

SOUTH AFRICA / JUDGMENT

MCG Industries (Pty) Ltd v Mpanza and Others (JS685/19) [2021] ZALCJHB 429 (5 November 2021) [2021] ZALCJHB 429

COURT

Labour Court Johannesburg

BEFORE

M I Mangena

CASE / FILE NUMBER

JS685/19

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

CASE

NO: JS 685/19

In

the matter between:

MCG INDUSTRIES PTY)

LTD Applicant

And

MPANZA

PATRICK AND 5

OTHERS Respondent

Considered

in chambers

Date

Delivered: 05 November 2021

JUDGMENT**MANGENA AJ**

- [1] The applicants in the main action were employed by MCG Industries (Pty) Ltd in various positions.
- [2] During September 2019, the respondent engaged the applicants in section 189 of the Labour Relations Act[1] discussions which resulted in all staff members being issued with letters reflecting their proposed severance payment for consideration. At the time the applicants were represented by their unions, namely NUMSA and UASA.
- [3] The respondent contends that the applicants returned the letters confirming that they have been paid in full the amounts reflected in their proposed severance package.
- [4] Subsequent to the payment of the packages in full and final settlement of its obligations to the applicants, the respondent received notification for section 41 referral dispute to the Metal and Engineering Industries Bargaining Council
- [5] The dispute was conciliated on 10 December 2018 and a certificate of outcome was issued confirming that the dispute remains unresolved.
- [6] The applicants instituted this proceedings on or about 01 October 2019-10 months after the Bargaining Council had issued a certificate of non-resolution. This referral to the Labour Court was not accompanied by any condonation application save to state that reference is made in the statement of case to the need to apply for condonation. However, this was not done.
- [7] The respondent pertinently raised the issue in its statement of defence and drew the applicant's attention to both the provisions of section 191(5) (b) (ii) as well as case law where it was stated that failure to apply for condonation deprives the court with the power to adjudicate the dispute. Still the applicants failed to heed the warning and continued with its cavalier attitude.
- [8] The respondent had applied for dismissal of the statement of claim on the basis that this court does not have jurisdiction to entertain it as it was referred out of time. There is merit in this contention and is backed by judicial authority in the form of case law. See in Associated Institutions Pension Fund Van Zyl[2], also Gqwetha v Transkei Development Corporation Ltd and Other[3].
- [9] The applicants had numerous opportunity to apply for condonation, including up to this day prior to this proceedings but remained steadfast in its position that condonation is not necessary. They are the victims of their own misfortune and should suffer the consequences of their own choice.
- [10] In the premises, the following orders are made:

1. The statement of case is dismissed for lack of jurisdiction.
2. There is no order as to costs.

M. I. Mangena

Acting Judge of Labour Court of South Africa

Appearances:

For the Applicant: Hinrichsen

attorneys

For the First Respondent: Patrick Mpanza and 5 Others (In Person)

[1] Act 66 of 1995

[2] 2005 (2) SA 302 (SCA)

[3] 2006 (2) SA 603 (SCA)

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