



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JS1121/09

In the matter between:

TAWUSA obo J MNISI & 54 OTHERS

Applicant

And

BRAS TRUCKING CC

Respondent

Heard: 06 May 2013

Delivered: 04 March 2015

JUDGMENT

BENJAMIN, AJ

[1] This is an ex-tempore judgment in the matter of Transport and Allied Workers Union of South Africa and J Mnisi and 54 others and Bras Trucking CC.

[2] The matter relates to a mass dismissal of employees of the company in August 2009. The matter was referred to the relevant bargaining

council and the bargaining council issued a certificate of non-resolution in September 2009.

[3] Thereafter the matter was referred as an unfair dismissal case to the Labour Court. While the referral was dated 25 August 2010, it was only served on the court and the respondent in December 2010. The application was therefore clearly out of time and the applicant was required to apply for condonation for the late filing of the application.

[4] The matter did not proceed quickly and was only enrolled for trial in May 2013. The initial attorneys representing the applicant withdrew and new attorneys who currently represent the applicants went on record from 26 November 2012. Mr Memani was instructed by these attorneys to appear in court for the applicant. The respondent was represented by Mr Orton who was also instructed shortly before the matter.

[5] A pre-trial minute was concluded in November 2012 and this clearly recorded that the applicant would be required to apply for condonation for the late referral to the Labour Court. On the morning when the matter was enrolled for trial in the Labour Court, the applicant applied for a postponement to enable it to apply for condonation for the late filing. No affidavit was presented by the applicant containing facts as to why the application for postponement was being made or to explain the circumstances which led to the late filing of the referral to the Labour Court.

- [6] Mr Memani, for the applicant, argued that even if his instructing attorneys had failed to do everything that they should have done, this should not be allowed to prejudice the workers and, as a result, if I looked with disfavour on the manner in which they had dealt with the matter, I should deal with that by an order for costs *de bonis propriis* or some other sanction and not dismiss the matter.
- [7] In brief, the explanation provided from the bar was that, shortly before the matter was enrolled, the applicants' attorneys believed that it would be settled and therefore did not prepare for trial. I was further advised that the attorneys believed there was a common understanding between the parties that the matter would either be settled or postponed.
- [8] Unfortunately as no affidavit was filed, there is no evidence before me to justify such a ruling. The rules and practise of this court are well-known and when matters are enrolled for trial parties are required to prepare for trial, even if they believe settlement to be imminent. If this were not the case, the trial roll of this court would not be functional and matters would be postponed at will. Matters that are enrolled must proceed, unless there are compelling circumstances for that not to happen.

[9] This matter has been going on for four years. It is obviously in the interest of both parties that at some point there be finality. I am not inclined in the absence of any evidence placed before me on affidavit to grant a postponement, no matter what arguments may be addressed to me from the bar and no matter what indication of what occurred is brought to my attention during argument.

[10] In the absence of a compelling set of reasons put forward on affidavit it is not appropriate in a matter such as this to grant a postponement in order to allow for an application for condonation. It is clear from the record that the attorneys for the applicant have been on record for approximately six months which gave them adequate opportunity to make any necessary application. The fact that they anticipated settlement is not a justification for such a failure.

[11] It is correct that the effect of a ruling to refuse to grant a postponement is that the case is effectively ended for these workers. This is not in itself a justification for allowing matters to continue where they have not been properly proceeded with, despite clear rules and directives as to how matters should be dealt with.

[12] My ruling therefore is to refuse to grant the application for postponement. Accordingly, the matter is dismissed with costs.

Benjamin, AJ

Acting Judge of the Labour Court

Appearances:

For the applicant: **Advocate F R Memani**

Instructed by: **Medupi Lehong Inc**

For the respondent: **R.J.C. Orton**