

SOUTH AFRICA / JUDGMENT

Ngadlela v General Public Service Sector Bargaining Council and Others (C06/2018) [2021] ZALCCT 11 (8 April 2021)

[2021] ZALCCT 11

COURT

Labour Court Cape Town

BEFORE

Rabkin-Naicker

CASE / FILE NUMBER

C06/2018

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IN THE LABOUR COURT OF
SOUTH AFRICA, CAPE TOWN

Not

Reportable

Case

no: C06/2018

In

the matter between:

MQONDISI
NGADLELA
Applicant
and
THE GENERAL PUBLIC
SERVICE SECTOR
BARGAINING
COUNCIL
First Respondent
DP
VAN TONDER
N.O.
Second Respondent
MINISTER OF AGRICULTURE,
FORESTRY
AND
FISHERIES
Third Respondent
DIRECTOR GENERAL OF THE
DEPARTMENT
OF

AGRICULTURE, FORESTRY AND FISHERIES

Fourth Respondent

CEBA

MTOBI

Fifth Respondent

Date heard: 3 February

2021 by means of virtual hearing Delivered:

April 8 2021 by means of scanned email

JUDGMENT

RABKIN-NAICKER J

- [1] This is an opposed application to review a Condonation Ruling under case number GPBC1307/2017. The second respondent (the Commissioner) ruled that condonation was refused. In his second prayer in the Notice of Motion, the applicant seeks to review the Rescission Ruling under the same case number, in which the Commissioner found that there were no grounds under section 144 of the LRA to rescind his Condonation Ruling.
- [2] In respect of the Condonation Ruling, the applicant referred an unfair labour practice dispute related to benefits to the first respondent. On the degree of lateness of the referral the Commissioner had this to say:

“[5] It is generally accepted that the longer the delay the less the prospects are that condonation will be granted, and the more the need for the applicant to have a good explanation. Applicant has referred an unfair labour dispute relating to benefits. Such disputes must be referred within 90 days from the date that the employee became of the unfair conduct of the employer. Applicant states that on 30 November 2014 he informed the employer there may be issues with his salary progression. On his own version he received a response on 16 April 2015 that he was disqualified by a moderation committee the previous year. Hence by the latest on 16 April 2015 applicant was aware of the alleged unfair conduct of the employer. He had 90 days to refer his dispute since 16 April 2015. He only referred his dispute on 14 June

2017. His referral is accordingly almost two years late and not two months as alleged by the applicant. This is an excessive delay. Our courts have held that excessive delay requires an extraordinarily good explanation.”

- [3] In his founding affidavit the applicant submits that the finding that there was an excessive delay in referring the dispute is a restrictive interpretation of a dispute:

“I submit that, being aware of unfair conduct does not necessarily translate to a dispute. Our courts expect litigants to only approach

courts when there are no other means to resolve their dispute. I submit that from 16 April 2015 up to 16 February 2017 parties were cooperating to find amicable solution to the problem. It was only when the outcome of the investigation conducted by Third Respondent became known that a dispute arose. Or technically, it could also be argued that only on 30 May 2017 that dispute arose when Third Respondent proposed referral of the matter which was a clear indication of unwillingness to cooperate anymore.”

[4] The LRA provides that:

“Section 191(1) of the LRA reads:

‘(a) If there is a dispute about the fairness of a dismissal, or a dispute about an unfair labour practice, the dismissed employee or the employee alleging the unfair labour practice may refer the dispute in writing to —

(i)

a council, if the parties to the dispute fall within the registered scope of that council; or

(ii) the Commission, if no council has jurisdiction.

(b) A referral in terms of paragraph (a) must be made within —

(i)

30 days of the date of a dismissal or, if it is a later date, within 30 days of the employer making a final decision to dismiss or uphold the dismissal;

(ii) 90 days of the date of the act or omission which allegedly constitutes the unfair labour practice or, if it is a later date, within 90 days of the date on which the employee became aware of the act or occurrence.’ (emphasis mine)

[5] The statute could not be clearer. The Commissioner was not being ‘restrictive’ in his interpretation but was following the prescripts of the LRA. The provisions of the LRA have to be understood in line with the principle of speedy resolution of disputes. In addition, the Commissioner referred extensively to case law on condonation applications such as the one before him. In particular that a full and detailed and accurate account of the reasons for the delay must be furnished. No such account was provided by the applicant for an excessive delay.

[6] The Commissioner in these circumstances cannot be faulted for his reliance on the authority of NUM v Council for Mineral Technologies.[1] In the face of a reasonable and acceptable reason for the delay, there was no need for him to consider the prospects of success. This principle has been affirmed many times. In Colett v Commission for Conciliation, Mediation & Arbitration [2] the LAC stated:

“[38] There are overwhelming precedents in this court, the Supreme Court of Appeal and the Constitutional Court for the proposition that where there is a flagrant or gross failure to comply with the rules of court condonation may be refused without considering prospects of success. In NUM v Council for Mineral Technology it was pointed out that considering whether good cause has been shown the well-known approach adopted in Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A) at 523 C-D should be followed, but —

‘[t]here is a further principle which is applied and that is without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without good prospects, no matter how good the explanation for delay, an application for condonation should be refused’.

[39] The submission that the court a quo had to consider the prospects of success irrespective of the unsatisfactory and unacceptable

explanation for the gross and flagrant disregard of the rules is without merit.”

[7] In all the above circumstances, the Condonation Ruling is not susceptible to review. In as far as the review of the Rescission Ruling is concerned, it is evident that the application for rescission was akin to an appeal of the Condonation Ruling. The Commissioner painstakingly sets out the law in as far as section 144 of the LRA is concerned and spells out that the provision of new information and additional arguments in a rescission application does not amount to pursuing a ‘variation’ of the Award.

[8] There is no basis in law for either of the Rulings to be reviewed. The applicant is a senior employee, a Director responsible for Intergovernmental & International Relations in the employ of the Department of Agriculture, Forestry and Fisheries. In my view, he has been cavalier in bringing these applications before the Labour Court, or perhaps ill advised by a legal representative whose identity is not apparent from the papers. Although, inclined to seriously consider making a costs order in this matter, I take into consideration that individual employees should not be deterred from exercising their rights to bring a review of an adverse ruling to this Court. I make the following order:

[1]

[1999] 3 BLLR 209 (LAC) at 211G-H

[2]

(2014) 35 ILJ 1948 (LAC); [2014] 6 BLLR 523 (LAC)

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Prepared on 23 October 2026 · Esheria