

SOUTH AFRICA / JUDGMENT

Mokwalase v Finovest Business Accountants (JS449/21) [2021]

ZALCJHB 444 (9 December 2021)

[2021] ZALCJHB 444

COURT

Labour Court Johannesburg

BEFORE

Graham Nasious Moshwana

CASE / FILE NUMBER

JS449/21

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 449/21

In the matter between:

MOKWALASE, KEITUMETSE LUCIA Applicant

and

FINOVEST BUSINESS ACCOUNTANTS Respondent

Heard: 19 October 2021

Edited: 09 December 2021

JUDGMENT – EX TEMPORE

MOSHOANA, J

- [1] Unlike the matter that was before Court earlier, what serves before Court is an application for condonation for the late referral of a dispute to this Court. The delay is that of five months, which both counsels agreed it is excessive and required a proper explanation.
- [2] What the Court gleaned from the founding affidavit is that the applicant stated the following as the reasons for the delay. Her matter was set down for arbitration on 31 March 2021. A ruling was issued that the CCMA lacks jurisdiction and she should refer the matter to the Labour Court. She was informed that there was 90 days period to make a referral.

[3] She came to the Labour Court on 18 May 2021, applied for a case number and went to SASLAW pro bono offices for further assistance. At that time, she believed that she was still within the prescribed timeframe. She had no idea as to whether she has been incorrectly advised. It has always been her intention to pursue the matter. Other than the above explanation, there was no explanation for the five months' period that went past. Clearly there is no proper explanation, as required.

[4] With regard to the prospects of success, only one paragraph was dedicated to that. The applicant simply states:

"My prospects of success in the main action are good. My dismissal was procedurally and substantively unfair. I was just told verbally that the company is not doing well and must retrench two people."

[5] That is the full extent of the prospects of success outlined in this application.

[6] A party seeking condonation must at least place the Court in a proper position to exercise its discretion. There is no indication why the applicant believes that at least the dismissal is procedurally and substantively unfair. However, in opposing the referral or the condonation application, it was made clear that she was not dismissed. It was testified that she absconded her workplace and never returned. Therefore, even if this Court were to grant condonation, this is one of those cases that lack prospects of success. For all the above reasons, condonation for the late filing must fail.

[7] In the result the following order is made:

Order

1. Condonation is refused.
2. There is no order as to costs.

Graham Nasious Moshwana

Judge of the Labour Court of South Africa

Appearances:

For the applicant : Ms P Govender of PG Attorneys

Instructed by : Pro Bono Saslaw Offices

For the respondent : Mr H Wissing of Henk Wissing Inc.

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