



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR22/2013

In the matter between:

**UNILEVER FIELD SERVICES (A DIVISION OF
SMOLLAN GROUP LTD)**

Applicant

and

MEHLEKETO CONFIDENCE SHIBAMBU

First Respondent

WILFRED (NOKO) NKGOENG N.O.

Second Respondent

**COMMISSION FOR CONCILIATION MEDIATION
AND ARBITRATION**

Third Respondent

Heard: 23 January 2025

Delivered: 12 February 2025

Summary: review application — labour court has no jurisdiction to entertain the application as main dispute archived in terms of Practice Manual read with Labour Court Rules – review application deemed withdrawn.

JUDGMENT

PHAKEDI, AJIntroduction

[1] This is an application to review the arbitration award issued by the CCMA on 20 November 2012. The arbitrator had found the dismissal of the first respondent to be substantively unfair. He directed the applicant to issue the first respondent with a final written warning valid for six months from 4 December 2012 and ordered her reinstatement with backpay.

[2] Unhappy with the award, the applicant instructed its attorneys to file a review application. The applicant contends that the provisions of the Practice Manual of the Labour Court¹ are not applicable to this matter as the review application was filed on 9 January 2013, before 2 April 2013 when the Manual came into operation.

[3] On 31 January 2013, the CCMA despatched the record of arbitration proceedings under case number GAJB22573/12.

Background

[4] Ms Lancaster, attorney for the applicant, was employed by MacRoberts Attorneys when the review application was filed. She later joined Crafford Attorneys on 1 February 2013. On 14 and 28 February 2013, her offices attended Labour Court but they could not uplift the record as it was not yet available. The record was only available for uplifting on 19 March 2013. However, on 17 April 2013, she discovered that the transcribed record only contained the evidence of one witness.

[5] On 11 November 2013, the applicant wrote to the Judge President in terms of item 11.2.4 of the Practice Manual seeking direction on the further conduct of the

¹ Practice Manual of the Labour Court of South Africa, effective 2 April 2013 (repealed, effective 17 July 2024).

review application. The applicant then filed a notice in terms of Rule 7A(8)(a) of the Labour Court Rules² together with a supplementary affidavit on 25 September 2014.

[6] The first respondent then applied to have the arbitration award made an order of court and same was granted on 22 August 2017. However, the order was rescinded on 4 November 2020. The applicant filed a notice in terms of Rule 22B on 11 November 2020 requesting the matter to be set down on the unopposed motion roll. The applicant indexed and paginated the review application on 7 September 2021. The incomplete transcribed record and commissioner's notes were then filed on 7 September 2021.

[7] The applicant received a notice of set down indicating that the review application would be heard on 31 May 2023. However, the matter did not proceed as it was not on the roll. The matter was scheduled to proceed on 13 November 2024 and Turner AJ granted the applicant leave to file a supplementary affidavit explaining the delay. The affidavit was filed on 9 December 2024 and the matter was then placed before me for determination.

Application of the Practice Manual and its binding effect

[8] At the outset and as mentioned above, the applicant is of the view that the provisions of the Practice Manual dealing with the archiving of files are not applicable in this matter because the review application was filed before the Manual came into operation. Item 1.1 of the Manual provides that:

‘... The manual aims to promote access to justice by all those whom the Labour Court serves. It is also intended to promote consistency in practice and procedure, and to set guidelines on the standards of conduct expected of those who practise in the Labour Court.’

[9] The applicant was at all material times aware that the provisions of the Practice Manual were applicable to its review application particularly as it relied on

² GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court (repealed, effective 17 July 2024).

item 11.2.4³ when it wrote to the Judge President on 11 November 2013 seeking direction on the further conduct of the review application.

[10] It is not clear as to why the applicant did not invoke the mechanisms provided in the Rules of the Labour Court and the Practice Manual to ensure that this matter was finalised in line with the objects of the Labour Relations Act (LRA).⁴ Moreover, the applicant did not invoke the provisions of then Rule 7A(3) which mandates the third respondent to ensure that it files the record within ten days of receipt of the notice of motion. In the event that the third respondent had failed to dispatch the record, the applicant ought to have invoked the provisions of Rule 7A(4) which provides that:

‘If the person or body fails to comply with the direction or fails to apply for an extension of time to do so, any interested party may apply, on notice, for an order compelling compliance with the direction.’

