



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR 2959/12

In the matter between:

SOUTH AFRICAN MUNICIPAL WORKERS

UNION (SAMWU obo TAFU)

Applicant

and

MOGALE CITY LOCAL MUNICIPALITY

First Respondent

COMMISSIONER M.L MATLALA

Second Respondent

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

Third Respondent

Heard: 16 June 2015

Delivered: 16 February 2016

Summary: The Practice Manual of the Labour Court of South Africa came into effect on 2 April 2013. It is not retrospective and does not apply to review applications filed before its commencement date.

JUDGMENT

LALLIE, J

[1] The individual applicant ("the applicant") was an employee of the first respondent. Pursuant to his dismissal, he referred an unfair dismissal dispute to the third respondent. The second respondent arbitrated the dispute and issued, on 5 November 2012, an award in which he found the applicant's dismissal substantively and procedurally unfair; and ordered that he be reinstated. On 11 December 2012, the first respondent launched an application to review and set aside the arbitration award. On 25 July 2014, the applicant, being of the view that the first respondent was dilatory in prosecuting the review application, served and filed an application for an order in the following terms:

'1 That the first respondent's review application filed in the matter is deemed to have been withdrawn and/or has lapsed for non compliance with the provisions of clause 11.2 of the Practice Manual of the Labour Court of South Africa which became effective on 1 April 2013.

Alternatively

2 An order compelling the first respondent to file the record in the review application within 5 days of the court order.

3 In the event that the first respondent failed to comply with paragraph 2 above, the applicants can approach the court on the same papers, supplemented by a supplementary affidavit as may be necessary, for an order dismissing the review application, with costs.

4 An order in terms of s 158 (1) (c) of the Labour Relations Act 66 of 1995 making the award issued by the third respondent under case number GPD080923 and dated 5 November 2012, as varied, an order of court.

5 Further and/or alternative relief.

6 Costs of suit.'

- [2] On 21 October 2014, the first respondent filed its answering affidavit opposing the dismissal application. The answering affidavit was filed 50 days late. On 22 October 2014, the applicant objected to the late filing of the answering affidavit. The dismissal application was set down for 18 June 2015. Just before the matter was argued, the first respondent filed an application for condonation of the late filing of the answering affidavit. As the first respondent filed the record after the dismissal application had been filed, the applicant sought only the order that the review application be deemed to have been withdrawn and/or has lapsed for non-compliance with provisions of clause 11.2 of the Practice Manual of the Labour Court of South Africa ("the practice manual").
- [3] The reason advanced, on behalf of the first respondent, for the late filing of the answering affidavit is that Mr Skhosana (Skhosana), the attorney to whom the first respondent's file was initially allocated resigned with immediate effect in December 2014. The deponent to the founding affidavit of the condonation application, Mr Phungo (Phungo), of the firm of attorneys representing the first respondent, submitted that around the beginning of November 2014, he instructed Skhosana to prepare the condonation application. He discovered, in June 2015, that Skhosana had not carried out his instructions. He drafted and filed it on 18 June 2015. When Phungo instructed Skhosana to file the condonation application, the answering affidavit was either due or already overdue. Phungo gives no reason for not establishing shortly after Skhosana's resignation whether he had filed the condonation application. His omission of the date, on which he discovered that the condonation application had not been filed in June 2015 has the effect of concealing the extent of the delay.
- [4] The approach of dealing with attorneys who do not comply with Rules of Court is expressed as follows in *Grootboom v NPA*:¹

'The language used in both *Van Wyk* and *Ethekwini* is unequivocal. The warning is expressed in very stern terms. The picture depicted in the two judgements is disconcerting. One gets the impression that we have reached a state where litigants and lawyers disregard the Rules and directions issued by

¹ [2014] 1 BLLR 1 (CC) at para 34.

the Court with monotonous regularity. In many instances very flimsy explanations are proffered. In others there is no explanation at all. The prejudice caused to the Court is self-evident. A message must be sent to litigants that the Rules and the Court's directions cannot be disregarded with impunity.'

- [5] The explanation proffered by the first respondent for filing its answering affidavit late is flimsy and unreasonable. The delay caused prejudice to the Court in that the condonation application was filed on the date that the matter was set down for hearing. It makes mockery of the requirement, in the first respondent's notice of motion that the applicant should file the opposing affidavit within 10 days. Absent a reasonable explanation for the delay, the condonation application cannot succeed.
- [6] The applicant elected to base its application on the provisions of clause 11.2 of the Practice Manual. The directives in the Practice Manual came into effect from 2 April 2013. Its application is not retrospective. The provisions of the practice manual do not apply to the review application which the applicant seeks this court to dismiss as it was filed on 11 December 2012. The application for dismissal can, therefore, not succeed.
- [7] In the premises, the following order is made:
- 7.1 The application for condonation of the late filing of the answering affidavit is dismissed.
- 7.2 The application is dismissed.

Lallie, J

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate Navsa

Instructed by: Cheadle Thompson and Haysom Inc

For the First Respondent: Advocate Sibuyi

Instructed by: Phungo Incorporated

LABOUR COURT