

SOUTH AFRICA / JUDGMENT

Baloi v Eskom Rotek Industries SOC Limited (JS242-19) [2021] ZALCJHB 89 (3 June 2021)

[2021] ZALCJHB 89

COURT

Labour Court Johannesburg

BEFORE

F. Coetzee

CASE / FILE NUMBER

JS242-19

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case

no: JS242-19

In

the matter between:

MOSES
BALOI
Applicant
and
ESKOM
ROTEK INDUSTRIES SOC
LIMITED
Respondent
Heard: 3 June 2021

Delivered:

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 3 June 2021.

Summary:

Condonation

JUDGMENT**COETZEE, AJ**

- [1] The respondent seeks condonation for the late filing of its statement of defence. The parties are referred to as in the main application.

The delay

- [2] The applicant delivered a statement of claim on 3 April 2019. The respondent's statement of defence was due on 17 April 2019.
- [3] The respondent delivered a statement of defence on 9 December 2020.
- [4] The delay is approximately 20 months.
- [5] The applicant approached the Labour Court in order to obtain documents from the respondent where after applicant served an amendment to its statement of claim. The amendment was delivered on 2 October 2020. The respondent had an opportunity to respond to the amendment by 23 October 2020. The respondent did not response thereto. The only response was a statement of defence delivered on 9 December 2020.
- [6] The applicant submits that the delay is approximately 20 months from April 2019 to 9 December 2020. In the alternative, the applicant submits that the respondent had an opportunity to respond to the amendment in which case the respondent delayed the matter for 47 days. The applicant submits that in any event such a response could only have been to the amendment and not to the statement of claim.
- [7] The respondent submits that the period of the delay is calculated from the date of delivery of the amended statement of case.
- [8] The respondent in its founding affidavit in support of the application for condonation does not provide its calculation of the delay itself.

The explanation for the delay

- [9] The respondent's explanation for the delay deals with the period from the receipt of the amended statement of claim on 2 October 2020 to the filing of the statement of defence on 9 December 2020.
- [10] The explanation is a short one. When the respondent received the amended statement of claim it did not have access to attorneys because of challenges with procurement. The respondent had to start another process to appoint attorneys and had to go through a tender process. Once the tender process was completed, the respondent sent instructions to its attorneys on 18 November 2020 and arranged a consultation with the attorneys. A meeting was arranged, and respondent had to provide documentation to the attorneys where after the statement of defence was delivered on 9 December 2020. The respondent in its replying

affidavit does not provide any further explanation.

Prejudice to the parties

- [11] The respondent submits that it will suffer prejudice in that it will have to pay the applicant more than the applicant is entitled to and do so in breach of the provisions of a collective agreement.
- [12] The applicant submits that he is an individual who is suffering a loss of income over an extended period and that the delay has caused him financial stress. As an individual he is less capable to absorb the financial effect than the respondent who is a large enterprise.

Prospects of success

- [13] The respondent denies the applicant's version in its statement of claim and refers the Court to its statement of defence. It then denies that it discriminated against the applicant on race or on arbitrary grounds and again refers to Court to the statement of defence for a calculation of the difference in the remuneration of all employees in the same position as the applicant.
- [14] The applicant similarly refers to its amended statement of case without setting out in its answering affidavit such prospects.

Analysis

- [15] The delay is excessive and to be calculated from the time that the respondent had to deliver its statement of defence to the statement of claim. This is apparent from Rule 6(3)(c) that requires a response to the statement of claim within 10 days from delivery.
- [16] The respondent has failed to deliver a statement of defence until 9 December 2020. The applicant's amendment to the statement of claim is no excuse to the respondent as the respondent had ample time before the introduction of the amendment to file its response.
- [17] The respondent does not explain why from 17 April 2019 to 12 February 2020 when the applicant obtained an order for the production of documents it did not file a statement of defence. In fact, there is no explanation for the period from 17 April 2019 to when it received the amended statement of case on 2 October 2020.
- [18] It was incumbent upon the respondent to explain the delay from 17 April 2019 to 12 February 2020, at least, and thereafter until it received the amended statement of case on 2 October 2020. It however elected to tender only an explanation as from 2 October 2020 to 9 December 2020.
- [19] The explanation for the 47-day period is lacking in detail. There is no indication as to why the respondent did not have attorneys of record at the time, when the tender was put out, or how the service provider in the form of a firm of attorneys has been selected and appointed.

- [20] The respondent mentions only the date upon which it instructed its attorney and does not disclose the date when the consultation occurred. The explanation is lacking in not only detail but also in substance. It is inadequate.
- [21] It is by now trite law that if there is not an explanation for part of the delay, there is no need to consider the prospects of success. In this matter the respondent has failed to explain the period of 18 months in which it failed to file a response. For that reason, there is no explanation that calls for a consideration of the prospects of success.
- [22] In addition, the explanation for the 47-day delay is inadequate and unreasonable.
- [23] The applicant's prejudice outweighs that of the respondent by the extraordinary delay on the part of the respondent.
- [24] The application for condonation should fail.

Costs

- [25] This is an interlocutory matter where the applicant is successful. The delay on the part of the respondent in filing its statement of defence is so excessive, serious and prolonged that it should have realised that with the inadequate explanation for only a very short period thereof, it would have no prospects of obtaining condonation. It's conduct in opposing the referral warrants a cost order.

- [26] The following order is hereby made:

Order

1. The application for condonation is dismissed with costs.

F. Coetzee

Acting Judge of the Labour Court of South Africa

Appearances:

The matter has been determined on paper.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCJHB/2021/89.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/baloi-v-eskom-unknown-topic-alcjhb-2021>

Prepared on 10 October 2026 · Esheria