



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 1544/16

In the matter between:

THE COMMISSIONER OF SOUTH

AFRICAN POLICE SERVICES

First Applicant

THE PROVINCIAL COMMISSIONER OF POLICE

Second Applicant

and

KEKANA GERT MOKONE

First Respondent

THE SAFETY AND SECURITY SECTORAL

BARGAINING COUNCIL (SSSBC)

Second Respondent

PRINCE KEKANA N.O

Third Respondent

Heard: 08 May 2018

Delivered: 16 August 2018

JUDGMENT

MAHOSI .JIntroduction

- [1] This is an application in terms of section 158(1)(g) of the Labour Relations Act (LRA)¹ for an order reviewing and setting aside the condonation ruling issued by the third respondent (arbitrator) acting under the auspices of the second respondent (SSSBC), dated 17 June 2016 under case reference number PSSS 487-13/14. In his ruling, the arbitrator ruled that there was no need for condonation. The arbitrator further directed that the unfair dismissal dispute be set down for arbitration.
- [2] Aggrieved by this ruling, the applicants launched this application.
- [3] The applicants have sought condonation for the late filing of this application which is some seven days late. I have considered the reasons proffered by Mr Mafanyane, the applicants' legal administration officer and deponent to the founding affidavit, and I am satisfied that they are reasonable. The delay is in my view not excessive, and condonation is hereby granted.

The parties

- [4] The first applicant is the Commissioner of the South African Police Services (SAPS) and the second applicant is the Provincial Commissioner of Police (Provincial Commissioner). Both will collectively be referred to as the applicants in this judgment.
- [5] The first respondent is Mr Kekane Gert Mokone who will be referred to as the employee in this judgment. The third respondent is Prince Kekana, a commissioner under the auspices of the second respondent, and whom I will refer to as the arbitrator.

Material background facts

- [6] The employee was employed by the South African Police Services as a Warrant Officer. He was charged with misconduct relating to stock theft and

¹ Act 66 of 1995 as amended.

following an internal disciplinary enquiry, the employee was dismissed on 15 February 2012, subject to the endorsement by the Provincial Commissioner. Concurrently, he was criminally charged, found guilty of stock theft by a magistrate court and was ordered to pay a fine.

[7] The employee assisted by his union enquired about the progress of the confirmation of the dismissal by the Provincial Commissioner and launched an internal appeal on 14 August 2013. The appeals committee informed the employee in a letter dated 05 December 2013 that his appeal was launched outside of the prescribed time limits as provided for in Regulation 15(5) of the SAPS disciplinary regulations and that he had to apply for condonation thereof. The employee did not file the condonation application with the appeals committee. Instead, he filed an unfair dismissal dispute before SSSBC on 05 December 2013.

[5] The dispute was set down for con/arb process and was conciliated unsuccessfully. Commissioner Jana Burger, then issued an outcome report in which the following was stated:

‘The dispute was not referred to SSSBC within the required 30 day period and the parties themselves are not sure of the date of referral. The applicant indicated that they wanted to apply for condonation, but was unable to do so on 14 March as they needed time to collect information attached to the application for condonation.

The case was postponed and applicant was directed to file an application for condonation on/or before 28 March 2014. The respondents may file its opposing papers, if any, on/or before 4 April 2014. The certificate of outcome could not be issued as the council does not have jurisdiction until such time that condonation is granted.’

[6] Accordingly, the employee filed his application for condonation and the applicant filed its opposing papers. The arbitrator considered the written submissions and issued his ruling on 17 June 2016.

Condonation Ruling

- [13] In his ruling, the arbitrator found that there was no proof that the employee had been informed of his dismissal and therefore there was no need on the part of the employee to apply for condonation. The arbitrator further found that the applicants had not been without fault as they had contributed in delaying the finalisation of the dismissal dispute internally.
- [14] The applicants contended in their founding affidavit that the confirmation of the dismissal by the Provincial Commissioner was communicated to the employee through a letter dated 05 March 2011 and further that he (the employee) acknowledged receipt thereof on 24 April 2012. The employee, on the other hand, disputes knowledge or acceptance of the said letter.
- [15] This letter was held by the arbitrator to be defective on the basis that it had the discrepancies, in that it is dated 2011 whereas the dismissal occurred in 2012. This was explained by the applicants as simply a typographical error and they contended that the arbitrator ought to have ignored the discrepancy as the contents of the letter relate to the events of 2012.
- [16] The arbitrator's finding in this regard as implausible. In the modern day world, everyone is susceptible to typographical errors. For the arbitrator to hold this view is unfortunate. However, from the reading of the ruling, this 'defect' does not seem to be an isolated determining factor considered by the arbitrator. The arbitrator further found that there was no proof before him that the employee indeed became aware of the Provincial Commissioner's confirmation as contended by the applicants.
- [17] What was before the arbitrator was a dispute of fact relating to the date on which the employee became aware of the confirmation of his dismissal. As a result, the arbitrator concluded that there was no evidence before him that the employee became aware of the confirmation of his dismissal. In my view, this finding is reasonable. No evidence of who served the letter on the employee or his representatives or who acknowledged receipt of the letter was placed before the arbitrator.

[18] Furthermore, the argument that the employee ought to have exhausted internal remedies speaks to the merits of the matter, which can be properly ventilated at arbitration.

[19] In my view, the ruling of the arbitrator is reasonable, and there is no prejudice to be suffered by any of the parties to have the matter argued at arbitration as ruled by the arbitrator.

[20] In the circumstances, I make the following order.

Order

1. The condonation for the late filing of the review application is granted;
2. The application to review the condonation ruling is dismissed;
3. There is no order as to costs.

D. Mahosi

Judge of the Labour Court

Appearances:

For the applicant: Advocate C. Batz

Instructed by State Attorney Bloemfontein

For the third respondent: Mr Gouws of Johan Gouws Attorneys