THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JR 48/19

In the matter between:

McCANN WORLDGROUP SA (PTY) LTD **Applicant**

And

RONEL LANDMAN **First Respondent**

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION **Second Respondent**

MUSOLWA RAPALALANE *N.O* **Third Respondent**

Enrolled: 11 June 2020

Delivered: 19 June 2020

In view of the measures implemented as a result of the Covid-19 outbreak, this judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 19 June 2020.

JUDGMENT

PRINSLOO, J

Introduction

[1] The Applicant filed an application to review and set aside a condonation ruling dated 6 December 2018 and issued under case number GAJB24157-18. The Third Respondent (arbitrator) granted condonation for the late referral of the First Respondent's (Respondent) constructive dismissal dispute.

[2] The Respondent opposed the application.

[3] The matter was enrolled for hearing on 11 June 2020. In accordance with the provisions of the 'Urgent directive in respect of access to the Labour Court' dated 28 April 2020, which is applicable with effect from 4 May 2020 until the end of the July 2020 recess, the parties agreed that this matter be disposed of without oral argument. I have considered the papers filed as well as the written heads of argument submitted by the parties.

Material background facts

[4] The Respondent was employed by the Applicant from July 2016 and in July 2017 she was promoted to the position of operations manager. She resigned on 24 August 2018 and her resignation was preceded by allegations of sexual assault.

[5] The Respondent referred a constructive dismissal dispute to the Second Respondent (CCMA) on 25 October 2018 wherein she challenged the fairness of her dismissal. The referral was accompanied by an application for condonation as the dispute was referred out of time and was 28 days late.

[6] The arbitrator granted the Respondent condonation for the late referral of the constructive dismissal dispute and afforded her 90 days to refer her dispute for arbitration.

[7] The Applicant seeks the review and setting aside of the aforesaid condonation ruling.

The condonation application

[8] In order to assess the arbitrator's findings and the ruling he ultimately issued, it is necessary to consider the evidence placed before him.

[9] In the condonation application that served before the arbitrator, the Respondent provided a background to the alleged incident of sexual assault on 3 August 2018 and the events subsequent thereto that led to her resignation on 24 August 2018.

[10] The Respondent's explanation for the late referral of her dispute was as follows: there were various correspondence exchanged between her attorneys and the Applicant's attorneys in an attempt to resolve the matter amicably. From 24 August to 21 September 2018, she was emotionally extremely unstable and she was advised by her psychologist and psychiatrist no to take on any additional stress, to distance herself from the incident and to avoid having to re-live it in her mind. The Respondent explained that in instructing her attorney and reviewing the letters between the attorneys, she was required to re-live the incident and suffer the same trauma over again. In order to protect herself from reliving the traumatic experience and on advice of her doctors and legal representatives, she decided that it would be best for her to settle the dispute.

[11] These attempts failed and after receiving the outcome of a disciplinary hearing on 5 October 2018, the Respondent realised that the Applicant would continue to mistreat her and she decided that she had to take the matter further.

[12] She explained that she delayed in referring the dispute as she wanted to exhaust all other remedies in an attempt to deal with the matter amicably and in order to limit any further emotional trauma.

[13] On the prospects of success, the Respondent submitted that she has good prospects of success because she was subjected to sexual assault in the workplace. She lodged a formal grievance but the Applicant failed to follow its own policies and procedures in respect of the investigation of such grievance. She further submitted that the Applicant victimized her and forced her to return to work without having investigated her grievance formally, without taking any measure to protect her and without taking her sick leave into account. The Applicant rendered any prospect of continued employment

intolerable as it did not take the issue of sexual assault seriously and she could not reasonably be expected to continue working in the same environment as the person who had sexually assaulted her.

[14] The Applicant opposed the application for condonation and its case was that on 5 August 2018, two days after the events of 3 August 2018, the Respondent indicated that she wanted to lay a formal complaint. On 6 August 2018, a meeting was held with the Respondent and she was assured that an investigation would commence on the same day and whilst the investigation was ongoing, she could remain at home.

