

IN THE LABOUR COURT OF SOUTH AFRICA**HELD AT JOHANNESBURG****CASE NO:** JR1585/10**DATE:** 2011/08/16

Not reportable

In the matter between

MLAMBO, D

Applicant

and

JOHANNESBURG METROBUS SERVICE

Respondent

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J U D G M E N T

STEENKAMP, J:

This is an application to review and set aside a condonation ruling made by the second respondent, Ms Khabo Mamba, a commissioner of the South African Local Government Bargaining Council, in which the commissioner refused to grant condonation for the late filing of the applicant's unfair dismissal dispute.

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The application was filed more than a year and two months (432 days) late. This is obviously an extraordinarily excessive delay. The reason that the applicant gave for the lateness is that he was dismissed on 24 February 2009, and he then left it to his trade union, SAMWU, to lodge an internal appeal against the dismissal. That appeal had to be lodged within five days.

In his application for condonation, the applicant stated under oath that he was advised that an appeal had been lodged on his behalf. However, as the arbitrator pointed out in her ruling, he provided no proof of such an appeal, nor did he attach a confirmatory affidavit from any trade union official. To make matters worse, I was informed from the Bar today by Mr *Shongwe* that, in fact, no such appeal had been lodged, contrary to what was stated under oath in the application for condonation.

The applicant provided no explanation why he, himself, did not
10 follow up and refer the dispute to the bargaining council when it became apparent that his trade union was not assisting him. With regards to prospects of success, he suggested that he was treated inconsistently. However, he mentioned only three names of other workers who had been reinstated, but provides no details of the charges against them, what they were found guilty of, or any further details, or, indeed, any confirmatory affidavits.

What is apparent is that the applicant admitted his misconduct, and, in fact, an organisation that appeared on his behalf at some stage, called the R Consultancy, stated in terms that the applicant "swindled
20 your company", that is Metrobus, "by pocketing all the money, and use it for his personal use". It is astounding that a person who is aware of his own dishonesty and the fact that he has swindled his employer and stolen from it, still considers that he has any prospects of success, and that an arbitrator should condone the late filing of a dispute that is more than a year late.

I can find absolutely nothing unreasonable in the arbitrator's refusal to condone the late filing. She properly considered the degree of lateness, the reasons therefor, the prospects of success and the relevant case law, for example, the principles set out in the case of *NUM v Council for Mineral Technology* [2002] 23 ILJ 1229 (LAC).

The only question that remains to be determined is that of costs. In the normal course, the costs in a matter such as this one, where there are no prospects on review, should follow the result. I take into account Mr *Shongwe's* argument *ad hominem*, though, that the applicant is an
10 individual who has been let down by his union and who is still unemployed. In those circumstances, I make the following order:

1. The application is dismissed.
2. There is no order as to costs.

STEENKAMP J

JUDGE OF THE LABOUR COURT

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APPEARANCES:

APPLICANT: Attorney IM Shongwe

THIRD RESPONDENT: Adv W Hutchinson

Instructed by Moodie & Robertson

