



Not reportable

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT CAPE TOWN**

CASE: C 490/2019

In the matter between:

NUMSA

First Applicant

FANYANA AMOS RADEBE & 8 OTHERS

**Second to Further
Applicants**

and

LETLHABILE COACHES CC

Respondent

Date of Hearing: 29 June 2021

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and released to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 23 July 2021.

Summary: (Unopposed application for condonation for the late filing of amended statement of case by 16 days. Relevant legal principles for condonation restated.)

Delay not lengthy, reasonable explanation provided, prima facie case made out on the papers, no prejudice to the Respondent. Condonation granted)

JUDGMENT

JORGE AJ

Introduction

- [1] The Applicant has brought an application for condonation for the late filing of its amended statement of case. The application is not opposed by the Respondent.
- [2] The application was determined on the papers.

Introduction & Chronology of the condonation application

- [3] The Labour Court Rules do not deal specifically with amendments to a statement of case. Although the Uniform Rules of Court do not apply in this Court, Rule 11(3) of the Rules of this Court provides that if a situation arises for which the Rules do not provide, the Court may adopt any procedure that it deems appropriate. In the circumstances this Court is guided by Uniform Rule 28 as an appropriate guide as to how to deal with an amendment of a statement of claim.

- [4] The relevant portions of Uniform Rule 28 are as follows:

'(1) Any party desiring to amend a pleading or document other than a sworn statement, filed in connection with any proceedings, shall notify all other parties of his intention to amend and shall furnish particulars of the amendment.

(2) The notice referred to in subrule (1) shall state that unless written objection to the proposed amendment is delivered within 10 days of delivery of the notice, the amendment will be effected.

(3) An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.

(4) ...

(5) If no objection is delivered as contemplated in subrule (4), every party who received notice of the proposed amendment shall be deemed to have consented to the amendment and the party who gave notice of the proposed amendment may, within 10 days after the expiration of the period mentioned in subrule (2), effect the amendment as contemplated in subrule (7).

(6) ...

(7) Unless the court otherwise directs, a party who is entitled to amend shall effect the amendment by delivering each relevant page in its amended form.'

[5] The Applicant served its Notice of Intention to Amend the Statement of Claim on the Respondent on 25 August 2020.

[6] The Respondent had 10 Court days within which to object to the proposed amendment. It did not do so.

[7] Accordingly, the Applicant had to deliver the amendment on 22 September 2020.

[8] The Applicant only served its Amended Statement of Claim on the Respondent some 16 days later on 14 October 2020.

[9] The Respondent filed its Amended Response on 28 October 2020.

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

[11] In *Melane v Sanlam Insurance Co Ltd*¹ 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.’

Objective conspectus of the facts

[12] The Amended Statement of Claim was filed some 16 days late. This is not a lengthy delay.

[13] The Applicant has explained that the delay was occasioned by logistical difficulties that it experienced in obtaining instructions from its members who were spread across two provinces. It has provided sufficient particularity as to the steps it took to contact its members in this regard.

[14] The Applicant has addressed its prospects of success by incorporating the contents of its Amended Statement of Case. This Court is satisfied that from a reading of the Amended Statement of Case that the Applicant

¹ 1962 (4) SA 531 (A) at 532 C - F.

has shown that, on its version, a prima facie case has been made that the Respondent will have to meet at trial.

- [15] The Respondent has already filed its Amended Statement of Response and does not appear to have been prejudiced by the amendment. This Court accepts that this is an extremely important matter for the Second to Further Applicants who are not currently employed.
- [16] The pleadings in this matter are closed and all that is left is for the parties to file a pre-trial conference minute for the matter to be ready for trial.
- [17] On an objective conspectus of the facts the delay is not lengthy, an acceptable explanation for the delay has been provided and the Applicants have made a prima facie case in respect of their prospects of success. It would accordingly be in the interests of justice to allow the Applicants to have their dispute properly ventilated.
- [18] In view of the above the following order is made:

Order

- [1] The application for condonation for the late filing of the Amended Statement of Claim is granted.
- [2] No order is made as to costs.



Jorge AJ
Acting Judge of the Labour Court of South Africa

Appearances -

For the Applicant: K Rapitsi

**National Union of
Metalworkers of South Africa**

LABOUR COURT