



REPUBLIC OF SOUTH AFRICA

Not reportable

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JS 115/2013

In the matter between:

HUGHES, LIZETTE

APPLICANT

and

LAZARUS & CO

RESPONDENT

Heard: 14 August 2015

Delivered: 17 August 2015

JUDGMENT

VAN NIEKERK JIntroduction

- [1] This is an application to condone the late referral of a dispute concerning the applicant's dismissal to this court for adjudication. The certificate of outcome in question was issued on 26 September 2012. The applicant's statement of claim had to be filed by no later than 26 December 2012. The statement of claim was served and filed on 18 February 2013, some 53 days late.
- [2] This is not an inordinate delay. Most of the respondent's attack, is on the merits of the application concerning the explanation for the delay. In short, the applicant states that she gave birth to a child during October prior to which she had been diagnosed with high blood pressure and bed rest was recommended by her doctor. She concedes that she was aware of the deadline of 26 December 2012 but that when she visited her attorney's offices during the beginning of December 2012, the offices had closed for the December/January break. The applicant scheduled a consultation with her attorney the day after the attorney's office reopened and received advice to the effect that the certificate of outcome was incorrect and that the matter should proceed to arbitration. Counsel was briefed to draft an application to set aside the certificate and advised that the dispute ought properly to be referred to this court for adjudication.
- [3] While the applicant's explanation might be criticised for not being as full as it might be, in my view, it is not an unreasonable one. It would appear from the papers that the applicant intended at all relevant times to prosecute her claim, and that part of the delay, at least, can be attributed to the poor advice of her attorney. It was also not unreasonable for the applicant to have waited until mid-January to consult with her attorney, given the closure of the attorney's offices.
- [4] I am satisfied that the applicant has made out an adequate explanation for the delay that is not excessive and that in the circumstances, she is entitled to the order that she seeks. Given the prevailing authorities, it is not necessary for me

to assess the applicant's prospects of success, and I make no findings in that regard.

- [5] Given the broad discretion afforded the court in terms of section 162 of the Act, it seems to me that the interests of the law and fairness are best served by each party paying its own costs.

I make the following order:

1. The late referral of the applicant's statement of claim is condoned.
2. There is no order as to costs.

ANDRE VAN NIEKERK

JUDGE OF THE LABOUR COURT