



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable  
Case No: JR701/20

In the matter between:

**MTHANDENI MBATHA**

**Applicant**

and

**COMMISSIONER MBONGENI MOTSOENENG**

**First Respondent**

**COMMISSION FOR CONCILIATION, MEDIATION  
AND ARBITRATION**

**Second Respondent**

**PIONEER FOODS PTY LTD t/a SASKO AEROTON  
BAKERY**

**Third Respondent**

**Heard: 29 February 2024**

**Delivered: 05 March 2024 (This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing-down is deemed to be 10h00 on 05 March 2024.)**

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**REASONS FOR ORDER**

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**PHEHANE, J**

- [1] On 29 February 2024, I issued an order striking the application off the roll for lack of jurisdiction with costs to be paid by the applicant union, Inqubelaphambili Trade Union. The reasons for the order follow below.
- [2] This review application is premised on a dispute that was launched by the applicant at the Commission for Conciliation, Mediation and Arbitration in terms of which the applicant alleged that third respondent committed an unfair labour practice in the ambit of a claim in respect of the Compensation for Occupational Injuries and Diseases Act.<sup>1</sup> The first respondent dismissed the applicant's claim of an unfair labour practice.
- [3] The applicant brings an application in terms of section 145 of the Labour Relations Act<sup>2</sup> (LRA) review and set aside the arbitration award by the first respondent.
- [4] The review application is opposed by the third respondent, who raises a preliminary point that the review application is deemed withdrawn for non-compliance with item 11.2.2 read with item 11.2.3 of the Practice Manual.<sup>3</sup> The third respondent also contends that the review application has lapsed for non-compliance with item 16 of the Practice Manual.
- [5] In a letter dated 20 October 2020, the third respondent's attorney of record informed the applicant of its non-compliance with items 11.2.2 and 11.2.3 of the Practice Manual, and therefore that the review application is deemed withdrawn.<sup>4</sup> There was no response to this letter and follow up letter. The third respondent further contends that the belated filing of the notices in terms of rule

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<sup>1</sup> Act 130 of 1993.

<sup>2</sup> Act 66 of 1995, as amended.

<sup>3</sup> Effective 2 April 2013.

<sup>4</sup> Annexure "RM5" to the answering affidavit on p 54.

7A(6) and 7A(8)(b) of the Rules of this Court<sup>5</sup> is an irregular step in the circumstances of the review application being deemed withdrawn.

- [6] In his replying affidavit, the applicant denies non-compliance with item 11.2.2 and 11.2.3 of the Practice Manual. The applicant also denies non-compliance with item 16 of the Practice Manual. It would appear that the applicant asserts that he will file a condonation application for the late delivery of the notice in terms of rule 7A(6).<sup>6</sup>
- [7] The notice in terms of rule 7A(3) delivered on 19 June 2020 and 1 July 2020. In email correspondence dated 16 July 2020,<sup>7</sup> the applicant undertook to uplift record from this Court and to comply with the Rules of this Court. Despite this undertaking, there has been no compliance with the Rules of this Court and the provisions of the Practice Manual. It has been overstated that the Rules and the provisions of the Practice Manual are binding on practitioners.<sup>8</sup>
- [8] No condonation application has been delivered by the applicant. In the absence of a condonation application, there is no “live” review application before this Court as it is deemed withdrawn for non-compliance with items 11.2.2 and 11.2.3 of the Practice Manual.
- [9] In the circumstances, this Court lacks jurisdiction to adjudicate the review application.

#### Costs

- [10] No condonation application was filed for the late filing of the record despite the union undertaking to do so.

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<sup>5</sup> Rules for the Conduct of Proceedings in the Labour Court as promulgated by GN 1665 in GG17495 of 14 October 1996.

<sup>6</sup> See: p 63 of the pleadings – the paragraphs of the replying affidavit are not properly unnumbered.

<sup>7</sup> “RM4” to the answering affidavit on p 53.

<sup>8</sup> See: *Samuels v Old Mutual Bank* [2017] 7 BLLR 681 (LAC).

- [11] In oral submissions by Mr. Zondo for the applicant, the applicant union blames its former official, Mr. Thokozani Luthuli, the deponent to the founding affidavit in the review application, for failing to progress the applicant's case as well as cases of other members. It is submitted that Mr. Luthuli was disciplined for this conduct. Mr. Zondo presented a number of implausible excuses ranging from the union's inability to obtain the content of the file from Mr. Luthuli in order to progress the applicant's case, to his own inability to launch the condonation application after he received the applicant's file during January 2024, as he is not familiar with Labour Court cases and the Rules of this Court.
- [12] This is a poor excuse by the applicant union for failing to deliver a condonation application and for failing to comply with the Rules of this Court. The union failed to act in the interests of its member.
- [13] In view of the afore-going, I find that an order for the payment of costs against the applicant union is warranted.
- [14] It is for the above reasons that the aforesaid order was made.

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M. T. M. Phehane

Judge of the Labour Court of South Africa