



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JR 20/10

In the matter between:

**NIMRO 152 (PTY) LTD t/a HENNENMAN
PICK N PAY MINI MARKET**

Applicant

and

TSHEPANG GEORGE MAKHETHA

First Applicant

SELLO MOPHAKI N.O.

Second Respondent

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Third Respondent

Heard: Decided in chambers

Delivered: 30 March 2017

JUDGMENT: LEAVE TO APPEAL

RABKIN-NAICKER J

- [1] This is an application for condonation for the late noting of an appeal. I handed down judgment in the above matter on 14 June 2016. An application for leave to appeal was delivered on 13 February 2017, some 7 months out of time.
- [2] Mr. Goldberg for the applicant avers that his client wished to appeal the judgment but he advised him to await the Constitutional Court decision in *Myathaza v Johannesburg Metropolitan Bus Services (SOC) Limited t/a Metrobus and Others*¹ decided on 15 December 2016.
- [3] According to his papers, he became aware of the judgment on 10 January 2017. The further excessive delay is explained in his affidavit by reciting his work diary up until 13 February 2017.
- [4] The order in my judgment was premised on a binding judgment of the Labour Appeal Court. The order was made according to the principles of *stare decisis*. It is trite that this rule is not simply a matter of respect for the courts of higher authority but a manifestation of the rule of law itself. To deviate from this rule is to invite legal chaos.²
- [4] The notion that a litigant can await the decision of the Constitutional Court before launching an application for leave to appeal against a judgment of this Court offends against the rule of law. It also offends against the Rules of this Court which exist to regulate legal proceedings in an orderly way in order to see that justice is done.
- [5] In the circumstances, this application cannot be granted. The attorney for the applicant should not be permitted to charge his client fees for this application.

Order

¹ [2016] ZACC 49; (2017) 38 ILJ 527 (CC); [2017] 3 BLLR 213 (CC).

² See *Camps Bay Ratepayers and Residents Association and Another v Harrison and Another* [2010] ZACC 19; 2011 (2) BCLR 121 (CC); 2011 (4) SA 42 (CC) para 28

[6] I make the following order:

1. The application for condonation is dismissed.
2. The attorney for the applicant is precluded from charging attorney client fees for this application.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa