



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Reportable

Case No: P331/11

In the matter between:-

MTHETHELELI EBENEZER QANDANA

Applicant

and

NATIONAL BARGAINING COUNCIL

FOR THE ROAD FREIGHT INDUSTRY

First Respondent

COMMISSIONER QUEENDY GUNGUBELE

Second Respondent

FUELOGIC (PTY) LTD

Third Respondent

Heard: 5 JUNE 2012

Delivered: 19 NOVEMBER 2012

Summary: Review application in terms of section 158(1)(g) must be brought within

reasonable time, when they are delayed the applicant needs to file a

Condonation application for the Court to determine whether they have

they have been brought within reasonable time.

Review application in terms of section 158(1)(g) of the LRA-condonation

JUDGMENT

LALLIE, J

Introduction:

- [1] The applicant launched this review application in terms of section 158(1)(g) of the Labour Relations Act 66 of 1995 (the LRA) for an order reviewing and setting aside an arbitration ruling of the second respondent (the arbitrator).

Condonation

- [2] The arbitration ruling which is the subject matter of the review application is dated 4 March 2011 and this application was brought on 15 July 2011. In the answering affidavit, the third respondent raised a point *in limine* that this court lacks jurisdiction to entertain this review application on the grounds that the application has been brought outside the period contemplated in the LRA. In the replying affidavit, the applicant submitted that no specific period applies to section 158(1)(g) reviews. He, however, undertook to file a condonation application in response to the point *in limine*.
- [3] The applicant did not file the condonation application and one was moved on his behalf from the bar just before arguing the review application. It was argued on behalf of the applicant that, although the arbitration ruling is dated 4 March 2011, he received it on 27 May 2011. He immediately approached the offices of the Legal Aid for assistance. He could be assisted on 11 July 2011 and the review application was filed on 3 August 2011. It was also argued that there is no proof of the date on which the applicant received the arbitration ruling and that he will suffer prejudice should this application not be granted. No reasons could be furnished for the office to the Legal Aid's inability to contact the applicant since August 2011.

- [4] It was argued on behalf of the third respondent that the arbitration ruling was dispatched to the applicant's elected address on 29 March 2011, but he failed to pursue this matter diligently. The third respondent sought the dismissal of this application, with costs, also on the grounds that the applicant cannot be found and his application is not supported by the facts which will allow it to succeed.
- [5] No time period has been set for the filing of review application brought in terms of section 158(1)(g). They have to be filed within a reasonable time. In determining reasonable time, the courts have used the six weeks period for filing review application in section 145 of the LRA as a bench mark.¹
- [6] In *Rustenburg Platinum Mines Ltd (Rustenburg Section) v NUM and Others*² the court made the following observation:
- ‘... a prerequisite to granting the substantive relief sought was the timeous bringing of an application for condonation. Put otherwise: without granting condonation a court may not grant substantive relief.’
- The same principle applies in this matter. Bringing the review application within a reasonable time constitutes the required jurisdictional fact which must exist before this court can consider the review application.
- [7] The condonation application was necessary as it would have placed this court in a position to determine whether the review was brought within a reasonable time. The Legal Aid office did its best to assist the applicant. It has been unable to contact the applicant since August 2011. Without the applicant's availability and co-operation, it was impossible for the Legal Aid office to file the required condonation application. There is a duty on the applicant to prosecute this matter diligently and he has failed to do so. The application for condonation moved on behalf of the applicant lacked vital allegations. The reason for the delay could not be furnished. The delay from the day after the six weeks period from 29 March 2011 is not explained. The period of delay is substantial and in the absence of its

¹ In this regard see: *Fidelity Guard Holdings (Pty) Ltd v Epstein NO and Others* [2000] 12 BLLR 1389 (LAC) and *JDG Trading (Pty) Ltd t/a Bradlow Furnishers v Laka NO and Others* [2001] 3 BLLR 294 (LAC).

² [2001] 3 BLLR 305 (LAC)

reasonable explanation it is unnecessary to consider prospects of success.³ In the circumstances, the application for condonation cannot succeed.

Costs

- [8] The third respondent sought a cost order against the applicant. The applicant was assisted by Clientelle. His policy lapsed. The office of the Legal Aid took over. The circumstances of his unavailability are unknown and, in the circumstances, I am not persuaded to grant a cost order against him.

Order

- [9] In the premises, the following order is made:

[9.1] The condonation application is dismissed;

[9.2] The review application is dismissed;

[9.3] No order is made as to costs.

Lallie J

Judge of the Labour Court

³ In this regard see: *Miya v Putco Ltd* (DA17/98, LAC) unreported and *PPWAWU and 2 Others v AF Dreyer and Co (Pty) Ltd* [1997] 9 BLLR 114 (LAC).

Appearances:

For the Applicant: Mrs. Van Staden of the Legal Aid Office

For the Third Respondent: Advocate Pillay

Instructed by: Yusuf Nagdee Attorneys