

SOUTH AFRICA / JUDGMENT

Lekhoba v Tsebo Facilities Solutions Proprietary Limited (JS700/23) [2024] ZALCJHB 227 (12 June 2024) [2024] ZALCJHB 227

COURT

Labour Court Johannesburg

BEFORE

Reed

CASE / FILE NUMBER

JS700/23

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS700/23

In the matter between

MAMOLOEDI MARTHA

LEKHOBHA

Applicant

and

TSEBO

FACILITIES SOLUTIONS PROPRIETARY LIMITED

Respondent

Heard: 14 May 2024

Delivered: 12 June 2024

JUDGMENT

REED, AJ

Introduction

- [1] The Respondent has raised a special plea on the grounds that the Applicant has failed to apply for condonation for the late filing of her statement of case in her unfair dismissal dispute before this Court. The special plea is opposed.

Background

- [2] The Applicant was employed by the Respondent until her dismissal for operational requirements on 1 January 2023.
- [3] On 1 February 2023, the Applicant referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA).
- [4] The matter was not resolved at conciliation, however neither the parties nor the CCMA is in possession of the certificate of non-resolution.
- [5] Nevertheless, the matter proceeded to arbitration on 2 March 2023 and a default award was issued by the CCMA on 13 March 2023.
- [6] The Respondent brought an application to rescind the default award which was granted on 21 April 2023.
- [7] The Respondent then brought an application objecting to the jurisdiction of the CCMA to arbitrate the dispute. The CCMA ruled, on 25 May 2023, that it did have jurisdiction to arbitrate the dispute.
- [8] The matter was set down for arbitration on 1 August 2023 but did not proceed. On 4 August 2023, the CCMA issued a further ruling confirming its jurisdiction to arbitrate the dispute.
- [9] On 5 September 2023, the CCMA issued a variation ruling in which it concluded that it did not have jurisdiction to arbitrate the dispute and that the Applicant should refer the dispute to the Labour Court.
- [10] The Applicant delivered her statement of case on 5 December 2023.

Special plea

- [11] The Respondent raised a special plea in which it claimed that the Applicant's statement of case was delivered outside of the 90-day period provided for in the Labour Relations Act[1] (LRA) and that it is accordingly necessary for the Applicant to apply for condonation for the late filing of the statement of claim.
- [12] The Applicant opposes the special plea and submits that she has filed her statement of claim well within the 90-day period.
- [13] The Applicant is of the view that the reference to "90 days" in the LRA is a reference to court days and accordingly excludes weekends and public holidays.
- [14] The Respondent is of the view that the reference to "90 days" in the LRA is a reference to calendar days.

[15] The Respondent is also of the view that the Applicant's referral is over six months late because the certificate of outcome was issued on 2 March 2023 alternatively that the 30-day period following conciliation, expired on 2 March 2023.

[16] The Court is called to determine whether the Applicant is required to apply for condonation for the late filing of the statement of claim or not.

Evaluation

[17] The question of how to interpret the reference to "days" in the LRA, where "days" are not defined in the Act, was addressed by the Labour Court in *Latiff v Donro Proprietary Limited*[2] (Donro) where the Court was called to determine whether the applicant in that matter was required to apply for condonation for the late filing of its statement of case. The Court held as follows:

‘[5] Section 191(5)(b)(i) of the Act entitles an employee who has alleged that the reason for dismissal is automatically unfair to refer the dispute to the Labour Court.

Section 191(11) provides:

“(a) The referral, in terms of subsection (5)(b), of a dispute to the Labour Court for adjudication, must be made within 90 days after the council or (as the case may be) the commissioner has certified that the dispute remains unresolved.

(b) However, the Labour Court may condone non-observance of that time-frame on good cause shown.”

[6] It was argued on the applicant's behalf that this objection has no merit as the referral had been made well within the 90-day period contemplated in section 191(11)(a). Reliance for this submission was placed on rule 1 of the Annotated Rules of the Labour Court in which the word “day” is defined as follows:

“‘day’ means any day other than a Saturday, Sunday or public holiday, and when any particular number of days is prescribed for the doing of any act, the number of days must be calculated by excluding the first day and including the last day.”

[7] The Act bears no definition of this word. This cannot mean, however, that a definition may be transplanted from ordinary Rules of Court to apply to the performance of any act under any statutory provisions other than those rules. As the learned authors Landman and Van Niekerk, point out in the *Practice In The Labour Courts* at D3:

“Rule 1 applies to the rules and not to the LRA. The converse is not true – if an expression in the rules is defined in the LRA, it bears the same meaning for the purposes of the rules.”

The same principle is equally applicable to the Uniform Rules of Court.

- [8] It is well established that sections 1 and 4 of the Interpretation Act 33 of 1957 govern the computation of days prescribed for any purpose in legislation which contains nothing to indicate that a different method was meant to be employed. In the decided case of *Nedcor Bank Ltd v The Master & others* 2002 (1) SA 390 (SCA),¹ Mthiyane JA, considering the correct interpretation to ascribe to the provisions of section 40(2) of the Insolvency Act 24 of 1936, said at 394I–395:

“When reckoning days in a statutory provision a Court is enjoined to apply the provisions of s 4 of the Interpretation Act unless there is something in the language or context of the particular provision repugnant to such provision or unless a contrary intention appears therein. Having regard to all the factors in this case, the appellant has not established, and I have not been able to find, anything either in the language or context of s 40(2) of the Act to suggest that the application of s 4 would lead to a repugnancy justifying a departure from the method of computation prescribed in the Interpretation Act. In the interests of legal certainty such departure is not readily to be assumed by the Court.”

See also *Rossouw & Prinsloo v Potgieter* 1984 (2) SA 603 (T) at 604; *Amalgamated Engineering Union of SA on behalf of Fourie v Sappi Fine Papers (Pty) Ltd, Adamas Mill* (1992) 13 ILJ 1029 (IC).

- [9] Section 1 of the Interpretation Act provides :

“The provisions of this Act shall apply to the interpretation of every law in force, at or after the commencement of this Act, in the Republic or any portion thereof, and to the interpretation of all by-laws, rules, regulations or orders made under the authority of any such law, unless there is something in the language or context of the law, by-law, rule, regulation or order repugnant to such provisions or unless the contrary intention appears therein.”

Section 4 thereof reads :

“Reckoning of number of days

When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.”

- [10] In my view, the provisions of section 191(11)(a) of the Act are no different in nature from those of the statutes considered by the courts in the cases mentioned in paragraph 8 above. There is nothing in the language or context of these provisions which would justify a departure from the method of calculation of days envisaged in section 4 of the Interpretation Act.’
- [18] Donro clearly indicates that the 90-day period referred to in section 191(11) of the LRA must be interpreted, in the absence of any definition in the LRA of "day", to refer to a calendar day and not to a court day as the Applicant alleges. Accordingly, the Respondent’s

special plea must be upheld as the Applicant's statement of claim was filed outside of the prescribed time period.

[19] In the premises, the following order is made:

Order

1. The special plea is upheld;
2. The Applicant is hereby ordered to apply for condonation for the late filing of her statement of claim;
3. There is no order as to costs.

J Reed

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant: Adv Keketso John Maleka

Instructed by: Molebaloa Attorneys

For the respondent: De Villiers and Du Plessis Attorneys

[1] Act 66 of 1995, as amended.

[2] [2004] ZALC 56; [2004] 11 BLLR 1151 (LC) at paras 5 – 10.

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