

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT Case No: CCT172/19

LAC Case No: DAB/2018

Labour Court Case No: D722/2015 & D459/2016

In the matter between:-

**NATIONAL UNION OF METALWORKERS
OF SOUTH AFRICA (KZN)**

Applicant

and

**LUFIL PACKAGING (ISITHEBE)
[A DIVISION OF BIDVEST PAPERPLUS (PTY) LTD]**

First Respondent

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

Second Respondent

LEON PILLAY N.O.

Third Respondent

CONDONATION AFFIDAVIT

I, the undersigned,

HENDRIK ANDRIES ROUX HUGO,

do hereby make oath and say:-

1. I am an adult male attorney of the High Court of South Africa, practising as an Associate at ENSafrica, with my employment address at The Marc, Tower 1, 129 Rivonia Road, Sandown, Sandton, 2196. ENSafrica is the attorneys of record for

the First Respondent.

2. The facts contained herein are within my personal knowledge, save where the contrary is stated or indicated by the context, and are true and correct.
3. This is an Application for Condonation for the late filing of the First Respondent's Written Submissions, Practice Note and List of Authorities in the Main Application.
4. This Application is as a result of a miscommunication between our offices in Johannesburg and that of ENSafrica, Cape Town.
5. I understand that, according to paragraph 3(b) of the Directions issued by the Chief Justice and dated 11 September 2019 ("**Directions**"), the Respondents were to lodge Written Submissions with the Honourable Court on or before 1 November 2019. A copy of the Directions is annexed hereto, marked annexure "**HH1**".
6. On 1 November 2019, and in accordance with the Directions, the First Respondent served its Written Submissions on the Applicant as well as the Second and Third Respondent. A copy of the filing sheet as proof of service is annexed hereto, marked "**HH2**".
7. Thereafter, the First Respondent attempted to file the Written Submissions with the Registrar of the Honourable Court. The Registrar, however, refused to accept the Written Submissions as it did not include the Practice Note or List of Authorities and as such, the filing of the First Respondent's Written Submissions did not comply with Rule 32(5) of the above Honourable Court. A copy of the email sent by me to the Registrar is annexed hereto, marked "**HH3**".

8. After service of the First Respondent's Written Submissions, the Registrar advised me per telephone that he will not accept the filing of the Written Submissions and that I must file a Practice Note and List of Authorities together with the Written Submissions on the next court day (in this instance, on Monday, 4 November 2019) – including a Condonation Application (being this Application) for the late filing thereof.
9. In this regard, the Practice Note and List of Authorities that had been prepared by counsel and were to have been filed together with the First Respondent's Written Submissions “fell through the cracks” in the instruction email from ENSafrica, Cape Town and were not attached thereto. I proceeded to only serve and file the First Respondent's Written Submissions (without the Practice Note and List of Authorities) – only to learn from the Registrar of the above Honourable Court that he will not accept the First Respondent's Written Submissions without a Practice Note, List of Authorities and a Condonation Application (being this Application) for the late filing thereof.
10. I humbly submit that there was a miscommunication as to what was required to be served and filed with the Honourable Court on 1 November 2019, as the First Respondent duly attempted to file the Written Submissions in compliance with the Directions but in error did not lodge the Practice Note and List of Authorities
11. In the circumstances, I humbly request the above Honourable Court consider the degree of lateness and the prejudice, if any, to the Applicant, Second Respondent and Third Respondent in determining this Condonation Application. The Written Submissions, as well as the Practice Note and List of Authorities (which have now all been lodged with the Honourable Court) are only 1 day late.

However, the Written Submissions (without the Practice Note and List of Authorities) were served in time on the Applicant, the Second Respondent and Third Respondent.

12. In the circumstances, I pray that the Written Submissions, Practice Note and List of Authorities be accepted by the above Honourable Court and Condonation be granted for the late filing thereof.

WHEREFORE, I pray that the prayer as per the Notice of Motion to which this affidavit is attached, be granted by the above Honourable Court.

DEPONENT

Thus signed and sworn to before me at _____ on this the _____ day of _____ **2019**, by the deponent who has acknowledged that he knows and understands the contents of this affidavit; that he has no objection to taking the prescribed oath; and that he considers the prescribed oath to be binding on his conscience.

COMMISSIONER OF OATHS

Ex Officio :

Full Names :

Address :