

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR 975/17

In the matter between:

CAMM TRANS CC**Applicant****and****COMMISSIONER DAVIDS MAILA N.O****First respondent****THE COMMISSION FOR CONCILATION
MEDIATION AND ARBITRATION****Second Respondent****ASSOCIATION OF MINEWORKERS AND
CONSTRUCTION UNION obo S MALANDVULA
AND 13 OTHERS****Third Respondent***In re: the Rule 11 application between:***ASSOCIATION OF MINEWORKERS AND
CONSTRUCTION UNION obo S MALANDVULA
AND 13 OTHERS****Applicant****and****COMMISSIONER DAVIDS MAILA N.O****First respondent****THE COMMISSION FOR CONCILATION
MEDIATION AND ARBITRATION****Second Respondent**

CAMM TRANS CC**Third Respondent****Heard: 15 October 2019****Delivered: 14 February 2020**

JUDGMENT**LALLIE. J**

- [1] The applicant the Association of Mineworkers and Construction Union (AMCU) obo S Malandvula and 13 Others (the applicant), launched his application, seeking, in terms of Rule 11 of the Labour Court Rules (the Rules), an order dismissing a review application which had been brought by the third respondent owing to the inordinate delay in its prosecution. The third respondent, CAMM Trans CC (the third respondent), filed an answering affidavit late and failed to seek condonation for the delay. Based on the omission, the applicant argued that the application should be heard on an unopposed basis. In an attempt to circumvent the Rule 11 application the third respondent filed a Rule 12 application in which it effectively sought leave to pursue its review application.
- [2] The Rule 11 application will be considered first as this matter was set down for its hearing. In determining whether the Rule 11 application should be adjudicated on an unopposed basis. I have taken into account that the application was filed on 13 June 2019. The third respondent filed its answering affidavit on 9 October 2019. On 14 October 2019 the applicant filed a notice in terms of clause 11. 4. 2 of the Practice Manual of the Labour Courts of South Africa¹ (the Practice Manual), objecting to the late filing of the answering affidavit. Notwithstanding receipt of the notice, the third respondent failed to seek condonation of the late filing of its answering affidavit. Absent condonation the third respondent's answering affidavit is not properly before Court.

¹ April 2013.

- [3] The Rule 12 application which the third respondent filed simultaneously with the answering affidavit did not cure its failure to seek condonation for the late filing of the answering affidavit. It is an impermissible attempt to circumvent the Rule 11 application and have the review application adjudicated. As the answering affidavit is not properly before Court, the Rule 11 application will be determined on an unopposed basis. All the arguments that were raised on behalf of the third respondent could not alter the correct legal position.
- [4] It is now trite that an inordinate delay in the prosecution of an application for review justifies its dismissal. The applicant traced the third respondent's delay from the institution of the review application. The individual applicants were dismissed for misconduct by the third respondent in May 2016. On 5 April 2017 the first respondent issued an arbitration award in which the dismissal was found to be unfair and the third respondent was ordered to reinstate the individual applicants. The third respondent filed its review application on 23 May 2017, later than the statutory six-week period within which it should have been filed. A day later the applicant filed its notice of intention to defend the review application.
- [5] The third respondent further delayed in filing the record of the arbitration proceedings because it was advised of its availability by the Registrar on 30 May 2017. The full record should, in terms of clause 11.2.2 of the Practice Manual, have been filed within 60 days from the 30 May 2017. The third respondent in breach of the clause filed an incomplete record on 28 July 2017 and a further portion on 31 August 2017.
- [6] The applicant's version is supported by the third respondent's failure to comply with the provisions of Rule 7A (8) by filing its notice in terms of Rule 7A (8) (b) on 10 October 2018, outside the 10 day period prescribed in the Rule. The 10 day period was triggered on 30 May 2017 when the Registrar advised the third respondent of the availability of the record. The applicant reminded the third respondent of its obligation to seek condonation of the late

filing of the Rule 7A (8) (b) notice but the necessary application was never filed.

[7] On 23 October 2017, the applicant had the arbitration award certificate by the second respondent in terms of section 143 of the Labour Relations Act² (the LRA). On 30 October 2017 it informed the third respondent of its intention to file the application at hand. All the delays which the applicant based its case on are unjustified.

[8] The applicant's case is galvanised by the order (the order) which was granted by this Court on 26 October 2018. The relevant paragraphs of the order are the following:

“3. The respondent is to provide security for the review application in the amount of R 3 000 000.00 (Three Million Rand) within 15 days.

4. The Respondent is given 10 days to file an affidavit to uplift the review application from the archives”.

[9] The third respondent failed to comply with the order. Clause 11.2.7 of the Practice Manual provides that a review application is regarded as having lapsed unless good cause is shown why it should be removed from the archives. In the order, the third respondent was given an opportunity to show good cause within 10 days from 26 October 2018. As a result of the third respondent's non-compliance with the order its review application is still archived.

[10] The LRA expressly provides for expeditious resolution of disputes. The Rules provide for procedures of meeting that objective and the Practice Manual provides rules of practice which assist litigants in the Labour Court to comply with both the LRA and the Rules. Clause 11.2.7 of the Practice Manual provides that review applications are by their nature urgent applications. The whole of clause 11 of the Practice Manual provides procedures which

² Act 66 of 1995 as amended.

facilitate the expeditious finalisation of review application. It also provides for procedures which need to be followed when parties, particularly the applicants, encounter difficulties which threaten to slow down the progress of review applications.

- [11] The third respondent failed to make use of the procedures even when its failure to do so was brought to its attention by the applicant. It also failed to comply with a court order directing it to comply with provisions of the Practice Manual. The third respondent failed to comply with all the time frames which governed its review application. The arbitration award which was the subject of their review application was issued on 5 April 2017, the review application was filed on 23 May 2017 and in October 2018 the review had been archived. This Rule 11 was filed on 13 June 2019 more than 2 years after the review application had been launched. The individual applicants continue to suffer the prejudice of being prevented from exercising their right to reinstatement in terms of a valid arbitration award. The prejudice is expressed as follows in *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and arbitration and Others*³, one of the authorities the applicant sought to rely on:

“Time periods in the context of labour disputes are generally essential to bring about timely resolution of the disputes. The dispute resolution dispensation of the old Labour Relations Act was uncertain, costly, inefficient and ineffective. The new Labour Relations Act (LRA) introduced a new approach to the adjudication of labour disputes. This alternative process was intended to bring about the expeditious resolution of labour disputes which, by their nature, require speedy resolution. 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 an employer who may have to reinstate workers after many years”.

- [12] The applicant submitted that the third respondent has no prospects of success in the review application which it pursues just to delay the individual applicants' reinstatement. The third respondent's lack of diligence in

³ [2016] 3 BLLR 217(CC) at para 1.

prosecuting the review application supports the applicant's submissions. The applicant has established valid grounds for the dismissal of the review application owing to the third respondent's inordinate delay in its prosecution.

[13] The applicant sought a costs order against the third respondent. I could find no reason, both in law and fairness for not granting the order. The applicant should not be out of pocket as a result of the third respondent's failure to prosecute its review diligently.

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

Order

1. The review application under case number JR 975/17 is dismissed.
2. The third respondent is ordered to pay the costs of this application.

Z Lallie

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate S Collet

Instructed by: Larry Dave Incorporated

For the Respondent: Advocate P W. Makhambeni

Instructed by: SMS Attorneys

LABOUR COURT