

SOUTH AFRICA / JUDGMENT

FAWU obo Beukes v Cold Chain (Pty) Ltd and Others (JR1545/11) [2021] ZALCJHB 424 (5 November 2021) [2021] ZALCJHB 424

COURT

Labour Court Johannesburg

BEFORE

M I Mangena

CASE / FILE NUMBER

JR1545/11

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

CASE

NO: JR 1545/11

In

the matter between:

FAWU OBO FLORENCE
BEUKES Applicant
and
THE COLD CHAIN (PTY)
LTD First
Respondent
COMMISSION P MBATSANA
N. O Second
Respondent
COMMISSION FOR
CONCILIATION,
MEDIATION AND
ARBITRATION (CCMA) Third
Respondent
Date
Heard: 27 October 2021
Date
Delivered: 05 November 2021

JUDGMENT

MANGENA AJ

- [1] This is an application in terms of Rule 11 of the Labour Court Rules in terms of which the applicant prays for the dismissal of the review for lack of diligent prosecution. Simultaneously with this prayer, the applicant seeks an order to make an arbitration award dated 24 May 2011 issued by the Second respondent under case number GAJB 595-11 an order of court in terms of section 58(1) (c) of the Labour Relations Act.[1]
- [2] This matter was previously enrolled for hearing on the 22 November 2018 and Coetzee AJ struck it off the roll due to no appearance on the part of the First respondent (Applicant in the main review).
- [3] On or about June 2021, first respondent applied to the Registrar for a hearing date. The application was accompanied by an affidavit deposited by an attorney for the first respondent, Mr Jaco Van Den Berg in which he explained the reason for non-appearance.
- [4] Rule 15 of the Labour Court Rules provides as follows:

15: Matters struck off the roll

- (1) If a matter is struck off the roll because a party who initiated the proceedings was not present, the matter may not be re-enrolled without that party having provided the court with a satisfactory explanation, under oath or affirmation, for the failure to attend court.
- (2) The affidavit or affirmation must be delivered and the registrar must place it before a judge in chambers, to decide whether the matter may be re-enrolled.
- (3) The judge before whom the affidavit or affirmation is placed may order that an application for re-enrolment be made. In that event, the application must comply with rule 11.
- [5] In compliance with Rule 15(1), the Registrar placed the matter before Mahosi J who on 23 July 2021 directed the first respondent (applicant in the main review) to serve the affidavit and application for hearing date on the respondents and to file proof thereof together with the service affidavit. Judge Mahosi's directive was transmitted to the first respondent's attorneys on 02 August 2021 for the attention of Mr Jaco Van Den Berg. I have trawled through the court file with a hope to find compliance with court's directive and could not find any.
- [6] The failure by the first respondent to comply with the court's directive means that she has as dominitis litis in the review application failed to provide an explanation under oath for her failure to attend court on 22 November 2018. Up until this explanation is provided both to the court and to the other litigants, the first respondent will not be in a position to enrol the matter. This is so because clause 14.4.2 of Practice Manual state in unequivocal terms that a matter struck off from the roll will only be enrolled if a proper explanation for non-

appearance is given. The explanation must be on oath.

[7] Rule

- [15] (2) places an obligation on the applicant to deliver the affidavit. Deliver in the context of the legal proceedings means to serve on the other parties and file with the Registrar. The purpose of this is not difficult to fathom: Review proceedings are by their nature urgent and a party who initiate proceedings and fails to attend court needs to satisfy the court that he/she is not being tardy in the prosecution of the review. The court considering the explanation as well as other litigants should be under no illusion that the review was instituted mala fide. In casu, the first respondent remains barred from enrolling the matter by virtue of the fact that he has not served the explanation affidavit upon the respondents as per the court's direction.
- [8] The applicant brought a Rule 11 application on the basis that the first respondent has not taken steps to advance the prosecution of the review since 22 November 2018. In the affidavit supporting the application the applicant chronicles the steps she took either personally or through her attorneys in an attempt to jolt the first respondent into action. The first respondent remains static in the comfort that "the matter had not yet been finalized or dismissed and had merely been struck off from the roll and is consequently still pending "
- [9] The first respondent's attorneys were clearly oblivious of the provisions of the Practice Manual regarding the archiving of files. Clause 16.1 empowers the Registrar to archive a file in the case of an application in terms of Rule 7 or Rule 7 A, when a period of six months has lapsed without any steps being taken by the applicant from the date of filing the application, or the date of the last process filed as well as when a party fails to comply with a direction issued by a Judge within the stipulated time limit. Clause 16.2 requires a party to a dispute in which the file has been archived to apply on motion supported by an affidavit for the retrieval of the file. Such an application should in compliance with Rule 7 be served on all other parties to the dispute. Clause 16.3 states that a file which has been archived shall have the same consequences as to further conduct by any respondent party as to matter having been dismissed.
- [10] In casu, the first respondent (applicant in the review) has never taken any step to prosecute the review for a period in excess of two years reckoning from 22 November 2018. If I am correct in my culculation the first respondent's review application has been archived on account of failure to take step within a period of six months from the last process filed.
- [11] In *Macsteel Trading Wadeville v Van der Merwe N.O and Others*[2], the Labour Appeal Court explained the objective of the Practice Manual and emphasized its purpose regarding the need for expeditious

resolution of labour dispute. The court said a labour court has no jurisdiction to entertain an application for Rule 11 in circumstances

where the file for review had lapsed or has been archived. Clause 16.3 of the Practice Manual places a lapsed review in the same

category with a dismissed review.

[12] Guided by the above decision which is binding on me, it is my considered view that, this court does not have jurisdiction to dismiss the review as prayed for in the rule 11 application. This is so because the review had lapsed and accordingly this court does not have jurisdiction.

[13] The remainder of the prayers regarding the enforcement of an award in terms of section 158(1) (c) stands on a different footing though arising out of the same and interrelated facts. The applicant availed herself of the provisions of rule 11 in circumstances where it was not possible but this does not in my view debar her from obtaining the section 158 (1) (c) relief. The court can in the exercise of its judicial powers to give effect to the objective of the Labour Relations Act act in any matter considered expedient. In the exercise of my judicial powers, I deem it appropriate that the applicant be spared the anxiety and agony of further litigation with regard to this matter.

[14] Consequently, the following orders are made:

Order:

1. The review application has lapsed
2. The arbitration award dated 24 May 2011 issued by the commissioner Mbatsana under case number GAJB 595-11 is made an order of court in terms of section 158 (1) (c) of the Labour Relations Act 66 of 1995.
3. No order as to costs.

M. I. Mangena

Acting Judge of Labour Court of South Africa

Appearances:

For the Applicant: CheadleThompson

and Haysom Inc

For the First Respondent: Gishen Gilchrist Inc

[1] Act 66 of 1995

[2]

(2019) 40 ILJ 798 (LAC)

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Prepared on 12 October 2026 · Esheria