



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR254/16

In the matter between:

SOUTH AFRICAN POST OFFICE SOC LTD

Applicant

and

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

First Respondent

NOMUSA MBHELE N.O

Second Respondent

COMMUNICATION WORKERS UNION obo

THOMAS MOKOENA AND 34 OTHERS

Third Respondent

Decided: In Chambers

Delivered: 8 February 2018

JUDGMENT-APPLICATION FOR LEAVE TO APPEAL

PRINSLOO. J

Introduction

- [1] The Applicant filed a review application outside the prescribed 6-week period within which an application for review has to be filed. The Applicant was well aware of this fact, but failed to apply for condonation. Instead the Applicant explained that condonation would be sought in the supplementary affidavit which would only be filed once a full record of the arbitration proceedings was obtained and the Applicant sought condonation for its failure to apply for condonation. In the absence of an application for condonation this Court has no jurisdiction to adjudicate the review application.
- [2] On 3 November 2017 I handed down an *ex-tempore* judgment *inter alia* dismissing the Applicant's review application for lack of jurisdiction.
- [3] The Applicant filed an application for leave to appeal against the whole of the judgment and order of this Court, except paragraph 1.4 of the order.
- [4] The application for leave to appeal is opposed.
- [5] I have considered the grounds for appeal as well as the submissions made in in opposition thereof and I do not intend to repeat those *verbatim* herein.

The test for leave to appeal

- [6] It is trite that an applicant in an application for leave to appeal must convince the court *a quo* that it has reasonable prospects of success on appeal. What the test requires is the reasonable likelihood that another court, presented with the same facts and evidence as this Court, could come to a different conclusion than the one arrived at by this Court.
- [7] Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law.

Grounds for leave to appeal

- [8] I have read and considered the Applicant's grounds for leave to appeal and having considered those and applying the aforesaid principles applicable to applications for leave to appeal, I am not persuaded that there are reasonable prospects that the Labour Appeal Court (LAC) would arrive at a different conclusion than the one arrived at by this Court.
- [9] The grounds for appeal are all without merit and I do not intend to repeat or address all the grounds for appeal raised by the Applicant. I will do so to a limited extent merely to illustrate that the application for leave to appeal is without merit and that scarce judicial resources should not be spent on a meritless appeal such as this one.
- [10] I have to emphasize that the Applicant has been and still is represented by attorneys, wherefore the grounds for leave to appeal are not the thought or the understanding of the law as from the perspective of a layperson or an unrepresented individual with no legal qualification.
- [11] The Applicant submitted that I erred in not considering that SAPO has acknowledged the need for it to launch an application for condonation for the late filing of its review application and that such an application would be launched once the full record has been filed, alternatively that it would be filed with the supplementary affidavit. What I ought to have found was that it remained open to the Applicant to file its condonation application at any stage before judgment on the review application.
- [12] These submissions show a lack of understanding of the legal position. In my judgment, I referred to *SA Transport and Allied Workers Union v Tokiso Dispute Settlement and others*¹ where the LAC confirmed that where a party is out of time and has to take the jurisdictional step to apply for condonation but failed to do so, a court cannot come to the party's assistance. The LAC held that in the absence of an application for condonation, a court cannot assist the party.

¹ (2015) 36 ILJ 1841 (LAC).

- [13] There is no authority for the Applicant's submission that it remained open to the Applicant to file its condonation application at any stage before judgment on the review application is handed down. Such a submission in fact flies in the face of the LAC's authorities.
- [14] In *Computer Storage Services Africa (Pty) Ltd v CCMA and Others*² the LAC recently confirmed that where no application served before the Labour Court seeking condonation to be granted for the late filing of the application for review, the Labour Court correctly found that it lacked jurisdiction to determine that review application.
- [15] The Applicant also seeks leave to appeal on the ground that I erred in dismissing the review application on the basis that it called for consideration before the merits of the two Rule 11 applications could be considered. The Applicant's case is that I ought to have found that whether to grant condonation for the late filing of the review application is a matter for the Court hearing the review application.
- [16] The Applicant's understanding of the judgment is flawed. The Applicant understands that the review application was dismissed on the basis that it called for consideration before the merits of the two Rule 11 applications could be considered. This was not the basis for dismissing it.
- [17] In its Rule 11 application the Third Respondent raised the issue that the review application was filed out of time and that no condonation application was filed. The late filing of the review application without an application for condonation was an issue that called for consideration before the merits of the two Rule 11 applications could be considered and once it was determined that the review application was indeed filed late without an application for condonation, this Court had no jurisdiction.
- [18] In view of the attitude adopted in respect of the issue of condonation and more specifically the fact that Third Respondent raised the issue of condonation in its Rule 11 application, that the Applicant conceded that the application for

² Unreported judgment of the Labour Appeal Court (CA 7 /2016) handed down on 30 November 2017.

review was filed out of time and that there was no attempt to apply for condonation and to rescue the Applicant's case by bringing it within the jurisdiction of this Court, I ordered that the Applicant's attorneys file an affidavit to explain why the tax payer should be burdened with a cost order and not the attorneys *de bonis propriis*. The attorneys were afforded until 30 November 2017 to file an affidavit to explain why they should not be liable for the costs.

[19] The Applicant's attorneys have not filed such an affidavit, instead the Applicant submitted that I erred in making such an order and that I ought to have found that the attorneys acted reasonably and that the Applicant should bear the costs.

[20] The purpose of the affidavit is exactly to explain their conduct and to set out reasons why they should not be liable for the costs, which affidavit the attorneys elected not to file, despite an invitation and order from this Court to do so.

[21] *In casu* I am not persuaded that a case is made out for leave to appeal to be granted and the LAC should not be burdened with an appeal that lacks merit.

[13] In the result I make the following order:

Order

1. The application for leave to appeal is dismissed;
2. There is no order as to costs.

Connie Prinsloo

Judge of the Labour Court