

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 2238/16

In the matter between:

MLZ CONSTRUCTION AND SUPPLIES CC T/A PROCAM

Applicant

and

T.S. MAFUJANE N.O.

First Respondent

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Second Respondent

TARYN SYDNE MAKINGS

Third Respondent

Heard: 28 February 2019

Delivered: 19 September 2019

Summary: Application to review and set aside condonation ruling to rescission application.

JUDGMENT

RAPHULU, AJ

- [1] This is an application by the Applicant to review and set aside the First Respondent's condonation ruling to the late filing of the Applicant's rescission application.
- [2] As required, prior to dealing with the rescission application, the First Respondent considered the condonation application to the rescission application and held that condonation should not be granted. As a consequence of this, it followed that the Second Respondent had no jurisdiction to consider the rescission application.
- [3] In assessing a condonation application, it is trite law that the degree of lateness of the pleadings in question (in this case the rescission application), as well as the prospects of success on the main matter (in this case the rescission application), are material¹.
- [4] In the present case, instead of examining the degree of lateness of the rescission application, the First Respondent focused on the lateness of the condonation application.
- [5] In respect of prospects of success, the First Respondent held that the Applicant had not made representations in this respect. In doing this, the First Respondent disregarded the fact that the Applicant's condonation application specifically prays at paragraph 7.3 thereof, that the contents of the founding affidavit to the rescission application be incorporated as part of the condonation application and that same should be regarded as specifically repeated in the condonation application.
- [6] In light of the above, it is apparent to me that the First Respondent committed a material irregularity, and failed to consider material information, and that this led to the condonation application to the rescission application not being properly considered.
- [7] In the results, I make the following order:

¹ See: *Melane v Santam* 1962 (4) SA 531 (A).

Order

1. The condonation ruling is reviewed and set aside.
2. The matter is remitted back to the Second Respondent for proper determination of the dispute before a commissioner other than the First Respondent.

L. Raphulu

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Snyman Attorneys

For the Third Respondent: Taryn Sydne Makings