



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR1142/14

In the matter between:

ENOCK MAMAILA

Applicant

And

ILANGA OUTSOURCING

First

Respondent

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Second

Respondent

VINI LUTCHMAN N.O.

Third

Respondent

Heard: 12 JULY 2017

Delivered: 24 November 2017

JUDGMENT

THOMPSON, AJ

Background

- [1] This is an application to review and set aside the arbitration award dated 10 February 2004 and issued under case number GPRFBC25489, under the auspices of the National Bargaining Council for the Road Freight and Logistic Industry. The application was lodged on 6 June 2014. The Applicant initially obtained a default arbitration award which award was rescinded on 10 October 2013. The dispute was arbitrated on 30 January 2014, both parties were present.
- [2] The arbitrator determined the unfair dismissal dispute and rendered an arbitration award on 10 February 2014. This is the award the Applicant seeks to review and set aside. The arbitration award reflects that the dismissal of the Applicant was in accordance with a fair manner and for a fair reason.
- [3] The Applicant logged this application by completing the pre-printed forms. The third respondent filed a notice of opposition on 14 July 2014. The third responded filed a document entitled 'notice of non-opposition' on 19 June 2017.

Merits

- [4] At the commencement of the proceedings, the Respondents, although they stated that they are not opposing the matter, sought to bring a number of difficulties to the attention of the Court. Mr England for the Respondent pointed out the following:
- (i) The Applicant failed to comply with Rule 7(2) of the Rules of Court in that the Applicant had failed to sign his notice of motion,

- (ii) The Applicant had failed to cite the correct parties in his application in that he cited the third Respondent as Vini Lutherman and not the Bargaining Council,
 - (iii) In the founding affidavit the Applicant also failed to cite the Bargaining Council,
 - (iv) The Applicant failed to depose to the founding affidavit,
 - (v) The Applicant failed to identify the parties in paragraph 3.2, 3.3 and 3.4 of his founding papers,
 - (vi) In the Applicant's Rule 7A (8) (b) Notice he cited the incorrect parties to the dispute in that he failed to cite the correct arbitrator as the Second Respondent.
- [5] The Applicant conceded the deficiencies in his application and offered no explanation other than that the Applicant is a lay person. The Applicant submitted that the arbitration award stands to be reviewed and set aside on the basis that he was accused of theft, which items were later recovered. He was asked to participate in a polygraph test which he refused. He is not guilty of the charges and on this basis the arbitration award should be reviewed and set aside.
- [6] The Respondent argued on the Applicant's papers and pointed out that the employer informed the Applicant that he should return to work which he declined. In turn the Applicant sought 12 months' compensation. The Applicant chose to leave the worksite on 15 March until 18 April 2013. The Applicant was telephoned and short message systems (SMS) were sent to the Applicant in which he was requested to return to work. This continued over a period of five weeks. In addition, a registered letter was sent to the Applicant, informing him that he should attend an internal disciplinary hearing. He was charged with, amongst others, leaving the premises without authority and bringing the company' into disrepute. The Applicant chose not to attend the internal disciplinary hearing which continued in his absence. He was found guilty and dismissed.

[7] In considering the papers, I cannot accept the Applicant's explanation for his dilatoriness. Without a founding affidavit, the Applicant's application is fatally flawed. Normally, it would not be necessary to consider the merits of the matter. Even if I were to consider the merits of the matter, I am not persuaded that any grounds of review exist.

[8] The Applicant has failed to provide any grounds which are remotely such to persuade me that the award falls within the category that it stands to be reviewed and set aside.

[9] In the circumstances, the following order is made:

Order

1. The application to review and set aside the arbitration award dated 10 February 2014 issued under case number GPRFBC25489 is dismissed.
2. There is no order as to costs.

JM THOMPSON

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: P M Moloi

For the Respondent: Mr A England