



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case no: JR 2727/07

In the matter between:

MCC CONTRACTORS (PTY) LTD

Applicant

(Applicant in the application for leave to appeal)

and

LORRAINE JOHNSTON NO

First Respondent

THE COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Second Respondent

NUM o.b.o DAVID NEL

Third Respondent

(Respondents in the application for leave to appeal)

Decided : In Chambers

Order : 23 February 2012

Summary: Late filing of an application for leave to appeal. No condonation application. Application dismissed with costs.

JUDGMENT

AC BASSON J

Introduction

- 1] This is an application for leave to appeal against a finding of this Court dismissing an application for review. The order dismissing the review application was made on 13 August 2009 and the written detailed reasons were delivered on 26 January 2010. The applicant only filed its application for leave to appeal on 13 May 2010. The application is not accompanied by an application for condonation.
- 2] In terms of Rule 30 (3) of the Rules of the Labour Court, an application for leave to appeal must be made within 10 days after the date on which the reasons are given (in circumstances where the reasons or the full reasons for the court's order are given on a date later than the date of the judgment or order), except that the court may, on good cause shown, extend that period.
- 3] Rule 49(1) of the High Court Rules similarly provides that an application for leave to appeal may be made within 15 days after the date when the reasons or the full reasons for an order or judgment have been given,

provided that the court may extend the period of 15 days on good cause shown. Although the courts seem generally reluctant to formulating a definite test as to what constitutes such 'good cause',¹ the courts will consider the length of the delay, the explanation for the delay, the merits of the appeal and the benefit to the applicant and the disadvantage to the respondent, and lastly the desirability of litigation being brought to finality:² See in this regard: *Michaels v Wells, NO*,³ where Van Winsen J set out the principles as follows:

' Rule 49 (1) requires the party intending to appeal to deliver his notice of appeal within 21 days after the date of the order appealed against, but the Court may "on good cause shown" extend such period. The Courts have consistently refrained from formulating definitive tests as to what constitutes "good cause" but certain factors have been indicated to which a Court will generally have regard in the exercise of its discretion. Such factors include the following, namely, the length of the delay involved, the explanation for it, the merits of the case of the applicant for relief, the benefit to the applicant and the disadvantage to the respondent, as well as the desirability of litigation being brought to finality. See e.g. *Cairns' Executors v. C Gaarn*, 1912 AD 181 at pp. 186 *et seq.*; *Rose and Another v Alpha Secretaries Ltd.*, [1947 \(4\) SA 511 \(AD\)](#); *Meintjies v H. D. Combrinck (Edms.) Bpk.*, [1961 \(1\) SA 262 \(AD\)](#); *Melane v Santam Insurance Co. Ltd.*, [1962 \(4\) SA 531 \(AD\)](#); *De Kuszaba-Dabrowski et Uxor v Steel, N.O.*: *Venturas v De Kuszaba-Dabrowski et Uxor*, [1966 \(2\) SA 277 \(RAD\)](#).

These factors will not necessarily be accorded the same weight *inter se* and in varying circumstances the importance attached to each in the conspectus of relevant facts will similarly vary. Thus in *Meintjies'* case, *supra* at p. 265, it was said that long delay will be more readily condoned where the prospects of success are convincing, while in *Melane's* case, *supra*, the Court remarked that

"a slight delay and a good explanation may help to compensate for

1 See for a general discussion: Herbstein & van Winsen *The Civil Practice of the High Courts of South Africa*. (Juta, 2009 5th ed vol 2) page 1157 *et seq.*

2 *The Civil Practice of the High Courts of South Africa* at 1158.

3 1967 (1) SA 46 (C).

prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay”.

One further observation of a general nature should be made. In *Meintjies’* case, *supra*, STEYN, C.J., at pp. 263 - 4 remarked as follows:

“Die bewyslas rus op die petisionaris. Dit is hy wat die Hof moet oortuig dat hy 'n goeie aanspraak op vergunning van kwytstelling het. Omdat 'n Hof uit die aard van die saak aarsel om 'n party deur nie-nakoming van 'n procestermyn die geleentheid te laat verbeur om 'n reg geldig te maak (vgl. *Phillips v Direkteur vir Sensus*, [1959 \(3\) SA 370 \(AA\)](#) op bl. 374) is hy geneë tot 'n toeskietlike oorweging van 'n aansoek soos die onderhawige; maar so 'n aansoek is allermens 'n blote formaliteit.”

