



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable
Case no: JS 541/13

In the matter between –

MONGESI CHRISTMAS NYIKILA

Applicant

And

**FIRST NATIONAL BANK, A DIVISION OF
FIRSTSTRAND BANK LIMITED**

First Respondent

EUGENE BRITZ

Second Respondent

Date heard: 23 April 2014

Date of judgment: 08 May 2014

Summary: Application for condonation. Failure to comply with the provisions of rule 11. Applicant granted leave to file application for condonation, late filing of the statement of case instead applicant writing letter to Judge. Applicant having LLB & LLM claim to be ignorant of the procedure to follow when applying for condonation.

REASONS FOR THE ORDER

MOLAHLEHI J

- [1] On 04 February 2014, Basson J made an order directing the applicant to file condonation application for the late filing of his statement of case before 28 February 2014.
- [2] The applicant purported to comply with the order by addressing the letter to the Honourable Judge Basson dated 24 February 2014.
- [3] The condonation application is essentially an interlocutory application, and therefore the governed by the Rule 11 of the rules of the Labour Court. In terms of this rule in the applications must be brought on notice and be supported by affidavits.
- [4] In line with the objects of the Labour Relations Act, the rules provide for procedures to follow and those procedures are intended to provide a framework for the speedy resolution of disputes. It is inevitable that the failure comply with the rules of the Court will hinder the speedy resolution of disputes and undermine the system of administration of labour justice. Unless the interests of justice and fairness dictates otherwise, the Court must require compliance with the rules at all times and adopt a zero tolerance with non-compliance.
- [5] In the present instance the applicant has failed to comply with the provisions of rule 11 in all respects. He has not served and filed a notice of motion neither has he filed an affidavit in that respect.
- [6] The applicant was granted leave to file the condonation applicant for the purposes of compliance with the time frame provided for in Section 191 of the Labour Relation Act. Having failed to comply with the requirements of rule 11 means no proper application for condonation was ever placed before the Court. Accordingly the court has no jurisdiction to entertain the applicant's claim

- [7] There is further no basis to indulge the applicant even if for whatsoever reason the letter he addressed to the honourable judge was to be treated as some form of an application for condonation.
- [8] It is trite that in an application for condonation the applicant must deal with the reason for the delay, the period of the delay, the prospects of success and the prejudice that would be suffered if condonation is refused or granted.
- [9] Something that appears like a reason for the delay is what is stated at paragraph 2 of the letter. The applicant states in paragraph that he was advised by the Commissioner who conducted the conciliation that the certificate of non-resolution was valid for a period of six months.
- [10] The letter does not deal with any other factors relevant to assist the Court in determining whether the interests of justice would support the granting of refusal of the condonation.
- [11] The alleged incorrect advice by the Commissioner that the certificate is valid for six months cannot sustain as an explanation for the delay. In fact I should say it is no explanation at all. The applicant has both an LLB and LLM degrees. He also states that at some point during his employment with the respondent he served in the portfolio of the HR where he was responsible for Labour Relations and Employment Equity.
- [12] It was for the above reason that the applicant's condonation application was dismissed.

E Molahlehi

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: No appearance

For the Respondent: X D Matyolo

Instructed by: Shepstone & Wylie Attorneys