



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR1341/2015

In the matter between:

RAKOMANE AND 31 OTHERS

Applicants

and

**GENERAL PUBLIC SERVICE SECTORAL
BARGAINING COUNCIL**

First Respondent

COMMISSIONER DAVID SEOPELA

Second Respondent

**DEPARTMENT OF ROADS AND TRANSPORT,
LIMPOPO PROVINCE**

Third Respondent

Heard: 16 February 2017

Delivered: 22 February 2017

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

- [1] This matter was set-down for pre-enrolment hearing. The Third Respondent had raised several preliminary points, and argued that the review application was not ripe for hearing, and that in fact it ought to be dismissed. The Applicants had brought an application to review and set aside the award

issued by the Second Respondent on 20 May 2015. The review application was launched on 30 July 2015.

- [2] Other than the issue of condonation in respect of the late filing of the review application, the Third Respondent also raised concerns surrounding whether a complete and proper record of arbitration proceedings had been timeously filed; whether the Applicants' cause of action had not become moot, and further whether there was a proper case made out for the review in view of new material that was not canvassed at arbitration proceedings having been introduced in that review application.
- [3] The Applicants contended that even though the award is dated 20 May 2015, it only came to their attention on 18 June 2015, and as far as they are concerned, the application was launched on time. The Third Respondent however denied that the award could have only come to the Applicants' attention on 18 June 2015, or that the application was filed timeously
- [4] In terms of the provisions of section 145 (1) (a), a review application ought to be brought before the court within six weeks of the date that the award was *served* on the Applicant. There are no attachments to the notices of compliance in terms of Rule 7A of the rules of this court to indicate the date on which a copy of the award was served on the Applicants. This notice was filed on 18 August 2015. However, in an explanatory affidavit filed by the First Respondent's Ephraus Lephai Kgofelo, he averred that the arbitration proceedings were not recorded hence a mechanical recording could not be made available. Significant with the averments made by Kgofelo is that the review application was served on the First Respondent by the Applicants on 20 May 2015¹. It appears unlikely however that the Applicants could have filed and served the review application on the same date that the award was issued.
- [5] In the absence of any confirmation from the First Respondent as to the date on which the award was served on the Applicants, and the award being dated 20 May 2015, I am prepared to accept that a copy could not have been

¹ Paragraph 4 of the "Explanatory Affidavit on compliance to rule 7A of the Labour Court" (Sic)

served on them a month later. In their founding affidavit, the Applicants had merely contended that they had received it some one month later. However, no attempt was made to attach any proof in that regard or to explain the circumstances under which the award could have been received a month later. The only averment made was that they had received it on that specific date. This simple averment in the light of the requirements of section 145 (1) (a) of the LRA cannot be a basis to conclude that they had indeed received a copy on the date in question.

- [6] Worst still, the Applicants, despite the Third Respondent having raised the issue of compliance with the time frames in filing the review, failed to file a supplementary affidavit. A supplementary affidavit in the light of the concerns raised in the answering affidavit would have afforded them an opportunity to clarify the circumstances under which a copy of the award was received about a month later after it was issued, and the reasons, if any why, a condonation application was not necessary.
- [7] The Applicants have therefore not complied with the time frames stipulated in section 145 (1) (a) of the LRA. The review application was filed out of time, and the delay is about four weeks. No attempt was made to seek condonation in this regard, nor was an attempt made in the founding affidavit to justify why condonation was not necessary. Accordingly, the review application is not properly before the court, and ought to be dismissed. In the light of this conclusion, it would not be necessary to deal with the other preliminary points raised on behalf of the Third Respondent. I am further not persuaded that a cost order is warranted in this case.

Order:

1. The review application as launched by the Applicants does not comply with the provisions of section 145 (1) (a) of the Labour Relations Act, and is accordingly dismissed;
2. There is no order as to costs.

Edwin Tlhotlhamaje

Judge of the Labour Court of South Africa

LABOUR COURT

APPEARANCES:

On behalf of the Applicants: Mr S Rangoanasha of S Rangoanasha INC

On behalf of the Third Respondent: Adv. SM Shaba

Instructed by: State Attorney

LABOUR COURT