

SOUTH AFRICA / JUDGMENT

Dunster v South African Broadcasting Corporation (SOC) Limited (JS627/21) [2024] ZALCJHB 214 (31 May 2024)

[2024] ZALCJHB 214

COURT

Labour Court Johannesburg

BEFORE

C. Orr

CASE / FILE NUMBER

JS 627/21

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THE LABOUR COURT OF SOUTH AFRICA,

JOHANNESBURG

Not Reportable

Case No: JS 627/21

In the matter between:

NOMSA
DUNSTER
Applicant
and
SOUTH AFRICAN BROADCASTING
CORPORATION
(SOC) LIMITED
Respondent
Heard: 02 May 2024
Delivered: 31 May 2024

JUDGEMENT

ORR AJ

- [1] In this matter the Respondent (“SABC”) applies for condonation for the late delivery of its Statement of Response. Its Statement of Response should have been delivered on 25 August 2021. It was in fact delivered on 17 September 2021 some 17 days late. Application for condonation was only made on 8 February 2024, three days before the matter was supposed to proceed to trial.

It is the delay in bringing the condonation application that became the real bone of contention between the parties at the hearing of this matter, with the Applicant (Dunster) arguing that on the basis of this delay alone the application for condonation should not be granted. The SABC, on the other hand, made a twofold contention, either there was no need to apply for condonation at all, or if condonation was required a proper case had been made out.

[2] In order to properly assess these opposing contentions, the following facts need to be set out all of which are common cause:

2.1. Dunster's Statement of Case was delivered on 11 August 2021. In terms of the Rules applicable at the time the Statement of Response was due on 25 August 2021. This did not occur;

2.2. On 10 September 2021 Dunster's then attorneys of record sent a letter to the SABC. In this letter they indicated that unless the Statement of Response was delivered within five working days, along with an application for condonation, Dunster would apply for default judgment;

2.3. On 17 September 2021 the Statement of Response was delivered albeit without a condonation application. A letter followed from Dunster's attorneys acknowledging receipt. No objection to the late delivery was raised at this stage, nor was any attempt made to pursue a default judgement;

2.4. It was only in the pretrial minute, concluded in March 2022, that Dunster indicated that there had been no condonation application brought in respect of the late delivery of the Statement of Response and that Dunster took issue with this. The recorded response by the SABC was that there had been no objection when the Statement of Response was delivered on 17 September 2021;

2.5. The matter was set down for trial and documents were discovered by the SABC. A draft of the joint practice note was prepared by Dunster's attorneys and sent to the SABC's attorneys on 27 January 2024. This draft indicated that Dunster would persist with the issue of the late delivery of the Statement of Response and the fact that no application for condonation had been made;

2.6. This prompted the application which is before me.

[3] SABC's primary contention is that there was no need to apply for condonation at all given that there was no objection raised by Dunster at the time of delivery. Whilst accepting that Clause 11 of the Practice Manual applies specifically to motion proceedings, Mr Matyolo, on behalf of the SABC, argued that there was no reason why the provisions of Clause 11.4.2 of the Practice Manual should not equally apply to referrals. Clause 11.4.2 reads as follows:

"Where the respondent or the applicant has filed its opposing or replying affidavits outside the time period set out in the rules, there is no need to apply for condonation for the late filing of such affidavits unless the party upon whom the affidavits are served files and serves a Notice of Objection to the late filing of the affidavits. The Notice of Objection must be served and filed within 10 days of the receipt of the affidavits after which time the right to object shall lapse."

[4] Mr Tooka for Dunster urged me to accept that Clause 11.4.2 should not be applicable to referrals. The only basis that he could put forward as to why it should not apply to referrals even though it applied to motion proceedings, was that in motion proceedings the affidavits amounted to evidence whereas in referrals the Court is dealing with pleadings. To my mind this is not a basis for differentiation but in fact an argument in support of the idea that Clause 11.4.2 should equally apply to referrals. If this Court requires no condonation, absent a formal objection, to the late admission of evidence, why should it not be the same for the late

filing of a pleading, a document of less formal weight than an affidavit?

[5] Mr Matyolo was unable to refer me to any authority for his argument, nor have I been able to find any. Given the fact that the Practice Manual will soon be superseded by the new Labour Court Rules, which includes specific barring provisions in relation to pleadings which are late, this issue need not be resolved.

[6] I am inclined to grant condonation in any event. The delay is not significant, and an explanation is tendered for the delay. In relation to the delay in delivering the condonation application, I find that their belief that they were not required to do so was reasonable, given that this issue had not been squarely addressed by this Court before. Although Mr Tooka urged me to find that SABC have no prospects of success at all in the matter, I cannot come to that conclusion on the papers before me. If anything, in my view, the prospects of success appear to favour the SABC. Finally in respect of prejudice the only prejudice which Mr Tooka could refer me was that Dunster's right to an expeditious resolution of her dispute has been compromised. However, that is due to a choice which she made, she could equally have chosen not to persist in the insistence on a condonation application being brought which would have meant that her matter would have been determined already. The prejudice to the SABC should condonation be refused is manifest, they would lose any right to oppose this matter and to demonstrate that the dismissal was fair.

[7] Finally, I must address the question of costs. On 12 February when postponing this matter this Court ordered that costs occasioned by the postponement would be "Costs in the condonation application". This is clearly not a case of costs simply being reserved which would empower me to consider which party, if any, should pay the costs occasioned by the postponement. It appears to me that this is effectively an order that costs occasioned by the postponement must be costs in the cause of the condonation application, and only the successful party in the condonation application could obtain costs in the postponement.

[8] As I have already indicated SABC has succeeded in this application to the extent that I have found that they either did not need to apply for condonation, or that a proper case for condonation has been made out. I am not inclined to grant costs in respect of the condonation proceedings. I am also not inclined to grant SABC costs in relation to the postponement. Although they may have reasonably held the view that they did not need to apply for condonation they could also have brought this application once the pre-trial

minute was concluded which would have prevented any postponement ultimately.

[9] In the premise the following order is made;

Order

1. The Respondent is granted condonation for the late delivery of the Statement of Response;
2. There is no order as to costs either in this application or the costs occasioned by the postponement of this matter on 12 February 2024.

C. Orr

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant:

Instructed by:

For the respondent:

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Prepared on 9 October 2026 · Esheria