



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS 520/23

In the matter between:

NUMSA obo MEMBERS AS PER ANNEXURE "A"

Applicant

and

**MACSTEEL SERVICE CENTRES
SOUTH AFRICA PROPRIETARY LIMITED**

Respondent

Heard: 28 February 2025

Delivered: 05 March 2025

This judgment was handed down electronically by consent of the parties' representatives by circulation to them via email. The date for hand-down is deemed to be 05 March 2025.

JUDGMENT

ORR, AJ

[1] The respondent in this matter (Macsteel) seeks to rescind my order granting the applicant (NUMSA) leave to appeal against my Judgement in which I refused condonation to NUMSA for the late delivery of their Statement of Case.

Background

[2] In order to understand the various issues dealt with in this judgement I need to recap the history of the litigation in this matter very briefly.

[3] NUMSA, acting on behalf of its members dismissed by Macsteel, referred an unfair dismissal dispute to this Court for adjudication. The Statement of Case should have been delivered to this Court by 27 July 2023 but was only delivered on 13 September 2023, 48 days late.

[4] The condonation application came before me. It became apparent that NUMSA had originally understood that their members had been dismissed for participation in an unprotected strike. For reasons that were not addressed at all in the condonation application this view changed at some stage to a view that the members had been dismissed for misconduct and that the dispute should be arbitrated by the Metal and Engineering Industries Bargaining Council (MEIBC). NUMSA continued to hold this view even after Macsteel had successfully challenged the jurisdiction of the MEIBC and obtained a ruling that the matter should be referred to this Court for adjudication.

[5] All of these incidents took place prior to 27 July 2023, the date on which delivery of the Statement of Case should have taken place. On 27 July 2023 attorneys were instructed to draft the Statement of Case which, following a change in attorneys, was eventually delivered on 13 September 2023.

[6] In refusing condonation, I found that the period post 27 July 2023 was adequately explained. I found that, given the primary cause for the delay was the change in views of NUMSA for the reasons for the dismissal, this needed to be explained as well as, absent this change of views, the matter would have been

referred timeously. Essentially because no explanation at all was provided for this change of view, condonation was refused.

[7] NUMSA sought leave to appeal. One of the grounds on which leave was sought was that my having regard to the period prior to 27 July 2023, and the lack of explanation for that period, amounted to a legally impermissible exercise of my discretion.

[8] At the time I considered the application for leave to appeal only NUMSA's submissions were before me. In these submissions the point was made that:

“The Learned Judge accordingly misdirected himself in the exercise of his discretion by finding that the applicant provided an adequate explanation for the period of delay relevant to the determination of the application and in dismissing the application based on a consideration of the conduct of the applicant where the statement of claim was not yet due.”

[9] The decision to grant leave was based solely on this issue. I noted that there was no Labour or Labour Appeal Court (LAC) authority dealing with a need for an applicant for condonation to provide an explanation for events prior to the expiry of the 90 day period, when those events effectively caused the Statement of Claim to be delivered after the 90 period. Although I was unpersuaded that I had erred in my approach, I was of the view that the fact that the LAC may hold a different view to mine was a compelling reason to grant leave to appeal. Although I did not specifically refer to a compelling reason in my judgement granting leave, I was of the view that the issue was an important one and my judgement should not be the only one on the matter.

[10] Subsequent to the granting of leave it emerged that Macsteel had filed submissions opposing the granting of leave but for various reasons these submissions had not come to my attention. This application for rescission followed.

The Rescission Application

[11] At the hearing of this matter I indicated to the parties that it seemed to me the crucial aspect was whether Macsteel's submissions on leave would be such as to shift my original views in granting leave. It seemed to me to be of little purpose to decide the rescission in isolation, rescind my ruling, consider Macsteel submissions and possibly still come to a decision to grant leave, particularly given that the LAC has already requested the parties to submit heads. I accordingly proposed to the parties that they address me on the leave to appeal itself. If I was persuaded by Macsteel that leave should not have been granted, I would rescind my earlier ruling and replace it with a ruling to that effect. If not, my original ruling would stand. Both parties were willing to proceed on that basis.

