

Sneller Verbatim/hvr

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J4176/98

DATE : 2001-02-19

In the matter between

Applicant

and

COMMISSIONER FOR CONCILIATION MEDIATION

AND ARBITRATION

1st Respondent

JAMMY, BM N.O.

2nd Respondent

3rd Respondent

J U D G M E N T

Delivered on 19 February 2001

REVELAS J:

1.This is an application for leave to appeal. The applicant wishes to appeal against my judgment dated 20 August 1999. The applicant has not brought an application for condonation. The applicant says that he received no reasons for my judgment, hence the application for leave to appeal is brought out of time. I gave an *ex tempore* judgment in open court on 20 August 1999.

2.To be successful in an application for condonation, a litigant has to give a proper explanation for the delay, demonstrate that there are good prospects of success as to the merits of the matter and the court must

also consider the degree of the delay.

3.The delay in this matter is excessive. There is no proper explanation for the delay. No good cause has been demonstrated.

4.Insofar as the merits of this matter is concerned, the following facts were brought to my attention:

5.According to his employer, the applicant absconded from work. According to the applicant, he did not. He had an altercation with his supervisor and was dismissed. He then referred a dispute about his dismissal to the Commission for Conciliation, Mediation and Arbitration ("the CCMA") on 26 January 1998 and alleged that he was unfairly dismissed on 6 January 1998.

6.A conciliation meeting was convened on 24 February 1998 before Commissioner Majola of the CCMA. The matter was not resolved and the applicant referred the matter to an arbitration hearing.

7.On the day the arbitration hearing was to take place, (24 June 1998), the applicant objected in writing to the matter being heard by the same commissioner who oversaw the conciliation meeting. He also filed an application to the director of the CCMA for the appointment of a senior commissioner to arbitrate his matter.

8.Commissioner Majola was not aware of the application and nonetheless convened the arbitration hearing on 24 June 1998. The applicant applied for the recusal of Mr Majola but later he indicated that he was prepared to accept Mr Majola. The latter gave the applicant an opportunity to rethink his previous position. The applicant was also advised that should he agree to Commissioner Majola proceeding, he should withdraw his objection in writing. Eventually Mr Majola recused himself for reasons that are not clear to me.

9.A letter from the applicant's erstwhile employer was then sent to the CCMA on 30 June recording his disappointment in what was described as **"the**

applicant's aggressive attitude towards the commissioner." The matter was then rescheduled for 6 November 1998.

10. The following facts can be gleaned from the report written by the second respondent ("the arbitrator") which was confirmed on affidavit by the representative of the respondent who attended the proceedings:

11. The applicant objected to the arbitrator on the basis of his race. He was also very agitated. The applicant asked for the proceedings to be mechanically recorded. This was arranged.

12. The applicant then wanted to know why there was no attendance register. When this was completed by the arbitrator, the applicant contemptuously refused to sign it on the basis that it was not in the proper form.

13. The interpreter informed the applicant that unless he was prepared to give the arbitrator an unconditional and unqualified commitment to the arbitration process and his proper participation in it, it was the arbitrator's intention to dismiss the application.

14. The applicant was aggressive and shouted that he had no problem with Commissioner Majola and that he was not prepared to have his matter heard by a "kangaroo court" and applied for the recusal of the arbitrator.

15. The arbitrator then dismissed the application for arbitration. He concluded by stating the following in his report:

"The conduct of the applicant patently constituted contempt of both the commissioner and the commission, that there is clearly in my view no purpose of pursuing that aspect of the matter. In my view, however, the arbitration should in no circumstances be rescheduled. Whatever the intellectual capacity of the applicant may be, and it is in my view more than adequate in that context, he is clearly not prepared to participate responsibly in a process which was clearly calmly unequivocally explained to him. His aggressive contemptuous and insulting conduct is inimical to the dispute resolution process to which the commission is committed and is untenable. If as would probably be the case, he reverts to senior

management of the CCMA, in relation to the matter, he should unequivocally be informed of his present status and of his rights, should he so wish, to seek review relief from the Labour Court."

16.The applicant then brought an application for the review of second respondent's decision. I declined to interfere with it because there were no grounds to justify such a step.

17.The applicant has brought this application for leave to appeal on the basis that he has a right to an arbitration hearing.

If so, he forfeited his "right" by his conduct which was contemptuous of the CCMA.

18.The CCMA is a statutory body whose commissioners enjoy a wide discretion in terms of the Labour Relations Act 66 of 1995, as to how to conduct CCMA proceedings. It is a discretion that should only be interfered with if cogent grounds for such a review exist. Such grounds were absent in this case.

19.A further ground advanced by the applicant for leave to appeal that a judge other than a white judge, might have intervened in the decision. I doubt that.

20.This applicant was extremely abusive at the CCMA and I believe that there is no reasonable prospect that another to court would come to a different decision than I have come to. Therefore the application for leave to appeal is dismissed and the applicant is advised that he may approach the Labour Appeal Court on petition to obtain leave to appeal.

E. Revelas