

THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not reportable

Case no: PR 110/14

In the matter between:

**JE FIKILE
AND 16 OTHERS**

Applicants

and

MINISTER OF ROADS AND TRANSPORT

First Respondent

**MEC FOR THE DEPT OF ROADS AND
TRANSPORT, EASTERN CAPE**

Second Respondent

GPSSBC

Third Respondent

PI DHLODHLO N.O

Fourth Respondent

RULING: APPLICATION FOR LEAVE TO APPEAL

Delivered: 30 October 2019

VAN NIEKERK J

- [1] The applicants seek leave to appeal against the whole of the judgment by this court on 23 August 2019. On that date, the court refused to condone the late filing of an application for review, and dismissed that application.

- [2] The material facts are recorded in the judgment and do not bear repetition. It is sufficient to say, for present purposes, that the award sought to be reviewed was issued on 23 September 2013, and received on 10 November 2014. The review application was filed on 30 July 2014, more than seven months late. The court held that the delay was excessive, and the explanation for it unsatisfactory, especially since there was simply no explanation for a period of delay of some three months after legal representatives had been consulted. More broadly, the events giving rise to the dispute occurred in 1996, and the court held that the interests of finality trumped.
- [3] The core of the present application is the submission that the court erred in failing to consider that the mere fact that the dispute had its origins in event that occurred in 1996 was irrelevant to the delay in either the reference to arbitration in 2013 or its being set down for adjudication in 2019. Put another way, the applicants submit that the court erred in regarding the commencement of the period of delay at 1996.
- [//] The fact remains that the review application was filed more than seven months late. Which by any account is an excessive if not inordinate delay. The applicant do not dispute that a significant period of that delay is simply unexplained. Structlt, as the court pointed out, in these corcuimstanves the applicanmts' prosepcts of success are irrelevant. To the extent that the applicants rely on the directive issued by Prinsloo J on 17 May 2017, this directive relates only to the filing of a Rule 7A(8) notice and answering and replying affidavits, and does not address the issue of condonation, or suggest that condonation has been granted. The answering affidavit squarely raises the submission that the court lacked jurisdiction to entertain the review application in the absence of condonation for the late filing of the review application. The court was obliged to deal with the jurisdictional issue – courts may not entertain disputes over which they have no jurisdiction. This required the court to determine whether the applicants had made out a proper case for condonation. After examining all of the relevant facts

and circumstances relating to the applicants' conduct between the date of receipt of the award and the filing of the review application, in the exercise of its discretion, the court concluded that the applicants had failed to make out a case for condition. The reference to events outside of that time period (and in particular to the fact that the dispute had its roots in events as far back as 1996) was made under the rubric of the interests of finality. In the exercise of a discretion to grant or refuse condonation, a court must necessarily have regard to the interests of justice, the interests of expeditious dispute resolution and the interests of finality. What the court found is that none of these interests, properly considered, outweighed a poor explanation for an inordinate delay in filing the review application. In my view, there is no reasonable prospect that another court would come to a different conclusion.

[//] Finally, there is no reason to deny the first and second respondents the costs of opposing the present application.

I make the following order:

1. Leave to appeal is refused, with costs.

Andre van Niekerk
Judge