

SOUTH AFRICA / JUDGMENT

Mkhatshwa v Shaduka Coal (PTY) Ltd (JS28/16) [2022] ZALCJHB 315 (7 November 2022) [2022] ZALCJHB 315

COURT

Labour Court Johannesburg

BEFORE

P Nkutha-Nkontwana

CASE / FILE NUMBER

JS28/16

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS28/16

In the matter between:

SIPHO MBEKWA MKHATSWA

Applicant

And

SHADUKA COAL (PTY) LTD

Respondent

Decided: In chambers

Delivered: 07 November 2022

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour

Court's website and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 07 November 2022.

LEAVE TO APPEAL – JUDGMENT

NKUTHA-NKONTWANA, J

Introduction

- [1] This is opposed leave to appeal wherein the applicant seeks leave to appeal the whole judgment and order of this Court handed down on 7 July 2022. Leave is sought to appeal to the Labour Appeal Court (LAC) on several grounds that are enunciated in its notice of the application for leave to appeal.
- [2] The application for leave to appeal was filed out of prescribe time limits as per the Rules of this Court[1], and condonation thereof is sought. The respondent is opposing both the leave to appeal and the granting of condonation.
- [3] Rule 30 of the Rules of the Labour Court read with clauses 15.1 and 15.2 of the Practice Manual[2] provides for the timelines on when leave to appeal should be filed. Unfortunately, in this matter, the leave to appeal was filed 40 days late.
- [4] The delay is excessive and the explanation is unreasonable. The applicant's explanation is that the judgment was forwarded

to the wrong email address by the secretary of his attorney and that his attorneys could not attend to his leave to appeal because he was engaged in another matter at High Court. Tritely, a litigant's attorney's remiss conduct in prosecuting a matter does not constitute a reasonable explanation to warrant the granting of condonation.

- [5] The Labour Appeal Court in *NUM v Council for Mineral Technology*[3] said the following:

'...The approach is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefore, the prospects of success and the importance of the case. These facts are interrelated: they are not individually decisive. What is needed is an objective conspectus of all the facts. A slight delay and a good explanation may help to compensate for prospects of success which are not strong. The importance of the issue and strong prospects of success may tend to compensate for a long delay. There is a further principle which is applied and that is that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused.' (Own emphasis)

- [6] In *Melane v Santam Insurance Co Ltd*[4] it was held that:

'...Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. What is needed is an objective conspectus of all the facts.'

- [7] Notwithstanding the excessive delay and unreasonable explanation, I have looked at the prospects of success. The issues canvassed in this application are addressed in detail in the impugned judgment and I defer to the reasons therein. Even so, it is clear that the

applicant's impugn is premised on the misconstruction of the applicable principles. His concession that his comparators (managers of operational mines) were performing different functions from his own (manager of defunct mines) was patently fatal to his pay discrimination claim. Thus, having considered all the grounds of appeal, I am satisfied that there are no prospects that another court might reasonably arrive at a decision different to the one reached by this Court.

[8] It follows that the condonation application stands to be dismissed. However, I disinclined to burden the applicant with costs.

[9] In the circumstances, the condonation application is dismissed with no order as to costs.

P Nkutha-Nkontwana

Judge of the Labour Court of South Africa

[1] GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court.

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

[3]

[1999] 3 BLLR 209 (LAC) at para 10.

[4] 1962 (4) SA 531 (A) at 532 C - E.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCJHB/2022/315.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mkhatshwa-v-shaduka-unknown-topic-alcjhb-2022--6a3ea5193b1caa912980fe3b>

Prepared on 10 October 2026 · Esheria