



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 453-15

Not Reportable

In the matter between:

NUMSA obo INNOCENT VUSI DLAMINI

Applicant

and

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

First Respondent

SELLO MAPHAKI N. O

Second Respondent

ESKOM HOLDINGS (SOC) LTD (LETHABO)

Third Respondent

Heard: 6 February 2018

Delivered: 6 February 2018

EX TEMPORE JUDGMENT

WHITCHER, J:

- [1] This is a Rule 11 application by the third respondent to dismiss the review application filed by applicant, the National Union of Metalworkers of South Africa (NUMSA). For the reasons that follow the application is granted.
- [2] The rule 11 application was filed on 21 November 2017. The review application was filed more than two years ago, on 18 March 2015. The

Commission Conciliation Mediation and Arbitration (CCMA) filed the Rule 7A (3) in relation to the record two years ago, on 25 November 2015.

- [3] In terms of clause 11.2.2 of the Practice Manual, the applicant ought to have filed the record by 25 January 2016, that is, more than 19 months ago.
- [4] In terms of the failure to do so and clause 11.2.3 of the Practice Manual, the review application is deemed to have been withdrawn on or about February 2016, that is 10 months ago.
- [5] On or about 13 and 28 September 2017, the third respondent placed the applicant on terms regarding the review and essentially warned them that a rule 11 application could be anticipated. There was no meaningful response to same.

Conclusion

- [6] The applicant dismally failed to take active steps to prosecute its review application and the delay is excessive.

Order

- [7] In the premises, the following order is made:
 - 1. The Rule 11 application is granted.
 - 2. The review application filed on 18 March 2015 by the applicant, NUMSA is dismissed.
 - 3. There is no order as to costs.

B. Whitcher

Judge of the Labour Court of South Africa

APPEARANCES:

For the third respondent:

Adv. P.M.W Botha

Instructed by:

Moshoana Mabena Mogane Inc

For the applicant:

No appearance

LABOUR COURT