

SOUTH AFRICA / JUDGMENT

Mandlazi v Ubuhle Bemvelo Plant Hire (JS212-20) [2021] ZALCJHB 88 (27 May 2021) [2021] ZALCJHB 88

COURT

Labour Court Johannesburg

BEFORE

F Coetzee

CASE / FILE NUMBER

JS212-20

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case

no: JS212-20

In

the matter between:

ANDREW
ANTONIOS
MANDLAZI
Applicant
and
UBUHLE
BEMVELO PLANT
HIRE
Respondent
Heard: 26 May 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 27 May 2021.

Summary:

Condonation

JUDGMENT

COETZEE, AJ

[1] The applicant seeks condonation for the late filing of his statement of claim.

The delay

[2] The certificate of outcome is dated 17 December 2019.

[3] The applicant's erstwhile attorneys referred the matter for arbitration scheduled by the CCMA for 18 February 2020.

[4] The statement of case was served on 18 March 2020 which means it was 2 days late. It is not an excessive delay.

The explanation for the delay

[5] The applicant approached his insurer, Scorpion, for legal assistance. Scorpion appointed Nkuna Attorneys. On their advice the matter was referred for arbitration set down for 18 February 2020.

[6] The applicant made enquiries as to what occurred on 18 February 2020 and the attorneys requested him to follow up on 28 February 2020 as Scorpion had to issue fresh instructions to refer the matter to the Labour Court as the CCMA could not deal with the dispute.

[7] When applicant enquired from Scorpion as to progress it became clear that the attorneys had not acted diligently whereupon the applicant arranged with Scorpion for the appointment of his current attorney of record. After further enquiries Scorpion appointed the attorneys of record on 17 March 2020 and the statement of case was promptly drafted and served.

[8] The explanation is sufficient and reasonable, and it is clear that the applicant diligently pursued this case.

[9] There are no special circumstances that prejudice either party accept that the applicant, if condonation is refused, would not have his matter heard.

Prospects of success

[10] The applicant submits that he was unfairly retrenched. He has prospects of success.

Costs

[11] This is an interlocutory matter where the applicant is successful. Having regard to the relevant factors there is no reason to make a cost order.

[12] The following order is hereby made:

Order

1. The late filing of the statement of claim is condoned with no order as to costs.

F. Coetzee

Acting Judge of the Labour Court of South Africa

Appearances:

The matter has been determined on paper.

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