



REPUBLIC OF SOUTH AFRICA

Not reportable
Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR 1256/05

In the matter between:

HULME, YVONNE MERLE

Applicant

and

**KLM CONSULTING SERVICES
(PTY) LTD**

Respondent

Heard: 24 January 2013

Delivered: 26 February 2013

Summary: Application to dismiss review application on account of unreasonable delays. Both parties acted in dilatory manner. Review application set down for hearing on unopposed roll.

JUDGMENT

STEENKAMP J

Introduction

[1] The applicant, Ms Yvonne Hulme, seeks an order dismissing a review application brought by the respondent, KLM, 7 ½ years ago.

Background facts

- [2] The dispute has a long and unhappy history, characterised by delays on both sides and a lack of common courtesy.
- [3] It arises from a dispute whether Hulme resigned or was dismissed. A CCMA arbitrator found that she had been dismissed and ordered KLM to pay her compensation equivalent to 12 months' remuneration. That was on 22 April 2005.
- [4] KLM brought a review application on 13 July 2005. Hulme delivered a notice of intention to oppose the review application on 4 October 2005. KLM delivered the CCMA record in terms of rule 7A(6) on 27 January 2006. However, the record was not complete. The review application was set down for hearing on 20 September 2006 but was postponed pending an application by KLM to compel the CCMA to comply with rule 7A(3) and to deliver the complete record. On 15 November 2008 this Court ordered the CCMA and the Commissioner to file the missing records and the commissioner's notes within 14 days.
- [5] In the meantime, on 5 March 2008, Hulme brought an application to dismiss the review application (the first application to dismiss). That application served before Basson J on 26 March 2009. She dismissed Hulme's application to dismiss and ordered KLM to deliver its final supplementary affidavit in terms of rule 7A(8). KLM did so; but despite her having delivered a "notice of intention to oppose", she did not deliver an answering affidavit in terms of rule 7A(9).
- [6] Instead, 2 ½ years later, on 14 November 2011, Hulme again brought an application to dismiss the review application (the second application to dismiss). That is the application that now serves before this Court. KLM opposes the second application to dismiss.

Evaluation / Analysis

- [7] Hulme argues that the review application should be dismissed because of KLM's failure to prosecute it timeously and diligently over the last six years.

- [8] Outrageous as the delay appears at first blush, the lady doth protest too much. Her own actions – or lack thereof – and that of her attorneys also need to be scrutinised.
- [9] Some of the initial delays were occasioned by KLM as well as the CCMA. By March 2009, though, Basson J had put the proceedings back on track. She ordered KLM to comply with rule 7A(8) by filing its supplementary affidavit. KLM did so. Hulme and her attorneys, on the other hand, did not file an answering affidavit as required by rule 7A(9). At the hearing of this application, Mr Voyi submitted that the reason for his inaction was that Hulme was not opposing the review application. That came as a surprise to the Court and to KLM's attorney. It is at odds with Hulme having delivered a "notice of intention to oppose" the review application. Hulme and her attorney never wrote to KLM's attorneys to advise them that she no longer intended to oppose the review application. Had they done so, the review application could have been enrolled on the unopposed motion roll three years ago.
- [10] Voyi replaced Hulme's previous attorney, Ashley Slamat, in September 2009. On 29 September and 7 October 2009, he wrote to KLM enquiring whether it had complied with the order issued by Basson J on 26 March 2009, i.e. to file its supplementary affidavit in the review application within 14 days. On 9 October 2009, KLM responded and confirmed that it had complied with the order; and it included "for ease of reference" a copy of the final supplementary affidavit. Voyi did not respond, despite having placed himself on record as Hulme's attorney in the review application. He did not deliver an opposing affidavit; nor did he write to or phone KLM and inform it that Hulme did not intend to oppose the review application, despite her earlier indications to the contrary.
- [11] In these circumstances, it is understandable that KLM was waiting for Hulme to deliver her answering affidavit. What is not, is that neither party bothered to ascertain from the other what the state of play was and to then take steps to have the review application enrolled, either on an opposed or unopposed basis.

Order

[12] The application is dismissed. The registrar is directed to enrol the review application on the unopposed motion roll.

Steenkamp J

APPEARANCES

APPLICANT: Ndumiso Voyi.

RESPONDENT: Andrew Goldberg.