[15] On 7 August 2018, the Applicant communicated with the Respondent via email and it was confirmed that the Applicant was deeply concerned about the allegations and was busy investigating the matter. The Respondent was reminded that she had the Applicant's full support, she was offered counselling through a service provider and time off during the time that the investigation was conducted. It was confirmed that the Respondent indicated that she did not want to lay a criminal or formal charge against Mondli (the alleged perpetrator) but that she wished for him to be removed from the Applicant's premises.

[16] During the week of 6 – 10 August 2018, the Applicant conducted an investigation during which CCTV footage was reviewed and relevant individuals were interviewed. Mondli's version was that the interaction between him and the Respondent on 3 August 2018 was consensual.

[17] On 10 August 2018, the Applicant had a meeting with the Respondent, where the findings of the informal investigation were discussed with her. The informal investigation was concluded after this meeting.

[18] The outcome of the informal investigation was inconclusive and absent a positive finding that Mondli had indeed sexually assaulted the Respondent, there was no basis to remove him from the Applicant's premises.

[19] The Applicant sought legal advice in the circumstances as it was aware of the fact that its sexual harassment policy and grievance procedure had to be

given effect. The Applicant was advised to treat Mondli as an employee accused of having committed serious sexual misconduct and that it had to comply with its own policies and procedures.

[20] In terms of the aforesaid policies, the following procedure has to be followed after the occurrence of alleged sexual assault: the victim must report the alleged assault to senior management, management must conduct an informal investigation and if the conduct in question justifies disciplinary action, it must be instituted pursuant to the terms of the grievance procedure.

[21] It became apparent to the Applicant that a formal enquiry was necessary to resolve the Respondent's complaint as a formal enquiry would be the only way to test all the evidence and determine the veracity of the allegation and because no disciplinary action could be taken against Mondli in the absence of a formal enquiry.

[22] Accordingly, an email was sent to the Respondent on 10 August 2018 wherein it was relayed to her, *inter alia,* that an informal investigation could not determine the veracity of either her or Mondli's version and that she has the right to instruct the Applicant to formally proceed with the grievance steps against Mondli. She was also informed that she and Mondli were expected to return to work on 13 August 2018.

[23] On 13 August 2018, the Respondent submitted a doctor's note that booked her off work from 13 – 17 August 2018 on grounds of extreme emotional distress.

[24] On 17 August 2018, the Applicant received a letter from the Respondent's attorneys, to which the Applicant's attorneys responded on 21 August 2018. In the aforesaid letter it was recorded that the Respondent initiated a formal grievance procedure against Mondli, which she subsequently withdrew, and she was offered another opportunity to institute a formal grievance procedure by 22 August 2018.

[25] The Respondent personally responded to this letter on 24 August 2018. The Respondent stated that her only wish was for Mondli to be removed from the

premises and for her to continue with her work, she did not want to lay formal charges and did not want a drawn out process. The Respondent stated that she was of the view that the trust relationship between herself and the Applicant had broken down irretrievably and she tendered her resignation with effect from 31 August 2018. The Respondent also stated that she wanted to proceed with a formal grievance against Mondli, and for same to be chaired by an outside mediator.

[26] On 28 August 2018, the Applicant responded and accepted the Respondent's resignation and agreed to pay her salary for September 2018. The Applicant indicated that there would be no purpose in proceeding with a formal grievance procedure as the Respondent will no longer be an employee due to her resignation. The Applicant proposed that the Respondent provide it with all evidence in respect of the alleged sexual assault and that based on such evidence, the Applicant would institute formal disciplinary proceedings against Mondli, if there was enough evidence to justify it. If disciplinary proceedings were to be instituted, the Respondent would be required to give oral evidence, at a neutral venue and due to the Respondent's emotional state, the Applicant would arrange for her evidence to be given *in camera.*

[27] Over the next month, there was an attempt to reach a settlement agreement, but it ultimately failed.

[28] The Applicant's case was that the Respondent's resignation did not amount to a constructive dismissal. She retracted her formal grievance, she was offered an opportunity to reinstate it in order to allow the Applicant to institute formal steps against Mondli and instead of doing so, she resigned. The Applicant submitted that there was no prospect of success

[29] The attempts to settle the matter ended on 27 September 2018. It is undisputed that the Respondent was legally represented prior to her resignation and throughout the settlement discussions.

