

SOUTH AFRICA / JUDGMENT

Matolo v Commissioner For Conciliation Mediation and Arbitration and Others (JS1070/19) [2024] ZALCJHB 276 (25 July 2024)

[2024] ZALCJHB 276

COURT

Labour Court Johannesburg

BEFORE

Makhubele AJ

CASE / FILE NUMBER

JS1070/19

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IN THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS1070/19

JR2901/19

In the matter between:

SIMON
MOTE MATOLO
Applicant
and
COMMISSIONER FOR
CONCILIATION MEDIATION
AND
ARBITRATION
First Respondent
MARIKANA
HOUSING DEVELOPMENT
Second Respondent
REDE
CONSULTANTS (PTY) LTD
Third Respondent
COMPERIO
CONSULTING
Fourth Respondent

Heard:

2 July 2024

Delivered: 25 July 2024
This judgment was handed down electronically by circulation to the parties via email. The date for hand-down is deemed to be 25 July 2024.

JUDGMENT

MAKHUBELE, AJ

Introduction

- [1] This is an application in terms of Section 145 of the Labour Relations Act^[1] (LRA) to review and set aside the arbitration award issued by the arbitrator under the auspices of the First Respondent, the Commission for Conciliation, Mediation and Arbitration (CCMA), under case number NWRB2983-19, dated 6 December 2019. In his award, the arbitrator found that the Applicant, Simon Mote Matolo, was not an employee of the three respondents.
- [2] The Applicant seeks an order reverting the matter to the arbitrator and Second Respondent for hearing on merits.
- [3] In opposing the review application, the Third Respondent, raised a point in limine to the affect that this Honourable Court does not have jurisdiction to adjudicate the disputes under both case numbers JS1070/19 and JR2901/19, as the applications are deemed to have been withdrawn and therefore dismissed.
- [4] It is necessary to provide a factual background of this case before dealing with the law on review applications.

Background

facts

- [5] The following facts are as per the Applicant's founding affidavit in support of the review application. The Third Respondent in its answering affidavit, did not provide an answer to the following facts pleaded by the Applicant.
- [6] The Applicant was employed by Comperio Consulting as an Independent Contractor. The Applicant entered into an employment relationship with Caperio, Comperio Consulting had already signed a contract with Marikana Housing Development Company (Third Respondent) to render management services for Marikana Housing Development Company. Comperio Consulting hired the Applicant to render the required services for Marikana Housing Development Company.

- [7] The Applicant worked for Comperio Consulting from June 2015 until March 2019. The contract of employment was terminated on 30 March 2019.

Issues

- [8] The Third Respondent in its answering affidavit raised two main issues. The first issue is that review applications have lapsed and is deemed to have been withdrawn. The second issue is that the Applicant did not file any notices in terms of Rules 7A (6) and (8) of the Labour Court Rules[2].

The applicable principles and provisions

- [9] The purpose of the Labour Relations Act (LRA) is inter alia the effective resolution of labour disputes and the processes introduced by the LRA are intended to bring about the expeditious

resolution of labour disputes.[3]

- [10] The Constitutional Court in *CUSA v Tao Ying Metal Industries and Others*[4] said the following:[5]

‘The absence of appeal from arbitral awards was intended to speed up the process of resolving labour disputes and free it from the legalism that accompanies other formal judicial proceedings. By adopting this simple, quick, cheap and informal approach to the adjudication of labour disputes, Parliament intended that, as far as it is possible, arbitral awards should be final and should only be interfered with in very limited circumstances. In order to give effect to these objectives, Parliament deliberately decided against appeals from arbitral awards and opted for the narrowest species of review, namely, that specified in section 145 of the LRA.’

- [11] Section 145 (5) of the LRA provides that a party who brings a review application must apply for a date for the matter to be heard within six months of delivery of the application, and the Labour Court may, on good cause shown, condone a late application for a date for the matter to be heard.

- [12] Rule 7A (6) of the Labour Court Rules provides that the applicant in a review application must furnish the registrar and each of the other parties with a copy of the record or portion of the record, as the case may be, and a copy of the reasons filed by the person or body.

