



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

Case no. JR 601/11

In the matter between:

FILTER AND HOSE SOLUTIONS

A DIVISION OF HUDACO TRADING (PTY) LTD

Applicant

and

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Respondent

COMMISSIONER N MBHELE

Second Respondent

CEPPWAWU obo P SEKHWELA

Third Respondent

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 set aside the arbitration award reinstating Phusha Sekhwela ("the Employee") and ordering the Applicant to pay the employee R27 000.00 in back pay issued by the Second Respondent on 6 February 2011.

- [2] The application for leave to appeal does not comply with the rules of the Labour Court or the practice directive effective from 2 April 2013 and in addition has been brought late. The Applicant seeks condonation for the late bringing of the application for leave to appeal.
- [3] The application for leave to appeal was filed on 24 April 2014. The application for leave to appeal had to be brought within 15 (fifteen) days of the judgment being handed down but was brought only 58 (fifty-eight) days after the handing down of the judgment. In the context of the time period allowed for the launching of an application for leave to appeal, the delay in launching the appeal is considerable.
- [4] The test for granting condonation is well known and requires the Court to consider a number of factors, including the extent of the delay, the explanation for the delay, the prospects of success in the main action, the importance of the matter and the potential prejudice should condonation be granted. Where there is a long delay and a good explanation for the delay, the explanation outweighs the length of delay. However where there is no plausible explanation for the delay, the length and failure to provide a plausible explanation for the delay are factors which may outweigh good prospects of success. ¹
- [4] I have already noted that the delay in the context is considerable and given the objects of the Labour Relations Act 66 of 1995 to ensure that employment disputes are resolved speedily, the delay in prosecuting the appeal in the current circumstances, the unsatisfactory explanation advanced and obvious acquiescence in the judgment for some time after

¹ *Melane v Santam Insurance Co. Ltd* 1962 (4) SA 531 at 532 C-F and *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC)

the expiry of the time period within which to appeal, I am disinclined to grant the Applicant condonation in bringing the application for leave to appeal.

[5] Whilst, having come to the decision I have, it is not necessary for me to consider the prospects of success on appeal, the failure of the Applicant to appreciate the basis upon which leave to appeal could sought.² I am furthermore of the view that the Applicant's prospects of success are in any event poor.

[6] The Third Respondent, in opposing the application for condonation and application for leave to appeal seeks its costs in opposing the application for leave to appeal on the basis of an attorney and own client scale. Considering all the circumstances of the matter, I am satisfied that the third Respondent has made out a case for its costs in opposing the leave to appeal.

[7] I accordingly, issue the following order:

- 1 the application for leave to appeal is dismissed; and
- 2 the Applicant is to pay the Third Respondent's costs on a party and party scale.

Wilken, AJ

Acting Judge of the Labour Court of South Africa

21 May 2014

² *Dince & Others v Department of Education North West Province & Others* [2010] 6 BLLR 631 LC at paragraph 4 and *S v Smith* 2010 (1) SACR at 576 (SCA).