



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR 2232/10

In the matter between

**ALFRED MANDLA SHABANGU
and**

Applicant

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

First Respondent

MASHOODA PATEL N.O

Second Respondent

ANGLO PLATINUM MINE

Third Respondent

Heard: 29 October 2014

Delivered: 8 July 2015

Summary: When the applicant has failed to establish grounds to have a condonation ruling reviewed and set aside, this court will not interfere with the condonation ruling.

JUDGMENT

LALLIE J

[1] In this application the applicant seeks an order reviewing and setting aside an arbitration ruling in which the second respondent declined his application to condone the late referral of his unfair dismissal dispute to the first respondent. It

is opposed by the third respondent. The facts of this matter are briefly that the applicant was employed by the first respondent as a machine operator from 1 August 2001. Owing to allegations of misconduct against him, he was subjected to a disciplinary enquiry whose chairperson dismissed him for misconduct on 24 August 2009. The applicant launched an appeal against the decision to dismiss him. Both the verdict and penalty were upheld. Aggrieved by the outcome of his appeal, the applicant referred an unfair dismissal dispute to the first respondent on 3 June 2010. As the referral was made outside the statutory 30 day period, he applied for condonation. It is the third respondent's decision refusing the applicant's condonation application that forms the subject matter of this application.

- [2] The applicant submitted that his disciplinary enquiry was held on 23 June 2009 but he received the dismissal letter on 31 May 2010. He lodged an appeal which was denied in 2009. His grounds for review are that the second respondent failed to take into account that he received the dismissal letter on 31 May 2010, he was busy with his trade union, NUM, in connection with his case and not aware of the lateness as he had been advised to wait for the dismissal letter. The commissioner therefore failed to consider that the delay was caused by the third respondent. The applicant sought to rely on the third respondent's failure to consider 23 June 2009, 31 May 2010 and the 23 June 2010, dates which he considered relevant to his condonation application. He submitted that the second respondent committed misconduct by conducting the arbitration in an irregular manner and issuing a ruling which was obtained improperly.
- [3] Opposing the application, the third respondent submitted that the applicant was issued with the outcome of his appeal advising him that both the verdict and penalty imposed by the chairperson of his disciplinary enquiry on 25 August 2009 had been upheld. He acknowledged its receipt by appending his signature on the form of the outcome of his appeal. He was informed in the same form that he had 30 days from 24 September 2009 to refer a dispute to the second respondent should he so wish. The third respondent submitted that the applicant established no grounds to have the ruling review and set aside as

the second respondent had considered the submissions presented before her. She found the delay of 252 days excessive. She further found that the applicant made no efforts to ascertain the progress of his matter, he was aware that he had to refer his dispute to the first respondent within 30 days and he had failed to prove that he had prospects of success. The third respondent denied that the applicant received the letter confirming his dismissal on 31 May 2010 and submitted that all the grounds the applicant sought to rely on were invalid. It was further submitted on behalf of the third respondent that when the condonation application was argued, the second respondent afforded the applicant an opportunity to augment the submissions made in his application. The applicant filed no replying affidavit and all the submissions made by the third respondent in its answering affidavit were not refuted.

- [4] The test for review is whether the arbitration award constitutes a decision a reasonable decision-maker could not reach on the facts before the commissioner. In this regard see *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*¹. In *Goldfields Mining SA (Pty) Ltd [Kloof Gold Mine]*², it was held that the duty of the reviewing court is to ascertain whether the arbitrator considered the principal issue, evaluated the facts presented and came to a reasonable conclusion. The totality of the facts before the second respondent proves that she considered the issue before her. She evaluated the facts and even afforded the applicant an opportunity to augment his application. The applicant presented no grounds to prove that the third respondent reached an unreasonable conclusion. All the grounds the applicant sought to rely on have no basis. His submission that he received his dismissal later on 31 May 2010 is not true because he acknowledged receipt of the outcome of his appeal on 25 August 2009. It is also not true that he was not aware of the lateness of his referral because he was advised in his appeal outcome that he had 30 days from 24 September 2009 to refer his dispute to the first respondent. It is therefore, untrue that the delay was caused by the third respondent. A reading of the condonation ruling proves that the second respondent took into account all the material dates and the applicant failed to establish how the second

¹ [2007] 12 BLLR 1097 (CC).

² [2014] 1 BLLR 20 (LAC)

respondent misconducted herself. The applicant has failed to establish grounds to have the condonation ruling reviewed and set aside. A reading of the ruling proves that it falls within bounds of reasonableness and there is therefore no reason to interfere with it.

[5] In the premises, the application for review is dismissed.

Lallie J

Judge of the Labour Court of South Africa

APPEARANCES

For the Applicant: Mr Shabangu In person

For the Respondent: Mr Malan Edward Nathan Sonnenbergs

LABOUR COURT