[12] As I understood Macsteel's submissions, they contended that leave to appeal should not have been granted as:

[13] In their application for leave to appeal NUMSA had confined their grounds for appeal to those contemplated in section 17(1)(a)(i) of the Superior Courts Act¹, being reasonable prospects of success, and therefore excluded grounds contemplated in section 17(1)(a)(ii), being compelling reasons. I was accordingly confined solely to the issue of whether there were reasonable prospects that the LAC would come to a different conclusion on the merits and could not have regard to the issue of compelling reasons to grant leave to appeal;

[14] In the case of *Matoto v Free State Gambling and Liquor Authority and Others*², the Supreme Court of Appeal had already addressed the question of the obligation to provide explanations for the period prior to the expiry of a statutory time period *albeit* in the context of the Promotion of Administrative Justice Act³ (PAJA) rather than the Labour Relations Act⁴ (LRA). Therefore, there could be no compelling reasons for the LAC to consider the matter as it had already been addressed by appellate authority.

¹ No. 10 of 2013.

² [2018] ZASCA 110

³ No. 3 of 2000.

⁴ No. 66 of 1995.

[15] In support of the first point, I was referred to *Selota and others v YG Property Investments (Pty) Ltd (Leave to Appeal)*⁵. However, Selota states no more than that a party is confined to the grounds of appeal articulated in a notice and may not raise additional grounds in argument. NUMSA's notice of appeal squarely raises the issue that I exercised my discretion wrongly in having regard to the period prior to 27 July 2023.

[16] Selota does not state that a party is obliged, in its Notice of Appeal to indicate whether grounds are confined to "*reasonable prospects*" and/or "*compelling reasons*". I agree with the submission made by Mr Groenewald for NUMSA that these two will in most cases considerably overlap. It seems to me that it would be unduly mechanistic to require a party in its notice to indicate whether a ground of appeal falls with section 17(1)(a)(i) or 17(1)(a)(ii) or both. I therefore do not accept Macsteel's submission in this regard.

[17] I am also of the view that *Matoto* is distinguishable from the matter before me. The point is made in *Matoto*⁶ that a review, whether in terms of PAJA or not, must always be brought within a reasonable time, so that even a review brought within the 180 day time period might require explanation:

"In this regard it is important to emphasise that s 7(1) does impose an obligation on an aggrieved party to institute proceedings for judicial review without unreasonable delay. Thus, whilst the launch of an application for review after the 180 days is unreasonable per se, the converse does not necessarily hold true. In other words, the launch of an application within 180 days is not reasonable per se."

[18] It is in that context that the SCA found that an application for extension for the 180 day time period, as provided for in PAJA, must adequately explain what has been done prior to the period expiring. No such considerations apply in terms of a referral to the Labour Court. Provided it is done within the 90-day time period there can never be any obligation on a litigant to explain what was done during that period.

⁵ [2023] JOL 58040 (GJ)

⁶ *Id* fn 2 at para 9.

At the very best for Macsteel, *Matoto* may be of some persuasive value that the approach I adopted in refusing condonation was a correct exercise of my discretion. It cannot possibly be dispositive of the matter.

[19] I therefore conclude that, even if Macsteel's submissions had been before me when I originally granted leave to appeal, I would have come to the same conclusion, namely, that there were compelling reasons to grant leave to appeal. In those circumstances there is no point in rescinding the earlier order. Neither party pressed the issue of costs with any conviction. I am satisfied that there are no special circumstances which warrant the granting of costs in this matter.

[20] In the premise the following order is made:

Order

1. The application for rescission is dismissed.
2. There is no order as to costs.

C. Orr

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Adv. D. Groenewald

Instructed by:

Serfontein Viljoen Swart

For the Respondent:

Adv. P Moll

Instructed by:

Webber Wentzel