

SOUTH AFRICA / JUDGMENT

NUMSA and Another v Element Six Production (Pty) Ltd (JS 1020/2015) [2023] ZALCJHB 47 (9 March 2023) [2023] ZALCJHB 47

COURT

Labour Court Johannesburg

BEFORE

Prinsloo

CASE / FILE NUMBER

JS 1020/2015

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

no: JS 1020/2015

In

the matter between:

NUMSA
First Applicant
MAKOTI
AND 94
OTHERS
Second Applicant
And
ELEMENT
SIX PRODUCTION (PTY) LTD
Respondent

Heard:

21 February
2023

Delivered:

9 March 2023
This
judgment was handed down electronically by consent of the parties'
representatives by circulation to them via email.
The date for
hand-down is deemed to be 9 March 2023.

JUDGMENT

PRINSLOO, J

Introduction

- [1] This is an application to retrieve the Applicants' referral from the archives in terms of the provisions of paragraph 16.2 of the Practice Manual of the Labour Court[1] (Practice Manual).

Background**facts**

- [2] The Respondent retrenched 95 employees (Second Applicant or employees) on 28 July 2015. They subsequently and on 22 August 2015 referred an unfair dismissal dispute to the Metal Industries Bargaining Council and after the dispute remained unresolved at conciliation, the dispute was referred to the Labour Court on 22 December 2015.
- [3] The Respondent filed a statement of response on 5 February 2015.
- [4] The parties concluded a pre-trial minute on 23 February 2017 and the matter was set down for trial on 12 March 2018. Shortly before the trial, the Respondent drew to the attention of Mr Mabaso, the Applicants' erstwhile attorney, crucial facts which had to be addressed with the employees, prior to the matter proceeding to trial, and the matter was postponed sine die.
- [5] As a result of the facts that came to Mr Mabaso's attention, he formed the view that there were no prospects of success in the Applicants' case and therefore he withdrew as attorney of record on 9 July 2018.
- [6] At the end of June 2019, the First Applicant (NUMSA) appointed the current attorneys of record, Serena Chetty Inc Attorneys, and instructed her to assess the matter and to provide a second opinion on the prospects of success.
- [7] On 18 May 2020, the Applicants' attorney served and filed a notice to amend the statement of claim. The Respondent's attorneys took issue with the notice of intention to amend because the matter was, by virtue of paragraph 16 of the Practice Manual, archived.
- [8] On 29 July 2020, the Applicants filed this application wherein they seek an order to retrieve their referral from the archives so that their matter may be fully ventilated and adjudicated upon.
- [9] The issue to be decided is whether the Applicants' statement of case is to be retrieved from the archives and the case to be reinstated.

The applicable principles and provisions

- [10] The purpose of the Labour Relations Act^[2] (LRA) is inter alia the effective resolution of labour disputes and the processes introduced by the LRA are intended to bring about the expeditious resolution of labour disputes. The detrimental implications of delays are obvious.^[3]
- [11] This is supported by the provisions of the Rules of the Labour Court^[4] and the Practice Manual. Rule 6 provides for referrals and Rule 6(4) requires that the parties hold a pre-trial conference within 10 days of the date of delivery of the statement of response. The applicant must ensure that a copy of the pre-trial minute is delivered within 5 days of the conclusion of the pre-trial conference. Rule 6(7) provides remedies in the event that there is non-compliance with the provisions of Rule 6. All this is to ensure that matters get set down for trial and are dealt with expeditiously.
- [12] Clause 10 of the Practice Manual provides specifically for referrals in terms of Rule 6 and for trial procedures. It is significant that clause 10.2.1 provides that where a statement of claim is filed and the issue in dispute concerns the dismissal of 10 or more employees whose reinstatement is sought, the referring party must simultaneously, with the filing of the statement of case, deliver a letter to the Registrar, for the attention of the Judge President, setting out the names of the parties, the nature of the dispute and an estimate of the probable duration of the trial. The Judge President may then appoint a Judge to undertake the case management of the file, to ensure an expeditious hearing.
- [13] The relevant portion of Clause 16.1 of the Practice Manual provides that in case of a Rule 6 referral, the file will be archived when a period of six months has elapsed from the date on which the last process was filed, without any steps being taken by the applicant.
- [14] Clause 16.2 provides that a party to a dispute on which the file has been archived may submit an application for the retrieval of the file. Where a file has been placed in the archives, it has the same consequences as if the matter had been dismissed.
- [15] This Court and the Labour Appeal Court (LAC) have considered the status of the Practice Manual^[5] and held that in essence, the manual promotes uniformity and consistency in practice and procedure and sets guidelines on standards of conduct expected of those who practise and litigate in the Labour Court and it promotes the statutory imperative of expeditious dispute resolution. The provisions of the Practice Manual are binding and should be adhered to and it is not to be complied with or ignored by parties at their convenience or discretion.
- [16] In *Samuels v Old Mutual Bank*,^[6] the LAC held that:
- [16] Clause 16.2 does not specifically state that in an application for the retrieval of the file, a party who brings that application must show good cause why the file must be retrieved from the archive. It however states in no uncertain terms that the provisions of rule 7 will apply in an application brought under the Clause 16.2. Clause 11.2.7 applicable to rule 7 and rule 7A

