



**PHSDSBC**

Public Health and Social Development  
Sectoral Bargaining Council

# RULING

Case No: **PSHS324-23/24**

Commissioner: **Lizelle Kriel Wessels**

Date of ruling: **3 February 2026**

In the matter between:

**PSA obo Skosana, Jane Nomusa**

Applicant

and

**Department of Social Development- Mpumalanga**

Respondent

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## Details of the Hearing and Representation:

1. The in limine process between the applicant Jane Nomusa Skosana) and the respondent (Department of Social Development – Mpumalanga) was set down in line with section 186(2)(a) – Unfair Labour Practice: Promotion of the Labour Relations Act, 1995 (“the Act”), per the Notice of Set Down dated the 13<sup>th</sup> November 2025.
2. The in limine was heard on the 15<sup>th</sup> December 2025 at the Department of Social Development Witbank (Pietkoornhof Building). The applicant was present and represented by PSA Official J.F. Heyneke. The respondent was represented by its Industrial Relations, Mr. E. Nkosi. The process was recorded both digitally- and manually. English confirmed for the record.
3. On the 17<sup>th</sup> December 2025 the Council issued a Directive in line with afore process. On the 12<sup>th</sup> January 2026, the Applicant deliver 7.13 alongside an Application for Condonation, with Annexures, dated the 10<sup>th</sup> January 2026. On the 26<sup>th</sup> January 2026, the Respondent, through Nkosi, delivered Opposing Affidavit before the Council. On the 29<sup>th</sup> January 2026, the Applicant replied to the opposing, through affidavit dated the 28<sup>th</sup> January 2026. The application is dealt with on papers for the Ruling below:

## **Background to the Referred Dispute:**

4. An alleged dispute in line with section 186(2)(a) Promotion arose on the 26<sup>th</sup> June 2023. The Applicant delivered a Referral of Dispute on the 24<sup>th</sup> July 2023. A Certificate of Non-resolution was issued on the 10<sup>th</sup> August 2023. The Applicant's Request for Arbitration followed on the 28<sup>th</sup> September 2023. On the 3<sup>rd</sup> May 2024 the Applicant, at arbitration, engaged a Withdrawal before Commissioner Sedibane. The Applicant sought re-enrolment on the 28<sup>th</sup> March 2025. The Council recorded an irregular Notice of Set Down for the 28<sup>th</sup> May 2025. The Council advised the Applicant to re-enroll through an Application for Condonation which was received on the 7<sup>th</sup> July 2025. The Parties appeared before the Council on the 15<sup>th</sup> December 2025 to address the re-enroll and Application for Condonation. On the 15<sup>th</sup>, both parties raised in limines; the Applicant in line with the re-enrollment through condonation and the Respondent to the validity of the affidavit submitted by the Applicant for re-enrollment and condonation. The Council issued a directive dated the 15<sup>th</sup> December 2025. Below follows the submissions, not verbatim, in consideration for the Ruling below:

## **Submissions of the Parties in terms of the Re-enrollment and Condonation:**

### **5. From the Applicant -**

- 5.1. Skosana submitted that the dispute arose on the 26<sup>th</sup> June 2023 and she pursued her dispute on the 24<sup>th</sup> July 2023. She met the timeframes both in referral and request. Skosana submitted that on the 19<sup>th</sup> February 2024 Commissioner Sedibane ruled at [Par 30] disclosure, within 10-days, however the Respondent failed to deliver by the 3<sup>rd</sup> May 2024. This failure led to a withdrawal on the 3<sup>rd</sup> and an approach to the Labour Court for enforcement ordered on the 21<sup>st</sup> November 2021. The Respondent then only complied on the 18<sup>th</sup> & 28<sup>th</sup> March 2025, whereafter, a request to the Council for re-enrolment was satisfied with a set down on the 28<sup>th</sup> May 2025. The Council later revoked the set down on the 28<sup>th</sup> under the context of the withdrawal, and that re-enrolment is subject to a condonation. Skosana submitted that although 742 days has lapsed, it was not willful but consequence of process before the Council.
- 5.2. Skosana submitted that her prospects of success rest in (a) she was the identified preferred candidate, (b) to date, the Respondent has not tendered reason(s) for her non-appointment, and (c) the Respondent has not conformed to the Public Service Regulations. Skosana submitted that the Respondent's mala fides has to be addressed through an award.
- 5.3. In reply, Skosana submitted that the Respondent refuses to accept that the withdrawal of the 3<sup>rd</sup> May 2024 was as a consequence of its conduct or non-compliance with the ruling of the 19<sup>th</sup> February 2024. Skosana disputed that the withdrawal on the 3<sup>rd</sup> May 2024 was an abandonment of the dispute before the Council. Skosana submitted that although the period may be excessive, reasonable explanation exists alongside reasonable prospects, and this the Respondent does not deny, but merely attempts to ignore under the withdrawal. Skosana submitted that the Respondent has a case to respond to (a) whether in recruitment, (b) whether in selection, and (c) whether in appointment. Skosana held that for fairness the application should be granted for the Ruling below:-

