IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: JR 2567/16

In the matter between:

TEBOGO JACOB MOISI **Applicant**

and

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION **First Respondent**

SELLO MOPHAKI *N. O* **Second Respondent**

STANDARD BANK OF SOUTH AFRICA LTD **Third Respondent**

Heard: **26 November 2019**

Delivered: **17 December 2019**

JUDGMENT

TLHOTLHALEMAJE, J

[1] The third respondent (Standard Bank) approached this Court on 12 February 2019 with a Rule 11 application seeking an order that the review application launched by the applicant on 5 December 2016 be dismissed, on the basis of excessive and undue delay in its prosecution. The Rule 11 application is unopposed.

[2] The background to the Rule 11 application is fairly common cause and may be summarised as follows;

2.1 The applicant was employed by Standard Bank from 1 April 2012 until his dismissal on 12 August 2014, based on allegations of misconduct. Aggrieved with his dismissal, the applicant referred an unfair dismissal

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dispute to the Commission for Conciliation Mediation and Arbitration (CCMA) on 25 August 2014.

2.2 The dispute could not be resolved at conciliation proceedings held on 23 September 2019 and a certificate of outcome was issued.

2.3 The applicant only referred the dispute for arbitration on *24 March 2016*, well outside of the statutory time frames. He also sought condonation for the late referral of the dispute.

2.4 On 14 May 2016, the second respondent (Commissioner) issued a ruling and dismissed the applicant's application for condonation on the basis that a delay of 448 days was excessive; that the explanation for the delay was *implausible;* and that good cause had not been shown.

2.5 On 7 December 2016, the applicant filed his notice of motion for the review application. The review application was again launched outside of the statutory time limits, and no condonation was sought for non-compliance with the time frames.

2.6 On 14 December 2016, Standard Bank filed its notice of intention to oppose the review application. Since then, no further steps have been taken in prosecuting the review application.

2.7 Standard Bank nonetheless averred that it was only on 14 March 2017 it was served with a transcribed record of the condonation proceedings before the CCMA. That transcribed record however was not filed with the Court.

2.8 On 14 March 2017, Standard Bank's attorneys of record wrote to the applicant confirming receipt of the transcribed record and further placed the applicant on terms in regards to his purported non-compliance with the requirements of rule 7A(6) and (8) of the Rules of this Court.

2.9 On 7 August 2018, settlement discussions were held at a meeting held between its attorneys of record and the applicant's representatives (VM

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General and Labour Consulting CC). Those discussions did not yield any result.

2.10 On 13 August 2018, Standard Bank again placed the applicant on terms in respect of his non-compliance with the requirements of rule 7A(6) and (8) of the Rules of this Court. When no further steps were taken in respect of the review application, Standard Bank launched the Rule 11 application on 12 February 2019. That application remained unopposed as at its hearing.

2.11 Rather than opposing the Rule 11 application, what the applicant instead did was to write a letter to Mr Bongani Masuku, of Standard Bank's attorneys of record (Tabacks), on 12 September 2019, which I do not deem it necessary to repeat the contents thereof, as it does not address the application at hand.

[3] At the hearing of the application, the applicant appeared in person despite the matter being unopposed.

[4] In the light of the background outlined above, it is apparent that the applicant's application for a review in its current form is not in compliance with the provisions of Rule 7A(6) and (8), read together with the provisions of the Practice Manual of this Court. To the extent that the review application has been deemed to have been withdrawn in accordance with the provisions of Clause 11.2.3[1] of the Practice Manual of this Court, the central issue to be determined is whether it is competent for the Court to dismiss that review

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[1] **11.2 Applications to review and to set aside arbitration awards and rulings**

11.2.1 Once the registrar has notified an applicant in terms of Rule 7A(5) that a record has been received and may be uplifted, the applicant must collect the record within seven days.

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.

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. The application must be accompanied by proof of service on all other parties, and answering and replying affidavits may be filed within the time limits prescribed by Rule 7. The Judge President will then allocate the file to a judge for a ruling, to be made in chambers, on any extension of time that the respondent should be afforded to file the record.

application on account of lack of timeous prosecution in view of the Rule 11 application before the Court.

[5] The Labour Appeal Court in *Macsteel Trading Wadeville v Francois van der Merwe N.O and Others*[2] considered the implications of the provisions of the Practice Manual and concluded that they were binding on this Court and the parties[3]. Furthermore, the LAC held that;

5.1 Where the time limits are not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not be archived or be removed from the archives;

5.2 Where undue delay in prosecuting the review application is raised in the answering affidavit in the review application, and since that application had in effect lapsed and been archived, this Court would

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[2] (2019) 40 ILJ 798 (LAC)

[3] At para 22 – 23 where the Labour Appeal Court held;

> "[22] The underlying objective of the Practice Manual is the promotion of the statutory imperative of expeditious dispute resolution. It enforces and gives effect to the rules of the Labour Court and the provisions of the LRA. It is binding on the parties and the Labour Court. The Labour Court does, however, have a residual discretion to apply and interpret the provisions of the Practice Manual, depending on the facts and circumstances of a particular case before the court.
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> [23] … Clause 11.2.7 imposes an obligation on the applicant to ensure that all the necessary papers in the application are filed within 12 months of the date of the launch of the application (excluding heads of argument), and the registrar is informed in writing that the application is ready to be set down 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 be archived or be removed from the archive..."

