



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG
JUDGMENT

Not Reportable

CASE NO: JR 2223/2013

In the matter between

CAP PERSONNEL PLACEMENT (PTY) LTD

Applicant (First Respondent)

and

NUMSA o.b.o DANIEL SKHOSANA

First Respondent (Appellant)

PANELIST / COMMISSIONER MAHOMED RAFFEE N.O

Second Respondent

METAL ENGINEERING INDUSTRIES

BARGAINING COUNCIL

Third Respondent

Heard: Considered in chambers

Delivered: 30 January 2017

LEAVE TO APPEAL RULING

BALOYI AJ

INTRODUCTION

1. The Applicant, Daniel Skhosana with assistance of his trade union approached this Court for leave to appeal the judgment delivered by

myself *ex tempore* on 17th December 2015. In the said judgment an order reviewing and setting aside of condonation ruling was made coupled with a substitution order to the effect that his *condonation application is dismissed*. The said review application was brought by the First Respondent. The content of the file denotes no filing of opposition papers by the First Respondent. More of this appear herein below.

THE APPLICATION

2. The application for leave to appeal was filed on 25th May 2016 containing grounds upon which leave to appeal is sought. For reasons set out below I see no need to have the said grounds restated herein. What deserves no omission is that when the application was filed the period of approximately five months had lapsed. Correspondence exchanged between the parties' legal representatives was copied to the Registrar hence same made it to the Court file.
3. It is apparent from the correspondence that the Applicant was reminded of the need to apply for condonation of the late filing of the application. Having received full reasons for the *ex tempore* judgment on 10th May 2016 was the Applicant's reaction to the reminder. According to the Applicant the filing of the application on 25th May 2016 was not out of time.

THE LEGAL FRAME WORK

4. I have not been fortunate to find any authority that supports the Applicant's

refusal to apply for condonation and none has been referred to in the Applicant's written submissions. It is however of high relevancy to visit the provisions of Rule 30(3) which read as follows;

"(3) If the reasons or the full reasons for the court's order are given on a date later than the date of the judgment or order, the application for leave to appeal must be made within 10 days after the date on which the reasons are given, except that the court may, on good cause shown, extend that period."

5. In the light of the judgment being delivered on the date of the sitting of the Court, certainly there were no reasons for the judgment to be anticipated on a later date. In respect of this matter the proper interpretation of Rule 30(3) read with Rule 30(2) is set out in section 14.5 of the Practice Manual which read thus;

" 14.5 When ex tempore judgments are handed down, it is the responsibility of the parties to arrange for the transcript of the judgment. Awaiting the transcript does not delay the time periods from continuing to run. The time periods run from the day the judgment was handed down."

CONCLUSION

6. In this regard there is no better way to convey that the Applicant was bound to apply for condonation under the circumstances. In the absence of application for condonation, the application for leave to appeal deserves no further consideration than dismissal. What is also concerning is that despite the First Respondent's reminder, the Applicant remained resistant to the fact that there was a need to apply for condonation.

7. Although the application is not opposed, it cannot be denied that the First Respondent incurred costs in the application for leave to appeal, which costs were kept minimal by undertaking to oppose as soon as the Applicant filed condonation application. To this date no condonation application has been filed. In the main judgment I have referred to the *Ellerine Holdings*¹ judgment which is undoubtedly relevant herein. Without hesitation it would seem that each and every legal step taken by the Applicant is affected by the lateness syndrome. This surely has a frustrating effect on the First Respondent towards getting finality to the matter. A cost order may not be a perfect solution for the situation at hand, however this is a deserving case for the granting of the cost order.

ORDER

8. In the premises the following order is made.

- 8.1 The application for leave to appeal is dismissed with costs.

Baloyi AJ

Acting Judge of the Labour Court of South Africa

Appearances: Determined in chambers

¹ 2002 23 ILJ 1282 LC Paragraph 14