

SOUTH AFRICA / JUDGMENT

Mathanda and Another v Greater Kokstad Municipality and Others (D1337/19) [2021] ZALCD 76 (14 December 2021) [2021] ZALCD 76

COURT
Labour Court Durban

BEFORE
Moodley

CASE / FILE NUMBER
D1337/19

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Not Reportable

CASE NO. D1337/19

In the matter between

B. N MATHANDA & 1 OTHER Applicant

and

GREATER KOKSTAD MUNICIPALITY First

Respondent

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL Second

Respondent

ASHA SEWPERSAD N.O Third

Respondent

Heard: 02 July 2021

Delivered: 14 December 2021

JUDGMENT

Moodley AJ

1. The applicants seek an order reinstating their review application which is deemed withdrawn. They also seek an order condoning the late filing of the record in the review proceedings.

BACKGROUND

2. The applicants were dismissed for misconduct arising from misappropriating cash while they were employed as cashiers. They referred the dispute to the second respondent. The referral culminated in the third respondent's arbitration award which upheld the dismissals. On 22 October 2019, the applicants launched a review application to set aside that award. On 24 October 2019, pursuant to a Rule 7(A)(5) Notice, the record filed by the second respondent was retrieved by the applicants' attorney.
3. The applicants did not deliver the record within the 60-day period prescribed in Clause 11.2.2 of the Practice Manual. On 23 January

2020, the applicants' attorney requested an extension of the prescribed period to deliver the record, after the expiry of that period. Consequently, the review application was deemed to be withdrawn in terms of Clause 11.2.3 of the Manual. These are the circumstances which have given rise to this application for the reinstatement of the review application. In *Samuels*, [[1]] it was held that an application for reinstatement is in essence an application for condonation.

THE FAILURE TO REQUEST AN EXTENSION BEFORE THE DEADLINE

4. The 60-day period within which the record ought to have been delivered expired on 22 January 2019. The Applicant's attorney sought an extension on 23 January 2019 after the prescribed period had expired. It is evident that the Applicants' attorney misapprehended the date of the deadline. From the letter requesting an extension, dated 23 January 2020, it emerges that the attorney harboured the mistaken belief that the date of the deadline for the delivery of the record was 27 January 2020. In *Glansbeck* [[2]] the Labour Appeal Court ('LAC') held that a reasonable explanation must be given for non-compliance with prescribed time limits arising from an attorney's mistake. No explanation is given for the mistake.
5. The applicants are also required to provide a reasonable explanation for failing to resort to the remedy of seeking an extension of the prescribed period timeously. The provisions of Clause 11.2.3 of the Manual were introduced to provide the remedy of an extension when an applicant faces difficulties in filing the record timeously. It follows that the applicants are required to disclose what difficulties reasonably prevented the delivery of the record timeously.

6. The applicants present the closure of the attorney's offices over the Christmas period as a difficulty. This explanation rings hollow. It is during this very period that the applicant's attorney made a payment to the transcribers on 8 January 2020. Ironically, the attorney's motivation for an extension appears to be predicated on this payment in the correspondence to the respondent's attorney. He implies that an outstanding amount of R 755 due to the transcribers delayed the transcription until its completion on 20 January 2020. However, he does not explain what difficulty prevented making payment earlier than when it was made.
7. Moreover, he ought to have realised that the transcribers overdue fees would delay the transcription process. In Segakweng [[3]] it was held that a request for an extension must be made within a reasonable time when it is anticipated that the deadline for

delivering the record will not be met. The applicants have failed to provide a reasonable explanation for not resorting to the remedy of obtaining an extension timeously.

8. In Zono [[4]] this court has held that the prescribed period of 60 days within which the record must be delivered is binding. Strong disapproval has been expressed for a failure to resort to the remedy of seeking an extension of the prescribed period when there are difficulties in preparing the record.

THE DELAY AFTER THE TRANSCRIPT IS RECEIVED

9. On the applicant's version, there are inaccuracies as to when the transcript was received from the transcribers. The applicants have simply flouted the requirement that an explanation be accurate. The founding affidavit states that the transcript was received on 16 January 2020. The letter requesting an extension of the prescribed period states that the attorneys received the record on 20 January
2020. On either version, the Applicants' attorney was in possession of the transcript before the deadline, yet he failed to deliver the record in time.
10. The Applicants persisted in their dilatory conduct thereafter. They did not display any sense of urgency towards the delivery of the record. This is quite apparent from the explanation given for the delay. The preparation of the supplementary affidavit is given as the reason for the delay during this phase. On this version, time was consumed perusing the 'voluminous' transcript. This explanation is unreasonable because preparation of the record should have come before the preparation of the supplementary affidavit. To make matters worse, even the drafting of the supplementary affidavit was delayed because the applicants' attorney had to "attend courts (sic) for other cases." An attorney's workload is an unreasonable explanation.
11. Moreover, the applicants' relaxed and casual attitude towards the delivery of the record persists. In the written request for an extension, an undertaking is given to deliver the record by 7 February 2020. However, the delivery of the purported record exceeds by far the anticipated date of delivery given in the undertaking. No explanation whatsoever is

advanced for this anomaly. It is apparent from the court file, that only the supplementary affidavit was filed on 7 February 2020. Yet, the Applicant's heads of argument asserts that the record was also delivered on that date. It was not until 26 February 2020 that the transcript, but not the complete record, was delivered. The applicant's attorney bears responsibility for the inattention shown towards the need to urgently deliver the record. Overall, the attorney's role in the cumulative delay is such, that his lack of diligence has reached the limit, beyond which the applicants cannot escape liability for that delay. [[5]]

12. To sum up, the applicants have failed to provide a reasonable explanation for their failure to seek an extension for the delivery of the record timeously; they have failed to explain significant periods of the delay; and when they have given explanations, I have found these to be unreasonable.
13. The applicants do not fare any better in their approach taken towards their prospects of success. The applicants list seven purported

grounds of review in the founding affidavit. None of these challenge the award itself. In fact, the list of "grounds" merely cite deficiencies which allegedly arose at the disciplinary hearing. It is plain to see that the applicants have failed to establish any prospects of success because the facts relied upon would not, if established, result in a successful review. [[6]]

14. I have considered the issue of costs. I do not believe it is in the interests of law and fairness, that a costs order is made.

ORDER

1. The application for the reinstatement of the review application is hereby dismissed.
2. Condonation for the late filing of the record in the review application is refused.
3. There is no order as to costs.

I Moodley

Acting Judge of the Labour Court of South Africa

APPEARANCES

For the applicants: Mr MP Nonyongo of M.P. Nonyongo Attorneys

For the first respondent: Ms LR Naidoo instructed by Mathew Francis Inc

[[1]] *Samuels v Old Mutual Bank* [2017] 7 BLLR 681 (LAC) (2017) at paragraph 17.

[[2]] *Glansbeek v JDG Trading (Pty) Ltd* (JA76/97) [1998] ZALAC 17 (13 February 1998) at paragraph 6.

[[3]] *Segakweng v CCMA & Others* (JR 848/15) [2020] unreported at paragraph 18.

[[4]] *Zono v Minister of Justice & Another* [2020] 11 BLLR 1160 (LC) at paragraph 23.

[[5]] Autopax Passenger Services (Pty) Ltd v Transnet Bargaining Council & others (2006) 27 ILJ 2574 (LC) at paragraph 22.

[[5]] Autopax Passenger Services (Pty) Ltd v Transnet Bargaining Council & others (2006) 27 ILJ 2574 (LC) at paragraph 22.

[[6]] Samuels at paragraph 22.

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Prepared on 10 October 2026 · Esheria