



**THE LABOUR COURT OF SOUTH AFRICA,
IN JOHANNESBURG**

Not reportable

CASE NO: JR 3062/12

In the matter between:

KHULULIWE MKHABA

Applicant

and

**THE COMMISSION FOR
CONCILIATION, MEDIATION AND
ARBITRATION**

First Respondent

MOTLATSI PHALA (N.O.)

Second Respondent

ESKOM HOLDINGS SOC LIMITED

Third Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

LAGRANGE, J

- [1] The parties as cited in the review judgement. The applicant has applied for leave to appeal but despite failing to file submissions timeously, has not even done so after being reminded to do so in writing.
- [2] Accordingly, the matter falls to be decided on the applicant's notice of appeal.
- [3] The applicant's first ground of appeal is that the court erred in deciding that it was irrelevant what two of the employer's witnesses testified to as to the appropriateness of her dismissal or what the employer might have done if she had approached it to discuss the security system. As I mentioned in the judgment, the statement by Mr Rasilingwani about the appropriate sanction was made in the context of it being assumed that the applicant had inherited a pre-existing practice of using the pre-signed forms, which was not the case. Further, as mentioned in my judgment, about what clearly troubled Rasilingwani, even if there had been such a pre-existing practice, the applicant appeared to see nothing wrong with it. He made no concession that Eskom had no problem with her returning to work, but simply agreed that if it was compelled to do so it would find a position for her.
- [4] Further, the applicant alleges that the court found the evidence of the investigator and Mr Rasilingwani was irrelevant to the determination of the appropriateness of the sanction. The judgment did no such thing but found nothing untoward about the arbitrator preferring the evidence of the enquiry chairpersons who were charged with determining that

issue. Secondly, Rasilingwani's evidence considered in totality and context did not support a lesser sanction.

- [5] I am satisfied in the circumstances that it is unlikely another court will come to a different conclusion on the issues raised on appeal.

Order

- [6] The application for leave to appeal is dismissed.
- [7] No order is made as to costs.



R LAGRANGE, J

Judge of the Labour Court

11 December 2015

(In chambers)