

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT CAPE TOWN___**

REPORTABLE

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CASE NO: C68/2005

DATE HEARD: 21-06-2005

DATE DELIVERED: 22-06-2005

In the matter between:

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WELTEVREDE KWEKERY (PTY) LTD

APPLICANT

and

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**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

1ST RESPONDENT

PIETER BREUGEM

2ND RESPONDENT

PIET VAN STADEN N.O.

3RD RESPONDENT

JUDGMENT

PILLAY D, J

1. Many technical issues arise in this review brought in terms of section 158(1)(g) of the Labour Relations Act No. 66 of 1995 ("the LRA"). It is also prefaced by an objection that it was launched out of time and not accompanied by an application for condonation.
2. The second respondent (employee) was dismissed on 29 March 2004. He posted a referral for conciliation to the Commission for Conciliation, Mediation and Arbitration ("the CCMA") the first respondent, on 23 April 2004. On 28 and 29 April 2004 the second respondent telephoned the CCMA to check that it received the referral. It had not as the post had not

been collected yet. On 30 April he was told that the referral had been received. On enquiring about progress on 7 May 2004, the employee learnt that the referral had been registered. Thereupon he served the referral on the applicant by telefax on 10 May 2005. He also faxed the referral form to the CCMA together with proof of transmission to the CCMA. He was mistaken about when service had to be effected and had assumed that it should be effected after the referral had been registered by the CCMA. The CCMA informed him on 28 June 2004 that he needed to apply for condonation. He signed the application for condonation on 30 June 2004 and transmitted it the next day to the CCMA.

3. The applicant opposed the condonation on 6 July 2004. On 17 August 2004 it received the ruling granting condonation. It filed this review application on 10 February 2005 and served it on 14 February 2005.

Point in limine: Condonation

4. The applicant submits that no application for condonation is required and the review was launched within a reasonable time. It was pointed out to Mr Kantor for the applicant that prior to the 2002 amendment of the LRA, the case law had equated the standard of a reasonable period for delivering an application for review in terms of section 158(1)(g) to the same standard as set for the review of arbitration awards in terms of section 145 of the LRA, i.e. six weeks (*Rustenberg Platinum Mines Ltd v Monnapula & Others* [2003] 9 B LLR 909 LC at paragraph 34 page 914; *Ruijgrok v Foschini (Pty) Ltd & Another* [1999] 20 ILJ 1284 LC at 1287 para 16-1288 para 22).
5. The 2002 amendment to section 158(1)(g) gave effect to the practice that had been established through the case law. Mr Kantor persisted that the reference to "subject to section 145" in section 158(1)(g) was to the grounds of review and not the time limit. I disagree. There is nothing in the wording of section 158(1)(g) that lends itself to such a qualification.

6. The review should have been launched within six weeks from 17 August 2004. It was launched more than five months later. That is not within a reasonable time, even on the applicant's version. The applicant was aware of and could have acquainted itself of all the information relevant for this application when it received the condonation ruling. There is, therefore, no reasonable explanation that can be distilled from the pleadings for such a long period of delay.
7. The first prayer sought is in the following terms:

"No valid referral of a dispute in terms of the rules for the conduct of proceedings before the CCMA was made to the first respondent in case reference WE509/04."
8. Insofar as the first order prayed is framed as a declarator, it will emerge from the facts discussed below that it is really a review of an act by the CCMA. Consequently, the six week time limit for claiming such relief applies to that prayer as much as to the rest of the relief sought.
9. The application for review is brought out of time. It falls to be dismissed on this ground alone. I nevertheless proceed to deal with the merits of the application.
10. The applicant submits that the referral was invalid, firstly because it was not accompanied by an application for condonation and secondly, there was no proof of service submitted to the CCMA. In support of these grounds of invalidity Mr Kantor submitted that Rules 9 and 10 of the Rules of the CCMA relating to the procedure for seeking condonation and referring a dispute to the CCMA respectively are peremptory. They must be enforced strictly otherwise it would impair the administration of disputes by the CCMA. Furthermore, the respondents would be prejudiced by not being afforded a hearing.
11. Mr Nieuwoudt for the second respondent countered, firstly, that the rules were not peremptory. Secondly, by the time the condonation ruling was made on 10 August 2004, both the application for condonation and proof of service of the referral had been lodged. In the alternative, he submitted

that sub-sections (1) and (3) of section 191 do not envisage such a technical interpretation of the rules and that they distinguish clearly between a referral and proof of service.

12. In support of his submission that the Court should not be overly technical, Mr Nieuwoudt referred to *Kruger & Another v MacGregor N.O. & Another* [1999] 9 BLLR 935 LC paras 14-16 and 23-30; *Queenstown Fuel Distributors CC v Labuschagne N.O. & Others* [2001] BLLR 45 NAC; *Standard Bank of South Africa Ltd v Fogg & Others* [2002] 9 BLLR 900 LC paras 6-7; *Rustenberg Platinum Mines Ltd v Monnapula* [2003] 9 BLLR 909 LC at para 13.

13. I agree with Mr Nieuwoudt that section 191(2)¹[1] allows an employee to apply for condonation at any time. Rule 10(2)(c)²[2] read with Rule 9(2)³[3] merely directs an employee as to when and how to file an application for condonation. Section 191(3)⁴[4] requires an employee to satisfy the CCMA that the referral has been served on the employer. Rule 10(2)(b)⁵[5] merely directs the employee as to how it can satisfy the CCMA.

1[1] "If the employee shows good cause at any time, the council or the Commission may permit the employee to refer the dispute after the 30 day time limit has expired."

2[2] "The referring party must if the referral document is filed out of time, attach an application for condonation in accordance with rule 9."

3[3] "A party must apply for condonation, in terms of rule 31, when delivering the document to the Commission."

4[4] "The employee must satisfy the council or Commission that a copy of the referral has been served on the employer."

5[5] "The referring party must attach to the referral document written proof, in accordance with rule 6, that the referral document was served on the other parties to the dispute."