



**REPUBLIC OF SOUTH AFRICA**

**IN THE LABOUR COURT OF SOUTH AFRICA JOHANNESBURG**

**JUDGMENT**

**Non Reportable  
Case no. JR.2297/07**

**In the matter between:**

**SEANI REBECCA MAIPHWANYA**

**Applicant**

**and**

**COMMISSION FOR CONCILIATION,  
MEDIATION AND ARBITRATION**

**First Respondent**

**COMMISSIONER SA1UEL KHAKHATI MQ**

**Second Respondent**

**THE SOUTH AFRICAN POST OFFICE**

**Third Respondent**

**Heard: Considered in Chambers**

**Delivered: 3 April 2014**

**JUDGMENT**

**WILKEN, AJ**

**Introduction**

- [1] The applicant seeks leave to appeal against the judgment delivered on 28 *January* 2014 dismissing the Applicant's application to review and setting aside the order making the arbitration award handed down by the Second Respondent an order of Court. The leave to appeal was brought on 21 February 2014.
- [2] I have decided not to afford the parties the opportunity to address me in open Court. I do not believe that there is anything else that could be added to the application and opposition for leave to appeal which has not been set out in the submissions. I am satisfied that the Applicant has been afforded a full opportunity to advance her case,
- [3] The appeal was brought late and condonation was granted solely to consider the leave to appeal on its merits, given that the delay was not significant. It is, however, rather surprising considering the history of the matter that the Applicant has once again failed to comply with the time period to bring an appeal.

#### Grounds for leave to appeal

- [4] The Applicant relies on two main grounds in support of its application for leave to appeal. These are:
- 4.1 Firstly, that the Court failed to exercise judicial discretion properly in dismissing the review and ought to have struck the matter from the roll in order to give the Applicant's attorney an opportunity to remedy the defects with the review application.
- 4.2 Secondly, that the Court failed to consider the strong prospects of success of the Applicant in dismissing the matter for want of compliance with the Rules.
- [5] It is trite that the central issue to determine in applications of this nature is whether there is a reasonable prospect of another court coming to the conclusion that this Court erred in deciding the matter as it did.<sup>1</sup>
- [6] On the basis of the application for leave to appeal, this court must consider

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<sup>1</sup> *Dince and Others V Department of Education North West Province and Others* [2010] 6 BLLR 631 LC, at para 3.

whether another Court would conclude that the decision made by the Second Respondent was one which a reasonable decision-maker could not reach.<sup>2</sup>

#### Consideration of grounds to appeal

[7] In respect of the first complaint, there is no merit to support the claim that the Court failed to exercise its judicial discretion. The Applicant's attorney was given an opportunity to either remove the matter from the roll and apply for condonation formally and rectify the record, or to bring an application from the Bar.

[8] The Applicant elected to bring an application from the Bar and the only justification proffered why the Applicant failed to launch the review within the required time period, was the self-professed lack of proficiency in labour law of the Applicant's attorney.

[9] The Applicant and Respondent both provided *Salojee and Another NNO v Minister of Community Development*<sup>3</sup> in support of their cases that the application for leave to appeal be granted or dismissed. It was held by the Court that:

... There is a limit which a litigant cannot escape the results of his attorney's lack of diligence or insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect on the observance of the Rules of this Court...<sup>4</sup>

[10] it is evident that the explanations tendered by the Applicant in the review application for the late referral does not pass muster having regard to *Salojee*, especially given the content of the delay and lack of any explanation why no formal condonation was brought since launching of the review and the hearing of this matter some six and half years later. In the circumstances, the Applicant did not provide a plausible explanation for the delay.

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<sup>2</sup> *Sidumo and Another V Rustenburg Platinum Mines Ltd and Others* [2007] 12 BLLR 1097 (CC) at para 110.

<sup>3</sup> 1965 (2) SA 135 (A).

<sup>4</sup> *Ibid* at 141C-D.

- [11] Further, the Applicant argues that the ultimate decision should be based on fairness and justice after assessment of the conduct of the Applicant and circumstances of the case.
- [12] I submit that due to the unjustifiable delay by the Applicant and the analysis provided for in the review judgment<sup>5</sup> taking into account all the circumstances, that the ultimate decision was just and fair.
- [13] Considering the first basis upon which the leave to appeal is sought, I am satisfied that another Court would not reasonably justify such lax approach by the Applicant and there is no reasonable prospect it would come to a different conclusion.
- [14] In respect to the second ground upon which leave to appeal is sought, in that the Court failed to consider the Applicant's prospects of success, the Court used its discretion analysing all the circumstances surrounding the matter and it was apparent that there was significant non-compliance with the Rules of the Court, especially, in failure to serve the record of proceedings upon the Third Respondent and not filing the entire record in court, despite having been placed on terms by the Third Respondent in this regard
- [15] I am satisfied that there is not a reasonable prospect of another court coming to a different conclusion.
- [16] I am of the view that it would be appropriate that each party pays its own costs.
- [17] In the circumstances, I issue the following order:
- 17.1 Application for leave to appeal is dismissed
- 17.2 There is no order as to costs.

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<sup>5</sup> Review Judgement at paras 25 - 26, 23 January 2013.

WILKEN, AJ

Acting Judge of the Labour Court of South Africa