

REPUBLIC OF SOUTH AFRICA



IN THE LABOUR COURT OF SOUTH AFRICA

JOHANNESBURG

Not Reportable

Case Number: JR2726/12

In the matter between:

DOBBIE MAKARINGE**Applicant**

and

COMMISSIONER NELSON LEDWABA**First Respondent****PHENAMA TRADING CC****Second Respondent****COMMISSION FOR CONCILIATION MEDIATION****AND ARBITRATION****Third Respondent****Heard: 14 January 2015****Judgment: 11 December 2015**

Summary: Application for condonation for the late filing of the review application. Good cause shown. Application granted.

JUDGMENT

MTHOMBENI AJ.Introduction

- [1] This is an application for the reviewing and setting aside of a dismissal ruling and the reviewing; the setting aside of a rescission ruling made by the first respondent on 10 July 2012 and 10 September 2012, respectively; and condonation for the late filing of this application. The application is unopposed.
- [2] During May 2012, the second respondent charged the applicant with absence from work without authorisation on or about March and April 2012. A disciplinary enquiry was scheduled for 13 May 2012.
- [3] On 8 May 2012, the applicant addressed a letter to the second respondent requesting further particulars to the charges and that the date of the hearing should be changed in that he would have problems securing transport as it fell on a Sunday. The second respondent failed to respond.
- [4] The second respondent proceeded in the applicant's absence and terminated his contract of employment and advised him accordingly.
- [5] Aggrieved by his dismissal, the applicant approached the third respondent and referred a dispute alleging an unfair dismissal.
- [6] The third respondent scheduled an arbitration hearing for 10 July 2012, following an unsuccessful conciliation meeting, and appointed the first respondent to arbitrate over the dispute.
- [7] On that day, the first respondent made a dismissal ruling, for the applicant failed to appear or to be represented at the arbitration hearing.
- [8] Subsequently, the applicant made applications for the rescission of the dismissal ruling and condonation for the late filing of the rescission application on 6 August 2012 and 15 August 2012, respectively. The first respondent dismissed both applications.

Condonation

- [9] The applicant received the rescission ruling on 13 September 2012. Thereafter, he approached the Legal Aid offices in Tzaneen for assistance to lodge this application. On 2 November 2012, seeing that there was no

progress in the matter; the applicant approached the registrar of this Court. He was advised to make an application for condonation, for his application was a day late.

- [10] In my view, the delay in bringing this application is not excessive and the explanation therefor is reasonable and acceptable. I also find that, for the reasons I shall set out hereinbelow, that the applicant has reasonable prospects of success in this application should condonation be granted. The applicant has shown good cause.

Rescission ruling

- [11] Owing to road construction at the time, the applicant arrived at the arbitration hearing fifteen minutes late and the first respondent advised him that he had made a dismissal ruling.
- [12] Thereupon, the applicant reported the matter to an employee of the third respondent who advised him to lodge a complaint, instead of making an application for rescission of the dismissal ruling. Consequently, his application for rescission was twelve days late.
- [13] The applicant submits that the first respondent relied on material which he had not submitted in his application for rescission.
- [14] In his affidavits in support of the applications for condonation and rescission the applicant submits that:

“Came to CCMA House in Polokwane. I personally spoke to the lady called Analise (white lady) who advise (sic) me to write a complaint letter to (sic) which I waited for response up to date ...

I arrived 15 minutes later (sic) due to road construction which is taking place on Tzaneen road as I was using public transport from Giyani.”

- [15] On the other hand, the first respondent remarks that:

“It is his submission that upon his arrival he was shocked to learn that his matter has (sic) been dismissed. He even phoned the Polokwane office to raise his dissatisfaction wherein (sic) he was advised to apply for rescission

of the ruling. In his own submission he went ahead and proceeded to the Commission's offices in order to see the Senior Convening Commissioner. He was again advised by both Mokgadi and Annelize that he should apply for rescission."

[16] The first respondent concludes that:

"I find that the applicant failed to show case (sic) why his application should be accepted. The applicant did not provide any reasons for the lateness of his rescission application. I do not even understand how a person who had such an (sic) advice timeously could only decide to apply for such rescission a month later.

The applicant's condonation application stands to fail on those bases alone and as a result thereof I shall not deal with the rescission application...

It is my view that indeed if the applicant did not denounce his cause he should have instantly applied for rescission of the dismissal ruling upon being advised to do so. This did not happen in this matter and he further failed to provide (sic) reasonable and acceptable explanation for such delay."

[17] From this perspective, in my view the first respondent's reliance on material not before him is grossly irregular. There is no basis for him to conclude that the applicant had been advised to make an application for rescission.

[18] The first respondent disregarded the applicant's explanation for the delay that he had been advised to lodge a complaint; instead he relied on a point that had not been raised before him.

[19] It is trite that, when a commissioner determines an application for condonation for non-compliance with time limits, certain factors, including but not limited to the explanation for the delay, should be considered. In this regard, the first respondent acted irregularly when he incorrectly not found that there was no explanation for the delay, but also when he confined his enquiry only to the explanation for the delay. (See *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C –F).

[20] The first respondent's decision is, in the light of all the reasons stated above, not one that a reasonable decision maker could have reached.

Order

[21] In the result, I make the following order:

21.1 Condonation for the late filing of this application is granted.

21.2 The rescission ruling, dated 10 September 2012, made by the first respondent is reviewed and set aside.

21.3 I make no order as to costs.

M Mthombeni
Acting Judge of the Labour Court

Appearances

For the Applicant : Mr L Mashiane

Instructed by : Legal Aid of South Africa

For the Respondent: No appearance

LABOUR COURT