

SOUTH AFRICA / JUDGMENT

Num obo Gogomo v Greymo Construction CC (C192/2020) [2023] ZALCCT 13 (11 April 2023)

[2023] ZALCCT 13

COURT

Labour Court Cape Town

BEFORE

Rabkin-Naicker

CASE / FILE NUMBER

C192/2020

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Not Reportable

C192/2020

In the matter between:

NUM obo SIYABULELA GOGOMO Applicant

and

GREYMO CONSTRUCTION CC Respondent

Date heard: 2 February 2023

Delivered: 11 April 2023 by means of email

RABKIN-NAICKER J

- [1] This is an opposed application for condonation for the late referral of a statement of case. The applicant employee was dismissed on the 8 November 2019. He referred a dispute to conciliation on the 4 December 2019.

- [2] The matter was set down for arbitration on 5 March 2020. On the 14 March 2020, having heard a point in limine raised by the respondent, a ruling was issued that the bargaining council did not have jurisdiction because the dismissal related to an unprotected work stoppage.
- [3] The attorney for the applicant avers that a consultation was held within the first month after the Covid Lockdown and the referral was filed on 28 May 2020. The statement of case is dated 28 May 2020. It was only filed at Court on the 22 January 2021. The Court file reflects that the statement was served by email on the respondent on the 27 May 2020.
- [4] Given the problems encountered during the lockdown, which applicant's attorney sets out in her affidavit, she submits that there were mitigating circumstances for the delay which she considers to be a delay of 28 days. On the other hand, it is respondent's case that the date of filing (22 January 2021) is the material date making the referral, some nine months late.
- [5] It is apparent from the answering affidavit and annexures thereto, that the respondent advised the applicant that the statement of claim had not been filed in the Labour Court on the 17 and 31 December 2020, and stated that this was prejudicing the respondent. A reply was sent by applicant's attorney on the 21 January 2021, which mentions that an erstwhile attorney at the firm could not remember if she had ever sent the statement to the Court for filing.
- [6] None of the above information was contained in the founding affidavit in this application, and the Court was thus not taken into Applicant's confidence. Indeed, in that founding affidavit it is contended that there is no prejudice arising from a one month' delay. The applicant did not file a replying affidavit. In addition, the negligence of applicant's attorney is compounded by a failure to file an application for condonation until May of 2022, when a directive to do so was issued by Lagrange J on the 12 February 2021.
- [7] The applicant employee, it is accepted, will be the person to be prejudiced if condonation is not granted. He was represented by his vastly experienced union, the NUM, which briefed the attorneys in question. The trite principles of *Saloojee & another NNO v Minister of Community Development* 1965 (2) SA 135 (A) apply in this matter, despite Counsel for the applicant's valiant attempt to persuade the Court to grant the application. He had no instructions as to the delay in filing the condonation application. The submissions regarding this Court being one of equity are accepted. However, the interests of all litigants using this Court are served if its Rules are respected and all parties may be allocated a hearing as expeditiously as possible.

[8] in sum, there is simply no explanation for the delay of nine months in launching the referral in terms of the Rules of the Labour Court. There is no explanation for the further long delay in applying for condonation despite the Directive to do so. In these circumstances, there is no need for the Court to consider the prospects of success in the main action[1]. The application must be refused. No costs order is made due to the ongoing relationship between the NUM and the respondent. I make the following order:

Order

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

H.Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicant: Khomola

M.L. instructed by Mohale Inc

Respondent: Employers Organisation SAUEO representative.

[1] Colett v CCMA & Others 2014 ILJ LAC 1448 paras 38 and 39

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCCT/2023/13.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/num-obo-gogomo-v-greymo-unknown-topic-alcct-2023>

Prepared on 12 October 2026 · Esheria