See also *Samuels v Old Mutual Bank* [2017] ZALAC 10 (25 January 2017) at para 14 – 15, where it was held,

> "The consolidated practice manual which came into operation on 2 April 2013 constitutes a series of directives issued by the Judge President over a period of time. Its purpose is, inter alia, to provide access to justice by all those whom the Labour Court serves; promote uniformity and/or consistency in practice and procedure and set guidelines on standard of conduct expected of those who practice and litigate in the Labour Court. Its objective is to improve the quality of the court's service to the public, and promote the statutory imperative of expeditious dispute resolution.
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> The practice manual is not intended to change or amend the existing Rules of the Labour Court but to enforce and give effect to the Rules, the Labour Relations Act as well as various decisions of the courts on the matters addressed in the practice manual and the Rules. Its provisions therefore are binding. The Labour Court's discretion in interpreting and applying the provisions of the practice manual remains intact, depending on the facts and circumstances of a particular matter before the court.""

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lack jurisdiction to determine the issue of the undue delay raised there. In these circumstances, a party complaining of undue delay would have been required to bring a separate Rule 11 application for the review application to be dismissed or struck from the roll on the grounds of the other party's undue delay in prosecuting it.

5.3 Once the review application was archived and regarded as lapsed as a result of a party's failure to comply with the Practice Manual, and there was also no substantive application for reinstatement of the review application, and no condonation was sought for the undue delay in filing the record, the Court is as a matter of law, obliged to strike the matter from the roll on the grounds of lack of jurisdiction or alternatively, to give the party affected by the undue delay, an opportunity to file a separate Rule 11 application demonstrating why the matter should be dismissed or struck from the roll on the basis of that delay.

[6] In this case, and to the extent that it was common cause that the review application in its current state was clearly not in compliance with the Rules of this Court and the provisions of the Practice Manual, the application would be deemed dismissed. The material facts and circumstances of this case are however distinguishable from those in *Macsteel*. In this case, the matter came before the Court at the behest of Standard Bank, by way of a Rule 11 application, in circumstances where the review application was essentially dormant, as none of the provisions of Rule 7A(6) and (8) were complied with. The review application had not even reached a stage where Standard Bank was placed in a position to file an answering affidavit due to non-compliance with the provisions of Rule 7A(8).

[7] In the light of the above, and further in view of the fact that the applicant was placed on terms and forewarned of the Rule 11 application and did nothing by either seeking to reinstate the review application or to oppose this application, there is no reason why the Rule 11 application should be not considered.

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[8] In *Macsteel*, the Labour Appeal Court had placed emphasis on the primary object of the LRA being to promote the effective resolution of labour disputes, integral to which was the speedy resolution of disputes[4]. This objective cannot in my view, be achieved where a reviewing party takes no steps whatsoever in order to ensure that a dispute is finally determined. Furthermore, that objective would be defeated if in circumstances where such as these, it would be expected of the opposing party to the review to do nothing, and to wait endlessly for the reviewing party to take steps in order to have a matter finalised. Respondent parties in any litigation against them are entitled to expeditious resolution of disputes, inasmuch as applicant parties are.

[9] Rule 11(4) of the Rules of this Court provides that in the exercise of its powers and the performance of its functions, or any incidental matter, a reviewing court may act in a manner that it considers expedient in the circumstances to achieve the objects of the Act[5].

[10] Given the history and the circumstances of this case as outlined elsewhere in this judgment, and further taking into account the lax manner with which the review application was prosecuted, and the fact that the applicant's conduct from the inception of this dispute has been that of nonchalance, there is no reason either based on law or fairness, as to why the Rule 11 application should not be granted. Given these conclusions which effectively are dispositive of the dispute between the parties, I further find that there is no basis for any costs order to be made.

[11] Accordingly, the following order is made;

<u>Order:</u>

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[4] At para 20, where it was held;

> "A primary object of the Act is to promote the effective resolution of labour disputes, integral to which is the speedy resolution of disputes. As stated by the Constitutional Court in *Toyota:*
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> > 'Any delay in the resolution of labour disputes undermines the primary object of the LRA. It is detrimental not only to the workers who may be without a source of income pending the resolution of the dispute but ultimately, also to the employer who may have to reinstate workers after many years.'"(citations omitted)

[5] See *Macsteel* at para 19

1. The application to review and set aside the condonation ruling issued by the second respondent on 14 May 2014 under case number GAJB18949-14 is dismissed on account of lack of timeous prosecution.

2. The is no order as to costs.

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E. Tlhotlhalemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: In Person

For the First Respondent: B. Masuku of Mervyn Tabacks Incorporated

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