applications requires that a party who applies for a file to be removed from the archive must show good cause why the file must be removed from the archive. Furthermore, an applicant who applies for a file that has been archived for failure to comply with an order by a Judge to file a pretrial minute, to be removed from archives, has to show good cause why such a file should be removed from the archives. There is therefore no doubt that showing good cause is a requirement for a file to be removed or retrieved from the archives in terms of Clause 16.2.

[17] In essence, an application for the retrieval of a file from the archives is a form of an application for condonation for failure to comply with the court rules, time frames and directives. Showing good cause demands that the application be bona fide; that the applicant provide a reasonable explanation which covers the entire period of the default; and show that he/she has reasonable prospects of success in the main application, and lastly, that it is in the interest of justice to grant the order. It has to be noted that it is not a requirement that the applicant must deal fully with the merits of the dispute to establish reasonable prospects of success. It is sufficient to set out facts which, if established would result in his/her success. In the end, the decision to grant or refuse condonation is a discretion to be exercised by the court hearing the application which must be judiciously exercised.'

[17] The relevant legal principles to be applied in an application for condonation are well established and will be applicable in an application such as the present one.

[18] This Court has a discretion, which must be exercised judicially on a consideration of the facts of each case and in essence, it is a matter of fairness to both sides.[7]

[19] In *Melane v Santam Insurance Co Ltd*[8] it was held that:

'... Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach

incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting

condonation... What is needed is an objective conspectus of all the facts.'

[20] In this Court, however, the principles have long been qualified by the rule that where there is an inordinate delay that is not satisfactorily explained, the applicant's prospects of success are immaterial. The courts have held and emphasised that an

applicant must necessarily act with the degree of diligence required by the Rules of this Court and the Practice Manual, thus giving

effect to the statutory imperative of expeditious dispute resolution.

[21] This Court has conventionally applied the approach that, in the absence of a satisfactory explanation for a delay, the applicant's

prospects of success are ordinarily irrelevant.[9] This principle was confirmed in National Education Health and Allied Workers Union on behalf of Mofokeng and others v Charlotte Theron Children's Home,[10] where the LAC held that without a reasonable and acceptable explanation for a delay the prospects of success are immaterial.

[22] In Colett v Commission for Conciliation, Mediation and Arbitration and others,[11] the LAC also confirmed that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial and without good prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused.

[23] The onus is on the applicant seeking condonation to satisfy the court that condonation should be granted. In employment disputes there is an additional consideration which applies in determining whether the onus has been discharged, as was held in National Union of Metalworkers of SA on behalf of Thilivali v Fry's Metals (A Division of Zimco Group) and others:[12]

'There is, however, an additional consideration which applies in employment disputes in determining whether an applicant for condonation has discharged this onus. This is the fundamental requirement of expedition. The Constitutional Court has, as a matter of fundamental

principle, confirmed that all employment law disputes must be expeditiously dealt with and any determination of the issue of good

cause must always be conducted against the back drop of this fundamental principle in employment law.'

