



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR 1217/13

Not Reportable

In the matter between:

BONGINKOSI MAGUBANE

Applicant

and

**METAL INDUSTRIES
BARGAINING COUNCIL**

First Respondent

CLAIRE HOCK N.O.

Second Respondent

REVIVE ELECTRICAL TRANSFORMERS (PTY) LTD

Third Respondent

Heard: 21 December 2015

Delivered: 27 January 2016

REASONS FOR ORDER

MOLAHLEHI, J

Introduction

- [1] This is an application to review and set aside the ruling made by the second respondent (the Commissioner) in terms of which the condonation application for the late filing of the dispute he had referred to the first respondent (the bargaining council) was refused.
- [2] The applicant referred a dispute concerning an alleged unfair dismissal to the bargaining council arising from his dismissal by the third respondent for the alleged poor work performance. The applicant was dismissed on 14 December 2012 and referred the dispute to the CCMA on 29 January 2013.
- [3] The applicant says that the reason for referring the dispute late was because he thought that the CCMA offices were closed during the December period.
- [4] The Commissioner in her analysis found that the 15 days delay in filing the dispute was significant. She further found that if the applicant felt aggrieved by his dismissal he ought to have made enquiries about the closure of the CCMA during the festive season before he left for home. Whilst accepting that the CCMA does close its offices between 16 December and 8 January the Commissioner says that the applicant could have made enquiries as to when it opens in January after the December holidays.
- [5] In considering the prospect of success the Commissioner relying on the case of *NUM V Council for Mineral Technology*¹ found that there were no prospect of success having regard to the documentary evidence submitted by the third respondent.
- [6] The Commissioner also considered the issue of prejudice in weighing whether or not condonation should be granted or not. In doing so she found that it may well be that the applicant may be prejudiced but that was outweighed by the prejudice that the third respondent would suffer in having to defend the application. In this respect the Commissioner found that the prejudice to be suffered by the applicant in the event

¹ 1999 3 BLLR 209 (LAC),

the refusal of condonation was outweighed by the consideration of the fact that the third respondent would have incurred costs to defend the case.

The principles governing condonation

[7] The test to apply in considering whether condonation should be granted or refused is the interest of justice as stated in *Grootboom v National Prosecuting Authority*.² The interest of justice is determined by having regard to the following factors: (a) the degree of lateness or the extent of non-compliance with the prescribed time frame, (b) the explanation for the lateness or the failure to comply with time frames, (c) prospects of success or *bona fide* defense in the main case; (d) the importance of the case, (e) the respondent's interest in the finality of the judgment, (f) the convenience of the court; and (g) avoidance of unnecessary delay in the administration of justice.

[8] In *Grootboom*, Zondo, J held that:

'51 ... some of the factors may justifiably be left out of consideration in certain circumstances. For example, where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of reasonable prospects of success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party. As a general proposition the various factors are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice.'

[9] In dealing with the approach to adopt when dealing with prospects of success and the explanation tendered for the delay, Zondo, J had the following to say:

'[52] where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of reasonable prospective of success, condonation may

² 2014 (1) BCLR 65 (CC) at para 22.

be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party.’³

[10] It is trite that Commissioners of the bargaining council like those of the CCMA have very wide powers when considering whether to grant or refuse condonation. They however have to exercise that discretion judicially. It is for this reason that the court will always be slow to interfere with the exercise of the discretion unless satisfied that the discretion was exercise in an unfair and unreasonable manner.

[11] In the present matter it is apparent from the reading of the ruling of the Commissioner that she applied her mind to the relevant factors set out above and based her conclusion on fair and reasonable principles. It should, in this respect be noted that this is an application involving an individual who more importantly failed to explain the reason for the delay in the January period. He proffered no reason as to why he did not approach the CCMA to find out as to when they would be opening in January.

[12] It was based on the above reasons that the following order was made:

1. The review application of the applicant is dismissed with no order as to costs.

E, Molahlehi

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: In person

For the Respondent: M De Villiers of De Villiers & Du Plessis Attorneys

³ Ibid at para 52.

LABOUR COURT