



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No:JR1454/2022

In the matter between

NUMSA OBO D PLAATJEI AND 61 OHERS

Applicant

and

RME TRANSNET

First Respondent

ANTONY OSLER N.O.

Second Respondent

**COMMISSION FOR CONCILIATION MEDIATION
AND ARBITRATION**

Third Respondent

Heard: 10 December 2024

Delivered: 14 January 2025

Summary: The review application to set aside the dismissal of the applicants' re-enrolment application is granted. The dismissal of the re-enrolment application had effectively prevented the arbitration from being rescheduled, prematurely terminating the process. The matter is remitted to the same Commissioner, as Commissioners are obligated under section 138(1) of the Labour Relations Act to address the merits of disputes. This obligation is particularly significant given that the arbitration was already underway and part-heard.

JUDGMENT

SWARTZ AJ

Introduction

[1] This is an unopposed review application. The applicants seek to review and set aside the Commission for Conciliation, Mediation and Arbitration (CCMA) ruling under case number NC1596-18 dated 25 May 2022. The ruling in question dismissed the applicants' request for re-enrolment. The applicants are now seeking an order to remit their part-heard dispute to the CCMA for final adjudication, ensuring a fair and complete resolution of the matter.

[2] This matter has a protracted and regrettable history at the CCMA, which underscores the need for a concise judgment, even though the matter was unopposed.

Factual background

[3] The arbitration of the applicants' unfair dismissal dispute commenced on 21 January 2019 and continued on 6 and 7 March 2019. It is evident from the transcripts that a fair amount of evidence was traversed before the second respondent, Commissioner Osler. However, the arbitration was never finalised.

[4] There are two rulings attached to the founding affidavit. The continuation ruling dated 17 September 2021 and the re-enrolment ruling dated 25 May 2022. Both rulings were issued by Commissioner Osler. It is the re-enrolment ruling that is sought to be reviewed and set aside.

[5] The history of this matter is not clear from the founding affidavit however the continuation ruling states in paragraph 2 that: *"It is not necessary to set out here the long and convoluted history of these arbitration proceedings. Suffice it to state that, after various rulings during the conduct of the arbitration, the case was struck off the roll on 15 August 2019. The same ruling provides that, once various conditions have been complied with, the applicant will be entitled to proceed with a properly motivated application to re-enroll the matter"*. Paragraph 3 of the same ruling states that: *"Notwithstanding the non- enrolled status of the case, the arbitration was erroneously set down for continuation on 8 and 9 September 2021, and I agreed to entertain the matter in the interest of fairness..."*

[6] The continuation ruling concludes by prescribing certain conditions that had to be met by the applicants whereafter the ruling then prescribes the applicants to bring a re-enrollment application in order for Commissioner Osler to determine whether the arbitration would continue.

[7] The re-enrolment ruling states in paragraph 8 states that: *"Thereafter, the outstanding compliance and the present application was handled relatively quickly in the hands of the applicant's new attorney of record, culminating in the present application on 29 September 2021"*. In paragraph 9, Commissioner Osler attributes the delay of the continuation of the arbitration to the applicants stating that: *"The arbitration in this matter was thus effectively stalled from 11 March 2019 until 29 September 2021, a period of just over two years and six months. This is an extensive period that requires a proper explanation"*.

[8] The re-enrolment ruling does not clearly indicate whether Commissioner Osler was satisfied with the completion of the pre-arbitration minutes. However, it is evident that he found the applicants' various explanations for the delay in arbitration unconvincing and ultimately dismissed their re-enrolment application.

The Applicants' Submissions

[9] The applicants argue that Commissioner Osler's ruling effectively deprives them of their right to have the arbitration re-enrolled and brought to a conclusion.

They assert that this decision undermines and directly conflicts with sections 136 and 195 of the Labour Relations Act (LRA),¹ which safeguard their entitlement to a fair and final resolution of disputes.

