

EMPLOYMENT LAW

ALERT

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INCORPORATING
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IN THIS ISSUE

Dismissal applications and the deeming provisions of the Practice Manual of the Labour Court: Some light at the end of a long, drawn-out tunnel

The speedy resolution of labour disputes has been a cornerstone of employment and labour law. In this light, Rule 11 of the Rules for the Conduct of Proceedings in the Labour Court provides for an avenue for a litigant to pursue the dismissal of an application in the Labour Court (LC) due to an applicant's failure to prosecute it diligently.



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The speedy resolution of labour disputes has been a cornerstone of employment and labour law. In this light, Rule 11 of the Rules for the Conduct of Proceedings in the Labour Court provides for an avenue for a litigant to pursue the dismissal of an application in the Labour Court (LC) due to an applicant's failure to prosecute it diligently.

The position in respect of these dismissal applications has been unclear because of conflicting judgments handed down by the LC on this issue, the most recent of which is *NUMSA obo Mavuso v Mini Mega (PTY) Ltd t/a Rustenburg Engine Centre* (JR 1288/13) [2022] ZALCJHB 180 (4 July 2022). In this matter, the LC dealt with an application for the dismissal of a review application due to a failure by the applicant party (the employer) to prosecute it as required by section 145 of the Labour Relations Act 66 of 1995 (LRA) and the Practice Manual of the LC.

Briefly, the employee was awarded reinstatement in terms of an arbitration award issued on 6 May 2013, and sent to both parties on 10 May 2013. On 4 July 2013, some 13 calendar days outside of the six-weeks' period, the employer launched a review application

challenging the award. The employer, however, did not file any application for the condonation of its lateness. No steps were subsequently taken by the employer in pursuit of finality in its review application thereafter. On 14 April 2016, the employee launched a Rule 11 dismissal application, in which he also sought an order making the award an order of the LC.

Dealing with the application, the LC found that it lacked jurisdiction to determine review application filed outside of the six-weeks' deadline and where no condonation application was sought.

The LC, however, went further and held that, despite the lack of jurisdiction and despite the provisions of the Practice Manual, the review application in this matter stood to be dismissed in terms of Rule 11 because of the undue delay by the employer in prosecuting it.

APPLYING THE PRACTICE MANUAL

The LC reasoned that the Practice Manual is not to be applied rigidly, but flexibly. Furthermore, the LC held that the promulgation of the Practice Manual did not serve to obliterate judicial discretion on matters coming before the LC.

In relation to the deeming provisions of the Practice Manual, the LC held that these are not to be interpreted to mean that the LC is barred from exercising its discretion to dismiss a review application that has clearly not been prosecuted diligently by the applicant. To that end, the LC relied on two judgments, one in the LC and one in the South Gauteng High Court, where the courts dismissed an application for the withdrawal of an urgent application and an application for the withdrawal of a rescission application respectively. In both these matters, the principle established by the courts was that the discretion of the court(s) to, in appropriate circumstances, determine a matter despite its withdrawal by the applicant party remained intact.

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The LC, therefore, granted the dismissal application due to the employer's undue delay in prosecuting its review application, despite the review application having been filed out of time (jurisdiction) and despite it having been deemed withdrawn or dismissed in terms of the provisions of the Practice Manual.

The judgment is of particular importance as it seeks to provide much-needed clarity on the manner in which the LC is to deal with Rule 11 dismissal applications in the face of the provisions of the Practice Manual. In this case, the LC casts some light at the end of a long, drawn-out tunnel of litigation before it where, by reason of the provisions of the Practice Manual, true finality

is often forfeited. Importantly, the LC's direction to determine Rule 11 dismissal applications notwithstanding the dismissal or deemed withdrawn status of a review application subsists. This also assists employees' quests for true finality in review applications that are not prosecuted diligently by employers, which promotes the policy considerations underpinning the LRA.

It remains to be seen whether the Labour Appeal Court will align itself with this attempt by the LC at achieving true finality in review applications brought in terms of section 145 of the LRA.

