



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 2527/2014

In the matter between:

PETRA DA COSTA

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

COMMISSIONER MOHAMMED RAFFEE

Second Respondent

SA GERMAN COMMERCE

Third Respondent

Heard: 15 February 2017

Delivered: 22 February 2017

DIRECTIVE

TLHOTLHALEMAJE, J

- [1] This matter was set-down for pre-enrolment hearing. The only issue for determination is whether the record of proceedings was filed timeously or whether the review application as filed by the applicant should be deemed to have been withdrawn in accordance with the provisions of clause 11.2.3 of this Court's Practice Manual¹.

¹ Which provides that;

- [2] The award that the Applicant seeks to have reviewed and set aside was issued on 14 October 2014. The application was launched on 26 November 2014. The Notice of Compliance in terms of Rule 7A (3) was filed by the First Respondent on 03 December 2014. On 20 May 2015, the Third Respondent confirmed receipt of the Notice of Motion together with the Founding Affidavit as well as the Rule 7A Notice, and further confirmed that it had filed its notice as well as the answering affidavit. The Third Respondent further advised the Applicant that she had a duty to attempt to reconstruct the record of proceedings, since the record provided by the First Respondent was materially incomplete.
- [3] The Applicant's attorneys of record responded on 26 May 2015, and confirmed that the First Respondent had indicated that the complete record could not be located, and invited the Third Respondent to participate in the reconstruction of the record at the First Respondent. The matter was set down for the reconstruction of the record on 27 July 2015 as per the parties' consent. On 14 October 2015, the Applicant's attorneys of record sent correspondence to the Second Respondent, advising that the reconstructed notes were still outstanding since 27 July 2015.
- [4] In further compliance in terms of Rule 7A (3) of the rules of this court, the First Respondent on 16 October 2015 filed what appears to be the reconstructed notes of the second respondent.
- [5] It is my view that in the light of the parties having consented to the reconstruction of the record of proceedings, and in view of a 'record' having been filed, there is no basis for the review application to be deemed withdrawn. At most, the so-called 'record' is nothing but ineligible notes which

"If the applicant fails to file a record within the prescribed period, the applicant will be deemed to have withdrawn the application, unless the applicant has during that period requested the respondent's consent for an extension of time and consent has been given. If consent is refused, the applicant may, on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time. The application must be accompanied by proof of service on all other parties, and answering and replying affidavits may be filed within the time limits prescribed by Rule 7. The Judge President will then allocate the file to a judge for a ruling, to be made in chambers, on any extension of time that the respondent should be afforded to file the record."

one cannot make sense of, but which are meant to supplement part of the already transcribed record of proceedings.

- [6] To the extent that the Third Respondent deems this 'record' to be incomplete and not of assistance in the determination of the review application, it is up to it to raise that as a separate issue either before a Judge once the matter is set down, or alternatively, to utilise the provisions of clause 11.2.4 of the Practice Manual for any directive in respect of the defect in the record complained of, but prior to the matter being set down for a hearing. I am however satisfied that all reasonable attempts were made by the Applicant to comply with the provisions of Rule 7A (6), and to the extent that the applicant has also filed a Rule 7A (8) (b) Notice, the matter is ripe for hearing.

Directive:

1. The Applicant's application for review is found to be in compliance with the provisions of Rule 7A (6) of the Rules of this Court.
2. The Third Respondent has 30 days within which to seek any further directives on the record of proceedings as filed.
3. In the absence of any such an application by the Third Respondent, the Registrar of this Court is directed to set the matter down for the hearing of the review application.

Edwin Tlhotlhemaje

Judge of the Labour Court of South Africa

APPEARANCES:

On behalf of the Applicant: Mr. N Kubayi of Noveni Eddy Kubayi INC

On behalf of the Third Respondent: Adv. J Campanella

Instructed by: Werthschroder INC

LABOUR COURT