



EMPLOYMENT

How Strong Merits Can Save a Late Case

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In a recent Labour Appeal Court (“**LAC**”) judgement in *Government Printing Works v Public Service Association and Another*,^[1] the court provided a detailed analysis of condonation as it relates to a late appeal and a delayed response to a statement of case. While the decision relating to the late appeal is important, it is the ruling on the condonation application for the late response to the statement of case that provides guidance on procedural delays in future labour litigation.

Facts

The dispute arose when the second respondent, Mr Mojananga, instituted an unfair discrimination claim in terms of the Employment Equity Act No. 55 of 1998, following the removal from his position as Chief Security Officer due to not being registered with the Private Security Industry Regulatory Authority (“**PSIRA**”). The appellant, Government Printing Works (“**GPW**”), responded to the statement of case 84 days late, for which it filed a condonation application.

The Labour Court refused condonation. It criticised the explanation for the delay as vague and insufficient. The court held that the length of the delay and the poor justification meant that the appellant’s prospects of success were immaterial. The decision resulted in an appeal to the LAC where the court had to decide whether the Labour Court had erred in its refusal to grant condonation and whether same should now be granted.

Factors assessed for condonation

The LAC affirmed that labour disputes must be speedily resolved, in line with the objectives of the Labour Relations Act No. 66 of 1995 which require expeditious outcomes to employers and employees. It stated that while time limits are not ironclad, condonation is an indulgence not a right. Generally, courts assess condonation applications holistically, weighing the following factors:

- The length and cause of the delay;
- The adequacy of the explanation;
- The effect on justice and other litigants;
- The importance of the issue; and
- The prospects of success.

The LAC clarified that the Labour Court exercises a “true discretion” when making decisions related to condonation. Thus, its ruling can be overturned if:

1. Its decision was capricious or influenced by wrong principles or material misdirection.
2. It failed to consider the relevant facts or applied incorrect principles; or
3. Its decision was unreasonable and unjust.

While traditionally courts could refuse condonation without considering prospects of success if the delay was excessive and unexplained (known as the *Western Holdings* principle),^[1] the Constitutional Court in *Steenkamp v Edcon Ltd*,^[2] has since adopted a more nuanced view. It held that all relevant factors, including prospects of success, must be considered, except in extreme cases of flagrant delay and gross procedural breaches.

The LAC’s Findings

The LAC found that the 84-day delay was substantial, particularly given the 10-day time limit to respond. While part of the delay (related to legal panel appointment and initial attorney engagement) was reasonably explained, a critical 50-day period remained unexplained, particularly after the affidavit for condonation had already been signed. The appellant’s justification (including the claim of “voluminous documents”) was weak and bordered on misleading, as the response was only 13 pages with one annexure.

However, the LAC found that the prospects of success were particularly strong given that GPW had removed Mr Mojananga from his security role after a notice from PSIRA that he was not registered to perform such services. Registration with PSIRA was a statutory requirement. The respondents offered only a bare denial of this claim. Further, the court noted that the matter held broader importance, including compliance with statutory security regulations and the State’s obligations under the PSIRA framework.

Conclusion

The LAC overturned the decision, finding that the Labour Court had failed to exercise its discretion judicially, particularly by ignoring the merits altogether. Condonation was granted for the late filing of the response.

This judgment underscores the need for litigants to provide detailed, honest explanations for the entire period of delays. It further shows that excellent prospects of success can outweigh even substantial delay and that courts must avoid rigidly applying procedural rules in a way that precludes a just outcome.

[1] *National Union of Mineworkers and Others v Western Holdings Gold Mine* (1994) 15 ILJ 610 (LAC).

[2] *Steenkamp and Others v Edcon Limited* (2019) 40 ILJ 1731 (CC).

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