



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGEMENT

Not reportable

Case no: JR 420/11

In the matter between:

Albert Mokgale

Applicant

and

C C M A

1st Respondent

Commissioner Kagiso Nthite

2nd Respondent

Sheikh Anta Diop College

3rd Respondent

Heard: 9 July 2013

Delivered: 11 July 2013

JUDGMENT

BRUINDERS AJ

- [1] The applicant was a teacher employed by a college. He alleges that he was unfairly dismissed on 22 July 2010. He was dismissed allegedly for fraud and having sexual relationships with learners. The LRA requires him to have referred his unfair dismissal dispute within 30 days after the date of the alleged dismissal; i.e. by 21 August 2010. He referred an unfair dismissal dispute to the CCMA on 4 January 2011. His referral was 164 days' late. He applied to the CCMA to condone the late

referral of his dispute. The commissioner found that the referral was 136 days' late and that was excessive. He refused to condone the late referral because he found that applicant had failed to provide a reasonably acceptable explanation for the delay.

- [2] The applicant applies to review and set aside the commissioner's ruling. The review is brought under s158(1)(g) of the Labour Relations Act 66 of 1995, as amended (the LRA). The ground of review is not identified with any precision. The applicant says that the ruling is reviewable because the commissioner failed to accept reasonable evidence presented to her. It appears that the ground of review is that the commissioner failed to take into account or ignored relevant evidence while taking into account irrelevant facts.
- [3] That ground of review can only succeed if the applicant can show that despite being presented with relevant evidence, the commissioner chose to ignore that evidence, preferring instead to refuse condonation on the grounds of irrelevant evidence, and that her choice was material. Her choice would be material if reliance on the evidence that she ignored, would have led to a different result.
- [4] The evidence that the commissioner allegedly ignored was that applicant could not refer his dispute because he was out of the country for a period of four months. The extracts from his passport attached to the review papers show that applicant was out of the country from 9 August 2010 until 22 November 2010.
- [5] It is not clear from the documents before the commissioner, that this fact was drawn to her attention. If it was not drawn to her attention, then she did not ignore it. If it was drawn to her attention, then it is in any event not material. Applicant had 16 days between 23 July (the date of his dismissal) and 8 August 2010 (the day before his departure) to refer his dispute. He provided no explanation for why he failed to do so in that time. Nor was his explanation for why he failed to do so in that period, or in the period between his return (on 22 November 2010) and the date of referral (on 4 January 2011) found to be acceptable by the commissioner. His explanation was

that it took time for him to gather relevant evidence and that he did not have money to consult an attorney (which he says he did on 4 December 2010.) His explanation that he took time to find an attorney or funds to pay an attorney was rejected by the commissioner. She found that he did not need an attorney or funds to refer his dispute. Her reason for rejecting the applicant's explanation is not unreasonable.

[6] The commissioner cannot be faulted for rejecting the applicant's explanation for his excessive delay as unsatisfactory and therefore unacceptable. There are no grounds in law to set aside the ruling. I make the following order:

- [a] The application to review and set aside the ruling made by commissioner Nthite under CCMA case number GAJB 141-11 is dismissed.
- [b] No costs order is made.

T J Bruinders

Acting Judge of the Labour Court