



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no.: JR 2221/14

In the matter between:

SELLO MICHAEL NTOMBELA

Applicant

And

**SAFETY AND SECURITY SECTOR
BARGAINING COUNCIL**

First Respondent

JOYCE NKOPANE N.O

Second Respondent

SOUTH AFRICAN POLICE SERVICES

Third Respondent

Heard: 9 February 2017

Judgment: 9 February 2017

Edited: 20 March 2017

EX-TEMPORE JUDGMENT

VAN NIEKERK J

- [1] This is an application to review and set aside an arbitration award issued by the second respondent on 8 September 2014. The present application was filed on 19 June 2015. That is an inordinate delay.
- [2] In terms of the relevant principles, the court is required to consider the period of the delay, the explanation for the delay and if relevant, the applicant's prospects of success. The prospects of success are not relevant where in circumstances where an applicant fails to prove or fails to establish a satisfactory explanation for an excessive delay. In the present matter, as I have indicated, the delay is excessive. An applicant in a matter such as this is required to file an application within six weeks of receipt of the arbitration award. In this case the delay is almost six months.
- [3] The reasons for the delay are set out in paragraph 6 of the application for condonation. In essence, the applicant states that he had instructed his union, POPCRU, to review the matter on his behalf and that the union failed to keep him informed as to progress or the lack thereof. It was only in June 2015 when the applicant says he finally became aware that the matter had been abandoned by the union. He then appointed an attorney who took steps to ensure that the matter was filed in court.

[4] The application itself appears to indicate that the applicant filed the application on his own behalf in June 2015. What is lacking from the explanation is any account of any efforts made by the applicant to enquire from his union as to what progress was being made on the review and to take necessary action in the event of there being no progress. In other words, the period from the date of receipt of the award through to June 2015 is one where the applicant simply seeks to blame the union for failing to keep him abreast of the progress and blames the union for a lack of communication in circumstances where, as I have indicated, there is no indication whatsoever as to what steps the applicant himself took.

[5] The law is quite clear on this point. Where a party is represented by a trade union or by an attorney, it is incumbent on the applicant to make enquiry on a regular basis as to progress. It is not sufficient for an applicant simply to instruct a union or an attorney to file an application and then sit back for months and fail to make enquiry as to progress. That is precisely what happened in the present matter wherefore almost seven months the applicant appears to have sat on his hands and failed to make any proper enquiry as to what progress his union was making in the application filed on his behalf. For that reason, and particular in my view, the explanation proffered by the applicant for an excessive delay is inadequate and condonation stands to be refused.

[6] There is a further matter to which I must necessarily refer; and that is the nature of review applications. This court has noted on a number of occasions that, as provided in the practise manual, review applications ought to be treated with the same degree of diligence as urgent applications. Parties are required to further the interests on that basis. If they fail to do so, they have themselves to blame for a court's refusal to hear the matter on the basis that the explanation proffered for a delay is unacceptable.

The order I make for those brief reasons then is the following:

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

ANDRÉ VAN NIEKERK
JUDGE OF THE LABOUR COURT