



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

CASE NO: JR 1853/08

In the matter between:

**FIDELITY SPRINGBOK SECURITY
SERVICES (PTY) LTD**

APPLICANT

And

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

FIRST RESPONENT

COMMISSIONER MAPALO TSATSIMPE

SECOND RESPONDENT

L GREYLING

THIRD RESPONDENT

Heard: 11 September 2015

Delivered: 11 September 2015

Edited: 24 February 2016

RULING: LEAVE TO APPEAL (EX-TEMPORE)

VAN NIEKERK J

- [1] This is an application for leave to appeal argued yesterday. The judgment appealed against is one issued by Acting Judge Sesele on 15 March 2012.
- [2] As I remarked during the course of argument, it is difficult to consider applications for leave to appeal against a judgment delivered by another Judge, but be that as it may, I have come to the conclusion that there is no merit in the application and that the application for leave to appeal should be dismissed.
- [3] My reasons are as follows. The review application which gave rise to the judgment was dismissed by Acting Judge Sesele on 15 March 2012. An application for leave to appeal was filed on 23 April 2012, that is some 9 days out of time and the applicant has applied for condonation for the late filing of the application for leave to appeal.
- [4] It is not necessary, in my view, the decision to which I have come for me to make any formal ruling in that application. But 9 days is not an inordinate

delay and in my view the reason proffered for the delay are acceptable. What I am concerned about is the fact that this matter reaches this court more than 3 years after the application for leave to appeal was filed. I appreciate that not all of that delay can be laid at the feet of the applicant. It is clear from the facts before me that the file at some stage went missing and that the applicant had some difficulties, a consequence in filing the application for leave to appeal. The application for condonation for the late filing would be in the application gives some indication of what transpired between April 2012 and 10 September 2015, the date on which the application for leave to appeal was filed and the date on which this application was argued.

- [5] I am not satisfied having regard to the material before me that the applicant has prosecuted this application with due diligence. For that reason alone, the application for leave to appeal ought to be dismissed.
- [6] It is incumbent on applicants in applications such as the present to ensure that the matter is enrolled for hearing timeously and that there is no unreasonable delay in prosecuting the application. That must be so, even in circumstances where the court file appears to be missing, or where other obstacles are placed in the path of an applicant.
- [7] In any event, in regard to the merits of the application, I am not satisfied that another court would come to a different conclusion to that which the learned Acting Judge came.
- [8] The threshold for review is set high and as the Labour Appeal Court is remarked more than once, it is not often that an applicant in an application for review will succeed in having a ruling set aside particularly a ruling as was made in the present instance to refuse a postponement. The facts of the matter and these are undisputed, is that the postponement sought was not made in accordance with the CCMA Rules and that the basis for the application for postponement, i.e. that witnesses needed to be located was

not a proper basis in circumstances where the applicant had had some time to locate and secure the witnesses that it intended to call.

For those reasons then the order is as follows:

1. The application for leave to appeal is dismissed.

ANDRÉ VAN NIEKERK

JUDGE OF THE LABOUR

COURT