[24] The fundamental requirement of expedition is not to be ignored. In Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others[13] (Toyota SA), the Constitutional Court emphasised that one of the fundamental purposes of the LRA was to establish a system for the quick adjudication of labour disputes. When it assesses the reasonableness of a delay, the court must not lose sight of this purpose.

[25] In summary: the Courts have endorsed the principle that where there is a delay with no reasonable, satisfactory and acceptable explanation for the delay, condonation may be refused without considering prospects of success and to grant condonation where the delay is not explained, may not serve the interests of justice. The expeditious resolution of labour disputes is a fundamental consideration.

[26] Condonation for delays in all labour law litigation is not simply there for the taking. The starting point is that an applicant in an application such as the present, seeks an indulgence and bears the onus to show good cause and a proper case should be made out before the indulgence could be granted.

[27] It is in this context that this application for retrieval stands to be determined.

The degree of lateness and the explanation tendered

[28] The first issue to be considered is the degree of lateness.

[29] In casu, the matter was set down for hearing on 12 March 2018, when it was postponed at the Applicants' request. Mr Mabaso withdrew as attorney of record on 9 July 2018 and no further steps were taken subsequently, until 18 May 2020 when the Applicants'

current attorney served and filed a notice to amend the statement of claim. The Respondent's attorneys took issue with the notice of intention to amend and indicated on 2 June 2020 that the matter was archived by virtue of paragraph 16 of the Practice Manual.

[30] It is evident that since the matter was postponed on 12 March 2018 until the notice to amend was filed in May 2020, no active steps were taken by the Applicants to request that the matter be set down for trial and to get the matter back on track. It is a period in excess of two years, which is no doubt excessive.

[31] The reason for the delay is explained as from the end of June 2019, when Serena Chetty Inc Attorneys were instructed to provide a second opinion on the Applicants' prospects of success. Ms Chetty requested a document from Webber Wentzel attorneys, the Respondent's attorneys of record, which document was provided on 25 July 2019. A legal opinion was submitted to NUMSA, whereafter a meeting was held with the employees to discuss the way forward. Given the number of employees and the fact that many of them reside far and wide from Johannesburg, the meeting was only held on 22 August

2019. At the meeting, the document was discussed and it was impossible to verify the information regarding the list of employees who were retrenched and on 25 August 2019, Webber Wentzel was requested to provide the list of employees who were to be retrenched. Webber Wentzel responded on 27 August 2019, expressing concern about the list and information requested, as it was already made available to Mabaso Attorneys in preparation for the trial.

[32] The information requested was, notwithstanding, provided by Webber Wentzel attorneys and another meeting was scheduled with the employees for 28 November 2019. Only a portion of the employees attended the meeting and at the meeting, the lists, as provided by the Respondent, were discussed. The employees noted that their dates of engagement, as recorded on the lists, were incorrect and other issues and inaccuracies were raised. The employees were tasked with ascertaining the date of engagement of each of the individual applicants, to compile a list of the employees who were in fact retrenched versus the employees who ought to have been retrenched, applying the agreed selection criteria.

