

SOUTH AFRICA / JUDGMENT

Hannival v Yes Clothing CC t/a Ruby Yes (C74/2022) [2023] ZALCCT 69 (13 April 2023) [2023] ZALCCT 69

COURT

Labour Court Cape Town

BEFORE

Lagrange

CASE / FILE NUMBER

C74/2022

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The Labour Court of South Africa,

Held At Cape Town

Case: C74/2022

Not reportable

In the matter between:

UTAH HANNIVAL Applicant And YES CLOTHING CC t/a RUBY YES Respondent

Date of Set Down: 13 April 2023

Date of Judgment: 13 April 2023

Condonation Ruling

LAGRANGE J

Introduction

- [1] This was an opposed condonation application for the late referral of a claim of automatically unfair dismissal based on pregnancy or alternatively that the applicant was permanently employed and that her dismissal was substantively and procedurally unfair.

- [2] The application was enrolled for hearing on 11 April 2023, but was removed from the roll when the parties advised that they had reached a settlement in respect of the condonation application. A copy of the settlement agreement was received the same day. In terms of the settlement, the Respondent withdrew its opposition and consented to the late filing of the referral.
- [3] Nonetheless, since the condonation can only be granted by the court in terms of section 191(11)(b) of the Labour Relations Act, 66 of 1995, the merits of the application must still be considered. The parties confirmed that the court could determine this in chambers

without the matter being dealt with at a court hearing.

Merits of the condonation application

- [4] Although this is a matter of dispute whether the applicant was actually employed on a series of successive fixed term contracts, she was advised towards the end of June 2021 by the employer that it did not intend renewing the one that supposedly expired that month.
- [5] The applicant's services were terminated the end of June 2021. By 16 August 2021 her dismissal dispute had been enrolled for conciliation/arbitration. She was unable to attend the proceedings because her husband had tested positive for the Covid 19 virus the previous day, though her attorneys did. The employer did not attend the proceedings. A certificate of outcome indicating that the dispute concerned an automatically unfair dismissal and should be referred to the labour court was issued on 16 August 2021, but the arbitrators ruling that the CCMA did not have jurisdiction was only issued on 25 August 2021. Part of the ruling was that the certificate of outcome should be served on the applicant to allow her to refer her dispute to the labour court.
- [6] In terms of section 191 (5) read with 191(11) of the Labour relations act, the applicant ought to have referred her dispute to the labour court within ninety days of the certificate being issued, namely by 14 December 2021. (See *F & J Electrical CC v Metal and Electrical Workers Union of South Africa obo Mashatola and others*

[2015] 5 BLLR 453 (CC) at paras [29] and 30)).

- [7] At the CCMA proceedings the applicant had been represented by her current attorneys of record and they sent emails to the CCMA on 10 December 2021 and 10 January 2022 asking for the certificate. It was only after three further letters from the attorneys that the certificate was eventually received on 4 February 2022. The statement of claim was filed approximately three weeks later on 23 February 2022.
- [8] The respondents correctly noted that the period of delay of nearly three months is significant. On the other hand, the applicant referred her dispute to the CCMA in time and her attorneys attended the proceedings on 16 August. The only reasonable inference to draw from the affidavits is that even though the certificate of outcome purported to be issued on that date it was not handed to the attorneys on that occasion. Following receipt of the

ruling, they made reasonable efforts on a regular and increasingly intensive basis to obtain the certificate and the delay in providing it seems to have been caused by CCMA. In the circumstances I do not think the additional delay after receiving the certificate was excessive and I am satisfied that the applicant and her attorneys have been reasonably diligent in pursuing the matter.

[9] In view of the respondent acceding to the late referral, the prejudice it might have suffered does not need to be considered,

though in the event of any adverse judgement against the respondent, the delay is something the trial court might take into consideration.

[10] In conclusion, the late referral of the statement of claim should be condoned

Order

[1] The late filing of the Applicant's statement of claim is condoned.

[2] No order is made as to costs.

Lagrange J

Judge of the Labour Court of South Africa

13 April 2023

(In chambers)

No appearances

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