- [13] Rule 7A (8) of the Labour Court Rules provides the following:

‘(8) The applicant must within 10 days after the registrar has made the record available either-

- (a) by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit; or

- (b) deliver a notice that the applicant stands by its notice of motion.’

- [14] Section 11.2.7 of the Practice Manual[6] provides the following:

‘A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure

that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application

(excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing.

Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive.’

[15] Section 16 of the Practice Manual provides the following:

’16 ARCHIVING FILES

16.1 In spite of any other provision in this manual, the Registrar will archive a file in the following circumstances:

- in the case of an application in terms of Rule 7 or Rule 7A, when a period of six months has elapsed without any steps taken by the applicant from the date of filing the application, or the date of the last process filed;
- in the case of referrals in terms of Rule 6, when a period of six months has elapsed from the date of delivery of a statement of case without any steps taken by the referring party from the date on which the statement of claim was filed, or the date on which the last process was filed; and
- when a party fails to comply with a direction issued by a judge within the stipulated time limit.

16.2 A party to a dispute in which the file has been archived may submit an application, on affidavit, for the retrieval of the file, on notice to all other parties to the dispute. The provisions of Rule 7 will apply to an application brought in terms of this provision.

16.3 Where a file has been placed in archives, it shall have the same consequences as to further conduct by any respondent party as to the matter having been dismissed.’

Analysis

[16] In consideration of the factual background, provisions of the Practice Manual and Rules of this Honourable Court, I now deal with the issues raised by the Third Respondent.

[17] The first issue and or question is whether the Applicant's review application is deemed to have been withdrawn in the context of the Practice Manual of this Honourable Court. Respondents did not oppose the application. The Third Respondent filed a notice to abide by the decision of this Honourable Court. In answering the above question, I quote the judgment of *Ramagoshi v Department of Home Affairs and Others*[7] where Judge Venter in dismissing the review application the following appears:

'[10] In correspondence from the First Respondent to the Applicant dated 24 November 2022, the First Respondent raised two preliminary issues with the Applicant:[8]

10.1 That the review application was referred outside the prescribed time period of six weeks and is therefore not properly before this Court; and

10.2 In terms of Clause 11.2.3 of the Labour Court Practice Manual, a record of the arbitration proceedings must be filed within 60 days; failing to do so, the review application is deemed withdrawn.

[11] Despite this correspondence, the Applicant did not take heed[9]. Instead, Applicant's Counsel took issue that these preliminary matters were only raised after the pleadings closed.' [Own emphasis]

[18] I now deal with the facts of this application on the first issue of whether the Applicant's review application is deemed to have been withdrawn. In December 2019, the Applicant caused a review application to be issued on urgent basis under case number JS1070/19. On 20 November 2020, the Honourable Acting Judge Mabaso postponed the review application and ordered the applicant to pay the costs occasioned by the postponement.

[19] On 5 July 2022, the Applicant filed an amended notice of motion under case number JR2901/19 in which he sought to review and set aside the arbitration award in question.

[20] From 20 November 2020, being the date of the order by Mabaso AJ, it took the Applicant approximately 20 (twenty) months to file the amended notice of motion. Clearly, this delay is excessive and unacceptable.

[21] The Third Respondent in its heads of argument referred to the case of *Macsteel Trading Wadeville v Van der Merwe NO & others*[10], where Kathree-Setiloane AJA examined the application of clause 11.2.7 of the Practice Manual. In that case, no reinstatement application

had been brought upon the archiving of the review application. The effect of the occurrence of the 'archiving event' was addressed as follows:

'[20] A primary object of the Act is to promote the effective resolution of labour disputes, integral to which is the speedy resolution of disputes. As stated by the Constitutional Court in *Toyota*:

“Any delay in the resolution of labour disputes undermines the primary object of the LRA. It is detrimental not only to the workers who may be without a source of income pending the resolution of the dispute but ultimately, also to the employer who may have to reinstate workers after many years.”

- [22] The second question is whether the Applicant complied with Rule 7A (6) and (8) of the Rules of this Honourable Court. Before I make reference to the papers filed by the Applicant. The Applicant’s attorney, Mr Mafuya, during his reply in court, conceded that the Applicant did not comply with the provisions of Rule 7A (6) and (8) and that the record of the arbitration proceedings was not filed in this review application. During the reply, the Applicant’s attorney requested that this matter be removed from the roll.

Conclusion

- [23] In my view, by the date of set down of the review application, the matters had long since been archived and regarded as lapsed. Moreover, this matter is not proper before the court in that the Applicant failed to comply with the provisions of Rule 7A (6) and (8) of the Rules of the Labour Court.
- [24] The Applicant’s attorney, Mr Mafuya, conceded during the hearing that the application was not proper before the court, and it ought to be removed from the roll. I am in agreement with Mr Mafuya’s submission that the matter is not properly enrolled. However, I am not persuaded that removing the matter from the roll would be a proper order.

Costs

- [25] In terms of section 162 of the LRA, I have a wide discretion where it comes to the issue of costs. The Constitutional Court has provided some guidance as to how this discretion is to be exercised. In *Union for Police Security and Corrections Organisation v SA Custodial Management (Pty) Ltd and others*[11] the Court said:

‘In the labour context, the judicial exercise of a court’s discretion to award costs requires, at the very least, that the court must do two things. First, it must give reasons for doing so and must account for its departure from the ordinary rule that costs should not be ordered. Second, it must apply its mind to the dictates of the fairness standard in s 162, and the constitutional and statutory imperatives that underpin it...’

- [26] What is thus required is a proper consideration of the dictates of fairness to both parties, followed by an exposition of reasoning why, despite the general principle in employment law disputes that costs do not follow the result, it was nonetheless decided to award costs[12].
- [27] This is the case where a departure from the normal principle relating to costs, and consequently an award of costs against the applicant is justified. I considered the applicant’s unexplained delay in prosecuting the review application expeditiously. In paragraph 4.9 of the replying affidavit the applicant states that “when the matter was postponed, there was no time frame as to when must I get a lawyer to bring the matter back on the roll”. This attitude

by the applicant is unacceptable and it contributed to the delay in prosecuting the review application. Over and above, the applicant failed to comply with the provisions of Rule 7A (6) and (8) of the Labour Court Rules, and the application persisted in setting the matter down for hearing despite the issues of non-compliance with the Court Rules and Practice Manual raised by the Third Respondent.

[28] For the facts and principles above, there is no reason why the costs should not follow the results.

[29] In the premises, I make the following order:

Order

1. The review applications under case numbers JS1070/19 and JR2901/19 have lapsed and been archived in terms of the Practice Manual.
2. This Court lacks the jurisdiction to hear the review application.
3. The Applicant's application is consequently struck from the roll.
4. The Applicant is ordered to pay the Third Respondent's costs in both applications under case numbers JS1070/19 and JR2901/19.

D. Makhubele AJ

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr Mafuya Instructed by: DG Mafuya Attorneys For the Third Respondent: Mr P Strydom Instructed by: PJS Inc. Attorneys

[1] Act 66 of 1995, as amended.

[2] GN 1665 of 14 October 1996: Rules for the conduct of proceedings in the Labour Court.

[3] *Stephens v South African Local Government Bargaining Council and Others* [2023] ZALCPE 8 at para 13.

[4] [2008] ZACC 15; 2009 (2) SA 204 (CC) at para 63.

[5] (CCT 40/07) [2008] ZACC 15; 2009 (2) SA 204 (CC), para 63.

[6] Practice Manual of the Labour Court of South Africa, effective 1 April 2013.

[7]

[2024] ZALCJHB 74.

[8] *Ibid* at para 10.

[9] *Ibid* at para 11.

[10]

(2019) 40 ILJ 798 (LAC); [2018] ZALAC 50 at paras 20 – 26.

[11] (2021) 42 ILJ 2371 (CC); [2021] ZACC 41 at para 35.

[12] *Moetji v General Public Service Sectoral Bargaining Council and Others* [2023] ZALCJHB 320 at para 86.

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