

SOUTH AFRICA / JUDGMENT

Ntuli and Others v Amandla Leak Detectors (JS 205-20) [2021] ZALCJHB 87 (1 June 2021) [2021] ZALCJHB 87

COURT

Labour Court Johannesburg

BEFORE

F. Coetzee

CASE / FILE NUMBER

JS 205-20

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case

no: JS 205-20

In

the matter between:

SMILE
THULANI NTULI & 8 OTHERS Applicant
and
AMANDLA
LEAK DETECTORS
Respondent
Heard: 1 June 2021

Delivered:

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 1 June 2021.

Summary:

Condonation

JUDGMENT

COETZEE, AJ

- [1] The applicants seek condonation for the late filing of the statement of claim.
- [2] The certificate that the dispute remained unresolved was issued on 7 January 2020.
- [3] The applicants referred the matter on 13 January 2020 to the Commission for Conciliation, Mediation and Arbitration ("the CCMA") for arbitration where it was set down for 3 March 2020. The Commissioner ruled that the CCMA lacked jurisdiction as the dispute was about a retrenchment involving 10 or more employees.
- [4] The applicants on 25 March 2020 visited the Labour Court where they were advised to complete the necessary form for the allocation of a case number. They were also advised to seek legal assistance.
- [5] The lockdown in terms of the Disaster Management Act of 2002 commenced on 27 March 2020. They found it difficult in view of the travel restrictions to find legal assistance, especially as the applicants relocated to their rural home for the lockdown period and could not travel across provincial borders.
- [6] On 10 June 2020 they telephonically got hold of their current attorney of record but could not immediately consult with him. He attempted to settle the matter with the respondent. By that time, according to the applicants, they had lodged a statement of claim with the Labour Court which the attorney wanted to consider and review. His first availability was on 7 September 2020 and he advised them to apply for condonation.

The degree of delay

- [7] The applicants submit that the period is to be calculated from 13 March 2020 when the CCMA ruled that it had no jurisdiction. Based on that calculation the delay is approximately 6 weeks. This however is not correct as the period runs from the date of issue of the certificate which is 7 January 2020. The statement of claim reached the Labour Court on 21 October 2020. On that basis the delay is excessive.

The explanation for the delay

- [8] The applicants content that they are lay persons. They erroneously referred the matter to the CCMA for arbitration which delayed the matter until 3 March 2020. They then approached the Labour Court on 25 March 2020 whereafter they were hampered by the lockdown until they were allowed to travel.

Prospects of success

- [9] They submit that the respondent initially attempted to convert their employment into subcontractor-relationships which was not viable to them. The respondent on 6 December 2019 verbally retrenched them without any retrenchment letters and without consultation.

Prejudice

- [10] The applicants state that they all will suffer prejudice if their dispute cannot be adjudicated while there is no prejudice to the respondent.

Analysis

- [11] While the delay is excessive, there are good and reasonable explanations for the delay. The applicants' prospects of success seem good. The respondent has elected not to oppose the application and therefore has not expressed a view on any prejudice.
- [12] It is the interest of justice to grant the applicants condonation for the late filing of their statement of claim.

Costs

- [13] This is a jurisdictional matter where the applicant is successful. Having regard to the relevant factors there is no reason to make a cost order.

- [14] The following order is hereby made:

Order

1. The late filing of the statement of claim is condoned with no order as to costs.

F. Coetzee

Acting Judge of the Labour Court of South Africa

Appearances:

The matter has been determined on paper.

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