

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT BRAAMFONTEIN

CASE NO: JR1815/15

DATE: 2017-08-15

In the matter between

POPCRU obo MOEKETSI A NTOA

Applicant

and

SSSBC

First respondent

M C VAN AARDE N.O.

Second respondent

SAPS

Third respondent

J U D G M E N T

STEENKAMP J:

This is an application for condonation for the late filing of a review application. I will consider it at the hand of the well-known principles set out in *Melane v Santam Insurance Company Ltd* 1968 (4) SA 531 (A).

The extent of the delay is more than three years or 36 months. To say that that is an excessive delay would be the understatement of the last three years. The explanation for that excessive delay is simply the internal disarray of the applicant, POPCRU. The union, by way of its provincial chairperson, Mr Reginald Pakiso Mokalapa, sets out in a supplementary affidavit the disarray in which the union left this matter

and the miscommunication between various officials.

Mr *Edwards*, who appears for the union, submitted that it did set out an explanation for each period of the delay. That is not the case. For example, for a period of two and a half years from 10 September 2012 to March 2015, all it says is the following:

“In and around [*sic*] August 2012 a firm of attorneys
namely Grosskopf Attorneys was appointed and a
brief was prepared and sent to Advocate JL Basson
for advice with regards to the prospects of success in
10 taking the arbitration award on review to this
Honourable Court.”

Although the deponent claims that that was done “in and around August 2012”, he attaches a memorandum from Advocate Basson that is dated 10 September 2012, at a time when the matter was already well out of time. Adv Basson reminded the Union of this fact in his memorandum:

“The award is dated 19 February 2012. In terms of s 145 of the LRA an application for review of an arbitration award must be launched within 6 weeks from the date on which the award is made available to
20 the parties. I accordingly need clear instructions regarding the date on which the award was made available to the employee and his representatives and the reason for the delay since then.”

Yet, despite this unequivocal reminder and advice from its chosen counsel, the union did not see fit to act with any more expedition. It also does not explain why its attorneys felt it necessary to

obtain counsel's opinion on a simple matter such as this in the first place.

In any event, another official, Ms Monica Monyela, then left POPCRU,

“...and following her departure, one Mr Ramafalo was then appointed as Head of Department, Legal at POPCRU. I therefore [‘I’ being the provincial secretary] continued to liaise with Ramafalo as to what is the progress on the matter until around [sic] March 2015. I wrote an email to follow up with Ramafalo and he responded telephonically on 23rd March 2015.”

There is no explanation as to what actually happened during that period of two and a half years – from September 2012 to March 2015 -- and no proof of the allegation that the provincial secretary, Mokalapa, “liaised” with Ramafalo and in what manner, and why, having already left its member in the lurch, the Union did nothing further for another two and a half years, despite the fact that Ramafalo was the so-called “Head of Department, Legal”.

There is also no explanation whatsoever what the individual applicant, Mr Ntoa, did to spur his union into action. Nor is there a confirmatory affidavit by either the employee or Mr Ramafalo. The explanation is so poor that it amounts to no explanation at all.

Apart from that, as La Grange J held as long ago as 2010 in

NEHAWU v Vanderbijlpark Society for the Aged (2011) 32 ILJ 1959 (LC)

at paragraph 9:

10 “The LRA has been in existence for more than fifteen years, and the time limits governing referrals have not changed in that time. It is reasonable to expect that trade unions ought to be well aware of the need to act timeously in the interest of their members and to adapt their internal procedures to accommodate those time limits, not vice versa. The scale of an organisation cannot serve as a justification for delays. On the contrary, it is reasonable to expect that larger organisations, be they trade unions or businesses, ought to be able to see to it that they are organised to deal with disputes of this nature in a systematic manner to ensure that they do not fall foul of the time limits in the LRA. Where handling such disputes is a core function of the organisation, this should go without saying.”

20 The same still applies today in circumstances where the LRA has now been in existence for more than 20 years, and POPCRU is one of the largest unions in the country.

 In a case that Mr *Edwards* referred to in his heads of argument, *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC), the

Labour Appeal Court said:

“There is a further principle which is applied, and that is that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial. And without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused.”

It goes on to say that the courts have traditionally demonstrated their reluctance to penalise a litigant on account of the conduct
10 of his representative, but have emphasised that there is a limit beyond which a litigant cannot escape the results of his representative’s lack of diligence or the insufficiency of an explanation tendered. This is exactly such a case.

Given the excessive delay of three years and a poor explanation therefor, in line with the authority of the LAC in *Mineral Technology* the prospects of success are immaterial. But even if I were to take the prospects of success into account, it appears that the arbitrator in this matter carefully considered the case before him. He did take into consideration hearsay evidence, but he did so in circumstances where
20 a key witness was not available. He did take into account the evidence led at the disciplinary hearing. And he did so in line with the provisions of the Act and the Rules dealing with arbitrations that are designed to be an informal process. It is doubtful that the employee will have good prospects of success on review, given those circumstances.

The application for condonation is dismissed.

STEENKAMP J

Counsel for Applicant: Adv B R Edwards

Instructed by Makgahlela Mashaba attorneys.



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POPCRU OBO MOEKETSI A NTOA v SAPS

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