[11] A substantial amount of time lapsed from the date the applicant sought directions from the Judge President without any pleadings being filed. The notice in terms of Rule 7A(8)(a) was only filed on 25 September 2014. The applicant was aware that a review application is an urgent application as envisaged in item 11.2.7 of the Practice Manual but chose to ignore the provisions of the Manual. As a result of the applicant’s failure to ensure that all the necessary papers in the review application were filed within 12 months from 9 January 2013, the application was archived and regarded as lapsed.

[12] Section 1(d) of the LRA) provides that one of the objects of the LRA is to promote the effective resolution of labour disputes. The Labour Appeal Court (LAC) in *Samuels v Old Mutual Bank*⁵ (*Samuels*) held that:

³ Item 11.2.4 reads:

‘If the record of the proceedings under review has been lost, or if the recording of the proceedings is of such poor quality that the tapes are inaudible, the applicant may approach the Judge President for a direction on the further conduct of the review application. The Judge President will allocate the file to a judge for a direction, which may include the remission of the matter to the person or body whose award or ruling is under review, or where practicable, a direction that the relevant parts of the record be reconstructed.’

⁴ Act 66 of 1995, as amended.

⁵ [2017] ZALAC 10;(2017) 38 ILJ 1790 (LAC) at paras 14.

‘... [The] purpose of [the Practice Manual] 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 standards of conduct expected of those who practise 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.’

[13] This Court is bound by the above-mentioned authority that the provisions of the Practice Manual are binding. Item 11.2.3 made it clear that an applicant in a review application must file the record within the prescribed period, failing which, the applicant would be deemed to have withdrawn its application. Item 11.2.7 stated that the review application will be regarded as lapsed unless good cause is shown why the application should not be archived or reinstated due to the failure of the applicant to prosecute the review application timeously.

Evaluation

[14] In *Macsteel Trading Wadeville v Francois van der Merwe N.O and Others*⁶, the LAC held that:

‘The Practice Manual came into effect during April 2013; midway through the review application. It, therefore, applies to it. 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. The record in the review application had been filed approximately 20 months after the launch of the review application. And the review application was set down for hearing almost six years from its launch. This means that by the date of set down of the review application, it had been archived and regarded as lapsed.’

⁶ (JA67/2016) [2018] ZALAC 50 at para 23

[15] In *Samuels*⁷, the LAC held that:

‘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.’

The legal position in this court has always been that the provisions of the Manual were binding on the litigants since it came into operation. It is therefore incumbent on an applicant in the review application to ensure that the matter is dealt with in line with the prescripts and not to frustrate the object of the LRA.

[16] I am aware that the provisions of the Practice Manual called for flexibility⁸ and were not intended to limit judicial discretion when it comes to the provisions of the Manual.⁹ As such, even if I wanted to ensure that this matter is finally disposed of, I am constrained from doing so due to the incomplete record of arbitration and the fact that the review application is deemed to be withdrawn.

[17] It is not the applicant’s case that the arbitration award ought to be reviewed and set aside on the ground of a failure to keep a proper record of arbitration proceedings as this failure is a reviewable irregularity. In order for the court to have the necessary jurisdiction to entertain the review application, the applicant must bring an application for reinstatement.

[18] Having concluded that the provisions of the Practice Manual are applicable in this matter, I therefore conclude that the review application filed by the applicant has been archived and regarded as lapsed.

⁷ *Ibid* at para 15.

⁸ Item 1.2 of the Practice Manual.

⁹ Item 2.1 of the Practice Manual.

[19] The review application was not opposed, and as such, the issue of costs does not arise.

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

Order

1. The review application filed by the applicant is deemed to have been withdrawn.
2. There is no order as to costs.

G.C. Phakedi
Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: S Lancaster
Instructed by: Lancaster Kungoane Attorneys

For the Respondent: No appearance