**BONGANI MASUKU AND
TSHEPISO RASETLOLA**



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OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:



Aadil Patel

Practice Head & Director:
Employment Law
Joint Sector Head:
Government & State-Owned Entities
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com



Anli Bezuidenhout

Director:
Employment Law
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com



Jose Jorge

Sector Head:
Consumer Goods, Services & Retail
Director: Employment Law
T +27 (0)21 481 6319
E jose.jorge@cdhlegal.com



Fiona Leppan

Joint Sector Head: Mining & Minerals
Director: Employment Law
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com



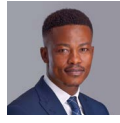
Gillian Lumb

Director:
Employment Law
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Imraan Mahomed

Director:
Employment Law
T +27 (0)11 562 1459
E imraan.mahomed@cdhlegal.com



Bongani Masuku

Director:
Employment Law
T +27 (0)11 562 1498
E bongani.masuku@cdhlegal.com



Phetheni Nkuna

Director:
Employment Law
T +27 (0)11 562 1478
E phetheni.nkuna@cdhlegal.com



Desmond Odhiambo

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com



Hugo Pienaar

Sector Head:
Infrastructure, Transport & Logistics
Director: Employment Law
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Thabang Rapuleng

Director:
Employment Law
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com



Hedda Schensema

Director:
Employment Law
T +27 (0)11 562 1487
E hedda.schensema@cdhlegal.com



Njeri Wagacha

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E njeri.wagacha@cdhlegal.com



Michael Yeates

Director:
Employment Law
T +27 (0)11 562 1184
E michael.yeates@cdhlegal.com



Mohsina Chenia

Executive Consultant:
Employment Law
T +27 (0)11 562 1299
E mohsina.chenia@cdhlegal.com



Faan Coetzee

Executive Consultant:
Employment Law
T +27 (0)11 562 1600
E faan.coetzee@cdhlegal.com



Jean Ewang

Consultant:
Employment Law
M +27 (0)73 909 1940
E jean.ewang@cdhlegal.com



Ebrahim Patelia

Legal Consultant:
Employment Law
T +27 (0)11 562 1000
E ebrahim.patel@cdhlegal.com

OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:



Asma Cachalia

Senior Associate:
Employment Law
T +27 (0)11 562 1333
E asma.cachalia@cdhlegal.com



Jordyne Löser

Senior Associate:
Employment Law
T +27 (0)11 562 1479
E jordyne.loser@cdhlegal.com



Tamsanqa Mila

Senior Associate:
Employment Law
T +27 (0)11 562 1108
E tamsanqa.mila@cdhlegal.com



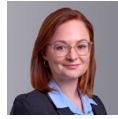
Christine Mugenyu

Senior Associate | Kenya
T +254 731 086 649
T +254 204 409 918
T +254 710 560 114
E christine.mugenyu@cdhlegal.com



Dylan Bouchier

Associate:
Employment Law
T +27 (0)11 562 1045
E dylan.bouchier@cdhlegal.com



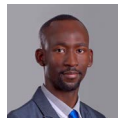
Abigail Butcher

Associate:
Employment Law
T +27 (0)11 562 1506
E abigail.butcher@cdhlegal.com



Rizichi Kashero-Ondego

Associate | Kenya
T +254 731 086 649
T +254 204 409 918
T +254 710 560 114
E rizichi.kashero-ondego@cdhlegal.com



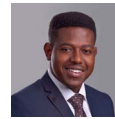
Biron Madisa

Associate:
Employment Law
T +27 (0)11 562 1031
E biron.madisa@cdhlegal.com



Peter Mutema

Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E peter.mutema@cdhlegal.com



Kgodisho Phashe

Associate:
Employment Law
T +27 (0)11 562 1086
E kgodisho.phashe@cdhlegal.com



Tshepiso Rasetlola

Associate:
Employment Law
T +27 (0)11 562 1260
E tshepiso.rasetlola@cdhlegal.com



Taryn York

Associate:
Employment Law
T +27 (0)21 481 6314
E taryn.york@cdhlegal.com



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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

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