
SOUTH AFRICA / JUDGMENT

Cash Paymaster Services (Pty) Ltd v Mgwenta NO and Others (JR2358/13) [2016] ZALCJHB 537 (14 June 2016) [2016] ZALCJHB 537

COURT

Labour Court Johannesburg

BEFORE

Van Niekerk

CASE / FILE NUMBER

JR2358/13

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

Case no JR2358/13

In the matter between

CASH PAYMASTER SERVICES (PTY) LTD Applicant

And

VUSI MGWENTA N.O First

Respondent

COMMISSION FOR CONCILIATION, Second

Respondent

MEDIATION AND ARBITRATION

SYDNEY VELAPHI MYENI Third

Respondent

Heard: 10 June 2016

Delivered: 14 June 2016

VAN NIEKERK J

[1] This is an opposed motion that came before the court for a pre-enrolment hearing. The applicant applied to review and set aside

an arbitration award issued by the first respondent. In the award, the first respondent held that the dismissal of the third respondent

was unfair and awarded the payment of compensation.

[2] The review application was filed on 4 November 2013, within the six-week time period established by s 145 of the LRA.

[3] The file, on the face of it, appeared to be ready for hearing, heads of argument having been filed by both parties. On a close examination of the file however, it appeared that the record filed by the applicant comprised the first respondent's handwritten notes and a transcribed record running into some 100 pages. The transcribed record however is that of a disciplinary hearing conducted into allegations of misconduct by the third respondent, it is not the transcribed record of the proceedings under review.

[4] The applicant's attorney has filed a brief explanatory affidavit in which he explains that a bundle of documents and the

internal disciplinary enquiry record was served and filed, but the record of the arbitration proceedings was not. His explanation,

without the benefit of first-hand knowledge of the matter, was that in 2013, he requested a person at the offices of the applicant's

attorney to listen to the CD of the arbitration proceedings delivered by the CCMA during November 2013. There is a file note to the effect that the CD is inaudible. There is no indication on the file as to whether anyone approached this court for direction pertaining to the reconstruction of the record, nor is there any record of any communications as between the applicant and the third respondent to discuss the record of the absence thereof. It can be assumed therefore that after the attorney concerned formed the view that the record was inaudible, and then proceeded to file the record of the internal disciplinary hearing, and after the filing of what is referred to as an 'opposing affidavit' by the third respondent, heads of argument were prepared and filed.

[5] While the failure to file the record of the proceedings under review as required by Rule 7A was no doubt the consequence of an oversight in the office of the applicant's attorneys, in my view, the explanation proffered by the applicant's attorney of record does not amount to a satisfactory explanation for a failure to comply with the provisions of the practice manual, which require the complete record to be transcribed and filed within 60 days of receipt of the record from the CCMA. The importance of compliance with the provisions of the Act and the Rules in relation to the filing of records in review proceedings was recently highlighted by the Constitutional Court. In *Toyota SA Motors (Pty) Ltd v CCMA & others* (CCT 228/14), where the court emphasised the purpose of expeditious dispute resolution that

underpins the LRA and the obligations on a party seeking review, to file the record timeously and to initiate steps when it is apparent that there are difficulties with the record.

- [6] In the present instance, the fact remains that an application for review, filed more than 2 ½ years ago, cannot proceed because the complete record has not been filed. While I appreciate that the point was not raised at any stage by the third respondent or his representatives, it is the applicant's obligation ultimately to prepare a full and proper record and to place the record before the court. This is particularly so the basis for the review, as is the case in the present instance, is premised primarily on the first respondent ending of the evidence. The practice manual stipulates that a review application is akin to an urgent application; one expects an applicant in the circumstances to ensure that the application is prosecuted with due diligence and in particular, to ensure that the proper documentation is timeously filed. The practice manual also makes clear the consequences of a failure to file the complete record within the required time period, in the absence of any application to the Judge President for a directive on what steps should be taken to secure a complete record. I intend to make an order to that effect.

I make the following order:

1. In terms of paragraph 11.2.3 of the Practice Manual, the application for review is deemed to have been withdrawn.

ANDRE VAN NIEKERK

JUDGE OF THE LABOUR COURT

REPRESENTATION

For the applicant: Adv. S Saunders, instructed by Fluxmans Incorporated

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Prepared on 14 October 2026 · Esheria