THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 393-16

Not Reportable

In the matter between:

LINDA PRINCE ZWANE	**Applicant**
And	
MOHINI SAMSON, N.O.	**First Respondent**
CCMA	**Second Respondent**
SOUTH AFRICAN BREWERIES LTD	**Third Respondent**

Heard: 1 August 2019

Judgment delivered: 13 August 2019

JUDGMENT

WHITCHER J

[1] The labour courts and the apex court have repeatedly emphasized that review applications, by their nature, are urgent and must be prosecuted expeditiously so that the opposing party can organise its affairs accordingly. The Practice Manual of this court is designed to give effect to this principle. Notwithstanding this, parties continue to prosecute review applications with no regard to the aforesaid principles.

[2] The matter before me concerns an application to reinstate a review application filed on 11 April 2016.

[3] On 24 June 2016, the applicant served part of the record. It was served about 10 days outside the 60 day period contemplated in Clause 11.2.2 of the Practice Manual; a condonable delay if this had been the only delay.

[4] On 20 July 2016, Bowman's for the third respondent (SAB) notified the applicant's attorneys, Ndumiso Voyi Incorporated (Voyi) that the filed record was incomplete.

[5] In response, Voyi filed the rest of the record on 27 January 2017, which meant the proper record was filed 7 months late.

[6] On 10 February 2017, Voyi asked Bowmans for an extension of time to file the supplementary founding affidavit by no later than 20 February 2017. Bowmans agreed to this request.

[7] However, the supplementary founding affidavit was filed 7 months after 20 February 2017, on 27 September 2017, and served 8 months after 20 February 2017. It was dispatched to Bowman's by post and was received on 20 October 2017.

[8] Notably, on 25 October 2017 in a letter to Voyi, Bowmans complained about the lengthy details and made it clear that in terms of the Practice Manual, the review application was deemed to have lapsed.[1] Bowman's made the same

[1] The Practice Manual:
Clause 11.2.2: For the purposes of Rule 7A (6), records must be filed within 60 days of the date on which the applicant is advised by the registrar that the record has been received.
Clause 11.2.3: If the applicant fails to file a record within the prescribed period, the applicant will be deemed to have withdrawn the application, unless the applicant has during that period requested the respondent's consent for an extension of time and consent has been given. If consent is refused, the applicant may, on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time.

point in its answering affidavit, filed on 25 November 2017, and in its heads of filed on 28 March 2018.

[9] This application (for the reinstatement of the review application) was then filed on 4 April 2018. It was filed more than a year after the complete record was filed, more than 6 months after the late supplementary founding affidavit was filed and more 5 months after Bowman's initial complaint.

[10] The attitude taken in the application is that the application is unnecessary because (i) the filing of the answering affidavit constituted a further step to advance the litigation process (and thus acquiescence to the applicant's failure to comply with the Practice Manual) and (ii) SAB failed to formally apply for the review application to be archived. To the extent that an explanation for the delays is needed, the applicant's attorneys did not appreciate the extent of the reading that occasioned a voluminous record, when balanced against the other matters the firm was dealing with at the time. These submissions have no merit.

[11] Rule 30 of the URC does not find application in this matter and SAB's letters and answering affidavit, read correctly, do not express acquiescence to the applicant's non-compliance with the Practice Manual. The various delays were squarely raised as an issue on 20 July, 25 October, 20 November 2017 and 28 March 2018. Moreover, condonation for non-compliance falls within the purview of the Court. Finally, the deeming provisions in the Practice Manual are what they say, deeming provisions, which means they do not require an active step from a respondent to bring them into effective.

[12] As for the explanation for the delays, the statement to the effect that the firm was busy with other matters and it took time [on my calculation, 1 year, 3 months[2]] to analyse the voluminous record is so vague that it amounts to no explanation. It further provides no explanation for the late filing of the record.

Clause 11.2.4: If the record of the proceedings under review has been lost, or if the recording of the proceedings is of such poor quality to the extent that the tapes are inaudible, the applicant may approach the Judge President for a direction on the further conduct of the review application.
Clause 11.2.7: A review application is by its nature **an urgent** application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive.

[2] From 24 June 2016.

The applicant has thus provided no good reason for the delays which are in violation of SAB's right to a speedy resolution of labour disputes.

[13] There is an additional consideration. As noted above, this application (for the reinstatement of the review application) was only filed on 4 April 2018 - more than a year after the complete record was filed, more than 6 months after the late supplementary founding affidavit was filed and more 5 months after Bowman's initial complaint. The applicant was under an obligation to institute an application for condonation (reinstatement of the review application) as soon as possible after becoming aware of his defaults.[3] He did not, and has provided no explanation for the delay.

[14] In light of the above findings – that the applicant has failed to provide a reasonable and bona fide explanation for the excessive delays in the prosecution of the review, there is no requirement for this Court to consider the applicant's prospects of success in the review application.[4]

[15] However, as a matter of caution, I did consider the applicant's prospects of success and concluded that they were not of a standard as to outweigh the weak explanation for the delays.

[16] The review amounts to no more than a regurgitation of the submissions the applicant made at the arbitration. It is evident from the record and the award that the commissioner pertinently applied her mind to all these submissions and rendered detailed findings that are logically and reasonably connected to the evidence that was before her. There is no demonstration with reference to the evidence on record that the commissioner overlooked material facts or failed to give the applicant a hearing on any of the issues raised in the review application.

[17] The only issue which gave me some pause is the commissioner's decision on the fairness of the disciplinary hearing. The evidence on record demonstrates

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[3] See: *Mewusa obo Mahatola and Others v F and J Electrical* (JS1002/09) [2016] ZALCJHB 167 (26 April 2016).
[4] See: *Colett v CCMA and Others* [2014] 6 BLLR 523 (LAC); (2014) 35 ILJ 1948 (LAC); *Makuse v CCMA and Others* [2015] 12 BLLR 1216 (LC); (2016) 37 ILJ 163 (LC).

that the chairperson of the disciplinary enquiry was grossly bias and disrespectful to the applicant and thus failed to give the applicant a fair hearing. The commissioner acknowledged this but awarded only one month's compensation. If I had been the commissioner, I would probably have awarded more than one month's salary. However, I cannot say that the commissioner's award is one that another commissioner could not possibly have granted, given the particular circumstances of this case.

[18] Applicant's counsel submitted that the misconduct of the chairperson amounted to substantive unfairness. Even if this is arguable, it does not assist the applicant to a finding that the dismissal was substantively unfair in light of the commissioner's mandate in an arbitration to determine whether overall the dismissal was substantively fair [that is, determine whether the applicant's dismissal in any event was warranted]; which the commissioner did.

[19] In the premises, I make the following order:

O**rder**

1. The application to reinstate the review application is dismissed.
2. The review application is dismissed.
3. There is no order as to costs.

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Whitcher J

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: B Ford, instructed by Ndumiso Voyi Incorporated

For the Third Respondent: L Mongie, from Bowman Gilfillan Inc.