



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JR198/2015

In the matter between:

ZINYEMBEZI LLOYD MHLARI

Applicant

and

THE SAFETY AND SECURITY SECTORIAL

BARGAINING COUNCIL

First Respondent

COMMISSIONER PRINCE KEKANA N.O.

Second Respondent

THE SOUTH AFRICAN POLICE SERVICES

Third Respondent

Heard: 18 July 2017

Delivered: 12 September 2017

Summary: Refusal of condonation for extensive and unexplained delay. No need to consider the merits.

JUDGMENT

EDMONDS AJ.

Introduction

- [1] This is an application to review and set aside the arbitration award made by the Commissioner, Prince Kekana under case no: PSSS 374-13/14, dated 12 March 2014 and to replace it with the following:
- 1.1 An order that the dismissal is substantively unfair;
 - 1.2 An order for the reinstatement of the Applicant;
 - 1.3 Alternatively ordering a complete rehearing of the matter under the auspices of the First Respondent, being The Safety and Security Sectorial Bargaining Council before an arbitrator other than the Second Respondent, being Commissioner Prince Kekana;
 - 1.4 Ordering that the Respondents who oppose the review application pay the costs of the application, jointly and severally, the one paying, the other to be absolved;
 - 1.5 Condoning the late filing of the review application; and
 - 1.6 Granting the Applicant further and/or alternative relief.

The Record and The Award

- [2] Albeit that the Applicant, Mr. Zinyembezi Lloyd Mhlari (Mhlari) made use of the South African Police Union's address in Pretoria, the South African Police Union (SAPU) did not elect to represent him on the papers in this matter.
- [3] The Applicant was employed as a constable in the service of the Third Respondent (SAPS).
- [4] Charges of misconduct were brought against the Applicant. He was subjected to a disciplinary hearing and found guilty of assault with the intent to do grievous

bodily harm and consequent to that, was dismissed on 09 January 2013. The Applicant lodged an appeal which was not successful.

Safety and Security Bargaining Council (SSBC) hearing

- [5] The Applicant referred an unfair dismissal dispute to the First Respondent and a con/arb procedure commenced which was finalised on 17 February 2014. The arbitration award found that the dismissal was procedurally and substantively fair.
- [6] The Applicant launched a review application and condonation application in the Labour Court on 26 February 2015.

Condonation Application

- [7] The Applicant is 278 days late after, in accordance with his application, he requested SAPU to contest the award. This apparently took place on or about 19 March 2014.
- [8] He alleges that he was informed that permission would have to be sought from the SAPU's head office, and that if and when permission was granted the legal department would compile the court documents. He was advised that the Safety and Security Bargaining Council (the SSBC) would then file the audio tapes with the Labour Court, which would then be uplifted and transcribed. He was further informed that the application on the merits would then be filed on his behalf. The SSBC would then be given an opportunity to respond and he would be given an opportunity to reply.
- [9] In paragraph 15 of his founding affidavit, page 11 of the paginated pages, he alleges that at all material times he was under the impression that his case received attention as explained. The Applicant then alleged that during the first week of December 2014 he made inquiries as to whether a court date had been received. He was then informed by his union that it had been decided that the matter would not be taken on review.

- [10] Accordingly, the Applicant took no steps between March 2014 and December 2014 to ascertain the status of his review application.
- [11] He further alleges that on 9 January 2015 he was informed by the national office of the SAPU that the necessary authority for the matter to be taken on review had been obtained and that the file had been sent to the SAPU's legal representative to compile all the necessary court documentation.
- [12] The Applicant then alleges that at all material times his intention was to contest the arbitration award.
- [13] Upon my questioning, I was advised that the Applicant had no knowledge as to why his union took no steps to inform him that they were not taking the matter further until December 2014.
- [14] The Respondent argued, in regard to the condonation application, that the matter had been filed nine and a half months after the period given for a review application. It argued that no plausible explanation was given for the delay. It was accepted that, in confirmation of paragraph 7.2 of the Applicant's supplementary affidavit, that he did phone the Labour Court in October and was told that it would probably take a year to have the matter set down.
- [15] I was referred to the case of *National Union of Mineworkers v. The Council for Mineral Technology*¹ where the court held that in the absence of an adequate explanation for the delay in proceeding with the application, the Court does not need to consider the prospects of success. I was also referred to *Colett vs. Commission for Conciliation, Mediation and Arbitration and Others*² in which the Labour Court held that in cases where the delays were extreme without a reasonable explanation, there was no need for the Court to look at the prospects of success.

¹ 1998 (2) ZALAC 22

² 2014 (6) BLLR 523

[16] In regard to prejudice, it was argued on behalf of the SAPS that it would be prejudiced by the effluxion of time given that it had relied upon non-SAPS witnesses and it would have to trace those witnesses and their memories in regard to the incident may be faded.

[17] Although I was addressed on the prospects of success, having read the papers and having been addressed by both parties on the merits, I am satisfied that there is no acceptable reason for the delay in bringing this application for review and that I need not consider the merits in this matter.

[18] In the circumstances, I find that the application for condonation is without merit and that I do not need to consider the substance of the matter. I therefore make the following order:

Order

1. The application for condonation is dismissed;
2. The applicant is to make payment of the costs of this application.

R. Edmonds

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: Andre Gerber, an official of SAPU

For the Third Respondent: Advocate Sumaya Tilly

Instructed by : The State Attorney

LABOUR COURT