Reasoning/Merits

[10] The Constitution guarantees the right to fair labour practices.² The LRA gives effect to those rights. One of its primary objects is to promote the effective resolution of labour disputes.³ In order to be effective, dispute resolution should be speedy,⁴ and both time and legal costs should be minimised. In *National Education Health and Allied Workers Union (NEHAWU) v University of Cape Town and Others*⁵ the Constitutional Court recognised this principle and said:

‘By their very nature labour disputes must be resolved expeditiously and be brought to finality so that the parties can organise their affairs accordingly. They affect our economy and labour peace. It is in the public interest that labour disputes be resolved speedily...’

[11] The dismissal of the applicants’ re-enrolment application effectively prevents the arbitration from being rescheduled, thereby prematurely terminating the process. As a result, the merits of the case remain unexamined and unresolved, denying the applicants the opportunity for a fair adjudication.

[12] The question to be answered is whether Commissioner Osler had the power to terminate the dispute without having concluded the arbitration.

[13] Section 138(1) of the LRA state that:

‘(1) The commissioner may conduct the arbitration in a manner that the commissioner considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.’ (own emphasis)

¹ Act 66 of 1995.

² Constitution section 23.

³ LRA section 1(d)(iv).

⁴ *CWIU v Darmag Industries (Pty) Ltd* [1999] 8 BLLR 754 (LC); [1998] ZALC 78 at para 29.

⁵ 2003 (3) SA 1 (CC); 2003 (2) BCLR 154 (CC) at para 31.

[14] While I empathise with Commissioner Osler's concerns about delays in filing a pre-arbitration minute, he was nonetheless obligated under section 138(1) of the LRA to consider the merits of the dispute. This duty is especially critical given that the arbitration had already commenced and was part-heard.

[15] In *State Information Technology Agency SOC Ltd v Commission for Conciliation, Mediation and Arbitration*⁶ Moshwana J noted that section 138(1) "somewhat guarantees parties at arbitration a fair hearing" and that a commissioner who does not give parties a fair hearing "commits a gross irregularity".

[16] In *Oakfields Thoroughbred & Leisure Industries Ltd v McGahey and Others*⁷ the court cautioned that, while an arbitrator has discretion as to how proceedings should be run, there should still be a semblance of procedural order reminiscent of a trial and, an "*unnecessarily crude application of arbitrator's discretion*" to determine the appropriate procedure was found to be a reviewable irregularity.⁸

[17] Accordingly, I find the dismissal of the re-enrolment application, which effectively deprives the applicants of concluding their dispute amounts to a reviewable irregularity.

Conclusion

[18] Mr Manasoe, representing the applicants, submitted that he has no objection to the matter being remitted to the CCMA and for Commissioner Osler to preside over it once again.

⁶ [2019] 9 BLLR 962 (LC); [2019] ZALCJHB 287.

⁷ [2001] 10 BLLR 1147 (LC); [2001] ZALC 103 at para 25.

⁸ At para 35 the court referred to *Naraindath v CCMA above*, *Pick 'n Pay Supermarkets, Northern Transvaal v CCMA* (2000) 21 ILJ 234 (LC) at 240; *Scholtz v Commissioner Maseko NO & Others* [2000] 9 BLLR 1111 (LC) at 1862; *East Cape Agricultural Cooperative v Du Plessis & Others* [2000] 9 BLLR 1027 (LC) at 1333 and 1341.

[19] Although Commissioner Osler's ruling is under review, it is important to acknowledge that he is already seized with the matter and has a comprehensive understanding of its background and history.

[20] In the circumstances, the following order is made:

Order

1. The ruling of the second respondent (Commissioner Antony Osler) dated 25 May 2022 under case number NC1596-18 is reviewed and set aside.
2. The CCMA (the third respondent) is directed to set down the part-heard unfair dismissal dispute referred to it by the applicants under case number NC1596-18 for arbitration before Commissioner Osler, unless Commissioner Osler is no longer in the employ of the CCMA, in which case before a commissioner other than the second respondent.
3. There is no order as to costs.

S. Swartz

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicants: Mr Manasoe

Instructed by: Letsholo Manasoe Inc. Attorneys

For the Respondents:

Instructed by: