

SOUTH AFRICA / JUDGMENT

Mofokeng and Another v The GPSSBC and Others (JR 1678/21) [2023] ZALCJHB 64 (17 March 2023)

[2023] ZALCJHB 64

COURT

Labour Court Johannesburg

BEFORE

GN Moshwana

CASE / FILE NUMBER

JR 1678/21

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case

No: JR

1678/21

In

the matter between:

VINCENT
RICHARD MOFOKENG First
Applicant
MAMOHAPE
PRINCESS MOFOKENG Second
Applicant
and
THE
GPSSBC 1st
Respondent
COMMISSIONER
R DE WET N. O 2nd
Respondent
GAUTENG
DEPARTMENT OF SPORTS,
ARTS,
CULTURE AND RECREATION 3rd
Respondent
Heard: 14
March 2023

Delivered: 17
March 2023

Summary:

An application to review and set aside a condonation ruling. When a commissioner considers a condonation application an exercise of discretion is involved. A Court of review may only interfere with the exercise of discretion if the decision maker (a) acted capriciously; (b) applied wrong legal principles; and (c) was actuated by malice. Thus the interference with the exercise of discretion is a limited one. Where a party laments a lack of hearing of a motion that party must establish that right in the rules of the bargaining council. The commissioner acted appropriately and this Court is loath to interfere. Held (1) The application for review is dismissed. Held (2). There is no order as to costs.

JUDGMENT

MOSHOANA, J

Introduction

[1] The two applicants; namely Mr. Vincent Mofokeng (Vincent) and Ms. Mamohapi Mofokeng (Mamohapi) were employed as security officers by the third respondent, Gauteng Department of Sports, Arts, Culture and Recreation (Sports and Culture) on fixed term employment contracts which were to efflux on 31 December 2019, having commenced on 01 October

2019. After the effluxion of time, the fixed term employment contracts were not renewed. Aggrieved thereby, Vincent and Mamohapi

approached the bargaining council and alleged unfair dismissal. The present application impugns the ruling by Commissioner De Wet (De Wet) who dismissed a condonation application. The present application emerged before me unopposed.

Background

facts

[2] Sports and Culture employed Vincent and Mamohapi as security officers on a fixed term employment contract on 30 September 2019. The duration of the fixed term employment contracts was from 1 October to 31 December 2019. Despite a wish to have the fixed term employment contracts extended like those of other seven security officers, the fixed term

employment contracts of Vincent and Mamohapi were not renewed. Both made enquiries why their contracts were not renewed, but all those enquiries drew blank until on 5 March 2020 that they approached the CCMA with an allegation of unfair dismissal.

- [3] In the midst, this country was placed on lockdown due to Covid-19. Both Vincent and Mamohapi did not make any further enquiries with the CCMA. Ultimately in June 2020 they approached the CCMA, only to be informed that their dispute is justiciable at the GPSSBC. On 22 June 2020, they referred the dispute to the GPSSBC. The referral was accompanied by a request for condonation of the late referral. On 17 July 2020, Commissioner SS Thoka (Thoka) issued a ruling condoning the late referral. The ruling of Thoka was short-lived in that on the same day Thoka rescinded the

ruling.

- [4] On 25 June 2020, De Wet issued the impugned ruling which denied condonation. Aggrieved, Vincent and Mamohapi launched the present application one day late and sought condonation for such late filing.

Evaluation

- [5] There is no basis in the interest of justice not to condone the one-day delay to launch the present application. Accordingly, the one-day delay is duly condoned.
- [6] Regard being had to the founding papers, it is apparent that the gripe of the applicants is that they were not afforded a hearing and De Wet considered their motion seeking condonation on paper. In support of this gripe, Mr. Faku, appearing for the applicants placed much store on the judgment of the Labour Appeal Court (LAC) in *Kungwini Residential Estate & Adventure Sport Centre Ltd v Mhlongo N.O and others*[1] (Kungwini) and cases of this Court that followed thereafter. To my mind, the Kungwini judgment is distinguishable. The judgment concerned itself with the CCMA rules, in particular rule 31 (9) which required the CCMA to allocate a date for hearing of an application and to notify the parties of that date.
- [7] The condonation application was entertained in the bargaining council. There is nothing suggested in the papers that the GPSSBC has a similar provision as rule 31 (9) which would have opportuned the applicants to expect an allocation of a hearing of the motion. Accordingly, this Court is unable to conclude that De Wet was obliged to hear the condonation application before making a ruling.
- [8] In refusing condonation, De Wet exercised a discretion. The known principles that apply to a condonation application were applied by De Wet. The applicants do not suggest that De Wet refused the condonation application for capricious reasons or was actuated by malice in so doing. A court of review is loath to interfere with an exercise of discretion unless it is shown that wrong principles were applied and that the decision maker was actuated by malice. It can hardly be said that De Wet acted capriciously. The delay involved in this

dispute is excessive and required an adequate explanation. The applicants are devoid of any prospects of success. Their contracts were fixed and by 31 December 2019 they ended. Any expectation of renewal is not reasonable at all. The applicants indeed failed to provide any adequate explanation for the period February 2020 to June 2020. The only inference to be drawn is that they laid supine for a period of five months. The fact that the country was facing lockdown cannot constitute a reasonable

explanation.

[9] In the results, I make the following order

Order

1 The late filing of the review application is condoned.

2 The application for review is dismissed.

3 There is no order as to costs.

GN Moshwana

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Mr. T Faku of T Faku Attorneys,

Johannesburg.

[1] [2006] 5 BLLR 423 (LAC)

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Prepared on 10 October 2026 · Esheria