- [33] The first list was provided on 13 February 2020, but the list was incomplete and another list was provided three days later, but Ms Chetty required clarity on certain aspects of the list. A final and complete list of the employees who were retrenched versus the employees who ought to have been retrenched, based on the agreed to selection criteria, was provided to Ms Chetty on 11 April 2020. The national lockdown ensued and not much could be done during this time.
- [34] On 18 May 2020, Ms Chetty served and filed a notice to amend the Applicants' statement of case. On 2 June 2020, the Respondent's attorney indicated that the matter was archived and that an application for retrieval of the file must be made.
- [35] This application was only filed on 29 July 2020.
- [36] In its answering affidavit, the Respondent took issue with the explanation tendered by the Applicants, more specifically the fact that there is no explanation provided whatsoever for the period after the trial was postponed (March 2018), when Mr Mabaso withdrew (July 2018) and when Ms Chetty was instructed as attorney (June 2019). A period of more than one year remained completely unexplained. The Applicants filed a replying affidavit and even in answer to the Respondent's averments, no explanation whatsoever had been provided for the aforesaid period.
- [37] The Respondent further submitted that it took almost another year for the Applicants' current attorney to obtain instructions, which could have been obtained earlier.
- [38] I have to consider the reasonableness of the delay by having regard to the explanation for the delay. As the LAC has held, the explanation has to be compelling and convincing and the Applicants must provide a reasonable explanation which covers the entire period of the default.
- [39] As the Applicants seek an indulgence from the court and bear the onus to satisfy the court that condonation should be granted, it is incumbent to provide the court with a full explanation for every period of the delay. It is not sufficient simply to list significant events that occurred during the period in question as that does not assist the court properly to assess the reasonableness of the explanation.[14]
- [40] A delay of almost two years is no doubt material, given the context within which labour litigation takes place and the system that is designed to ensure the effective and expeditious resolution of labour disputes.
- [41] Where the delay is as material as it is in this instance, the explanation for the delay has to be compelling, convincing and comprehensive and should cover every period of the delay.

[42] It is evident from the explanation tendered for the delay, that the period between March 2018 and June 2019 is not addressed or explained at all. This is a material and significant period, for which no explanation is tendered and which this Court is not in a position to assess the reasonableness of the delay. The Applicants failed to provide an explanation that covers every period of the delay.

[43] The explanation tendered covers the period from June 2019 when Ms Chetty was appointed as attorney of record and May 2020 when the notice of intention to amend was filed. This is almost another year of delay and the explanation is that Ms Chetty had to obtain instructions. Although I accept that Ms Chetty might have needed instructions after being briefed, I find it hard to accept that it could take almost a year to obtain same, in circumstances where the papers had already been drafted, a pre-trial minute had already been filed and the matter had already been enrolled for trial. The conduct

of the Applicants in taking so many months to provide Ms Chetty with instructions is not indicative of applicants who are pursuing their matter with diligence and speed but rather paints a picture of litigants who litigate at their own pace and at their own convenience.

[44] The Applicants failed to place facts before this Court to show what steps were taken to ensure that their case is pursued and finalised expeditiously. The Applicants provided no detail of their efforts and certainly did not paint a picture of a diligent litigant who took a serious interest in this matter and who took active steps to have this matter finalised. Material periods are not explained at all and this Court is not placed in a position to properly understand the reasons for the delay and the in-action for a period of almost two years. Where an explanation is tendered, it is bereft of detail or substance and is wholly inadequate.

Prospects of success

[45] Having found that the delay in prosecuting this matter is material and the explanation tendered inadequate, it leaves the issue of prospects of success.

[46] I already alluded to the fact that the courts have endorsed the position that the failure to provide a reasonable and acceptable explanation for the delay renders prospects of success immaterial.

[47] This was also confirmed in *Grootboom v National Prosecuting Authority and another*,^[15] where the Constitutional Court has held that:

‘The interests of justice must be determined with reference to all relevant factors. However, some of the factors may justifiably be left out of consideration in certain circumstances. For example, where the delay is unacceptably excessive and there is no explanation

for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of reasonable prospects of success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party.’

[48] In view of my finding that the delay is material and the explanation tendered not satisfactory, the Applicants’ prospects of success are immaterial and thus need not be considered.

Prejudice

[49] The Applicants stated that they have a right to recourse in respect of the procedural and substantive unfairness occasioned during the retrenchment process and their only means of recourse against the Respondent, is this litigation. Should the Court refuse to retrieve their referral from the archives, the employees would be severely prejudiced.

[50] It is evident that the retrenchment process was facilitated in terms of the provisions of section 189A of the LRA and as such, the Applicants’ remedy in respect of procedural fairness was to be found in section 189A(13) and they are precluded from pursuing a claim for procedural fairness by way of this referral. An application to challenge procedural fairness had to be brought in terms of section 189A(13) of the LRA, “not later than 30 days after the employer has given notice to terminate the employee's services or, if notice is not given, the date on which the employees are dismissed”.