In *Regal v African Superslate (Pty.) Ltd.*, [1962 \(3\) SA 18 \(AD\)](#) at p. 23, the Court, referring to the above *dictum*, said that

“although the power to condone a failure to comply with a procedural rule within a prescribed period will be exercised only upon sufficient and satisfactory grounds being shown, an application such as the present will receive favourable consideration because a Court is hesitant to allow a party to forfeit the enforcement of a right by reason of the non-compliance with such a Rule”.⁴

- 4] As already pointed out, the applicant in the present application made no attempt whatsoever to explain the delay and I am of the view that the application for leave to appeal should therefore be dismissed on this basis alone. The Rules of the Labour Court (and that of the High Court) provides for time periods within which an application for leave to appeal must be brought. There are important policy considerations for requiring a party to file an application for leave to appeal within a certain time period. Where a party does not observe the Rules, such a party must apply for condonation

⁴ *Michaels v Wells* at 50 A – G.

and it is for the applicant to satisfy the court that there is sufficient cause to excuse him or her from not complying with the Rules.⁵ Van Zyl, J in *Michaels*⁶ (in refusing the application for condonation for the late filing of the application for leave to appeal), summarises the policy considerations underlying the requirement that an application for leave to appeal must be filed within a certain time limit as follows:

'I find myself in agreement with the English cases quoted by my Brother VAN WINSEN. I do not think that the mere fact that a Court of appeal has subsequently given another judgment is sufficient cause to condone the late noting of appeal. It seems to me that proper weight must be given to the fact that respondent has obtained judgment in his favour which has become final through the applicant deliberately refraining from noting an appeal. In *Cairns'* case SOLOMON, J., said:

"After all the object of the Rule is to put an end to litigation and to let parties know where they stand. It would be intolerable, if there were no reasonable limit of time within which appeals might be brought, and it is in the interest of the public that the time should be limited. When a party has obtained a judgment in his favour and the time allowed by law for appealing has lapsed, he is in a very strong position, and he should not be disturbed except under very special circumstances."

In a case like the present the "very special circumstances" it seems to me must be something more than an assured ultimate success. It seems to me that they must relate to the abandonment and explain it in such a manner that the Court, quite apart from the final result, feels justified in allowing the applicant to change his mind. In this case no circumstances were quoted to us which can be said to be very special circumstances which would justify the Court in allowing the applicant to change his mind. The only circumstance relied upon by the applicant is the assured success of the appeal if the application is granted. This does not seem to me sufficient ground for depriving the respondent of his right to the final

⁵ *The Civil Practice of the High Courts of South Africa supra* at page 1228.

⁶ *Michaels v Wells supra* at 48 D-H.

judgment which he obtained through the applicant abandoning his right to note an appeal.

In these circumstances I am of opinion that the application should be dismissed with costs.'

5] I am in agreement with Van Zyl, J. In the context of labour litigation, there is however a further important consideration that should be taken into account which is that labour disputes should be resolved speedily. Any delay in bringing the application for leave to appeal should therefore be properly explained. In the present case no such explanation has been proffered. In the event, the application for leave to appeal is dismissed with costs.

6] I have despite my view that the application should be dismissed for non-compliance with the Rules, nonetheless considered the lengthy submissions filed by Mr. Snyman on behalf of the applicant and those filed on behalf of the respondent. I am not persuaded that there is a reasonable prospect of success on appeal and would, in any event have dismissed the application for leave to appeal had it been filed within the time periods stipulated in the Rules of the Labour Court.

AC BASSON J

Judge of the Labour Court

APPEARANCES

FOR THE APPLICANT: Mr Snyman of Snyman Attorneys.

FOR THE RESPONDENT: Mr K Naidoo of Cheadle Thompson & Haysom
Incorporated