

Timing is everything in the Labour Court: Dismissing a claim due to inordinate delay

By Lize Louw, Amy King, Bianca Viljoen | 08 June 2022

In a recent ruling, the Labour Court has clarified the circumstances under which an application may be made to dismiss a case because of inordinate delay by the referring litigant

The speedy resolution of labour disputes has long been a core principle of employment law. Much to some litigants' dismay and frustration, it is a noble principle that is not always realised in matters before the Labour Court.

Lawyers eager to serve the interests of their clients and give effect to this tenet of employment law previously relied on Rule 11 of the Labour Court Rules to apply for matters to be dismissed if applicants delay in prosecuting their claims. Developments in case law, however, indicate that Rule 11 cannot be relied on for this purpose any longer. The Practice Manual of the Labour Court of South Africa (Practice Manual) makes provision for a matter to be archived when six months has elapsed without any steps taken by the referring party from the date the last process was filed in court.

The question that arose in *Lebelo and Others v The City of Johannesburg* (J2055/14) [2022] ZALCJHB 81 (22 March 2022) was whether archiving takes place automatically after six months have elapsed or whether it requires an action from the registrar. This case is another warning that dismissing a claim due to inordinate delay is not always that easy and, even though it may be frustrating, the interests of justice will prevail over the expeditious resolution of disputes.

Mr Lebelo and 406 others (Lebelo) referred a dispute for adjudication on 22 August 2014. The exchange of pleadings trudged along slowly, and pre-trial preparation had begun, when on 28 January 2020 (almost six years later), the City of Johannesburg launched an application seeking to dismiss the referral in terms of clause 16 of the Practice Manual, alleging that the applicants had delayed in prosecuting the claim. The City of Johannesburg held the view that Lebelo's inaction for a period exceeding six months caused the referral to be automatically archived and considered dismissed. The purpose behind its application was simply to seek confirmation that the referral had been archived and dismissed.

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The court disagreed and found that the expiry of the six-month period referred to in clause 16 of the Practice Manual did not lead to an automatic dismissal of the claim. The Court stated that archiving does not take place automatically and that, when a party is faced with the situation where the prescribed period in clause 16 expires, it may approach the registrar of the court to exercise his or her powers to archive the file. Once the matter has been archived by the registrar, the matter will be considered to be dismissed.

Having determined that the matter had not been automatically archived and thus dismissed, the court turned to the question whether the matter could be dismissed for inordinate delay. In deciding whether to dismiss an action, the Court will only take one factor into consideration – grave injustice. Therefore, the Court may dismiss an action when the delay is inexcusable and would do grave injustice to the other side. The Court will, however, only exercise this power in exceptional circumstances, as the dismissal of an action seriously impacts the constitutional and common law rights of the referring litigant.

Three requirements must be met in an application to dismiss: (i) delay in the prosecution of the case; (ii) the delay must be inexcusable; and (iii) serious prejudice to the other side.

The Courts have previously held that, while finality is good, justice is better. Therefore, dismissing a matter in the absence of grave injustice will serve finality, but it will not serve the interests of justice. Another core principle of the Labour Relations Act is to advance social justice, so a balance should be struck between the two principles of speedy resolution of disputes and the advancement of social justice.

In the *Lebelo* case, the City of Johannesburg took almost four years to launch the application to dismiss. The Court held that the requirements for granting an application to dismiss were not met and that the City of Johannesburg failed to prove a grave injustice and/or serious prejudice, primarily because the action was already ripe for hearing at the time that the dismissal application was launched and had already been set down for trial. The matter was no longer in the hands of the litigants and the matter would soon be disposed of through the intended trial.

In conclusion, the *Lebelo* case provides greater clarity regarding the application of clause 16 of the Practice Manual. It clearly set out the circumstances under which a party may approach the registrar of the Court to exercise his or her power to archive a file. Importantly, employers must ensure that their requests to the registrar to archive matters should be done timeously, at the first inaction after six months.

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