

SOUTH AFRICA / JUDGMENT

Clink v Leinot and Others (C1192/2018)

[2021] ZALCCT 27 (8 April 2021)

[2021] ZALCCT 27**COURT**

Labour Court Cape Town

BEFORE

Rabkin-Naicker

CASE / FILE NUMBER

C1192/2018

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Source record**IN THE LABOUR COURT OF
SOUTH AFRICA, CAPE TOWN****Not****Reportable****Case****no: C1192/2018****In****the matter between:**

PIETER
SAAIMAN
CLINK
Applicant
and
COMMISSONER
K LEINOT
First Respondent
COMMISSIONER
L TAYLOR
Second Respondent
NATIONAL BARGAINING
COUNCIL FOR THE
ROAD
FREIGHT
INDUSTRY
Third Respondent
DHL
SUPPLY CHAIN MANAGEMENT (PTY) LTD
Fourth Respondent
SATAWU
Sixth Respondent

BRITISH
AMERICAN TOBACCO SA (PTY) LTD
Seventh Respondent
Date heard: 18 February
2021 on the papers
Delivered: 8 April 2021
by means of scanned email

JUDGMENT

RABKIN-NAICKER J

- [1] This is an opposed application brought by the seventh respondent (BAT) to archive the applicant's review application which was launched on the 6 December 2018. It is not entirely clear as to whether BAT seeks to have the Court dismiss the application.
- [2] The application is brought on the basis that the applicant failed to deliver the Record of the proceedings within the prescribed period in terms of Clause 11.2.2 of the Practice Manual. The review in question seeks to review Condonation and Rescission Rulings, and as is common in these applications, there was no transcribed record of the proceedings. The documentary record was however filed by the third respondent and a Notice to that effect bears a stamp of this Court dated 12 April 2019, and a stamp that it was served by hand on the 22 May 2019. The record comprises the Condonation application and Ruling and the Rescission application and Ruling, and comprises 29 (twenty-nine) pages. It is indicated on the Notice in terms of Rule 7A(8) by the third respondent that all the parties were served by post.
- [3] In his answering affidavit, the applicant avers that he served the record on all the respondent parties on 22 May 2019 and their signatures appear on it as proof thereof. He had uplifted the documentary record and then returned it to the Court file on the 14 June 2019. A Court stamp again reflects this date.
- [4] It appears that the record was not however filed on the attorney of record of the seventh and eighth respondents. Notices of intention to oppose by the sixth and seventh respondents attorney of record were filed on 18th December 2018. It appears that the attorneys for the said respondents uplifted documents from the court file once on the 8 April 2019, and returned these on the 10 April 2019. This was before the record was filed by the third respondent.
- [5] The applicant also filed and served a notice dated the 12 August 2019, in which it is stated that the record had been filed and there was no digital recording of the proceedings at the third respondent. Again however, this was not addressed to the attorney of record for the sixth and seventh respondents.

[6] In my view, it would not be in the interests of justice to grant the application before me as there was in fact compliance with the Practice Manual, albeit that the applicant did not serve documents on the attorney of record for the respondents. However, the respondents should be granted leave to oppose the review given the applicant's failure to serve them in terms of the Rules. I make the following Order:

Order

1. The application to archive the main application is dismissed.
2. The sixth and seventh respondents are given leave to file answering papers in the review application within 10 days of this Order;
3. The applicant may deliver a reply in terms of the Court Rules.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Representation:

Applicant: Nobahle Mkabayi Attorneys

Sixth and Seventh Respondents: CDH

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Prepared on 12 October 2026 · Esheria