[30] The Applicant took issue with the fact that there is no explanation tendered for the delay, as every period of the delay has to be explained. In her replying affidavit, the Respondent explained that on 5 October 2018 she was informed

that her attorneys of record were closing down and she could only consult with her new attorneys in the middle of October 2018.

[31] The Respondent was offered an alternative position with Joe Public on 1 August 2018, which position she took up with effect from 1 October 2018.

The test for the grant of condonation

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

[33] The court or relevant tribunal 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[1].

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

[35] In *Melane v Sanlam Insurance Co Ltd*[2] it was held that:

> '…. Among the facts usually relevant, are the degree of lateness, the explanation therefore, 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 will be no point in granting condonation. What is needed is an objective conspectus of all the facts.'

[36] 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.

[37] The approach that in the absence of a satisfactory explanation for a delay, the applicant's prospects of success are ordinarily irrelevant, has been

[1] 'Civil Procedure in the Superior Court, Harms at B27.6.
[2] 1962 (4) SA 531 (A) at 532 C - F.

conventionally applied[3] and was confirmed in *National Education Health and Allied Workers Union on behalf of Mofokeng and Others v Charlotte Theron Children's Home*[4] where the Labour Appeal Court (LAC) held that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial.

[38] In *Collett v Commission for Conciliation, Mediation and Arbitration*[5] the LAC held that 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 the delay, an application for condonation should be refused.

[39] An applicant in an application for condonation bears the onus to satisfy the court or tribunal that condonation should be granted and it is incumbent upon such applicant to provide a full explanation for every period of the delay. The explanation for the delay must be both comprehensive and persuasive and should cover every period of the delay.

[40] In *IMATU obo Zungu v SALGBC and Others*[6] the principle was confirmed that 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.

[41] In summary: The Courts have endorsed the principle that where there is a delay with no reasonable, satisfactory and acceptable explanation for such 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 another fundamental consideration.

[42] It is within this context that an application for condonation stands to be determined.

[3] See *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC).
[4] (2004) 25 *ILJ* 2195 (LAC) at para 23.
[5] (2014) 6 BLLR 523 (LAC).
[6] (2010) 31 ILJ 1413 (LC).

The condonation ruling

[43] The issue to be decided by the arbitrator was whether condonation should be granted for the late referral of the Respondent's constructive dismissal dispute.

[44] The arbitrator recorded the Applicant's and the Respondent's submissions. In his analysis of the submissions and the factors to be considered in an application for condonation, the arbitrator recorded that the referral was 32 days late, which he found not to be excessive, having considered the reasons for the delay.

[45] In respect of the explanation for the delay, the arbitrator found that the reason for the delay was reasonable and justifiable, given the fact that the Respondent was treated by a psychologist and psychiatrist during the days in question.

[46] On the prospects of success, the arbitrator held that dismissal is in dispute and therefore the matter could be dealt with properly in a hearing where both parties can state their respective cases.

The test on review

[47] I have to deal with the merits of the review application within the context of the test that this Court must apply in deciding whether the arbitrator's decision is reviewable. The test has been set out in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*[7] as whether the decision reached by the commissioner is one that a reasonable decision maker could not reach. The Constitutional Court very clearly held that the arbitrator's conclusion must fall within a range of decisions that a reasonable decision maker could make.

[48] The review test is a stringent and conservative test of reasonableness. The Applicant has to show that the arbitrator arrived at an unreasonable result.

[7] 2007 28 ILJ 2405 (CC) at para 110.

[49] In *Bestel v Astral Operations Ltd and Others*[8] the LAC considered the limited scope possessed by this Court to review an arbitration award and accepted that an arbitrator's finding will be unreasonable if the finding is unsupported by any evidence, if it is based on speculation by the arbitrator, if it is disconnected from the evidence, if it is supported by evidence that is insufficiently reasonable to justify the decision or if it was made in ignorance of evidence that was not contradicted.

