



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR1458/11

In the matter between:

MACHOGA REGINALD LEDWABA

Applicant

And

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

First Respondent

COMMISSIONER SIMON RANTHO

Second Respondent

ESKOM CUSTOMER SERVICES

Third Respondent

Heard: 10 July 2013

Delivered: 29 May 2014

Summary: Applicant for review confined to grounds in founding and supplementary affidavits

JUDGMENT

PONELIS, AJ

Factual background

- [1] In the matter before me the applicant seeks the review and setting aside of a written ruling of the second respondent ('the ruling'), pursuant to the provisions of section 158(1)(g) of the Labour Relations Act¹ ('LRA').
- [2] On 31 March 2010 the third respondent dismissed the applicant for misconduct. On 8 December 2010 the applicant referred a dispute concerning the fairness of his dismissal to the first respondent. This was accompanied by an application for condonation of the lateness of the referral, pursuant to section 191(2) of the LRA.
- [3] The applicant's allegations in the condonation application are scant. He submits that he was dismissed on 31 March 2010, that the dispute arose on 14 April 2010 and that his dispute referral was 224 days late. His explanation for this lateness is that he went to his trade union on 28 September 2010 and that he was waiting for a response from the third respondent. The applicant further concedes that he was guilty of the charge for which he had been dismissed, though he submits that he should have been given a warning instead.
- [4] On 20 January 2011 the applicant's condonation application proceeded to hearing before the second respondent, in the capacity of commissioner of the first respondent. Both the applicant and the third respondent appeared before the second respondent. The applicant was represented by a trade union. Though the proceedings were not mechanically recorded, it is apparent that the second respondent allowed the parties to make oral submissions.
- [5] The ruling was issued by the second respondent pursuant to those proceedings. In the ruling the second respondent dismissed the applicant's condonation application and, concomitantly, the applicant's dispute referral. The second respondent's salient reasons in the ruling are as follows:

'The degree of lateness herein is extremely extensive – 224 days which amounts to approximately 7 Months. The applicant submitted that he has

¹ 66 of 1995

been waiting for the appeal outcome nonetheless he could not demonstrate concrete efforts to obtain same from employer. He did not show the steps he took to obtain same from the respondent.

It was submitted for the employer that applicant was a fulltime shopsteward who is conversant with the disciplinary policy and this was never disputed by the applicant accordingly. I find that the reasons for the delay are untenable.

Furthermore I find that the applicant may have the right chance of success herein and he may suffer prejudice but in overall I find that he failed to make a case for condonation.

In arriving at his conclusion I also took the fact that the applicant bears the onus of private herein.'

Analysis

[6] But for prayer 1 in the notice of motion, the founding papers in the present application contain no reference to the ruling. In his founding affidavit the applicant elaborates on reasons why he maintains that his dismissal was unfair. Even though I accept that the applicant was, at least when he deposed to his founding affidavit, an unrepresented lay person, I am unable to construe any review grounds from those allegations. I am also not availed of a supplementary affidavit because, for purposes of rule 7A(8), the applicant filed a notice that he stood by his notice of motion. The only review grounds proffered by the applicant appear in his replying affidavit.

[7] Pursuant to the Labour Appeal Court decision in *Netherburn Engineering v Mudau*,² an applicant for review is confined to the case made out in the founding affidavit, as supplemented in terms of Rule 7A(8). I am accordingly enjoined to dismiss the present application.

[8] Regardless, taking into account the reasons for the ruling in relation to the content of the applicant's condonation application, it is apparent that the second respondent was seized with an instance where the applicant for condonation did not, despite the occurrence of a substantial delay,

² *Netherburn Engineering CC t/a Netherburn Ceramics v Mudau NO & another* (2009) 30 ILJ 269 (LAC) at para 18.

demonstrate compelling reasons in relation to prospects of success and reasons for the delay. In these circumstances the ruling was not one that a reasonable decision maker could not reach.³

Conclusion

[9] In the premises, the second respondent's ruling is allowed to stand as the following order is made:

- (i) The application is dismissed.
- (ii) There is no order as to costs.

PONELIS, AJ

Acting Judge of the Labour Court

APPEARANCES:

For the Applicant: No appearance

For the Third Respondent: S Zilwa

Makaula Zilwa Inc.

³ *Sidumo and another v Rustenburg Platinum Mines Limited and others* (2007) 28 ILJ 2405 (CC) at paras 106-110.