

SOUTH AFRICA / JUDGMENT

Moodley v Atlantis Foundries (Pty) Ltd (C129/2021) [2024] ZALCCT 21 (3 June 2024) [2024] ZALCCT 21

COURT

Labour Court Cape Town

BEFORE

Rabkin-Naicker

CASE / FILE NUMBER

C129/2021

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Source record**THE LABOUR COURT OF
SOUTH AFRICA, CAPE TOWN****Not Reportable****Case****No: C129/2021****In****the matter between:****MERVIN
MOODLEY Applicant
and
ATLANTIS FOUNDRIES
(PTY) LTD
Respondent****Heard:****14 February 2024****Delivered:****3 June 2024
(This judgment was handed down electronically by emailing a
copy to the parties. The 4 June 2024 is deemed to be the date of
delivery
of this judgment).**

JUDGMENT

RABKIN-NAICKER J

- [1] This is an opposed application to reinstate a claim for unfair dismissal by the applicant. The Court must consider whether the application, a form of application for condonation[1] should be granted.
- [2] The applicant filed a statement of claim on 1 March 2021 and the statement of response was filed on the 26 March 2021. On the 23 August 2021, the applicant's attorneys of record sent the respondent a draft pre-trial minute. On the 31 August 2021, the applicant was informed that the draft pre-trial minute did not conform to the requirements of the Court. The applicant took no further steps to progress the matter until he filed a notice attempting to amend his statement of claim on 2 May 2023, nearly 2 years later. He was informed on the 4 May 2023 that he needed to apply for reinstatement of the claim but waited until 26 June 2023 to do so.
- [3] The reasons for the delay are set out by the applicant and include the following:
- 3.1 In August 2021, when the pre-trial draft was sent, he had previously referred an unfair labour practice dispute to the CCMA;
- 3.2 He decided to focus on the CCMA dispute because the relief he sought there 'may' have had a bearing on the dismissal claim;
- 3.3 He avers that it took him from May to December 2022 to obtain a consultation with a sufficiently senior counsel;
- 3.4 He was also during this period considering a review of the award in his CCMA dispute and avers that he was trying to obtain the record of the arbitration before embarking on same. He did not proceed with a review;
- 3.5 He does not inform the Court as to when it was decided to amend his statement of claim or when and how he instructed his attorneys in this regard;
- 3.6 There is no explanation as to why it took two months to finalise the proposed amended statement of claim or why it took so long to serve the finalised statement of claim.
- [4] The respondent in answering this application pointed out various of the deficiencies of the explanation for the delay. No replying affidavit was filed.
- [5] It be noted that the applicant does not incorporate his pleadings by reference when dealing with prospects of success in the claim but simply states as follows:

“I am advised that I need to show that I have reasonable prospects of success and in this regard I submit that this is indeed demonstrated. After having been employed by the Respondent company for the better part of a decade and effectively managed and facilitated its successful sale at a cost of 100 million euro’s (sic). After having done so, Atlantis Foundries dismissed me.”

- [6] The above statement does not even reach the requirement for this type of application i.e. to set out facts, which if established would result in a litigants success.[2] However, in any event, it is not necessary for the Court to deal with the merits of the claim, given that the explanation for the excessive delay in prosecuting the claim is lacking in particularity, and is so unreasonable it amounts to no explanation at all[3]. It should be borne in mind that the applicant had legal representatives throughout the period. He ignored the fundamental principle of speedy resolution of disputes as well as disrespecting the Rules of this Court. In the result, I make the following Order, making no order as to costs given the applicant is an individual:

Order

1. The application for reinstatement is dismissed.
2. There is no order as to costs.

HRabkin-Naicker

Judge of the Labour Court of South Africa.

Appearances:

For the Applicant: A. Lawrence instructed by Schoeman Law INC

For the Respondent: Craig Bosch instructed by Webber Wentzel

[1] Samuels v Old Mutual Bank [2017] 7 BLLR 681 (LAC)

[2] Samuels supra at para 17

[3] Collet v CCMA & Others [2014] 6 BLLR 523 (LAC)

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Prepared on 9 October 2026 · Esheria