



THE LABOUR COURT OF SOUTH AFRICA HELD AT, JOHANNESBURG

JUDGEMENT

Not Reportable

Case no: JR1926/13

In the matter between:

THULANI NKWANYANE

Applicant

and

**METAL AND ENGINEERING INDUSTRIES
BARGAINING COUNCIL**

First Respondent

LUNGILE MTIYA N.O.

Second Respondent

SEGALS METALS CC

Third Respondent

Heard: 10 July 2015

Delivered: 16 February 2016

JUDGMENT

Introduction

- [1] This is an application in terms of section 158(1)(g) of the Labour Relations Act 66 of 1995 ("the LRA") to review and set aside the arbitration award which the second respondent handed down on 12 August 2013 ("the arbitration award"). The applicant also seeks condonation for the late filing of the review application.
- [2] The third respondent opposes the review application and the condonation application. The first and second respondents chose to abide the decision of this Court.

The condonation application

- [3] The review application is some ten months late. Such a delay is excessive where one of the primary purposes of the Labour Relations Act 66 of 1995 ("the LRA") is to ensure the expeditious resolution of labour disputes.
- [4] The reason for the delay is that the applicant erroneously telefaxed the review papers to the telefax number of the Bargaining Council and the Arbitrator instead of the telefax number of the third respondent. The applicant rectified this error once he realised that the review papers had been telefaxed to the wrong number.
- [5] I am satisfied that the applicant was not in wilful default and that his failure to timeously telefax the review papers to the third respondent was a *bona fide* error in the circumstances.
- [6] Insofar as the prospects of success are concerned, the applicant alleges in the condonation application and the review application that the Arbitrator was biased and committed a reviewable irregularity by essentially believing the evidence led by the third respondent's witnesses during the arbitration proceedings and disbelieving his version of events.

- [7] The applicant further alleged, in the review application, that the Arbitrator committed a gross irregularity in the conduct of the arbitration proceedings by preventing him from cross-examining the witnesses of the third respondent.
- [8] I have read and considered the transcript of the arbitration proceedings ("the transcript") and the arbitration award. In my view, there is no evidence before this Court to suggest that the Arbitrator was biased or that the applicant should reasonably have apprehended bias on the part of the Arbitrator.
- [9] It is apparent from the transcript that the applicant was represented by a NUMSA official, Mr Sam Khumalo, who was afforded an opportunity to cross-examine the third respondent's witnesses and was also afforded an opportunity to present the applicant's case.
- [10] The transcript similarly does not show that the Arbitrator unnecessarily intervened during the arbitration proceedings or displayed bias in favour of the third respondent or against the applicant. There is, therefore, no merit in these two grounds of review, namely, that the Arbitrator was biased against the applicant or that she failed to allow his representative to cross-examine the third respondent's witnesses during the arbitration proceedings.
- [11] Insofar as the remaining ground of review is concerned, namely, that the Arbitrator erred in believing the third respondent's witnesses and disbelieving the applicant, it is clear from the arbitration award that the Arbitrator made a credibility finding against the applicant and in favour of the third respondent's witnesses.
- [12] A Court of review would be extremely reluctant to interfere with credibility findings made by a trier of fact such as the Arbitrator.¹ The reason for this is obvious; namely, that the Court of review does not have the benefit of

¹ *Cox v CCMA and Others* (C360/99) [2000] ZALC 111(02 October 2000).

hearing the *viva voce* evidence of these witnesses in order to assess the credibility of their evidence.

[13] I am satisfied that the credibility finding made by the Arbitrator in the arbitration award falls within the range of findings which a reasonable decision-maker would have made on the evidence before the Arbitrator.²

[14] There is, therefore, also no merit in this ground of review.

[15] Since the applicant has no reasonable prospects of success in the review application, he has not satisfied one of the essential requirements for condonation.³

[16] Accordingly, I am unable to condone the late filing of the review application.

Conclusion

[17] Accordingly, I make the following order:

17.1 The application for condonation of the late filing of the review application is dismissed;

17.2 The review application is therefore also dismissed;

17.3 There is no order as to costs.

Van As, AJ

Acting Judge of the Labour Court

² *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] 12 BLLR 1097 (CC).

³ *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A).

Appearances:

For the applicant: In person

For the third respondent: Ms Esté Wessels of Du Randt du Toit Pelser
Attorneys

LABOUR COURT