



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR 2106/15

In the matter between:

JOHANNES LESETJA MALATLHELA

Applicant

and

MAXI SECURITY

First Respondent

MALUBANE BUTI N.O. COMMISSIONER

Second Respondent

THE COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Third Respondent

Heard: 26 November 2019

Delivered: 21 January 2020

JUDGMENT

LALLIE J

- [1] This is an unopposed application to review and set aside an arbitration award of the second respondent (the Commissioner).

- [2] The relevant facts of this matter are that the applicant was an employee of the first respondent until he was dismissed on 23 April 2013. He referred an unfair dismissal dispute to the third respondent, the Commission for Conciliation, Mediation and Arbitration (the CCMA) which issued a certificate of the non-resolution of the dispute on 10 September 2013. On the same day the applicant delivered a request for arbitration at the CCMA. The CCMA dispatched a letter to the applicant by registered mail on 3 October 2013, informing him that his arbitration request was fatally defective as he had failed to attach proof of its service on the first respondent. The applicant cured the defect on 16 October 2014 when he faxed to the CCMA proof that he had served the request for arbitration on the first respondent on 16 October 2014. The applicant simultaneously filed an application for condonation of the late filing of his request for arbitration.
- [3] The CCMA scheduled the condonation hearing for 24 November 2014 and notified the applicant of the hearing date by registered mail on 31 October 2014. Only the first respondent was represented at the condonation hearing. After considering the application, the second respondent issued the ruling under review in which he refused condonation. In terms of section 145 (1) of the Labour Relations Act¹ (the LRA), the applicant was required to have filed his review application within 6 weeks of the date on which the condonation ruling was served on him. Although the condonation ruling is dated 24 November 2014 and the review application filed on 4 November 2015, the CCMA omitted proof of the date on which the condonation ruling was delivered on the applicant from the arbitration record. The delay, although noted, could not be imputed on the unrepresented applicant
- [4] The applicant's grounds for review are that in taking his decision refusing condonation, the commissioner failed to consider that he had sustained injuries as a result of an assault by the first respondent from which he was still recovering. The applicant's case therefore is that the condonation ruling is defective as envisaged in section 145 (2) (a) (ii) of the LRA in that he committed a gross irregularity in the conduct of the condonation hearing.

¹ Act 66 of 1995, as amended

- [5] The commissioner's reasons for refusing condonation were that the referral was excessively late. The applicant failed to provide reasons for the delay and averments on prospects of success in his affidavit. The commissioner concluded that without reasons for the delay and prospects of success it would not be in the interest of justice to grant condonation.
- [6] For the condonation ruling to be reviewed and set aside the applicant was required to have established that the commissioner's decision was unreasonable². The reasonableness of the condonation ruling has to be assessed on the evidentiary material before the commissioner when he was taking his decision on condonation³. The only reason for the delay the applicant presented at the CCMA was that he was at his home, in pain, after he had been assaulted by management. The applicant left unanswered all the questions which prompted him to give information on the other relevant factors which the commissioner had to consider.
- [7] In addition, he did not seize the opportunity of making oral representations when the condonation hearing was set down as he did not attend it. The commissioner can, in those circumstances, not be faulted for basing his decision on the evidentiary material at his disposal. When the information on condonation the applicant presented at the CCMA is considered against the test for condonation, it supports the commissioner's decision. The condonation ruling is therefore based on the evidentiary material before the commissioner and falls within bounds of reasonableness.

[8] In the premises, the following order is made:

Order

1. The application for review is dismissed.

Z. Lallie

Judge of the Labour Court of South Africa

² *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] 12 BLLR 1097 (CC).

³ *Herholdt v Nedbank* (2013) 34 ILJ 2795 (SCA).

Appearances:

For the Applicant: In person

For the Respondent: No appearance

LABOUR COURT