



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR1506/13

Not Reportable/Reportable

In the matter between:

MANDLA AMOS MYENI

Applicant

and

CCMA

First Respondent

MR N MBELENGWA N.O

Second Respondent

ADT SECURITY (PTY) LTD

Third Respondent

Heard: 8 July 2015

Delivered: 15 July 2015

Summary: Review application – pleading not identifying grounds of review – review not prosecuted timeously – review dismissed

JUDGMENT

LEPPAN, AJ

Introduction

- [1] On 26 June 2013, the Second Respondent handed down an arbitration award in the dispute about an alleged unfair dismissal of the Applicant by the Third Respondent.

- [2] The Second Respondent found the dismissal of the Applicant to be substantively fair.
- [3] On 25 July 2013, the Applicable instituted review proceedings in terms of section 145 of the Labour Relations Act, 66 of 1995, as amended ("the LRA") in an endeavour to have the award reviewed and set aside and remitting the dispute back to the First Respondent for an arbitration hearing to be heard *de novo* before a Commissioner other than the Second Respondent
- [4] The review application was opposed by the Third Respondent, the former employer of the Applicant. However, at the hearing of this matter, the Third Respondent indicated it would abide by the decision of this Court.
- [5] Little or no progress occurred in delivering the essential Record of Proceedings timeously which is a requirement of Rule 7A(6) of the Rules of the above Honourable Court. There is no explanation for that delay.
- [6] This delay prompted the Third Respondent to make application to the above Court in terms of Rule 11 of the Rules of Court for the dismissal of the review application on the basis that it had not been prosecuted timeously and diligently by the Applicant. The Rule 11 application was instituted by the Third Respondent on 3 April 2014. This application was not pursued by the Third Respondent.

The Applicant's Delay

- [7] The Applicant has not prosecuted his review application timeously or at all. He has provided no reasons to this Court why he was unable to comply with this Court's Rules.
- [8] It is of significance that the Certificate of veracity at page 127 of the Record of the Transcribed evidence states that the aforesaid compact disc was received by the transcribing company, iAfrica Transcriptions, only on 17 March 2014 and same was completed by the transcribing company on 31 March 2014, yet the First Respondent had made the compact disc available to the parties on 8 August 2013.

- [9] On at least two occasions the Third Respondent alerted the Applicant to the need to file the Record of Proceedings as expeditiously as possible. It appears that the Applicant did not reply to this correspondence even though he was *dominus litus*, hence the reason for the Rule 11 application to dismiss the review.
- [10] In *Liwambano v Department of Land Affairs and others* (2012) 6 BLLR 571 (LC), the Labour Court was critical of delays in labour related disputes which needed to be expedited to finality in the interests of all concerned. It emphasised the need for the observance of time limits and the steps a party should take where the other party fails to act efficiently which could result in the disposal of an application for the review of an award.
- [11] I am satisfied that the delay in this matter is the result of the Applicant's tardiness and in the ordinary course, had the Rule 11 application been pursued, it may have resulted in a dismissal of the review where the delay was unexplained.

The Applicant's review to this Court

- [12] The Applicant's review application is wanting. It identifies no discernible grounds for review in the context of section 145 of the LRA. No defects are identified.
- [13] In dealing with applications for review, the standard test was formulated in *Sidumo and another v Rustenburg Platinum Mines Ltd and Others* (2007) 28 ILJ 2405 (CC) namely: "*Is the decision by the decision maker one that a reasonable decision maker could not reach?*"
- [14] Importantly, arbitration awards of the CCMA are final and binding. There is no appeal against a CCMA arbitration award.
- [15] The Applicant simply avers in this founding affidavit under the title "Grounds of Review" that: "*the only thing that the company dismiss me for. I'm not getting the reason. They must show me the prove (sic) of the reason.*"

- [16] The Applicant's attorney, Mr P. Bam, who had come into the matter at a very late stage, urged this Court to interpret the above as a challenge to the substantive fairness of the dismissal. It was the Applicant's contention that this meant that the Second Respondent had confused the Applicant's degree of culpability as recklessness, when he had not even been negligent. Again, the submission falters because it was in any event never pleaded.
- [17] Mr Bam also argued that this Court should take account of the fact that the accident occurred early in the morning at first light, that the third party's vehicle was grey in colour and that the third party may well have been negligent. Mr Bam made the point that the third party did not testify in the arbitration hearing but gave a statement. He argued that the Applicant should not be faulted for making the judgment call he did in responding to an emergency call out.
- [18] This Court put to Mr Bam that his argument ran close to an appeal and to read into the Applicant's review ground that the Second Respondent came to a wrong conclusion does not pass the review test as aforesaid. The Applicant could take this aspect no further.
- [19] The Applicant was charged with having caused a motor collision at a busy intersection in Rivonia Road in the late afternoon of 18 January 2013. He was, in his capacity as a security officer, responding to an emergency call out at a customer's premises where a security breach may have occurred. In responding to the call, the Applicant manoeuvred the light delivery pick-up van ("the LDV") from the extreme left hand lane to the right hand lane. In doing so, a collision occurred with a third party. He was charged with a failure to comply with the rules of the road whilst driving the LDV which was the property of his employer, the Third Respondent. He was also charged with reckless and negligent driving in executing a dangerous manoeuvre and damaging his employer's property. By all accounts, the Applicant drove across a double barrier line when changing lanes. The vehicle of the third party was significantly damaged.

[20] The Third Respondent conducted an internal investigation which indicated that the Applicant was in the left turning lane when all of a sudden he pulled across two lanes into a right turning lane at a robot and in doing so collided with the third party who was travelling through the intersection with the traffic light green in the third party's favour. Having pleaded not guilty at this disciplinary enquiry, the Third Respondent's chairperson found the Applicant guilty and he was dismissed.

[21] At the arbitration hearing before the Second Respondent when the Applicant disputed the fairness of his dismissal, the Applicant was tackled on the assertion that he had not breached the rules of the road and appeared to indicate that he had not been the cause of the collision. In cross-examination, it was put to the Applicant as follows –

"Mr Mynard: Why did you go to the right side?"

Mr Myeni: Because I already observed everything like I said (indistinct).

Mr Mynard: But that, can you do that?

Mr Myeni: If it was safe, it was safe for me

Mr Mynard: You are lying, you are not telling the truth because, what is (sic) the solid line mean, can you cross it?

My Myeni: No, you cannot cross it?

Mr Mynard: Why did you cross it?

My Myeni: Because it was safe, there was no other car.

Mr Mynard: it does not matter if it was safe, are you allowed to do it?

My Myeni: I know you cannot do it."

[22] It cannot rest in the mouth of the Applicant to say that he wants his employer to indicate the reason for dismissal when he had infringed the traffic regulations, and that in itself was negligence.

[23] In this matter, the Second Respondent produced an articulate award. It was well reasoned and does not contain any defect or gross irregularity. He did not misconstrue the nature of the proceedings and I find no reason to interfere with the Second Respondent's findings.

Order

1. The Applicant's review application is dismissed.
2. No Order as to costs.

Leppan, AJ

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr P Bam

For the Respondent: H Schensenig

LABOUR COURT