



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR 3082/12

In the matter between:

FIHLOKWAKHE SITHOLE

Applicant

and

COMMISSIONER ROB MAC GREGOR

First Respondent

CCMA

Second Respondent

TIBER BRANDS ALBANY BAKERY

Third Respondent

Decided: 7 October 2015

Decided in chambers

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

HULLEY, AJ

- [1] The applicant applies for leave to appeal against my judgment dated 16 July 2015 in which I dismissed with costs his application to review and set aside an arbitration award issued by the first respondent.
- [2] Although the application for leave to appeal itself was served and filed timeously, the written submissions were delivered outside the time period prescribed in terms of paragraph 15.2 of the Practice Manual of the Labour Court. For this delay the applicant seeks condonation.
- [3] Insofar as the filing of the written submissions is concerned, Rule 30(3A) of the Labour Court Rules stipulates that unless the judge from whom leave to appeal is sought otherwise directs, the parties' respective submissions must be "*delivered on or before a date fixed by the judge*".
- [4] Paragraph 15.2 of the Practice Manual, no doubt with a view to creating certainty, removes the discretion which Rule 30(3A) grants to the judge from whom leave to appeal is sought, and itself stipulates a time period. It is a failure to comply with this time period of which the applicant has fallen foul.
- [5] I am not sure whether paragraph 15.2 of the Practice Manual is *intra vires*, but do not intend deciding this matter on that basis. I am inclined to grant condonation.
- [6] Having regard to the fact that the application for leave to appeal was filed timeously, there is no apparent prejudice (outside of the desire to finalise the matter), suffered by the third respondent, and the delay (28 days), while not insignificant, is not so significant as to warrant the matter being decided on that basis alone. While I do not fully accept the explanation provided, I do not think this is a matter which warrants its finalisation on the basis of the question of condonation. I will accordingly consider the application on its merits.
- [7] I have considered the application for leave to appeal as well as the heads of argument which have been filed. In my view, there is no reasonable prospect that another court may come to a different conclusion. Speaking generally, the applicant appears to misunderstand the nature of the function which I,

sitting as a court of review, was performing. Although I was in general agreement with the findings made by the arbitrator (and said so), given that I was performing a review function even if I disagreed with the arbitrator, I was not entitled to set aside his findings; I could do so only if I was satisfied that no reasonable arbitrator could come to the same conclusion.

[8] The applicant has approached this application for leave to appeal as though I was sitting as a trial court and challenges my findings. What the applicant needs to demonstrate is that there is a reasonable prospect that another court may come to the conclusion that the arbitrator arrived at a conclusion which no reasonable arbitrator could have arrived at. That he has failed to demonstrate.

[9] In all the circumstances the following order is made:

- I. Condonation for the late filing of the written submissions is granted.
- II. The application for leave to appeal is dismissed.
- III. There is no order as to costs.

Hulley, AJ

Acting Judge of the Labour Court of South Africa