



THE LABOUR COURT OF SOUTH AFRICA

JOHANNESBURG

Not Reportable

Case no: JS 2345/14

**SOUTH AFRICAN MUNICIPAL WORKERS' UNION
obo SEICHOKO & OTHERS**

Applicant

and

SALGC

First Respondent

PJ GREYLING N.O

Second Respondent

NALEDI LOCAL MUNICIPALITY

Third Respondent

Heard on: 9 February 2017

Delivered: 13 February 2017

JUDGMENT

VAN NIEKERK J

- [1] This is an application to review and set aside an arbitration award issued by the second respondent on 2 June 2014. In his award, the second respondent concluded that the third respondent had not committed an unfair labour practice in relation to the promotion of a Mr Groep and by failing to appoint to the individual applicants to the same level.
- [2] The applicant received the arbitration award on 2 July 2014. The papers in the present application was served only on 1 December 2014. In terms of the applicable time limit, the application ought to have been served by no later than 19 August 2014. The application was therefore served some three months late.
- [3] The explanation for the delay is one that concerns a late request to the applicant's attorneys to deal with the review application, and the inability of the attorneys to deal with the matter expeditiously. In particular, the attorneys were instructed during the last week of August 2014. By this time, the statutory time limit had already expired. Consultation took place only on 30 September 2014, whereafter the preparation papers commenced. A further consultation to place on 1 October 2014, apparently for the purposes of drafting the supplementary affidavit.
- [4] The delay, although not inordinate, is excessive. In my view, the explanation for the delay is poor. The applicant fails to explain why the attorneys were instructed as late as they were. At that stage, all concerned must have been aware that any application for review was already out of time. Yet, it took from the end of August to the beginning of December to file the application. The explanation which is proffered relates in essence to the attorney's commitments to attend to other matters during August and September and other urgent matters during October. The explanation is vague and does not account for the whole of the period of

delay. I fail to appreciate why another attorney from the office could not deal with the matter, given that it was already out of time. The explanation for the period from 1 October 2014, where the deponent to the affidavit in support of the condonation application states that a consultation was required to prepare the supplementary affidavit makes no sense. A supplementary affidavit is due only once the record has been filed, after the filing of the founding affidavit.

[5] The applicable legal principles are clear – in the absence of a satisfactory explanation for an excessive delay, condonation stands to be refused and the applicant's prospects of success are irrelevant.

[6] There is a further consideration to take into account. The practice manual requires the parties to review application to treat the matter as they would in urgent application. An applicant is also required to complete the filing of all papers within a period of 12 months after the filing of the application. In the present matter, the replying affidavit was filed in May 2016, significantly more than a year after the filing of the founding papers. These requirements, and the recent statutory amendment which require a party in a review application to complete the relevant paperwork within a period of six months after the date of review, are all directed at the statutory purpose of expeditious dispute resolution. To grant condonation in the present circumstances would frustrate that purpose.

For the above reasons, I make the following order:

1. Condonation for the late filing of the review application is refused.
2. The application for review is dismissed.

ANDRÉ VAN NIEKERK
JUDGE OF THE LABOUR COURT