



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 508/17

In the matter between:

MOTA JACK MOCHE

Applicant

and

MAUNGA PROJECTS CC

Respondent

Heard: 11 June 2018

Delivered: 22 June 2018

Summary: An undertaking to correct unjustified disparity in remuneration is binding on the respondent.

DEFAULT JUDGMENT

LALLIE, J.

- [1] This is an application for default judgment. It appears that the respondent was present when the matter served before the Court on 14 November 2017. The Court issued an order removing the matter from the roll and directing the respondent to file a statement of response within 10 days. The Respondent failed to comply with the order and as at the hearing of this matter, the statement of response had not been filed.

- [2] Owing to the respondent's failure to file a response to the applicant's statement of case, the Registrar of this Court enrolled the matter for a judgment by default. On 20 January 2018, the Court issued an order removing the matter from the roll and directing the applicant to file a notice of intention to amend the statement of claim on or before 20 March 2018, as the statement of claim before Court did not reveal a cause of action. The applicant filed his notice of intention to amend on 28 March 2018 and further called upon the respondent to file its objection to the intended amendment, if any, within 10 days from the date of being served with the notice of amendment. No objection was filed and the applicant's claim remains undefended. The notice of amendment is five days late and the applicant sought condonation thereof.
- [3] This Court has a wide discretion in terms of the provisions of Rule 12(3)¹ of the Rules of this Court to condone non-compliance with the timeframes prescribed in the Rules, on good cause shown. In determining whether an applicant has shown good cause, the court must take into account all the circumstances surrounding the delay and this includes a proper explanation for the delay, the extent of the delay, prospects of success and prejudice the parties stand to suffer in the event that condonation is granted or refused.
- [4] The applicant submitted that the delay in filing the notice of amendment is wholly attributed to the *Pro Bono* Labour Law Clinic which assisted him. In view of the fact that the delay is minimal, the explanation thereof reasonable, the applicant stands to suffer prejudice for losing his right to be heard in the event of condonation being refused, I granted the application for condonation.
- [5] In his amended statement of claim, the applicant seeks an order directing the respondent to pay him outstanding leave payment and outstanding remuneration which became due to him as a consequence of the

¹ Rule 12 **Extension of time limits and condonation:**

(1)

(2)

(3) The court may, on good cause shown, condone non-compliance with any period prescribed by these rules.

respondent's discriminatory remuneration regime. The applicant seeks the payment of an amount of R16 500 (Sixteen Thousand Five Hundred Rand) as payment of his outstanding remuneration and R6 500 (Six Thousand Five Hundred Rand) for unpaid leave.

[6] The material facts of this matter are the following:

- 6.1. The applicant was employed by the Respondent (Maunga Projects CC) on a limited duration contract as a Community Liaison Officer at a monthly salary of R5 000 (Five Thousand Rand) with effect from 3 August 2015. The applicant's contract of employment was renewed in January 2016. The applicant submitted that he became aware that other Community Liaison Officers in Thohoyandou and Middleburg had been earning R6 500 per month as opposed to the R5 000 he was earning. On 18 February 2016, the applicant held a meeting with representatives of the respondent (Mr O Ncube, Mr S Dube and Mr Tshuma) who agreed to cure the disparity by increasing his salary to R6 500 with effect from January 2016.
- 6.2. At the end of February 2016, the respondent had not effected the increase. The applicant exhausted all the internal dispute resolution mechanisms to no avail. He was then told by Mr Tshuma that he was a mere political appointee and because of his old age, he should abandon his salary claim.
- 6.3. The applicant refused to abandon his fight for equal pay and in November 2016, the applicant was served with a notice of termination of employment. The employment relationship between the parties terminated on 30 November 2016.
- 6.4. The applicant referred a claim to the Commission for Conciliation Mediation and Arbitration (CCMA). On 10 January 2017, the CCMA issued a jurisdictional ruling holding that the jurisdiction of the short payment dispute belonged to this Court.

- [7] In his statement of claim, the applicant seeks payment of the difference insalary the respondent undertook to pay him in correcting its discriminatory practice. He further seeks the payment of his outstanding one month's leave pay.
- [8] The provisions of section 6(1) of the Employment Equity Act (EEA)² prohibits both direct and indirect unfair discrimination against an employee in any employment policy or practice on grounds of, *inter alia*, age and any other arbitrary grounds.³ The applicant's version remains unchallenged and it is that the respondent acknowledged that no reason existed for remunerating him at a rate lower than his counterparts who work for the respondent. He was instead told to stop pursuing his fight for equal pay because he was old and a political appointee. Both the respondent's reasons for refusing to fulfil its undertaking to pay the applicant at the same rate as his counterparts are prohibited in terms of the provisions of section 6(1) of the EEA. Age is the listed ground and being a political appointee constitutes an arbitrary ground as it cannot be fairly used to treat the applicant differently from his counterparts. The respondent's conduct therefore constituted unfair discrimination as envisaged in section 6 of the EEA.
- [9] The applicant was told in November 2016 to abandon his fight for equal pay. He referred his dispute to the CCMA during January 2017 and he filed his statement of claim on 6 July 2017. He submitted that a months' leave pay was due to him. Based on the respondent's undertaking to cure its discriminatory practice and increase his salary by R1 500 per month the amount due to the applicant for outstanding salary from January 2016 to end November 2016 is R16 500.
- [10] In the premises, the following order is made:

² Act 55 of 1998, as amended

³ Section 6. **Prohibition of unfair discrimination.** —

- (1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground.
- (2) ...

Order:

1. The late filing of the notice of amendment is condoned.
2. The respondent is ordered to pay the applicant outstanding leave pay in the amount of R6 500 (Six Thousand Five Hundred Rand).
3. The respondent is ordered to pay the applicant outstanding salary in the amount of R16 500 (Sixteen Thousand Five Hundred Rand).
4. There is no order as to costs.

Z. Lallie

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

In person

For the Respondent:

No appearance

LABOUR COURT