

SOUTH AFRICA / JUDGMENT

Fidelity Security Services (Pty) Ltd v Murray and Others (JR722/2017) [2021] ZALCJHB 402 (27 October 2021) [2021] ZALCJHB 402

COURT

Labour Court Johannesburg

BEFORE

M T M Phehane

CASE / FILE NUMBER

JR722/2017

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR722/2017

In the matter between:

FIDELITY SECURITY SERVICES (PTY) LTD Applicant

and

LODEWYK MURRAY First Respondent

COMMISSIONER THANDIWE TSHAYANA Second

Respondent

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION Third

Respondent

Considered: In Chambers

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing-down is deemed to be 10h00 on 27 October 2021

JUDGMENT -LEAVE TO APPEAL

PHEHANE, J

Introduction

- [1] On 19 August 2021, I delivered an ex tempore judgment in an application by the applicant to reinstate its review application, in which I ordered that the application is dismissed, with no order as to costs. The reinstatement application was unopposed.
- [2] On 2 September 2021, the Applicant launched an application for leave to appeal the whole judgment and order. The application for leave to appeal is unopposed.
- [3] Although judgment was delivered ex tempore, the application for leave to appeal calls for the written record of the proceedings and reasons for the decision to be provided within 15 days.
- [4] The ex tempore judgment was transcribed and signed by me on 18 October 2021. It follows therefore, that the grounds of appeal in tandem with the written submissions as contemplated in Rule 30(3A) of the Rules of this Court, read with clause 15.2 of the Practice Manual,[1] were filed before the judgment was transcribed.

Grounds of appeal

- [5] On 27 August 2021, the review application served before Prinsloo J, who ordered that the “matter is removed from the roll [and that] the Registrar is directed to enrol the review application with the application for reinstatement for hearing on the opposed motion Court roll”.
- [6] The applicant’s legal representative, Mr. Crafford, in his opening remarks, stated that the reinstatement application was unnecessary, as all the steps that the applicant took in prosecuting its review, was in terms of the Practice Manual. At this remark, I questioned why Prinsloo J’s judgement read as it did, to which, Mr. Crafford replied that the reinstatement application was brought as a “cautionary measure” and he confirmed that the application to reinstate the review is brought in terms of clause 11.2.7 of the Practice Manual.[2]
- [7] I took note that the application to reinstate was filed on 20 August 2020 and this is recorded in the judgment. I further took note that there was no application by the applicant within the time-frame of 60 days as contemplated in item 11.2.2 read with 11.2.3 of the Practice Manual, to extend the period to file the record. Thus, the review application was deemed withdrawn even before any arrangements for reconstruction were made. The time period from the receipt of the record to the realisation that portions were missing (approximately 3 months) is unexplained.
- [8] Further, on the applicant’s papers, no good reason is provided for the further delay of approximately four months to file the reconstructed record and supplementary affidavit.

[9] It is obvious why the application to reinstate was necessary, despite Mr. Crafford's remarks to the contrary, as, in the absence of no- compliance with the provisions of Rule 7A and the provisions of clause 11.2 of the Practice Manual, the review application is deemed withdrawn, lapsed and archived.

[10] I have considered the grounds of appeal and written submissions and have once more, considered my judgment and I am of the view that a different Court would not come to a different conclusion on the same

facts.

[11] In the premises the following order is made:

Order:

1. The application for leave to appeal is dismissed.

M. T. M. Phehane

Judge of the Labour Court of South Africa

[1] Effective 2 April 2013.

[2] Clause 11.2.7 of the Practice Manual states as follows: "A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application

(excluding Heads of Argument) and the registrar is informed in writing that the application is ready for allocation for hearing.

Where the time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not be archived or removed from the archive".

[2] Clause 11.2.7 of the Practice Manual states as follows:

"A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure

that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application

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Prepared on 14 October 2026 · Esheria