleading is both served and filed with the Court, the period of lateness is compounded by the late filing the statement of claim, and additional period of 235 days was accumulated. This results in a total period of delay of 378 calendar days. This period of delay is no doubt excessive.

[45] The Respondent, in its statement of response, indicated that the referral of the dispute to this Court was late. Despite this allegation being made in the opposing papers, the Applicant inexplicably failed to take any action on the score of condonation. The legal principle that condonation should be applied for as soon as the need to do so becomes apparent applies, and the Applicant ought to have taken steps to address the issue of lateness, if he was unaware thereof, when it

[9] *Ibid* at para 51.

was duly raised by the Respondent. He did not do so, and instead, took a series of steps not provided for in the Rules. He unilaterally amended the citation of the Respondent, and filed the further statement of claim with the amended particulars, which further statement of claim, he failed to serve on the Respondent. These steps, which the Applicant alleges he took from a place of ignorance being a lay person, were not rectified. He did not withdraw any one of the statements of claim, he did not follow the prescripts of Rule 22(4), and he did not apply for condonation when the need for condonation was pointed out in the statement of defence.

[46] He only applied for condonation after Orr, AJ removed the matter from the roll on 30 April 2024 to enable the Applicant to apply for condonation. When asked about this issue during the interlocutory hearing, he indicated that he did not trust the Respondent and only accepted that this was the legal position once the Court confirmed the position. This explanation is unacceptable. Litigants cannot expect the Court to give them legal advice and then only comply with statutory time periods or the prescripts of the rules once the Court has given them a directive to do so. The LRA, the rules and various judgments of both this Court and the LAC are readily available online, and a simple search would have indicated to the Applicant what the steps were that he needed to take, and the time periods applicable thereto. Furthermore, there is a *pro-bono* office located in the foyer of this Court, where the Applicant could have made enquiries and sought advice. He ostensibly failed to do so. Ignorance of the law is no excuse, certainly not in this day and age where technology has made access to law reports, statutes and rules freely available. Ironically, the Applicant quoted extracts from jurisprudence in his heads of argument, indicating that he indeed had access thereto and had the ability to do research in respect of his case.

[47] The Applicant filed his condonation application on 03 May 2024. The condonation application was initiated 126 Court days after the Respondent indicated in its statement of response that the referral to this Court was late. Again, the delay is exceptionally long and the explanation for the delay is wholly unsatisfactory. Applying the principles set out in *Aspen*, the length of the delay pursuant to the need for condonation being made apparent is an additional delay which this Court must take into consideration.

[48] The allegations made by the Applicant in his statements of claim have not been tested, and they simply remain allegations. A dismissal is not automatically unfair simply because an applicant says so. There are legal thresholds to be met, and a

reading of the statements of claim do not reveal a *prima facie* dispute which would fall within the ambit of automatically unfair dismissals.

[49] The expeditious resolution of labour disputes remains of paramount importance. On a conspectus of the facts, the delay is inordinate without sufficient explanation.

[50] The prospects of success are sketchy, and the exception to the statement of claim serves to demonstrate that the Applicant has not made out a sufficient case to foreshadow a claim of automatically unfair dismissal. The Applicant bemoans the fact that he was "urgently suspended", which suspension was challenged as an unfair labour practice, and is an issue which falls within the jurisdiction of the CCMA. The Applicant also appears to have been dismissed for misconduct, and his view that the dismissal was effected in retaliation for exercising his rights under the LRA is misplaced. In this regard, the LAC said the following in *DBT Technologies (Pty) Ltd v Garnevska*[10] ('*Garnevska*'):

> 'A grievance complaining about a fellow employee's conduct, filed in terms of a contractually agreed grievance procedure at first glance does not constitute taking action against an employer, nor ordinarily, does it involve the exercise of any right conferred by the LRA or the participation in any proceeding in terms of the LRA. The LRA does not expressly confer rights upon employees to file grievances. Nor does it establish a mechanism or proceeding for the resolution of grievances filed by employees. The only reference to the processing of grievances in the LRA is found in section 115(3)(b) of the LRA which provides that the CCMA may provide employees, employers and their bargaining agents with advice or training relating to 'preventing and resolving disputes and employees' grievances'. Hence, the only right that the LRA confers in relation to employee grievances is the right to approach the CCMA for training.'

[51] A reading of his statement of claim and the statement of response however demonstrates a misconception of the nature of the dispute by the Applicant. The jurisdiction of this Court is not engaged on the Applicant's pleaded case.

[52] It is not only the interests of the Applicant that matter. The interests of the Respondent, such as the interest in finality of litigation, as endorsed by the Apex Court[11] is a factor to be considered, and a balanced approach is necessary.

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[10] DBT Technologies v Garnevska [2020] 41 ILJ 2078 (LAC) at para 16
[11] Van Wyk v Unitas Hospital and Another (CCT 12/07) [2007] ZACC 24; 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC) at para 31

[53] The principles laid down in *Government Printing Works* demonstrates that that each case must be assessed on its own merits, and all factors must be viewed collectively. However, in *Aspen*, the LAC made it clear that there is a point beyond which a litigant cannot escape the consequences of his or her tardiness. On a conspectus of the facts, *In casu*, the extent of the delays, particularly once the Respondent made it clear to the Applicant that there is a need for condonation for the substantial delay in referring the matter to this Court, together with the delay between the filing of the statement of response wherein the issue of condonation was raised and the date when the condonation application was filed, are collectively are so long that the explanation for the delays and the prospects of success needed to be truly exceptional to excuse the inordinate delay. The Applicant has not met the threshold for condonation to be granted and it is the considered view of this Court that condonation should be refused. Given the refusal of condonation, the other preliminary or interlocutory points raised by the Respondent needs not be determined, as they fall away as a natural consequence.

[54] This only leaves the matter of costs. Costs occasioned by the appearance of the parties on 30 April 2024 was reserved. The Court is of the view that it is not in the interests of justice and fairness to order the Applicant to pay the costs associated with the previous appearance nor the appearance in this Court on 27 February 2025, despite the glaring difficulties with the Applicant's case.

[55] In the premises, the following order is made:

Order

1. The application for condonation is dismissed.
2. There is no order as to costs.

L. Steenkamp

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	In person
For the First Respondents:	Advocate D Groenewald
Instructed by:	Higgs Attorneys Inc