



THE LABOUR COURT OF SOUTH AFRICA

JOHANNESBURG

Reportable/Not Reportable

Case no: JR 2755/15

MATLOU SAUL MOLOTO

Applicant

And

**COMMISSION FOR CONCILIATION, MEDIATION &
ARBITRATION**

First Respondent

TREVOR WILKES N.O.

Second Respondent

RAND WATER

Third Respondent

Heard on: 09 February 2017

Delivered: 14 February 2017

JUDGMENT

VAN NIEKERK J

- [1] This is an application to review and set aside an arbitration award issued by the second respondent. In his award, the second respondent upheld the dismissal of the applicant by the third respondent.

- [2] The arbitration award is dated 3 March 2014. The applicant states that he received the award on or about 17 March 2014. In terms of the time limit established by s 145 of the LRA, the application for review ought to have been filed within six weeks, i.e. on or before 7 April 2014. The review application was filed only on 12 January 2015, some 10 months late.
- [3] The explanation for the late filing of the review application is in essence one that relates to a union official, whom the applicant believed was attending to the review. The applicant states that he was advised that the process would take approximately 18 months to be finalised and that it was only in November 2014 that he went to the union officers to enquire back progress. He could not find the official concerned and during December 2014, the applicant met with the unions hurting provincial deputy secretary who appointed the applicant's current attorneys of record. A consultation was held on 11 December 2014 where it became apparent that the union official had done nothing to prosecute the review other than to apply for a case number. In late December 2014, the attorney said read all of the documents used in the arbitration hearing and drafted a founding affidavit.
- [4] When an applicant seeks to ascribe blame for a delay on the part of a legal or other representative, the courts have made clear that the applicant may not rest content in the knowledge that the representative concerned has been furnished with instructions – it is incumbent on the applicant to follow up and ensure that those instructions are being executed. There is a limit beyond which a litigant cannot escape the consequences of an attorneys lack of diligence (see *Saljee and another NNP v Minister of Community Development* 1965 (2) SA 135 (A)). An applicant in these circumstances must satisfy the court that none of the delay is to be imputed to him or herself.
- [5] There is a further consideration that must necessarily be taken into account, consequent on the publication of this Court's practice manual and recent amendments to the LRA. In the recent decision by Myburgh AJ in *Makuse v CCMA & others* (JR 2795/11, unreported, 18 August 2015), the court alluded to measures recently instituted to address systemic delays, particularly in review applications. The practice manual, introduced in April 2013, records that a review application is 'by its very nature an urgent application'. The practice manual also requires that all of the necessary papers in any review application

be filed within 12 months of the date of the launch of the application. Although in the present instance the practice manual was not in force at the relevant time, the classification of the review application is one that necessarily requires its prosecution with diligence and urgency remains apposite. As the court observed, the corrective steps taken by this court and the legislature (in the form of the 2014 amendments to the LRA) the statutory imperative that labour disputes must be effectively and thus expeditiously resolved. What this requires is a strict scrutiny of condonation applications and an approach that affords due regard to the statutory purpose of expeditious dispute resolution.

- [6] it is not in dispute that the applicant was a shop steward. It is reasonable to assume therefore that he was aware of the applicable time limit and the importance of following up on instructions given to union officials. For the period 7 April 2014 to the end of November 2014, there is no evidence of any follow-up by the applicant. The explanation, insofar as it seeks to attribute blame to union officials, is not supported by any confirmatory affidavits. In my view, the explanation for the delay is not satisfactory. Given an unsatisfactory explanation for an excessive delay, the applicant's prospects of success are not relevant.

I make the following order:

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

Van Niekerk J

Judge of the Labour Court

APPEARANCES

APPLICANT: Mr N Thagwana, Madlela Gwebu Mashamba Inc.

THIRD RESPONDENT: Mr O Molatudi, Hogan Lovells