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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR1169/01

2001-10-24

In the matter between

MHLAMBI

Applicant

and

EAST RAND N17 PRIVATE HOSPITAL

Respondent

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J U D G M E N T

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LANDMAN J: This is an application brought by Ms Jeanette Mama Mhlambi to review and set aside a ruling by a Commissioner of the CCMA. It appears that a second referral of a dispute concerning the dismissal of Ms Mhlambi was late. She applied to the CCMA to condone the late application.

An application for condonation must be brought in terms of the Rules of the CCMA. Rule 19 provides that the party bringing the application must sign a notice of application and it must be supported by an affidavit in which various matters must be set out. The party opposing the application may then deliver a notice of opposition and an answering affidavit. Once this has been done, the party initiating the proceedings, in this case Ms Mhlambi, may lodge a replying affidavit within five days on the day on which any notice of opposition and answering affidavits is delivered. Deliver means serve on the other parties and file with the Commissioner.

In this instance her employer, East Rand M17 Private Hospital, did not file an affidavit. Instead a letter dated 27 June 2000 was sent to the CCMA. Annexed to it was a document which appears to be an unsworn statement. The CCMA did not make the letter of 27 June 2000 available to Ms Mhlambi. It did not inform the employer that it was obliged to put its case under oath. The Commissioner, however, took the letter and unsworn statement into account and issued a ruling in terms of which the Commissioner declined to condone the late application.

Not only did the Commissioner not comply with the Rules of the CCMA, the Commissioner did not comply with the rules of natural

justice. The applicant was not allowed any opportunity whatsoever to deal with the response by her employer.

In the circumstances this constitutes a gross irregularity. The condonation ruling is reviewed and set aside. The matter is referred back to the CCMA for a fresh hearing on the question of the condonation. This is to be conducted before a commissioner other than the second respondent. East Rand N17 Private Hospital, the third respondent, is ordered to pay the applicant's costs of this application.

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A A Landman

Judge of the Labour Court of South Africa

