

SOUTH AFRICA / JUDGMENT

Marakala v Commission for Conciliation, Mediation and Arbitration and Others (R91/18) [2020] ZALCJHB 198 (7 August 2020)

[2020] ZALCJHB 198

COURT

Labour Court Johannesburg

BEFORE

Gush

CASE / FILE NUMBER

R91/18

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

No R91/18

In

the matter between:

HLOPEKA

JANE MARAKALA

Applicant

and

THE

COMMISSION FOR CONCILIATION,

MEDIATION

AND ARBITRATION

First Respondent

COMMISSIONER

NTSWAKE MODISE

Second Respondent

RETAIL

OPERATION...SECURITY

SERVICE

Third Respondent

Heard

5.August 2020. In Chambers on the papers

by consent of the parties.

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down is deemed to be 10h00 on 7 August 2020.

Summary: Review and condonation

JUDGMENT

GUSH, J

- [1] This is an application to review and set aside the arbitration award made by the second respondent under case number LP 3610/17 in which award the second respondent concluded that applicant's dismissal by the third respondent was both procedurally and substantively fair and dismissed the applicant's arbitration application.
- [2] As the applicant filed the application for review outside the six week prescribed by section 145 of the Labour Relations Act, the applicant has applied for condonation.
- [3] The arbitration award is dated 12 October 2017 and the applicant avers that she only received the award on 31 October 2017.
- [4] Accepting the purposes of this application that the applicant received the award on 31 October 2017, the six week within which the review application was required to be filed expired on 11 December 2017.
- [5] The applicant filed the review application on 19 January 2018. The application is accordingly the applicant's condonation application, fifty days late.
- [6] It is trite that an applicant that has not complied the requisite time limit set out in the act and seeks the court's indulgence is required to explain in detail the reason for the delay.
- [7] The dictum regarding condonation and the courts attitude was set out by the LAC[1]:

In principle, therefore, it is possible to condone noncompliance with the time limit. It follows, however, from what I have said above, that condonation in the case of disputes over individual dismissals will not readily be granted. The excuse for noncompliance

would have to be compelling, the case for attacking a defect in the proceedings would have to be cogent and the defect would have to be of a kind which would result in a miscarriage of justice if it were allowed to stand.

And

It follows from this that condonation for delays in all labour law litigation is not simply there for the taking. But this is particularly so when it comes to delays in the launching of section 145 review applications, especially in the context of individual dismissals. Here the courts have made it clear that applications for condonation will be subject to "strict scrutiny", and that the principles of condonation should be applied on a "much stricter" basis" [2]

- [8] It is also trite that an applicant is required to explain in some detail the full extent of the delay. The applicants application for condonation is dealt with on pages 69 of the founding affidavit . the explanation of and the reasons for the late filing of the application appear at paragraphs 2130 of the founding affidavit. The explanation and reasons offered by the applicant do not include the full extent of the delay nor does the explanation tendered cover the full period of delay.
- [9] Given the above, it is necessary to consider whether the applicant's explanation for the reasons': for the late filing of the application justify condonation being granted. The applicant's. explanation is that after receipt of the award on 31 October 2017; on 1 November 2017 she referred the matter to her insurance company; on 20 November 2017 the matter was referred to her attorneys; and on 27 November 2017 the attorneys replied to the Insurer who instructed

them to proceed. The statutory sixweek period had not expired. There ends the applicant's explanation save for a vague reference to her affidavit and an averment that her attorneys were closed between 15 December 2017 and 8 January 2018.

- [10] There is no confirmatory affidavit and neither has the applicant even attempted to explain the delay between 27 November 2017 and the filing of the application on 19 January 2018.
- [11] I am satisfied that the delay of 50 days is excessive and if not explained the applicant's attempt at explanation is insufficient.

- [12] In *Hlatswayo v South African Police Service and Others*[3] the court said the following:

A reasonable and acceptable explanation for the delay is pertinent to the enquiry as to whether or not condonation should be granted. Where no such explanation is forthcoming, no examination of the prospects of success needs to be undertaken.

In other words, if an applicant for condonation does not explain the default or tenders an unsatisfactory explanation, condonation will not be granted. The mere fact that the party has decidedly strong prospects of success is not in itself sufficient cause to grant condonation.[4]

- [13] In the circumstances and in the absence of the applicant tendering a satisfactory explanation applicant's application for condonation is refused.

- [14] I am not persuaded that a costs order is justified in the circumstances.

- [15] I, make the following order:

Order:

1. The applicant's application for condonation is refused. The application is dismissed with no order as to costs.

DH Gush

Judge of the Labour Court of South Africa

[1] In Queenstown Fuel Distributors CC v Labuschagne NO and Others

[2000] 1 BLLR 45 (LAC)

[2] Queenstown Fuel Distributors CC v Labuschagne NO and others

[2000] 1 BLLR 45 (LAC) and Whitcher J in D976/13 DEPARTMENT OF SPORTS , ARTS and CULTURE

[3] (JR684/06) [2008] ZALAC 199 (25 April 2008)

[4] See also Ferreira v Silinga 1994 SA 271A

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