



REPUBLIC OF SOUTH AFRICA
THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH
JUDGMENT

Not reportable

CASE NO: P 229/16

In the matter between:

MASSDISCOUNTERS (PTY) LTD

t/a GAME AND DION WIRED

Applicant

and

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Respondent

SIPHIWO SMITH N.O

Second

Respondent

GREGORY KAYSER

Third Respondent

Ruling issued: 14 March 2018

RULING: APPLICATION FOR LEAVE TO APPEAL

VAN NIEKERK J

- [1] This is an application for leave to appeal against the whole of the court's judgment delivered on 16 November 2017. In its judgment, the court refused to condone the late filing of an application to review and set aside an arbitration award issued by the second respondent.
- [2] The applicant has applied for condonation for the late filing of this application. The explanation proffered by the applicant's attorney is satisfactory, and condonation is granted.
- [3] The written submissions filed by the applicant in support of the application for leave to appeal scarcely address the court's finding, i.e. that condonation for the later filing of the review application should be refused. Instead the applicant has sought to make out a case primarily on the merits of the review application. The delay in filing the review application was significant, if not inordinate. The explanation for the delay amounted to submissions by a specialist labour law adviser that the issues raised in the award under review were 'complex', that further consultations were necessary prior to filing the review application, that the deponent experienced IT related problems, and that he was unaware that a founding affidavit needed to be attached to a notice of motion. All of these explanations were considered in paragraph 6 of the judgment, and found wanting for the reasons recorded. The fact remains that the deponent is a labour law specialist in the employ of the applicant, who was obviously aware of both the

applicable time limits and the fact that the application ought to have been attended to with the required degree of diligence and urgency. He manifestly failed to do so. Strictly, in the absence of a satisfactory explanation for an unacceptable delay, the applicant's prospects of success in the review application were not a relevant factor. However, the court gave consideration to those prospects, and concluded, for the reasons recorded, that they were not so overwhelming so as to justify a failure to file the review application timeously. To the extent that the applicant relies in the present application on the merits of the review application, the same consideration must apply.

- [4] The granting of condonation is a matter of discretion, and it is trite that an appeal court will rarely interfere with a discretion properly exercised.
- [5] In my view, the applicant has failed to make out a case for leave to appeal and the application stands to be dismissed. There is no reason why costs should not follow the result.

I make the following order:

1. The application for leave to appeal is dismissed, with costs.

André van Niekerk
Judge