[50] The LAC in *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v CCMA and Others*[9] affirmed the test to be applied in review proceedings and held that:

> 'In short: A reviewing court must ascertain whether the arbitrator considered the principal issue before him/her; evaluated the facts presented at the hearing and came to a conclusion that is reasonable.'

[51] The review court must consider the totality of the evidence and then decide whether the decision made by the arbitrator is one that a reasonable decision maker could make based on the facts placed before him / her.

[52] In *Parliament of the Republic of South Africa v CCMA and Others*[10] it was held that:

> 'This Court accepts that when considering applications for condonation, Commissioners enjoy a wide discretion and the Courts should be cautious when interfering with decision arrived at by Commissioners in the light of that wide discretion.
>
> The applicable test before the Court can interfere with a Commissioner's discretionary decision is whether or not it can be said that the discretion was exercised "capriciously, or upon a wrong principle, or in a biased manner, or for insubstantial reasons. Thus, the test is whether the Commissioner committed a misdirection, an irregularity, or failed to exercise his or her discretion, or exercised it improperly or unfairly.'

[8] [2011] 2 BLLR 129 (LAC) at par 18.
[9] (2014) 35 ILJ 943 (LAC).

[10] Unreported judgment (C646/16) [2018] ZALCCT 12 (24 April 2018)

[53] In *Cowley v Anglo Platinum and Others*[11] , it was held that;

> 'When a Commissioner is endowed with a discretion this court will be very slow to interfere with the exercise of that discretion. The commissioner's exercise of discretion would be upset on the review if the applicant shows, *inter alia*, that the Commissioner committed a misdirection or irregularity, or that he or she acted capriciously, or on the wrong principle or in bad faith or unfairly or that the exercise seeing the discretion the Commissioner reached a decision that a reasonable decision-maker could not reach. If it is clear that the commissioner exercised such discretion judiciously and fairly after taking into consideration all the relevant facts, this court will not interfere with the exercise of such discretion.'

[54] The ultimate question is whether holistically viewed, the decision taken by the arbitrator was reasonable based on the evidence placed before him. I have to consider this question taking into account the evidence contained in the condonation application and opposition thereto that was placed before the arbitrator, the ruling he had issued and the grounds for review raised by the Applicant.

[55] It is within this context that the application for review is to be considered.

Grounds for review and analysis

[56] It is evident from his ruling that the arbitrator was well aware of the fact that the Respondent had to show good cause and that he was to be guided by Rule 9(3) of the CCMA Rules, which sets out the factors to be addressed in an application for condonation. The arbitrator recorded that the factors were interrelated and that the Respondent bore the onus to show that condonation should be granted.

[57] In my view, the arbitrator was aware of the factors to be considered as per Rule 9(3) namely the degree of lateness, the reasons for the lateness, prospects of succeeding with the referral and obtaining the relief sought and prejudice.

[11] JR 2219/2007; [2016] JOL 35884 (LC) at para 21.

[58] In considering whether or not to grant condonation, the arbitrator had to consider the aforesaid factors, thus the legal requirements or the law, the facts placed before him and exercise his discretion on an objective conspectus of the law, applied to the facts.

[59] The essence of the Applicant's grounds for review is that the arbitrator committed material errors of fact and of law and this resulted in an egregious exercise of the discretion to condone the late referral of the Respondent's dispute, which rendered the ruling unreasonable.

[60] The Applicant took issue with two particular findings of the arbitrator, which were material to his decision to grant condonation.

[61] Firstly, the Applicant took issue with the arbitrator's finding that the delay is not excessive, considering the reasons for the delay, which the arbitrator found to be justifiable and reasonable. The Applicant's case is that the arbitrator's finding was not factually correct and that condonation should not have been granted as there was no explanation for the delay. The arbitrator failed to apply his mind to the facts placed before him.

[62] In my view there is merit in this ground for review.

[63] The period of delay is the period after the expiry of the 30 days within which an unfair dismissal dispute has to be referred and the date it was actually referred. *In casu,* the Respondent resigned on 24 August 2018. In her condonation application, she stated that she had to refer her dispute by 25 September 2018. The dispute was referred on 25 October 2018.

