



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR441/2010

In the matter between:

NITHIAKALYANIE PILLAY

Applicant

and

SIMON DIALE N.O

First Respondent

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Second Respondent

TSHWANE UNIVERSITY OF TECHNOLOGY

Third Respondent

Heard: 29 April 2013

Delivered: 30 April 2010

JUDGMENT LEAVE TO APPEAL

SAVAGE AJ

- [1] This is an application for leave to appeal against the judgment made by this Court on 28 October 2011 refusing to condone the applicant's late filing of a review application and dismissing the review application.
- [2] The review application sought to review and set aside a ruling made by the first respondent in which condonation for the applicant's referral of a dispute to the second respondent more than 500 days out of time was refused.
- [3] The application for leave to appeal against the judgment of this Court was filed on 26 January 2012 and is opposed by the third respondent.

This Court's *ex tempore* judgment was not attached to the application for leave to appeal. At my request, the judgment was transcribed and it was only on 29 April 2013 that the application together with the complete record was provided to me for consideration.

- [4] Rule 9(2) of the Labour Court requires that notice of appeal must be filed within 10 days of the date on which the person filing the notice of appeal is notified of the decision that is the subject of the appeal. The application for leave to appeal in this matter was filed on 26 January 2012, outside of the 10 day period provided for in Rule 9. In spite of this, the applicant has not sought condonation for the late filing of the notice of appeal. On this basis alone, the application falls to be dismissed.
- [5] However, in spite of the applicant's late filing of the application for leave to appeal, given that the applicant is unrepresented and for the sake of completeness, the merits of the application have been considered.
- [6] The grounds of appeal as set out in the notice of appeal are that this Court –
- 6.1 erred in failing to apply fundamental legal principles prior to making a determination in the matter;
 - 6.2 gave judgment with no deliberation and acted prejudicially in handing down judgment on 28 October 2011;
 - 6.3 “erred in finding that the third respondent presented no legal argument in opposing the condonation”;
 - 6.4 erred in not taking into account the serious and complex nature of the case and in not using its power to call for further investigation into the condonation issue; and
 - 6.5 erred in not looking at the case collectively and in failing to uphold justice and look after the interests and welfare of the voiceless.
- [7] The Respondent opposes the application for leave to appeal on the basis that –

- 7.1 the application for leave to appeal was filed out of time with no application for condonation;
- 7.2 the correct approach to the application for condonation in respect of the late filing of the review application was adopted by the Judge, in accordance with judgments of the Labour Court, the Labour Appeal Court and the Supreme Court of Appeal;
- 7.3 the Judge correctly exercised her discretion through considering the relevant factors;
- 7.4 there exists no possibility that another court might interfere with the judgment; and
- 7.5 the Applicant's referral to the Second Respondent was 589 days out of time without any proper explanation for the excessive delay and the review application has no prospects of success.

[8] In order for an application for leave to appeal to succeed this Court must consider whether there is a reasonable prospect of the appeal succeeding and, whether or not the case is of substantial importance to the Appellant or to both the Appellant and the Respondent justifying leave to appeal.¹

[9] S 145(1) of the Labour Relations Act permits an application for review to be made to the Labour Court within six weeks of the date that the award was served on the applicant. In spite of this, the Applicant's review application was filed three weeks late. This Court concluded that no reasonable or proper explanation for this delay had been made out by the Applicant, who simply submitted that the delay was marginal without any reasonable or proper explanation having been provided for such delay. In the absence of a proper explanation for the delay, I am satisfied that the decision to refuse the grant of condonation was justified given both the facts and the law and that there exists no reasonable possibility

¹ *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 531C.

that another court will find differently, or that the appeal in such circumstances has reasonable prospects of success.

[10] In addition, I am satisfied that the decision to refuse condonation was further justified given the underlying prospects of success in the Applicant's review application, notably the fact that the Applicant's dispute was referred to the Second Respondent more than 500 days after time without any proper explanation for that excessive delay.

[11] In such circumstances, I am not satisfied that there exists any reasonable prospect of success in an appeal against the judgment of this Court. On the facts before me I am unable to find that the case of such importance, or that it concerns a matter of law or fact that justifies the grant of the application for leave to appeal. Furthermore, I am satisfied that the applicable legal principles were applied at all times prior to making a determination in the matter, that judgment was deliberated, that the nature of the case was understood and that this Court acted in the manner required of it at all times, with due regard to the interests of justice.

[12] Whilst costs in the normal course should follow the result, given that the applicant is unrepresented, I am satisfied that it is in the interests of justice that no order as to costs should be made in this matter.

[13] In the result, the following order is made:

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

K M Savage

Acting Judge of the Labour Court of South Africa

APPEARANCES:

FOR THE APPLICANT: Adv Kobus Steyn

INSTRUCTED BY: Hassan, Parsee & Poovalingam

FOR THE RESPONDENT: Adv Hein Gerber

INSTRUCTED BY: Clarinda Kugel Attorneys

LABOUR COURT