

IN THE LABOUR COURT OF SOUTH AFRICA

Held in Durban

Case No : D135/98

In the matter between :

Applicant

and

First respondent

THE COMMISSION FOR CONCILIATION,

Second Respondent

JUDGEMENT

ZONDO J:

- [1] This is a review application which came before me on the 5th February 1999. At the commencement of the hearing, it transpired that the applicant should have made an application for condonation in respect of its failure to file its heads of argument timeously. The matter had previously been set down for hearing on the 6th August 1998. The applicant had been required to file its heads of argument on the 17th July 1998 and the first respondent was to have filed its heads

of argument on the 28th July 1998.

- [2] The applicant failed to file its heads of argument within the time stipulated. Instead on the 31st July 1998 the applicant filed an application for an adjournment of the matter for the reasons that I do not propose dealing with. The matter was adjourned on the 6th August 1998. The first respondent filed its heads of argument timeously. The applicant only filed its heads on the 21st December 1998 which was a period of six months after they were supposed to have been filed. They were not accompanied by any application for condonation of the late filing thereof.
- [3] When, on the day of the hearing, the above transpired, I agreed to hear argument on the merits of the application on condition that the applicant was going to file an application for condonation for the late filing of its heads of argument within a certain period. I also stipulated the period within which the first respondent was going to file its opposing affidavits if it decided that it was going to oppose the condonation application. All those periods lapsed without any condonation application reaching me. I then asked my assistant to enquire from the registrar in Durban if any condonation application had been filed. It was then reported to me that no condonation application had been filed. To date no condonation application has been filed despite the fact that the deadline for doing so lapsed some time in February. Not only that but the applicant's legal

representatives have not even had the basic courtesy of informing the Court about such difficulties, if any, as there might have arisen in complying with the deadline. It must be so that there were no difficulties. I regard this conduct as being a flagrant disregard of directions and orders of this Court - conduct which has obviously prejudiced the respondent as well.

[4] If the applicant did not want to pursue this application, it should have notified the Registrar as well as the attorneys for the respondent. But more than that, the applicant is represented by a firm of attorneys. Its attorneys should have ensured that one way or another the respondent's attorneys and I were not simply left in limbo- not knowing what the applicant's intentions were with regard to this review application. The conduct of the applicant's attorneys in this regard is totally unacceptable. The time that has been taken up by this matter is court time which could have been used for another matter of other more deserving litigants.

[5] I would be failing in my duty if I did not show my strong disapproval of this kind of conduct by an appropriate order of costs against both the applicant and its attorneys. Although the applicant is not entitled to a judgement on the merits of the review application, it seems to me that, because, having heard argument on the merits already, I am of the view that the applicant's case on the merits is hopeless, the order that would serve the interest of justice best would be one dismissing the

application altogether. Accordingly I make the following order :-

1. The applicant's application is dismissed with costs on the scale as between attorney and client.
2. The applicant's attorneys are ordered to pay 20% of the costs referred to in 1 above and the balance is to be paid by the applicant.
3. The fees payable to the first respondent's attorney for appearance in court may be charged as if they were fees for Counsel of the level of a Senior Junior.
4. As the applicant and its attorneys have not had an opportunity to be heard on why the Court should not mark its disapproval by way of a costs order such as the one I make above they are hereby given up to 12 March 1999 to make representations on whether the said costs order should be altered, amended or withdrawn. Should they fail to submit representations, the above costs order will become final. Should they submit representations, the Court will make a decision thereon and communicate it to the parties.

R. M. M. ZONDO

Judge in the Labour Court of South Africa

ument

: 5 February 1999

gement : 5 March 1999
icant : Mr B. Van Heerden
 : K Swart & Company
ndent : Mr D. Farrell
 : Shepstone & Wylie