## 6. From the Respondent –

- 6.1. Nkosi opposed the Application for Condonation in those 742 days of lateness without proper reasons, or proper prospects, the condonation cannot be condoned by the Council. Nkosi further submitted that even if the Council condones the lateness in line with the historical context of the dispute, the Applicant has no prospects of success as all vacancies are under moratorium due to overspending and in line with Regulation 67(9)(a). Nkosi submitted further that there is no prejudice on the part of either the Applicant or the Respondent as to date the post applied for remains vacant. The Respondent urges the Applicant to abandon the dispute until such time the post is advertised. Nkosi held that the application should be dismissed for the Ruling below: -

### **Analysis of the Submissions of the Parties for Re-enrollment and Condonation:**

7. In present, the Applicant seeks re-enrollment of the arbitration withdrawn on the 3<sup>rd</sup> May 2024. Withdrawal of the dispute on the 3<sup>rd</sup> did not bar the Applicant to seeks the restitution of proceedings before the Council as the merits of the section 186(2)(a) of the Act “Promotion” has not been dealt with. This is common cause between the Applicant and the Respondent. If the Council isolates “re-enrolment” under the term of *res judicata* in line with *Mashego v Cellier NO and Others* (2016) 37 ILJ 994 (LC) in which Steenkamp J addressed both the context of expeditious resolve of labour disputes and whether the dispute has achieved its end; Steenkamp held that a party to a dispute may withdraw and later decide to re-enroll in the absence of a Award, Ruling or Settlement Agreement that finalise the dispute before the CCMA or the Council.
8. In present, the dispute was withdrawn, and in consideration of the matters of *Shibogde v Minister of Safety and Security and Others* (JR3307/09) [2012] ZALCJHB 64 and *Robor Tube (Pty) Ltd V MEIBC and others* (JR1758/13) [2018] ZALCJHB 229, the context of re-enrollment is a re-referral and condonation. The following dates is therefore in need of consideration in the application: - (a) the Certificate of Non-resolution was issued on the 10<sup>th</sup> August 2023, (b) the Withdrawal on the 3<sup>rd</sup> May 2024, (c) the Request for Re-enrollment on the 28<sup>th</sup> March 2025, (d) the re-referral of Request for Arbitration on the 7<sup>th</sup> July 2025, and (e) the (compliant) Application for Condonation on the 12<sup>th</sup> January 2026. Alongside the historical context of the process associated with the afore dates. The timeframe between the certificate of the 10<sup>th</sup> to the re-referral on the 7<sup>th</sup> is a total of 607 days late (and to date of condonation 802 days late).
9. Consideration of above, the Council confirms that the period suggests itself to be excessive on its face, however, the excessiveness is not married to passive conduct on the part of the Applicant. In fact, the period is associated with the historical context of the dispute of which the Respondent is a party to. In simple terms, if the Respondent complied with the directive of disclosure, the case could have been finalized on the 3<sup>rd</sup> May 2024 instead of the withdrawal, which the Applicant pursued to enforce the directive. The Respondent cannot rely on the excessiveness where the excessiveness filtered from its contempt of the Council’s directive. On this basis the condonation should succeed due to the historical context of the dispute.

9. Then, the prospects of the parties rest on opposite ends – the Applicant claims that the Respondent failed her in the recruitment, selection and appointment process as the preferred candidate, and that the moratorium is an excuse for the fairness of the Respondent's failed acts or omissions; and the Respondent on the other hand submits that its process was halted under the moratorium, and that its intentions remains in good faith towards the Applicant in future. On the face of reasonability and without pre-empting an award under condonation, both parties has proposed prospects, and therefore, in the interests of justice, the condonation should succeed due to the fairness to be heard before the Council.
  
10. Then, whether or not prejudice exists within the delay towards the Respondent? The Applicant held that her prejudice finds itself in the Respondent's failed communications or failed appointment; whereas the Respondent held that neither party has suffered prejudice as the position remains vacant under the moratorium. For the Council, looking at the historical context, and in particular the withdrawal of the 3<sup>rd</sup> May 2024, the Council finds that the Respondent halted the process through the contempt of the directive, the delay of process associated with the occasioned enforcement to the Labour Court and subsequent the Respondent is party thereto and the Council cannot occasion prejudice as a punitive action against the Applicant for following due process.
  
11. In retrospect of the parties' positions and the following factors for re-enrollment – I make the following Ruling below:  
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**Ruling:**

12. The Applicant's application succeeds.
  
13. Case Management is directed to re-enroll the matter for arbitration.



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**LIZELLE KRIEL WESSELS**