

SOUTH AFRICA / JUDGMENT

Mafumba and Others v Commission for Conciliation Mediation and Arbitration and Others (JR2880/17) [2019] ZALCJHB 253 (2 September 2019)

[2019] ZALCJHB 253

COURT

Labour Court Johannesburg

BEFORE

Van Niekerk

CASE / FILE NUMBER

JR2880/17

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

CASE NO: JR 2880/17

In the matter between:

LUNGA ALFRED MAFUMBA & 20 OTHERS Applicant

and

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

First Respondent

COMMISSIONER ELMIEN WEHNCKE

Second Respondent

KIT KAT GROUP Third

Respondent

OUTSOURCING FOR YOU

Fourth Respondent

Heard: 29 August 2019

Judgment

delivered: 2 September 2019

VAN NIEKERK J

- [1] This is an unopposed application to review and set aside a ruling made by the second respondent on 8 December 2017, when she refused to condone the late referral of a dismissal dispute.
- [2] The ruling records the evidence and argument. In essence, the arbitrator concluded that the delay, which she computed as 195 days, was excessive and that the explanation for the delay was unsatisfactory.
- [3] The essence of the review application is that the delay was not 195 days; the applicants compute the delay as 53 days. In a supplementary affidavit filed in the review proceedings, together with the referral form, the applicants challenge the computation of the period of delay. I am satisfied that the affidavit calls into question the period of delay referred to in the ruling under review. The difference between the delay computed by the arbitrator and that by the applicants is significant, and may well have a bearing on the outcome of the application for condonation.
- [4] In my view, the interests of justice require that the ruling be reviewed and set aside, and that the matter be remitted to the CCMA for rehearing before a different commissioner. To be clear, my decision is based solely on what appears to be a genuine dispute as to the extent of the delay, and none of the arbitrator's other findings are the basis for my decision to set aside the ruling.

I make the following order:

- 1. The ruling issued by the second respondent on 5 November 2017 is reviewed and set aside.
- 2. The matter is remitted to the second respondent for rehearing before a commissioner other than the second respondent.

Andre van Niekerk

Judge

REPRESENTATION

For the applicant: Ndumiso Voyi Attorneys

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