



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J 2439/16

In the matter between:

FINANCIAL FISCAL COMMISSION

Applicant

and

CCMA, PRETORIA

First Respondent

MILANZO ISAAC N.O.

Second Respondent

MAVUSO ROSSWELL VOKWANA

Third Respondent

Heard: 27 July 2018

Delivered: 2 August 2018

JUDGMENT

RABKIN-NAICKER, J:

[1] This applicant seeks the following relief on an urgent basis:

“That the first and second respondents be interdicted and restrained from commencing arbitration proceedings in the dispute between the applicant and the third respondent under case number GAJB23000-17 pending the final determination of the review application under case number: JR1382/18, alternatively, that the arbitration proceedings be stayed pending the final determination of the aforesaid review application.

- [2] The arbitration proceedings have been set down for 3 August 2018. I first deal whether the Court is prepared to treat the matter as urgent, without going into the substantive merits of the matter.
- [3] The proceedings set down for the 3 August 2018 relate to an alleged unfair labour practice pertaining to suspension. The third respondent is employed as the Chief Financial Officer (CFO) of the applicant and was suspended on 22 September 2016. His disciplinary hearing is scheduled for 3 August 2017.
- [4] On 7 June 2018, the condonation ruling which applicants seeks to review, was issued. The parties were informed on 3 July 2018 that the matter was enrolled for an arbitration hearing. The applicant did not launch the review application until 16 July 2018. In other words, the applicant rather than file such review urgently, waited for the full six-week period to do so. The applicant then waited until the 20 July 2018 to file this application.
- [5] In its founding papers, the applicant's averments relevant to urgency are the following that:
- “4.1.1 The arbitration proceedings which are sought to be stayed are scheduled to commence on 3 August 2018;....
- 4.1.5 The applicant did not delay in bringing this application. The review application was filed on 16 July and its notice of motion contains the same interdictory relief as that sought in this application but the respondents have not agreed thereto, thereby justifying the applicant in approaching the Court for urgent relief...”
- [6] The review application was not brought on an urgent basis. One can only presume that the reason for the inclusion of a prayer for the staying of the arbitration proceedings in that application was tactical rather than premised on any legal basis. There is no explanation as to why the applicant did not seek to review the condonation ruling urgently once it was issued, *i.e.* during the period that the set down date for the arbitration hearing was awaited.
- [7] In the Court's view, this application is a case of self-created urgency, the timing of its lodging carefully crafted. The matter of staying the arbitration

proceedings was urgent as soon as the condonation ruling was issued on 7 June 2018. The applicant only served the review application on the third respondent on the 9 July 2018, the day that it received the notice of set down for arbitration.

[8] The Practice Manual of this Court provides that:

“12.10 Deviation from the time periods prescribed by the Rules of Court must be strictly commensurate with the urgency of the matter as set out in the founding papers. In cases of extreme urgency, a reasonable time must be afforded to the respondent to give notice of intention to oppose.

12.11 The court will decline to grant an order for the enrolment of the application as an urgent application and/or for the dispensing of the forms and services provided for in the rule if the facts and circumstances set out in the applicant's affidavits do not constitute sufficient urgency for the application to be brought as an urgent application and/or justify the abrogation or curtailment of the time periods referred to in the Rule 6(5) and/or justify the failure to serve the application as required. Save for a possible adverse cost order against the applicant, the court will make no order on the application or will strike the matter off the roll. These requirements will be strictly enforced by the presiding judge.”

[9] It is only once an applicant has persuaded the court that sufficient grounds exist which necessitate a relaxation of the rules and ordinary practice, that the court will proceed to consider a matter as one of urgency. The extent to which the court will allow parties to dispense with the rules relating to time periods will depend on the degree of urgency in the matter. ¹

[10] In all the circumstances, I am not persuaded that the facts set out in the applicant's affidavits constitute sufficient urgency or justify the abrogation of the time periods in the normal course. The applicant asked that costs be reserved until the hearing of the review application. Third respondent sought

¹ *National Union of Mineworkers v Black Mountain - A Division of Anglo Operations Ltd* (2007) 28 ILJ 2796 (LC) at paragraph 12.

punitive costs. The order I make takes into account both law and equity in deciding on an appropriate costs order.

[11] In all the circumstances, I make the following order:

Order

1. The application is struck off the roll with costs.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:

K Tsatsawane instructed by
Mavuso Rosswell Vokwana

For the Respondent:

Mr N.P Voyi of Ndumiso Voyi Inc.
Attorneys

LABOUR COURT