

SOUTH AFRICA / JUDGMENT

Gwala v CCMA and Others (D 1782-17) [2020] ZALCD 6 (5 August 2020)

[2020] ZALCD 6

COURT

Labour Court Durban

BEFORE

Whitcher

CASE / FILE NUMBER

D 1782-17

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IN

THE LABOUR COURT OF SOUTH AFRICA
(HELD IN DURBAN)

Case

no: D 1782-17

Not Reportable

In the matter between:

LONDEKA
GWALA
Applicant
and
CCMA
First Respondent
SIZWE M NGUBANE
N.O.
Second
Respondent
CHICKENLAND (PTY) LTD
t/a NANDOS Third
Respondent

Heard:

2 July 2020
Judgment
delivered: 5 August
2020

JUDGMENT

WHITCHER J

- [1] The application to review and set aside a condonation ruling by the second respondent (“the commissioner”) is dismissed for the following reasons.
- [2] The review application does not pass the stringent test for a review and the very circumscribed basis upon which a court is entitled to interfere with a discretionary ruling.
- [3] It is evident from the ruling that the commissioner appreciated the factors that needed to be considered in a condonation application and applied his mind thereto.
- [4] It cannot be said that no reasonable commissioner could have found that the applicant failed to provide a reasonable explanation for the delay and failed to demonstrate good prospects of success in the dismissal dispute.
- [5] It is common cause that the applicant was warned in his dismissal letter that if he chooses to refer his matter to the CCMA, it must be done within 30 days.
- [6] The applicant did not require the third respondent’s disciplinary code to refer his matter to the CCMA. In any event, one does not need a disciplinary code to confirm that the allegations proffered against the applicant constituted a dismissible offence.
- [7] The minutes of the disciplinary proceedings and the outcome report indicate that the applicant has very poor prospects of success on the main charge.
- [8] In the premises, the review application is dismissed.

Benita Whitcher

Judge of the Labour Court of South Africa

APPEARANCES:

APPLICANT:

Xaba Attorneys

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THIRD RESPONDENT: Guardian Employers Organisation

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