

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO: JR1494/05

In the matter between:

MADODA COLLEN SIMELANE

Applicant

and

FIDELITY SPRINGBOK SECURITY
SERVICES (PTY) LTD

First Respondent

COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION

Second Respondent

COMMISSIONER NICOLE JOHNSTON N.O.

Third Respondent

JUDGMENT

FRANCIS J

1. This is an application to dismiss the first respondent's review application on the grounds of defectiveness, excessive and unreasonable delay in prosecuting the review application.
2. The application was opposed by the first respondent.
3. The applicant was employed by the first respondent. After he was dismissed on 24 March 2004, he referred an unfair dismissal dispute to the second respondent (the CCMA) for conciliation and arbitration. The third respondent (the commissioner) in an award dated 22 October 2004 found that the applicant's dismissal was substantively unfair. She ordered the first respondent to reinstate the applicant within 14 days of the award without any loss of remuneration and benefits from date of his dismissal with back

pay.

4. On 29 July 2005 some eight months after the award was served on the first respondent, it filed an application to review the said award in terms of section 145 of the Labour Relations Act 66 of 1995 (the Act).
5. On 26 September 2007 the applicant's attorney enquired from the first respondent about the status of the review application. The first respondent's attorneys responded on 1 October 2007 advising that they were still waiting for the transcribed record from the transcribers. The applicant instructed his attorney on 15 October 2007 to proceed with an application to dismiss the first respondent's review application. This was communicated on the same day to the first respondent's attorneys.
6. On 17 October 2007 the first respondent stated in a letter that the tapes were misplaced by the transcribers and that the application to dismiss would be opposed.
7. The application to dismiss the review application was filed on 4 January 2008. The applicant contends that the review application is defective and there is no condonation application for the late filing of the review application. It was further contended that this Court has the requisite power to protect and control its own proceedings and to grant orders which would further the administration of justice, including an order dismissing proceedings already instituted due to *inter alia* delay or want of prosecution amounting to an abuse of the Court's process. The review application was not prosecuted with the degree of diligence required from a litigant. The delay in prosecuting the review

application was so excessive and unreasonable with the result that the review application stands to be dismissed.

8. The applicant contended further that there is no application for condonation for the late filing of the review application. The review application is defective in that it does not comply with the Rules of this Court. Rule 7A(2)(c) states that a review application must be supported by affidavit setting out the factual and legal grounds upon which an applicant relies to have the decision or proceedings corrected or set aside. The first respondent had to specify the grounds of review relied upon and to specify the facts constituting the grounds of review relied upon. In paragraph 6 of the founding affidavit in the review application, bald and unsubstantiated allegations are made. The review application was filed on 29 July 2005 which was almost three years. The Rules of this Court lay down the procedures to be followed by the parties prosecuting disputes before this Court. Such rules are there to ensure that disputes are dealt with speedily and expeditiously, and are brought to finality as soon as possible. This is in line with the object of the Act which is to facilitate effective resolution of labour disputes. The provisions of Rule 7A(5), (6) and (8) have not been adhered to. The doctrine of *vigilantibus non dormientibus lex subvenit* (the law assists those who are vigilant) has been accepted by our Courts and has developed into a principle of our law. Such doctrine is apposite in the context of the present matter. The party who has caused an excessive and unreasonable delay in the prosecution of the matter should not enjoy the protection of this Court. The first respondent has no serious intention of having the review application heard before this Court with the hope that the matter would die a natural death. The review application was merely launched as a stratagem to frustrate the receipt of his

compensation award. The review application should be dismissed.

9. The first respondent contended that when it filed the review application it was not in possession of the record and that once it would be available it would amend and supplement its papers in terms of section 7A(8) of the Rules of this Court. It is now in possession of the record after considerable effort. It had received the record in May 2007 whereafter it delivered the record to the transcribers to be transcribed. On receipt of the letter from the applicant's attorneys on 26 September 2007, their attorneys immediately ascertained what was happening in their file and the record sent to the transcribers which had not been received from the transcribers. They sent a letter to the transcribers and received a response on the same day requesting additional information. They responded to the letter. After this they continued to examine the court file to see if the record had been placed there by mistake but could not locate it. After the December 2007 recess they proceeded to look for the information wherein they located the delivery note, which indicated that the record was delivered to the transcribers on 15 May 2007. They sent the delivery note with a letter. The transcribers responded and said that they had the record and that they could collect it. They proceeded to file an amendment in terms of the Rules and the application for condonation was filed on 28 January 2008.
10. This is an application brought in terms of Rule 11 of the Rules of this Court to dismiss the first respondent's review application filed on 29 July 2005. The application for condonation was filed on 28 January 2008. The first respondent had obtained the record from the CCMA in May 2007 and requested the transcribers to transcribe it in May 2007. Nothing happened until September 2007 when the applicant's attorney made enquiries

about the review application. The application to dismiss was filed with this Court on 4 January 2008.

11. There has been some lengthy delay in prosecuting the review application. Nothing happened between 29 July 2005 to May 2007 which is a period of 22 months. No explanation has been given by the first respondent why it took no steps to prosecute the review application. It is also not clear why the applicant did not put the first respondent on terms about the lack of progress in this matter. He did so only in October 2007. His enquiries had the necessary. All that now remains to happen in this matter is for the registrar to set the matter down for a hearing.
12. Both parties were to some degree not vigilant in ensuring that the matter was prosecuted. The applicant could have applied much earlier to make the award an order of court. He could have brought the application to dismiss much earlier. The first respondent, as applicant in the review application should shoulder the main blame in this matter.
13. I have decided not to dismiss the review application since only a court date needs to be given by the registrar. The date could not be given due to this application. It is of course unacceptable that the applicant has not been reinstated in terms of the award. Since there is no limit on reinstatement, the applicant should he succeed in opposing the review application, will be reinstated and will receive all his back pay and benefits in terms of his award from date of his dismissal. This will amount to some 4-year back pay.
14. I do not deem it necessary to deal with the prospects of success of the condonation and

review application. The review court will make a pronouncement on it.

15. The application to dismiss stands to be dismissed. I do not believe that costs should follow the result. This is a matter where the first respondent should pay the costs of the application as a mark of this court's displeasure about how it has dealt with this matter.

16. In the circumstances I make the following order:

16.1 The application to dismiss the review application is dismissed.

16.2 The first respondent is to pay the costs of the application.

FRANCIS J

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

FOR THE APPLICANT : ATTORNEY P VOYI

FOR FIRST RESPONDENT : M VAN AS INSTRUCTED BY BLAKE
BESTER INC

DATE OF HEARING : 26 JUNE 2008

DATE OF JUDGMENT : 1 JULY 2008