



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR 1047/12

Not Reportable

In the matter between:

JOSEPH MAIMAU SIPHO SIBIYA

Applicant

and

DENGA MUJLIMA N.O.

First Respondent

**THE GENERAL PUBLIC SERVICE
SECTORAL BARGAINING COUNCIL
MINISTER OF LABOUR**

Second Respondent

Third Respondent

Heard: 19 November 2015

Delivered: 27 January 2016

REASONS FOR JUDGMENT

Molahlehi, J

Introduction

- [1] On 19 November 2015, this Court made an order dismissing the applicant's review application. In the application the applicant sought to have the rescission ruling made by the first respondent under case GPBC 2240/2010 reviewed and set aside. The reasons which were promised are set out below.

Background

- [2] The applicant who was prior to his dismissal employed by the third respondent as an Occupational Health Inspector was dismissed on allegations of misconduct related to bribery. Following his dismissal, he referred the dispute to GPSSBC. The matter was referred to conciliation where it remained unresolved and was later referred to arbitration.
- [3] The applicant failed to attend the arbitration hearing. His unfair dismissal claim was accordingly dismissed. He then applied for the rescission of the dismissal ruling on the ground that he did attend at the venue where the hearing was to have been conducted but arrived late because of traffic and problem of finding parking. Aggrieved by the outcome of the rescission application he instituted the present proceedings.

Grounds of review

- [4] The applicant in his founding affidavit in the present matter raised several grounds of review the essence of which is that the Commissioner committed misconduct and gross-irregularity

The Commissioner's ruling

- [5] The arbitrator dismissed the applicant's rescission application on the ground that it was filed outside the 14 days prescribed by the rules of the bargaining council and that it was not accompanied by an application for condonation.

Evaluation

- [6] It is common cause that the rescission application was never served on the third respondent. In this respect it was conceded on behalf of the applicant that the fax number, 0152958565, where the rescission application was supposedly served on the third respondent belongs to the applicant. This means the rescission application was never properly placed before the first respondent. It was for this reason that the review application was dismissed.
- [7] As concerning the issue of cost, it was not disputed that the defect in the application was brought to the attention of the applicant long before the hearing of this matter but notwithstanding that the applicant persisted with the application. It was for this reason that I saw no reason in fairness and law why the costs should not follow the results.

Order

- [8] It was for the above reasons that the following order was made:
1. The review application is dismissed with costs.

E, Molahlehi

Judge of the Labour Court of South Africa