



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR 1009/11

In the matter between:

CALVIN POPI MAKGOTLHO

APPLICANT

And

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Respondent

A PIETERS N.O

Second Respondent

EXXARO RESOURCE

Third Respondent

Heard: 24 January 2012

Delivered: 26 January 2012

Summary: Review - condonation ruling. Application failed – no satisfactory reasons proffered.

JUDGMENT

MOLAHLEHI J

[1] This is an application to review and set aside the ruling made by the second respondent (“the arbitrator”) under case number SATW4086/11 dated 21 April 2011. In terms of that ruling, the arbitrator dismissed the condonation application for the late referral of the dispute to the bargaining council by the applicant. Whilst it does not seem that the dismissal of the applicant is in issue, the circumstances of his dismissal are not apparent from the papers. The applicant, in his founding affidavit, simply indicates that the dismissal arose from an occurrence in August 2010 when he was dismissed without “proper adherence to the contract that they had.”

[2] The review application was not opposed.

[3] It was apparent from the reading of the papers that the applicant is a lay person. It was in this regard that the court offered him the opportunity to seek assistance from the pro bono legal representatives. He was very reluctant and insisted that the court should determine the matter on the basis of the paper which were before it. The matter was stood down and the applicant was informed that he has a right to choose whether he would wish to consult lawyers for advice but that he should consider that proposal during the break very seriously.

[4] The attorney that was present in the pro bono office at the time could not assist because he was conflicted. The pro bono office then made arrangements with the Legal Aid Board South Africa to assist. The Legal Aid Board promptly sent an attorney to assist.

[5] The instruction given to the attorney by the applicant was that he should only request the court to decide the matter on the basis of the papers before it.

[6] The grounds of review as set out in the applicant’s founding affidavit reads as follows:

‘This should be reviewed because the way that I was dismissed was not quantified in the contract that we had, me and the company. The CCMA ruling was unprofessional.

There is enough grounds on my contract for this matter to be reviewed.

The judgment at the CCMA was not enough for me to understand the way that I requested services. It was not explanatory enough to convince me about the outcome of my contract with my previous employer.

The conclusion of my services with my previous employer was and it is still not instructed in the copy of my contract. I request exxaro to pay me US\$30 00000 00000.00 payment for that particular circumstances.'

[7] The ruling of the commissioner dismissing the applicant's condonation reads as follows:

'The applicant's explanation for the excessive delay in referring the matter is not convincing. His prospects of success in the matter are also doubtful on the version given for his alleged dismissal.'

In dealing with the reasons for the delay in referring his dispute to the bargaining council the applicant states in one sentence that the delay was due to due to "studies."In as far as prospect of success the applicant says,"My working experience is quantitative".

[8] It is trite that when a dispute is referred to the CCMA outside the thirty days period as prescribed for by section 191 of the Labour Relations Act, the applicant is duty bound to apply for condonation for the late filing of his/her dispute. It is also trite that in considering the application for condonation, the commissioner ceased with the matter has a discretion to exercise in determining whether condonation should be granted. The approach to be adopted in considering whether to grant condonation has been set out in a number of judgments where it has repeatedly been stated that in terms of the leading case of *Melane v Santam Insurance Co Ltd*,¹ the factors to take into the account are the degree of the delay and the reason or the explanation for the delay, the prospect of success of the party seeking the indulgence succeeding in its claim or defence, the prejudice that the party will suffer if condonation is granted or refused, and finally whether it is in the interest of justice to grant condonation sought.

¹ 1962(4) SA 531 (A) at 532B – D.

[9] The authorities have also emphasized over the period that condonation should not be readily granted in cases involving individual disputes. In cases involving individual disputes, the general view is that condonation should only be granted in those instances where the explanation for failure to comply with the time frames is compelling and refusal to grant condonation will result in miscarriage of justice.²

[10] In the present instance, the duty to persuade the commissioner that he/she should grant condonation, in other words extend the thirty days period as provided for in the LRA, was on the applicant. Applicant was required to provide the commissioner with information sufficient for him to be able to exercise the discretion given to him by the law. In the absence of sufficient explanation for the delay, the commissioner would not be in a position to properly exercise his or her discretion in favor of granting the condonation and therefore the logical conclusion would be to refuse condonation. As indicated above, the applicant simply says the reason for the delay in referring his matter to the CCMA was due to “studies”. It is not clear as to in what way the studies made it impossible or difficult for him to comply with the time prescribed by the law...

[11] The same applies to the prospects of success. The applicant has failed to take the commissioner into his confidence by explaining the circumstances that surrounded termination of his contract of employment. The details regarding the facts and circumstances of the termination of contract are important in assisting the commissioner to assess as to whether there are prospects of success.

[12] In my view and on the basis of the above, the applicant has failed to make out a case warranting interference with the commissioner’s ruling that he be denied condonation for the late referral of his dispute to the bargaining council.

[13] In the premises the applicant’s review application is dismissed with no order as to costs

² See *Queenstown Fuel Distributors CC v Labuschagne N.O and Others* (2000) 1 BLLR 45 (LAC) at 53 F-J.

MOLAHLEHI J

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

APPEARANCES:

APPLICANT: The Applicant in person

RESPONDENT: No appearance
