



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no.: JR 482/14

In the matter between:

POPCRU obo A C PALM

Applicant

And

M C VAN AARDE N.O

First Respondent

**THE SAFETY & SECURITY SECTORAL
BARGAINING COUNCIL**

Second Respondent

SOUTH AFRICAN POLICE SERVICES

Third Respondent

MINISTER OF POLICE

Fourth Respondent

Heard: 9 February 2017

Judgment: 9 February 2017

Edited: 13 March 2017

EX-TEMPORE JUDGMENT

VAN NIEKERK J

- [1] This is an application to review and set aside an award made by the first respondent on 19 April 2012. The applicants say that they received the award on 20 April 2012. The present application was filed on 1 September 2014. The application is out of time. It exceeds the time limit established by section 145 of the Labour Relations Act by some two years and two months.
- [2] The reasons for the lateness are recorded in paragraph 21 of the founding affidavit. In essence, the applicants say that on receipt of the award, their representative advised them of the findings, the need to take the matter on review and the reasons why this should be done. On 22 May 2013 a letter was sent to the union's legal representative requesting a mandate to proceed with the review application. There were administrative delays within the union and these resulted in instructions being sent to the applicants' attorneys only on 28 February 2014.
- [3] The attorneys state that they unsuccessfully endeavoured to contact the applicants and only managed to get hold of one of them on 28 March 2014. Consultations were then conducted telephonically. The union reverted to the applicants' attorneys on 25 July 2014, instructing them to review the matter. The review application was thereafter drafted and, as I have indicated, was filed in this court on 1 September 2014.
- [4] In regard to the prospects of success; the applicants contend that they have strong prospects of success in the matter. They set out their submissions in this regard in paragraph 22 of the award.

- [5] The legal principles that are applicable are well established. They require the court to exercise a discretion; a discretion that must be exercised judicially having regard, amongst other things, to the period of the delay, the reason for the explanation and the applicants' prospects of success. That rule has been tempered by the Labour Appeal Court on at least two occasions where that court has said that where a delay is excessive and the reason or the explanation for the delay is unsatisfactory, the applicants' prospects of success are irrelevant. Applying these principles to the present matter; there can be no question that the delay in this matter is inordinate, given that the statute requires a review to be filed within six weeks. A delay of two years and two months is way beyond the stipulated time limit.
- [6] Insofar as the reasons for the delay are concerned; given the degree of lateness, these must necessarily be compelling for this court to grant any application for condonation. In my view, the explanation is less than compelling. In fact, it is unsatisfactory. The award was received, as I have indicated, on 20 April 2012. It is only on 22 May 2013 that a mandate is requested to appoint a legal representative to proceed with the review. The internal delays within the union resulted in the attorneys being instructed only on 28 February 2014.
- [7] This court has held that where a trade union represents a member in proceedings in this court, it is incumbent on the union to act with the same degree of diligence as a legal representative. Officials of employers' organisations and trade unions are held at the same standards of conduct as legal representatives.
- [8] In the present matter it is not enough simply to state broadly that the delay was the result of an administrative issue within the union. The nature of the administrative delay is simply not described and it is proffered as a

broad and general explanation which is intended to cover a period of some almost two years. It is incumbent on an applicant in a condonation application to explain the full period of the delay. This the applicants have failed to do. There is no explanation to what transpired between 25 July 2014, when the review application was to proceed and 1 September 2014 when this application was filed.

- [9] It must have been obvious to the legal representatives and the parties involved at that time that the matter was already way out of time; and that it was necessary to file the application with the utmost degree of urgency. That was not done. It seems to me that the parties proceeded at their leisure, as they had done, since receipt of the award; and that the application was filed at what appears to be their convenience.
- [10] There is a further consideration to take into account. The Constitutional Court and the Supreme Court of Appeal have reproached this court on more than one occasion for what would be referred to as 'systemic delays' in the determination or adjudication of disputes before this court. Particular reference has been made to review applications. This court has responded in the form of the practice manual which requires parties to file the record within 60 days of date of receipt by the registrar of the record and to complete a review application within a period of 12 months. In addition, a recent amendment in the Labour Relations Act acknowledges the same problem; requiring parties to complete proceedings at least to the point of applying for a court date within six months of filing a review application. To grant condonation in these circumstances where the application is out of time, in excess of two years, would frustrate the statutory purpose that underlies the amendment to the Labour Relations Act and the efforts by this court to ensure that review applications are brought timeously and dealt with expeditiously.

- [11] For those reasons, given the inordinate delay and the failure to explain the delay satisfactorily, it is not necessary for me to consider the applicants' prospects of success. And for those reasons, in my view, the application for condonation stands to be refused.
- [12] In relation to costs; in my view, there is no reason why costs ought not to be awarded. The costs of the opposition to this application on the part of the fourth respondent are ultimately underwritten by the tax payer. I see no reason why the tax payer should be burdened effectively with the costs of this matter, given the failure by the applicants to prosecute the review with the required degree of diligence.
- [12] Finally, this court continues to be in receipt of applications, particularly applications for review where the applications are filed way out of the statutory time limit of six weeks. Parties ought to be aware that this court, for the reasons I have outlined, takes a strict approach to the application of the applicable legislation and the practice manual and will require compelling reasons for any application for condonation for a failure to comply with the time limit; be that in relation to the filing of the review or the filing of the record or otherwise. Applicants and attorneys who represent parties and who continue to file applications such as the present, where a matter is so hopelessly out of time, this court will in future consider granting cost orders on a *de bonis propriis* basis in order to discourage what is litigation that serves only to place a continuous strain on the resources of this court. Be that as it may, the cost order I intend to make in the present instance a cost order on the ordinary scale.

For those reasons I make the following order:

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

2. The review application is dismissed with costs.

ANDRÉ VAN NIEKERK
JUDGE OF THE LABOUR COURT