

SOUTH AFRICA / JUDGMENT

Gonyela and Others v Ginami Trading 36 CC (JS13/2021) [2021] ZALCJHB 324 (7 October 2021) [2021] ZALCJHB 324

COURT

Labour Court Johannesburg

BEFORE

F. Coetzee

CASE / FILE NUMBER

JS13/2021

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Not

of interest to other judges

Case

no: JS13/2021

In

the matter between:

SANDISO

GONYELA AND 6

OTHERS Applicant

and

GINAMI TRADING 36

CC Respondent

Heard: 7

October 2021

Delivered: This

judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII.

The

date and time for hand-down is deemed to be 10h00 on 7 October 2021.

Summary:

Unopposed application to condone the late referral of a statement of claim

JUDGMENT

COETZEE AJ

- [1] The applicants attended Court from where they attended a virtual meeting.
- [2] The application is unopposed
- [3] The applicants allege that they were retrenched unfairly and that they were only paid one half of their severance pay.
- [4] They referred their dispute to the Commission for Conciliation, Mediation and Arbitration ("the CCMA") who issued a certificate of non-resolution and set the matter down for arbitration. The matter was subsequently referred to the Labour Court.
- [5] The referral to the Labour Court is approximately 6 months late. The delay is excessive.

The explanation for the delay

- [6] The CCMA initially set the applicants' dispute down for arbitration. On the set down date, they were informed by the CCMA that the set down was in error and that the matter must be adjudicated by the Labour Court.
- [7] They first approached the Casual Workers Advice Office in Germiston who promised to do the referral. They made several attempts to establish whether the referral was done, and they were assured that it was.
- [8] Eventually the applicants took their file to the Labour Court and established that the referral had not been done. They received advice to get assistance from a Pro Bono organisation and approached several who could not assist them. They eventually succeeded in referring the matter to the Labour Court.
- [9] They submit that they have good prospects of success as they were not consulted but dismissed for operational requirements. In addition, they were paid only 50% of their severance pay.
- [10] They allege that they would suffer prejudice if their matter cannot proceed.

Analysis

- [11] The explanation for the delay is sufficient as they applicants made various efforts to have the referral done but was left in the lurch by their representative. They have good prospects of success.
- [12] The application should succeed.

Costs

[13] The matter is unopposed.

Order

[14] I make the following order:

1. The late referral of the Statement of Case is condoned with no order as to costs.
2. The respondent has 10 days from the date of this order to file a statement of defence failing which the applicants may apply for default judgment.

F. Coetzee

Acting Judge of the Labour Court of South Africa

Appearances

For the applicant: Two applicants

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ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCJHB/2021/324.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/gonyela-and-others-v-ginami-unknown-topic-alcjhb-2021--6a3ea50f3b1caa9129808051>

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