



LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

JUDGMENT

Case no: JR 1286/11

In the matter between:

EDWARD MAVASA

First Applicant

DUMISANI BALOYI

Second Applicant

and

SSSBC

First Respondent

ZODWA MDLALA N.O

Second Respondent

SAPS

Third Respondent

Heard: 5 August 2015

Delivered: 7 August 2015

JUDGMENT

WHITCHER J

Introduction

- [1] This is an application to condone the late filing of a review application of an arbitration award made by the second respondent (the arbitrator) on 30 June 2010 but apparently received by the applicants on 15 July 2010. In the award the arbitrator found the dismissal of the applicants by the third respondent (the

employer) was procedurally and substantively fair. The application was filed almost 10 months after the expiry of the six week time limit established by section 145 of the LRA.

- [2] The applicants' reasons for the delay can be summarised as follows: they obtained a copy of the award from the employer on 15 July 2010. They then took the award to the union. They do not specify when they did this. The union told them they will formulate an opinion on whether to proceed with a review application or not. They only made enquiries about the status of their matter in or about January 2011 and only discovered then that the union did not lodge a review. The applicants approached Legal Aid and they claim they were informed that they could only be seen by an attorney in two months' time and they did not pursue the matter further with the Legal Aid. They then sought to raise funds from their relatives which they only received on 31 May 2011.
- [3] The degree of lateness is significant. The practice manual indicates an application for review is inherently in the nature of an urgent application. For this reason, the Act prescribes time limits in relation to the filing of the application and the exchange of affidavits. In the case of *Mathonsi v Mphaphuli and Others*, Van Niekerk J said that it must be appreciated that the time limits relevant to the filing and hearing of reviews have the express purpose of promoting expeditious dispute resolution. Condonation should be reserved for those cases where there is a genuine inability to meet a prescribed time limit: it is not available to those who litigate at leisure or as if the time limits are mere guidelines.
- [4] The applicants' explanation for their delay does not disclose a reasonable explanation but rather that they were clearly complacent about compliance with the rules of court. They do not aver that they were unaware of the time periods and that time periods were not discussed when they first discussed review proceedings with the union so I assume they were aware they had until August 2010 to launch the review. It is noteworthy that the applicants waited six months before making any enquiries from their union about the status of their matter.

- [5] The applicants do not attach any confirmatory affidavits from their union to corroborate their assertions. They do not provide any reasons for their inactivity from July 2010 to January 2011. This period remains unaccounted for.
- [6] The applicants could not have assumed they could just file applications at any time and months after the event. They ought to have known that there were time periods involved as in the case of referring dismissal disputes. It was only after a significant delay of six months (which is unexplained) that they made efforts to seek legal assistance.
- [7] And by the time they got the matter moving, at a slow pace even after the 10 month period, they found the Council had lost the record. The Council deals with numerous cases so such problems are not surprising; though not to be condoned. But the potential for such problems is another reason why it is imperative that parties proceed expeditiously with reviews.
- [8] In the circumstances I am not satisfied that the applicants have provided a satisfactory explanation for the delay in filing the review application.
- [9] On this basis alone, in accordance with the relevant case law on condonation, the applicants' prospects of success are irrelevant. Be that as it may, an overview of the applicant's grounds of review indicates that the primary complaint is that the arbitrator allegedly failed to take into consideration certain evidence and accepted certain evidence. However, a reading of the award indicates that the arbitrator explained in a clear and detailed manner why she accepted or rejected various evidence and her reasoning in this regard relies on appropriate rules of evaluating evidence.
- [10] The commissioner clearly appears to have performed her functions as a reasonable commissioner ought to. Lastly, the applicants did not make out a case in their affidavits that addressed directly the threshold for review i.e. whether the award falls into a band of decisions to which reasonable people could come on the same material.

Order

- (a) The application to condone the late filing of the application to review and set aside the second respondent's arbitration award is dismissed with no order as to costs.

Whitcher J

Judge of the Labour Court

APPEARANCES

FOR THE APPLICANT: M Baloyi

Instructed by: MM Baloyi Attorneys

FOR THE RESPONDENT: T Molokomme

Instructed by: The State Attorney

LABOUR COURT