



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JS881/09

In the matter between:

GLADYS PULE

Applicant

and

NORTH WEST PARKS AND TOURISM BOARD

Respondent

In re:

**TRANSPORT AND ALLIED WORKERS UNION OF
SOUTH AFRICA obo GUSTAF MATJILA AND 26
OTHERS**

Applicant

and

NORTH WEST PARKS AND TOURISM BOARD

Respondent

Decided in chambers

Delivered on: 12 January 2016

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

TLHOTLHALEMAJE, J

- [1] Judgment in this matter following upon a trial was handed down on 2 June 2015. In the judgment, the dismissal of the individual applicants was declared to have been automatically unfair as contemplated in section 187 (1) (a) of the Labour Relations Act¹. The respondent was ordered to reinstate the individual applicant retrospectively from 14 December 2008. Back-pay due to the individual applicants was however limited to six months' salary, calculated at their rate of pay as at 14 December 2008.
- [2] Only one of the individual applicants, Ms. Gladys Pule (now represented by a new set of attorneys) seeks leave to appeal against the order relating to the amount of back-pay. Pule is of the view that the Court should have granted her full back-pay. Accompanying the application for leave to appeal is an application for condonation for its late filing.
- [3] The respondent (also represented by a new set of attorneys) has ostensibly opposed both applications. It is said ostensibly in that firstly, notices to oppose both applications were filed on 8 July 2015. However, no answering affidavit was filed in respect of the application for condonation. Instead, the respondent had on 1 December 2015, filed a notice consisting of copies of its written heads of argument and submissions in regards to condonation in respect of the late filing of those written heads of argument. This document is incomplete and can hardly be construed as a proper application for condonation. In essence then, there is no proper opposition to application for leave to appeal.
- [4] In terms of Rule 30 (2) of the Rules of this Court, if leave to appeal has not been made at the time of judgment or order, an application for leave must be made and the grounds for appeal furnished within 15 days of the date of the judgment or order against which leave to appeal is sought, except that the court may, on good cause shown, extend that period. The application for leave to appeal in this case was filed on 26 June 2015, which was some 9 days out of time after judgment was handed down on 2 June 2015.

¹ Act 66 of 1995

- [5] The principles applicable to applications for condonation are well established². Thus whether the applicant has shown good cause involves a consideration of a variety of factors including the degree of lateness, the explanation therefor, the prospects of success and the importance of the case. These factors are interrelated and are not on their own individually decisive. However, where there are no prospects of success, there would be no point in granting condonation. Furthermore, a slight delay and a good explanation may nevertheless help to compensate prospects which are not strong, whilst the importance of the issue and strong prospects may compensate for a long delay. Ultimately, the interests of justice would determine whether the application for condonation should be granted³.
- [6] In explaining the delay, Pule in her founding affidavit averred that having obtained a copy of the judgment from her erstwhile attorneys (who had represented the individual applicants on *pro bono* basis), she was more concerned about the order in respect of the back-pay granted to her. Having taken up her concerns with her then attorneys, she was advised that no leave to appeal would be launched on her behalf. She then approached her new attorneys of record on 24 June 2015, who could only file the application on that date.
- [7] It is accepted that a delay of about nine days in filing the application for leave to appeal is not excessive. Nevertheless, Pule is still required to furnish a reasonable and acceptable explanation for the delay. It is trite that an applicant seeking condonation for non-compliance with the set time frames must give a complete account for each period of the delay⁴. In this case, it is my view that Pule's explanation is lacking in detail and does not give a complete account of what had caused the delay between 2 June 2015 when the judgment was handed down, and 24 June 2015 when she had ultimately secured a new set of attorneys to represent her. She had not explained as to when she was informed by her erstwhile attorneys of record that they would not launch an application for leave to appeal. Even if she was informed on 2 June 2015 that no such an

² See *Melane v Santam Insurance Co. Ltd* 1962 (4) SA 531 (A) at 532B-E

³ *Brummer v Gorfil Brothers Investments (Pty) Ltd* [2000] (2) SA 837 (CC) at 839 F

⁴ See *NUMSA and another v Hillside Aluminium* [2005] 6 BLLR 601 (LC)

application would be launched, there is no explanation at all for the delay until 24 June 2015.

- [8] Other than Pule's failure to proffer a reasonable and/or acceptable explanation for the delay, the issue is whether she has prospects of success in respect of her application for leave to appeal. It is trite that even if the delay is not excessive no purpose would be served in granting condonation where the applicant's prospects of success are minimal.
- [9] In considering Pule's prospects of success, I have had regard to the grounds upon which she sought leave to appeal, and I am not convinced that there are reasonable nor remote prospects that the Labour Appeal Court would come to a different conclusion to that arrived at by the court *a quo*. Pule's primary ground is that the allegations and/or charges preferred against her related to incidents alleged to have taken place on 27, 29 and 30 November 2008 and on 1 December 2008. Her contention was that at that time, she was on annual leave from 26 November 2008 to 3 December 2008. She further submitted that her evidence in this regards was not refuted during the trial.
- [10] In the light of the above contentions, Pule submitted that the Court had erred in not awarding her full back-pay from the date of dismissal as she was not supposed to have been suspended, charged and dismissed in the first place. She further submitted that the granting of six months back-pay offended her constitutional right to fair labour practices.
- [11] Having reflected on my judgment, it is apparent from the evidence led during trial that Pule's contentions in regards to being on leave at the time of the incidents that led to the dismissal were improbable. Her evidence was contradicted by Shibane's testimony on behalf of the respondent, to the effect that he had seen and spoken to her during the course of the strike action, as she was one of the representatives or spokesperson of the striking employees.
- [12] Other than her evidence having been contradicted, it is trite that the principles regarding the granting of a remedy involves an exercise of a judicial discretion. The legal principles in this regards as espoused in *Aviation Services (Pty) Ltd v*

CCMA & others⁵ and other authorities were sufficiently dealt with in the judgment. In exercising my discretion, a variety of factors were considered as can be gleaned from paragraphs [59] to [65] of the judgment, and I fail to understand how Pule expects the Labour Appeal Court to interfere with the judgment when she had not indicated in what respects that discretion was not exercised judicially and properly.

[13] In the light of the above, and further having considered all material pertinent to the application before the court, it is concluded that Pule has not proffered a reasonable and acceptable explanation for the delay *albeit* that delay is not excessive. Having considered the grounds upon which she seeks leave to appeal, I am not persuaded that there are reasonable prospects of success in the application for leave to appeal. Notwithstanding the fact that the respondent's opposition to the applications is not properly before the court, I am nevertheless of the view that it (respondent) is entitled to finality on the matter given its protracted history. Furthermore, the interest of justice dictate that the application for condonation in respect of the leave to appeal should not be granted.

Order:

- i. The late filing of the application for leave to appeal is not condoned.
- ii. The application for leave to appeal is also dismissed.
- iii. There is no order as to costs.



Tlhotlhemaje, J

Judge of the Labour Court of South Africa

⁵ (2008) 29 ILJ 2507 (CC) at para [48]