



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

Not Reportable
Case no: JR 1371/09

In the matter between:

GLOBAL PARTS

Applicant

and

CHRISTOPHER MALTJI

Respondent

Heard: 09 September 2011

Delivered: 09 September 2011

Edited: 11 September 2018

EX TEMPORE JUDGMENT

MOSHOANA, AJ

- [1] This is an application for review of a ruling issued by the second respondent which award was issued on the 10th day of December 2008. Before I deal with the main judgment I take this opportunity to express the displeasure of the

court in respect of this application. I had indicated to both representatives that the papers are in shambles and the pagination is not in order. Ordinarily I would have just struck off this matter from the roll. However, this matter was at some stage struck off the roll by my brother Francis J and as to how it subsequently came to the court roll without any explanation why the matter should be re-enrolled, I have no idea. In any event I am seized with the matter today.

- [2] I also indicated that I am very reluctant to hear the matter on those basis, but owing to the fact that this is an old dispute and one issue would be dispositive of the entire matter, I deemed it appropriate to nonetheless allow the applicant, who today appears through an advocate, to make submissions why the court should entertain this application and secondly why should the court having entertained the application grant the relief sought, that is, review and set aside of the ruling.
- [3] The brief facts of this matter relevant to this application are as follows. The applicant, Motolo Christopher Malatji an employee of the first respondent was dismissed on the 27th of February 2007 for incapacity. Following his dismissal, it is apparent that, the applicant sought to challenge the fairness of his dismissal and that led to the matter being conciliated upon it remained unresolved and was then referred to arbitration.
- [4] On the 3rd of September 2007 the arbitration hearing was to sit. It is common cause that on that day the applicant was absent. As a result, the arbitrator, who was appointed, then dismissed the referral as it were. The applicant then became aware of the dismissal on the 15th of September 2007. On 30 December 2007 he engaged a set of attorneys in order to advise him and/or assist him.
- [5] In June 2008 he engaged yet another set of attorneys to advise and/or assist him further. In October 2008, a rescission application was filed with the third respondent, being the DRC. As it were, the rescission application was filed out of time and there was no condonation application for the late filing of the rescission application. It was pointed out to this court by Mr Posthumous

appearing for the first respondent, that there was an oral condonation application. Nonetheless, and in brief, the applicant pointed out that for some period he was indisposed and had to receive some medical attention through a Sangoma. Secondly he put the entire blame of his case not proceeding to the set of attorneys who were instructed.

- [6] The second respondent, after having heard the application for condonation, gave what appears to be a very extensive ruling and refused to condone the late filing and dismissed the rescission application.
- [7] The applicant was aggrieved thereby and the only route available to him was to bring an application for the review of the rescission ruling. Such an application was filed but four months out of time. In terms of Section 145 of the Labour Relations Act a review should be brought within a six weeks period. Section 158(1)(g) which ordinarily is used to review rescission rulings does not set out the six weeks period, however there has been judgments of this court and the Labour Appeal Court to the effect that the six weeks period also applies in respect of Section 158(1)(g). So, to that extent, the applicant required condonation before this court can hear the application for review.
- [8] I may just point out that the first respondent in opposing the application for review amongst others raised as a point in limine to the effect that the application for review is defective since it has been filed outside the six weeks period. It does appear to me that the applicant knew that his legal representatives did nothing in order to correct the situation, that is to bring an application for condonation.
- [9] On the 1st of September 2009, this matter appeared before my brother Cele J, who granted the applicant leave to amend his papers and where necessary to set out the grounds upon which the ruling is being attacked. It does seem that nothing was done in that respect until the matter was enrolled on the 2nd of September 2010 and as I have already pointed out earlier was then struck off.
- [10] Now with that background there is only one issue that the court has to

determine, which issue is dispositive of this matter, and that is, is there a proper condonation application before court? Simple answer thereto, is that there is no proper application as the one before court is defective. The court can only exercise its reviewing powers in terms of the enabling statute and late filing of review applications is a ground upon which this court can refuse to exercise jurisdiction.

- [11] It is most telling, that much as the applicant may have been without assistance, as Mr Shaw indicated to me that Mr Mashishi attorneys was only briefed around, almost six months ago. Fact is, the fact that the condonation application is required had been highlighted in the papers. I am not sure how Mashishi attorneys when taking instructions and considering the papers and noticing that there is a point *in limine* about the lack of condonation, what did they do?
- [12] Nonetheless, I cannot comment further in that regard. So it is only on those basis that this court, if there is a proper application, is entitled to hear the review application. However, I may add that even if the court were to hear this matter, without the condonation application, assuming that it is possible, I asked Mr Shaw appearing for the applicant as to what the grounds are upon which this ruling should be reviewed. He was unable to point to me to any of the grounds. It ought to be remembered that my brother Cele J has already indicated to the applicant that his application as it stood then did not set out the grounds and the applicant was afforded an opportunity to set out those grounds but almost two years later, I cannot be shown any grounds.
- [13] Now, even if, as I indicated, I were to hear this application there are no grounds. Therefore, there is no basis upon which this court can fault a ruling, that appears to be detailed, by the second respondent.
- [14] In the circumstances I am making the following order:

Order

1. The application for review is dismissed.
2. I make no order as to costs.

GN Moshwana,
Acting Judge of the Labour Court of South Africa