[64] The relevant period for which the Respondent had to tender an explanation is thus 25 September until 25 October 2018. In her founding affidavit, the Applicant stated that from 24 August to 21 September 2018 she was emotionally unstable and was advised by her psychologist and psychiatrist not to take on any additional stress and to distance herself from the incident. This explanation is irrelevant as it covers the period prior to the actual period of delay that had to be explained.

[65] The Respondent further explained that there were attempts to settle the matter. It is undisputed that attempts to settle came to an end on 27 September 2018. Thus, by 27 September 2018 the Respondent should have been aware that the possibility of settlement was no longer on the table.

[66] The Respondent explained that on 5 October 2018 she decided to take the matter further and she sought legal advice. Only in her replying affidavit did she explain that her attorney closed his practice and she sought advice from new attorneys by mid-October 2018.

[67] The arbitrator found the delay reasonable and justifiable because the Respondent attached letters from her psychologist and psychiatrist, confirming that she was treated by them during the days in question.

[68] It is evident that the arbitrator's finding, based on letters from the Respondent's psychologist and psychiatrist is factually incorrect. There is no letter to confirm that the Respondent was treated or booked off by them during the period 25 September to 25 October 2018. The letters cover the periods 13 – 18 August 2018 and 20 – 24 August 2018. The letter from the psychiatrist dated 2 September 2018, indicated that the Respondent is to stay on sick leave until her mood stabilised and that it would not be in her best interest to return to work until the issue had been resolved.

[69] The Respondent resigned on 24 August 2018. There is nothing in the letters which the arbitrator accepted as reasonable explanation to support her explanation for the delay. There is no evidence that the Respondent was still under treatment by her psychologist or psychiatrist between 25 September and 25 October 2018.

[70] The Respondent had to provide an explanation for every period of the delay to enable the arbitrator to assess the reasonableness of the delay and the explanation for it. 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 Respondent has tendered no version as to what happened during those periods.

[71] The arbitrator accepted the explanation tendered to be reasonable and justifiable without a proper consideration of the facts placed before him. The arbitrator further ignored the fact that the Respondent took up employment with another entity on 1 October 2018.

[72] The question that this Court must ask on review is whether the explanation for the delay was material to the determination of the question whether condonation should be granted and whether the arbitrator's failure to consider the facts, distorted his ultimate decision.

[73] In *Head of the Department of Education v Mofokeng*[12] the LAC provided the following exposition of the review test:

> 'Irregularities or errors in relation to the facts or issues, therefore, may or may not produce an unreasonable outcome or provide a compelling indication that the arbitrator misconceived the inquiry. In the final analysis, it will depend on the materiality of the error or irregularity and its relation to the result. Whether the irregularity or error is material must be assessed and determined with reference to the distorting effect it may or may not have had upon the arbitrator's conception of the inquiry, the delimitation of the issues to be determined and the ultimate outcome. If but for an error or irregularity a different outcome would have resulted, it will *ex hypothesi* be material to the determination of the dispute. A material error of this order would point to at least a *prima facie* unreasonable result.' (My emphasis)

[74] In my view, the explanation was material to the issue to be decided. The arbitrator's failure to apply his mind to material facts, alternatively making a finding that is factually incorrect, indeed had a distorting effect upon his conception of the enquiry, the issues to be determined, the ultimate outcome and it distorted the arbitrator's ultimate decision. The arbitrator could not have granted condonation on the basis of the letters of the psychologist and psychiatrist.

[75] Secondly, the Applicant took issue with the arbitrator's assessment of the prospects of success.

[12] [2015] 1 BLLR 50 (LAC) at para 33.

[76] The arbitrator, in considering the issue of prospects of success, found that dismissal is in dispute and therefore the matter could be dealt with properly in a hearing where both parties can state their respective cases.

[77] In my view, there is merit in this ground for review.

[78] The arbitrator, in considering the prospects of success, had to consider the Respondent's prospects of succeeding with a constructive dismissal dispute.

