



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR804/2016

In the matter between:

MATHIVHA AJ AND 5 OTHERS

Applicant

and

PUBLIC HEALTH AND SOCIAL DEVELOPMENT

SECTORAL BARGAINING COUNCIL

First Respondent

MPHAPHULI JOSEPH

Second Respondent

DEPARTMENT OF HEALTH, LIMPOPO

Third Respondent

Heard: 26 April 2018

Delivered: 3 October 2018

Summary: Defects in the review application do not justify its dismissal on grounds of inordinate delay in its prosecution when the delay is not proved.

JUDGMENT

LALLIE, J

- [1] This is an application to dismiss an application for review which was instituted by the applicant in April 2016. It is opposed by the applicant. The factual background to this matter is largely not in dispute. The individual applicants (the applicants) are employed by the third respondent as nurses. In

September 2007 the third respondent and trade unions representing a number of its employees concluded a collective agreement which was incorporated in Resolution 3 of 2007 (the resolution). It was referred to as the Occupational Specific Dispensation for Nurses (the OSD). The resolution provided for the translation of professional nurses to posts on condition that they met laid down requirements. In 2015 the applicants referred a dispute to the first respondent (the bargaining council) regarding the application and interpretation of the resolution, having been aggrieved by what they perceived to be its incorrect application by the third respondent. The dispute was arbitrated by the second respondent (the arbitrator) who, on 17 March 2016 issued an award in favour of the third respondent. In April 2016 the applicants filed an application to have the award reviewed and set aside. On 5 June 2017 the third respondent launched the application at hand to have the review application dismissed owing to the applicants' delay in prosecuting the review application.

- [2] The grounds the third respondent sought to rely on are that the application does not contain the names of the applicants or their confirmatory affidavits. The application is also based on a number of defects in the review application which include the late filing of the arbitration record, lack of valid grounds for review, a defective record, the applicant's failure to cure defects in the review application and the delay in its prosecution which prejudiced the third respondent.
- [3] In their opposing papers the applicants denied that their review application is defective. In the event of the presence of defects in their application, they denied that those defects justified the dismissal of their review application.
- [4] The reason for dismissing a review application for delay in its prosecution is aptly expressed as follows in *MJRM Transport Services CC v Commission for Conciliation, Mediation and Arbitration and Others*¹:

[18] A further misconception that needs to be dispelled in this court is that whenever the provisions of clause 11.2.3 of the Practice Manual are to

¹ [2017] 1 BLLR 40 (LC) at para 18.

be invoked, the respondent party can by necessity, implore the Court to dismiss the main review application. It could never have been the intention of the provisions of the Practice Manual to allow parties to by-pass the other provisions of the Rules of this Court where there is an allegation of a failure to timeously prosecute a review application.'

- [5] The matter at hand is, however, distinguishable from *MJRM Transport Services*². The applicants correctly submitted that not every delay justifies the dismissal of a review application. By the third respondent's own admission, the applicants filed their review application on time in April 2016. On 5 September 2016, the applicants filed their notice in terms of Rule 7A(8)(b) of the Labour Court Rules indicating that they stood by their founding papers. The period between April and September 2016 does not constitute an inordinate delay for purposes of a review application. Having received the Rule 7A(8)(b) notice, the third respondent should have dealt with the defects in the review application in its answering affidavit. The third respondent elected not to file an answering affidavit and instead used the defects as a basis of the application at hand. I am not convinced that the third respondent's approach is correct.
- [6] An application to dismiss a review application is not granted lightly because of its far reaching effects. It denies the applicant the right to challenge an arbitration award on review. The late filing of the record on its own does not, in the circumstances of this case constitute an inordinate delay or justify the dismissal of the review application. Clause 11.2.3 of the Practice Manual of the Labour Court (the Practice Manual), does not close the doors of this Court to applicants who file arbitration records late. It deems their review applications withdrawn and affords them an opportunity to show cause why they should be afforded an opportunity to pursue their review applications.
- [7] The third respondent did not establish that the applicants delayed inordinately in prosecuting their review application. They further did not prove any grounds justifying the dismissal of the applicants' review application.

² *Supra*.

[8] In the premises, the following order is made:

Order

1. The application to dismiss the applicant's review application is refused.

Z Lallie

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate Mapila

Instructed by: Ernest Rammela Attorneys

For the Third Respondent: Ms Maponya of the State Attorney

LABOUR COURT