



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JS 617/16

In the matter between:

JAMES MOTEBU

APPLICANT

and

SYLVANIA METALS

RESPONDENT

Date of ruling: 20 February 2016 (In Chambers)

RULING: LEAVE TO APPEAL

VAN NIEKERK J

- [1] This is an application for leave to appeal against a judgment delivered by this court on 7 November 2016. In the order, I afforded the applicant an opportunity to file an application to condone the late referral of his dispute to this court within 7 days, failing which the referral would be dismissed.
- [2] The purpose of the order was to afford the applicant, who had filed his application for review out of time, an opportunity to apply for condonation. Strictly, the court was entitled to dismiss the application for want of jurisdiction. The court was entitled, if not obliged, to have regard to the jurisdictional point since to hear the matter without the requisite jurisdiction would amount to an infringement of the rule of law. There is thus no merit in the applicant's contention that the court erred in raising and considering this point. To the extent that the applicant submits that the order was made without his consent, the reality that confronted the applicant was to agree to the postponement and avail himself of an opportunity to file an application for condonation, or to have the application dismissed. The raised no objection to the matter being postponed so as to enable him to explain late referral of his dispute.
- [3] The present application was itself filed out of time without any application for condonation. On that basis, strictly, the application should be dismissed for want of jurisdiction. However, having regard to the relevant test, there is no merit whatsoever in the application for leave to appeal; indeed, I concur with the respondent's submission that the application is nothing less than egregious. In my view, and in the light of the broad discretion conferred on the court by s 162, the requirements of the law and fairness dictate that the applicant should be liable for the costs of the application.

For the above reasons, make the following order:

1. The application for leave to appeal is dismissed, with costs

ANDRÉ VAN NIEKERK

JUDGE OF THE LABOUR COURT