[79] Where an employee claims constructive dismissal, the onus is on the employee to prove that the resignation was not voluntary and it was not the employee's intention to terminate the employment relationship. Once the employee discharges the onus, the conduct of the employer must be assessed and the question is whether the employee could reasonably have been expected to put up with the conduct of the employer.

[80] In opposing the condonation application, the Applicant has put up a case to show that there was no prospect of succeeding with a constructive dismissal case, *inter alia,* because the Respondent opted to resign instead of affording the Applicant an opportunity to deal with the issue, as it clearly conveyed its intention to do. This called for an assessment of the factors relevant in a constructive dismissal case, as well as the facts placed before him.

[81] The arbitrator dismally failed to consider or assess the issue of prospects of success, based on the facts placed before him. This was a factor he had to consider in an application for condonation.

[82] The arbitrator's referral to the fact that dismissal is in dispute, with reference to prospects of success is bizarre as it has no bearing on the question of prospects of success and it is not a factor to be considered or applied in determining the question of prospects of success.

[83] In summary: the condonation ruling issued and the findings made therein, do not pass muster considering the test that this Court has to apply on review. The arbitrator's findings are unreasonable and cannot survive being challenged on review.

Relief

[84] This leaves the issue of relief.

[85] The Applicant seeks for the condonation ruling to be reviewed and set aside and to be substituted with a ruling that the Respondent's condonation application is dismissed.

[86] In the event that the ruling is set aside on review, this Court has a discretion whether or not to finally determine the matter. The matter could be finally determined where there is a full record of the proceedings before Court and where it would be in the interest of justice to do so.

[87] The principles had been set out by the LAC in *Palluci Home Depot (Pty) Ltd v Herskowitz*[13] as follows:

> 'Where all the facts required to make a determination on the disputed issues are before a reviewing court in an unfair dismissal or unfair labour practice dispute such that the court is "in as good a position" as the administrative tribunal to make the determination, I see no reason why a reviewing court should not decide the matter itself. Such an approach is consistent with the powers of the Labour Court under s 158 of the LRA, which are primarily directed at remedying a wrong, and providing the effective and speedy resolution of disputes. The need for bringing a speedy finality to a labour dispute is thus an important consideration in the determination by a court of review of whether to remit the matter to the CCMA for reconsideration, or substitute its own decision for that of the commissioner'.

[88] *In casu,* the Court has the entire record before it and is well-placed to make a decision on the merits and to decide and finally determine the matter on the record as it is before me and where the parties' cases were fully ventilated.

[89] On a consideration of all the facts before the arbitrator at the time, it is evident that the most reasonable outcome upon a consideration of the overall interests of justice would have been to refuse the granting of condonation. In exercising his discretion to grant condonation, the arbitrator committed a

[13] (2015) 36 ILJ 1511 (LAC) at para 58.

misdirection of such a nature that his discretion was exercised not only improperly, unfairly and unreasonably, but also upon wrong principles and for insubstantial reasons.

[90] In the circumstances, it follows that the condonation ruling ought to be set aside, and I am satisfied that upon the material that was placed before the arbitrator, this Court is in a position to substitute that ruling. No purpose would be served by remitting the matter back to the CCMA for reconsideration. It is also in the interest of justice to determine the matter finally and not to order a re-hearing of the matter as any further delay in this matter would undermine one of the key objects of the LRA namely expeditious dispute resolution.

Costs

[91] This Court has a wide discretion in respect of costs.

[92] This is a matter where ultimately the arbitrator got it wrong and the Respondent was entitled to defend a ruling issued in her favour by opposing the application. In my view, considering the facts placed before me, the interest of justice will be best served by making no order as to cost.

[93] In the premises I make the following order:

Order

1. The condonation ruling dated 6 December 2018 and issued under case number GAJB 24157-18 is reviewed and set aside;

2. The condonation ruling is substituted with the following:

   'The Applicant's (First Respondent) application for condonation is dismissed.'

3. There is no order as to costs.

_____

Connie Prinsloo

Judge of the Labour Court of South Africa

Representatives:

For the Applicant: Marais Attorneys

For the First Respondent: Mervyn Taback Inc Attorneys