



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

Case no: JS 370/13

In the matter between -

VELAPHI BIYELA & 3 OTHERS

Applicant

And

MORTRADE 209 (PTY) LTD t/a

SABELA LOSS CONTROL

Respondent

Date heard: 23 April 2014

Date of judgment: 08 May 2014

Summary: Application to dismiss statement of case for allegedly filing it outside the required time frame. The respondent claiming that the applicants should have filed their statement of case within 10 days as required by rule 6 (2) of the Rules. Rule 6 (2) not applicable and thus the application dismissed.

JUDGMENT

MOLAHLEHI J

Introduction

- [1] This is an interlocutory application in terms of which the respondent seeks the dismissal of the applicant's statement of case. The respondent contends that the applicant's claim should be dismissed because the statement of case was filed outside the time prescribed by the LRA and no condonation for such late filing has been made.
- [2] Subsequent to his the dismissal, the applicant referred an alleged unfair dismissal dispute to the CCMA on 15 February 2013. The dispute could not be resolved and on 14 March 2014 the Commissioner issued a certificate of non-resolution.
- [3] It is apparent from that thereafter the matter was referred to arbitration where a jurisdictional ruling was issued on the 30th April 2013. In that respect the Commissioner found that the CCMA lacked jurisdiction to entertain the dispute and directed the parties to consider referring the matter to the Labour Court. The applicant had filed a statement of case on 22 May 2013.
- [4] The respondent contends that the applicants ought to have filed their statement of case within 10 days from the date of the Director of the CCMA referred the matter to Court as required by rule 6 (2) (C) of the Rules of the Labour Court.

- [5] Section 191 (6) deals with the power of the Director to refer a dispute to the Labour Court on application by a party. In the present matter there has been no application by either party to have the matter referred to the Labour Court by the Director neither has such a referral been made by the Director.
- [6] It is apparent from the reading of the statement of case and all other relevant documents in this matter that the matter is referred to the Court in terms of section 191 (1) of the Labour Relations Act. This means that the provisions of section 191 (1) (b) (ii) of the LRA applies. The provisions of this subsection require that the referral should be made within 90 days.
- [7] In light of the above, I am of the view that the point *in limine* raised by the respondent has no merit and accordingly stands to fail.
- [8] As concerning the costs it was argued on behalf of the applicants that costs should be punitive. Although the respondent can be criticised for the approach it adopted in dealing with this matter, I am of the view that it would not be appropriate to award punitive costs. I am however of the view that there is no reason why costs on a party to party scale should not be allowed to follow results.

Order

- [9] In the circumstances, the respondent's point *in limine* is dismissed with costs.

E Molahlehi

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: MC Vermeulen Attorneys

For the Respondent: B Masuku of Tabacks Inc

LABOUR COURT