

SOUTH AFRICA / JUDGMENT

Minister of Police and Another v SAPU and Others (JR2326/2012) [2014] ZALCJHB 490 (19 December 2014)

[2014] ZALCJHB 490

COURT

Labour Court Johannesburg

BEFORE

Snider

CASE / FILE NUMBER

JR2326/2012

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REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case No: JR2326/2012

In the matter between:

MINISTER OF POLICE.....First Applicant

NATIONAL COMMISSIONER OF POLICE.....Second Applicant

and

SAPU obo W/O N R RAEDANI.....First Respondent

MOHUBEDU SIMON RANTHO.....Second Respondent

SAFETY & SECURITY SECTORAL BARGAINING COUNCIL.....Third Respondent

Heard: 4 July 2014

Delivered: 19 December 2014

Summary: Application in terms section 158(1)(c) of the Labour Relations Act 66 of 1995 as amended and application to dismiss review application. Applicants demonstrating dilatory conduct in the prosecution of a review application without any satisfactory explanation. Application in terms of 158(1)(c) accordingly granted and application

dismissing review application similarly granted.

SNIDER AJ

- [1] This is an application, in terms of section 158(1)(c) of the Labour Relations Act[1] (“the LRA”) in terms of which the First Respondent (“the Employee”) seeks –
- 1.1. an order dismissing the review application delivered by the First and Second Applicants on or about 20 September 2012;[2]
 - 1.2. that the arbitration award in favour of the employee, dated 12 August 2012 under case number PSSS 552 - 11/12 be made an order of this Court; and
 - 1.3. ordering the Applicants to pay the costs of this application.
- [2] The award, as set out above, is dated 12 August 2012 and is stamped “received” on 13 August 2012.[3] It is not contentious that the review application was timeously delivered by the Applicants.
- [3] It is common cause that the Third Respondent (“the Bargaining Council”) during or about November 2012 made the record of the arbitration proceedings available and, in fact, it does not seem to be seriously disputed that the Applicants uplifted the record of the arbitration proceedings on 7 November 2012.
- [4] This application was received by the State’s attorney on behalf of the Applicant on 1 July 2013. Somewhat astonishingly, giving the time periods provided for in Rules of this Court an answering affidavit was delivered on 2 July 2014, two days before the hearing of the matter on 4 July 2014.
- [5] The said answering affidavit was delivered without an application for the condonation of the late delivery thereof.
- [6] Dilatory conduct of this nature has, unfortunately, been the hallmark of the Applicant’s conduct in general in the review application and in this application. For the sake completeness and notwithstanding that it is not properly before me, I have had regard to the Applicants’ answering affidavit deposed to by Thabo Victor Letageng (“Letageng”) in this application.
- [7] At the time of launching this application, in July 2013 a period of more than seven months had lapsed since the record was uplifted by the Applicants on or about 7 November 2012. In fact the time period was closer to eight months. It was then another almost precisely a year from the delivery of this application on 1 July 2013 until the Applicants delivered their answering affidavit on or about 2 July 2014. The delays are long and as will be set out below, with little, if any, justification.

- [8] Notwithstanding that the record was uplifted on 7 November 2012, some twenty months before this matter was heard, the Applicants have thusfar failed to produce the record of the matter including a transcript of the oral evidence which was before the Second Respondent.
- [9] On the Applicants' own version the records consisted of three cassettes which had to be transcribed.
- [10] Letageng, who apparently had control of this matter alleges, ad misericordiam that his office was relocated for health reasons as he is allergic to smoking because of a sinus condition that he has. Apparently his office was next to the smoking room. He then states that 1200 files were relocated, presumably to his new office and some got misfiled and that this matter was one of those.
- [11] I find this extremely difficult to accept. Letageng gives absolutely no explanation whatsoever as to how his filing system operated and how matters were diarised. As an individual who is an attorney, necessarily dealing with time deadlines on a daily basis, he must not only have a filing system but also a diary system which is designed to prevent time limits being exceeded as is the case in this matter. Letageng gives absolutely no explanation whatsoever in this regard.
- [12] Letageng then says he was alerted to this matter again when this application was launched and started looking for the file which was found on 3 July 2013. He says that the cassettes were in the file. Again this very allegation begs the questions as to what could possibly have transpired between 3 July 2013 and 4 July 2014 when the Applicants' answering affidavits were filed. There is simply no explanation whatsoever as to what transpired between August 2013, when the transcribed evidence of the record was apparently received by the Applicants and the hearing of this matter. The Applicants do not even bother to put the transcription before this Court.
- [13] When the allegation is made that the Applicant has been making progress since the records were uplifted in November 2012, it is progress of a tortuously slow nature. Again the allegation at paragraph 15 page 6 of the answering affidavit that the Applicants have been doing "everything" to bring this matter finality is obviously woefully incorrect.
- [14] Although neither party dealt with the merits of the review application in this application, nor did they direct me to such merits in their heads of argument, I have considered the review application and have found that, at best for the Applicants it is lacking in any real substance and is also premised on the so-called "rationality" test which has not been the test on review for some time.[4]
- [15] It was well within the ability of the Applicants to have both the transcript and a supplementary affidavit before the Court at the hearing of this application. They elected not to do so without any satisfactory explanation whatsoever.

- [16] This is an application in terms of which I have a discretion which is obviously to be exercised judicially.
- [17] I find the conduct of the Applicants herein highly unsatisfactory and demonstrative of a complete lack of adherence to the Rules of this Honourable Court as well as displaying disregard for the Employees interests in the finalising this matter.
- [18] In the premises I make the following order -
- i. the review application, delivered by the Applicants under case number JR 2326/2012 is dismissed;
 - ii. the arbitration award dated 12 August 2012 under case number PSSS 522 – 11/12 is made an order of this Court;
 - iii. the Applicants are ordered to pay the costs of this application.

SNIDER, A J

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicants: Advocate S M Malatjie

Instructed by: State Attorney

For the First Respondent: Advocate Gerber

Instructed by: Thapelo Kharametsane Attorneys

[1] Act number 66 of 1995 as amended

[2] Page 4 of the review application

[3] Page 30 of this application

[4] Sidumo v Rustenberg Platinum Mines Limited

[2007] 12 BLLR 1097 (CC)

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Prepared on 13 October 2026 · Esheria