



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 156/16

In the matter between:

NEHAWU obo NOMAZIZI MDLULWA

Applicant

and

AIRPORT COMPANY SOUTH AFRICA

Respondent

Heard: 02 February 2018

Delivered: 9 February 2018

Summary: An application seeking condonation for the late referral of the statement of case. The applicant must provide an adequate explanation why the referral was delayed. Where prospects of success are non-existent, it is a futile exercise to grant condonation. It is not in the interest of justice to do so. Held (1): The application for condonation is refused. Held (2): The applicant to bear the costs of the application.

JUDGMENT

MOSHOANA, J

Introduction

- [1] This is an application to seek condonation for the late referral of a dispute of alleged discrimination. The application is opposed.
- [2] The basis for the opposition is that the applicant failed to provide an adequate explanation and that the prospects of success are non-existent.

Background facts

- [3] Ms Mdlulwa ('the member') was employed on a one year fixed term contract by the respondent. She commenced employment in November 2014. Her contract terminated in November 2015. Around January 2015, Ms Mdlulwa discovered that she fell pregnant. She informed her supervisor about the discovery. She had a number of complaints which led to her resignation by the end of January 2015. Following her resignation she had a meeting with the General Manager of the respondent. In that meeting, the General Manager allegedly accused her of not disclosing her pregnancy during the interview process. She allegedly retracted her resignation on account of the General Manager's undertaking to resolve her complaints.
- [4] On or about 11 May 2015, the member commenced her maternity leave. She returned on or about 3 August 2015. According to her she was harassed, victimized and discriminated against. She filed a grievance, which the respondent allegedly failed to take steps to resolve. She then referred the grievance to the CCMA for resolution. The dispute was certified to be unresolved.
- [5] Forty four days later, the applicant referred the matter to this court. The respondent took exceptions and the applicant attempted to amend. The amendments were objected to and the court has not as yet pronounced

on the objections. Despite the late referral, no condonation was sought until a year later. A year after the referral, the applicant sought condonation for the late referral. The application was opposed and came before me for a decision.

Evaluation

- [6] The explanation provided by the applicant is inadequate in many respects. Certain time periods have not been accounted for with no explanation why. An applicant for condonation seeks an indulgence from the court. He or she must adequately explain the default and not leave the court guessing. The applicant's case is not altogether clear. From the statement of case, it is apparent that due to the alleged utterances by the General Manager and the statements by her supervisor, she felt victimized, harassed and discriminated upon on the grounds that she fell pregnant. The member bears the evidentiary burden. In her founding papers, by which she stands and falls, she pegs her case on the utterances by the General Manager¹. I fail to understand how an accusation of misrepresentation would amount to discrimination which is unfair. The speculation that had she disclosed the pregnancy she would not have been employed is unhelpful. Clearly the member has no prospects of success. To grant condonation in such instances would not be in the interest of justice². The respondent would be forced into incurring costs to defend an unmeritorious action. Granting condonation would be a futile exercise.

Issue of costs.

- [7] The applicant had an unmeritorious case from the onset. Thus it would be unfair to saddle the respondent with costs. It is appropriate for the costs to follow the results. Accordingly, the applicant should bear the costs of this application.

¹ Paragraph 46.1 of the FA

² Grootboom v NPA and another 2013 ZACC 43.

Conclusion

[8] I come to the conclusion that the explanation is inadequate and the applicant's prospects of success are non-existent. Condonation ought to be refused with costs.

[9] In the results I make the following order:

Order

1. The condonation application is hereby refused.
2. The applicant to bear the costs of the application.

GN Moshwana

Judge of the Labour Court of South Africa.

Appearances

For the Applicant: Mr N Thaanyane

Instructed by: Thaanyane Attorneys, Johannesburg.

For the Respondent: Ms P Moulahlo.

Instructed by: CDH Inc, Sandton.