[51] The Respondent submitted that it would be severely prejudiced should this application be granted as it will have to incur further expenses to defend a matter which had been finalised in 2015 and which has no prospects of success. The Applicants were represented at all times during the retrenchment process, numerous consultations were held and ultimately an agreement was reached and their dismissal was fair. Given the significant period of time which has lapsed, the witnesses

for the Respondent may no longer be readily available to testify on its behalf.

[52] I accept that the Applicants have the right to refer their dispute to this Court for adjudication, but that right is not without the responsibility to do so within the confines of the law, the Rules and the Practice Manual and to ensure that their matter is pursued diligently and expeditiously. The refusal to retrieve the Applicants’ statement of case from the archives will have the result that the Applicants will be denied the opportunity to pursue this case before Court. However, it is evident that the Applicants have not pursued this matter diligently.

[53] The notion that litigants will be denied access to a court to ventilate their case cannot be examined within a paradigm that ignores the interests of the adversary, nor of the ordinary dynamics of litigation, more especially, because the reality is that litigation

is a process in which adversaries make choices. If the consequences of choices that are made, or the consequences of inaction and

tardiness are that opportunities to pursue the matter are forfeited, it does follow that there is a failure of justice. The litigation

system affords litigants a process within which they must navigate their own routes and it is no failure of justice if their journey

culminates in a dead end.[16]

[54] In casu, there are 95 employees before the Court seeking retrospective reinstatement from July 2015. The Practice Manual expressly provides that where a statement of claim is filed and the issue in dispute concerns the dismissal of 10 or more employees who seek reinstatement it must be brought to the attention of the Judge President, who may then appoint a Judge to undertake the case management of the file, to ensure an expeditious hearing. This is to allow for a hearing on an expedited basis where the matter involves a large number of applicants and where the relief sought is reinstatement, as the consequences and prejudice, if such a matter is only dealt with years later and reinstatement is ordered, are severe and obvious.

[55] The employees were dismissed more than seven years ago and the matter is still not one step closer to finality. In fact, the matter is now at the stage where the Applicants seek to introduce an amendment to their pleaded case. The employees ultimately seek retrospective reinstatement, more than seven years after their services were terminated and if this matter is to be enrolled for trial, the period will even be longer. The financial burden on the Respondent, should they be reinstated, will be highly prejudicial, in circumstances where the Applicants dragged their feet to finalise their matter expeditiously, more so where the Practice Manual also provides for an expeditious hearing when a large number of applicants seek reinstatement.

[56] This Court has a discretion, which must be exercised judicially on a consideration of the facts of each case and in essence, it is a matter of fairness to both sides. While the refusal to retrieve the referral from the archives will have the result that the Applicants will be denied the opportunity to pursue their case before this Court, the Respondent's prejudice outweighs the Applicants' prejudice. It is evident that the Applicants have not pursued this matter diligently.

[57] One of the primary objects of the LRA is the effective resolution of labour disputes.

[58] The Constitutional Court, in the opening paragraph of *Toyota SA*, [17] held that:

'Time periods in the context of labour disputes are generally essential to bring about timely resolution of the disputes. The dispute-resolution

dispensation of the old Labour Relations Act was uncertain, costly, inefficient and ineffective. The new Labour Relations Act (LRA)

introduced a new approach to the adjudication of labour disputes. This alternative process was intended to bring about the expeditious

resolution of labour disputes which, by their nature, require speedy resolution. Any delay in the resolution of labour disputes undermines the primary object of the LRA. It is detrimental not only to the workers who may be without a source of income pending the resolution of the dispute but, ultimately, also to an employer who may have to reinstate workers after many years.'

[59] The scheme of the LRA is that, if it creates a right, it also creates processes or procedures for the enforcement of that right, a dispute resolution procedure for disputes about the infringement of that right, specifies the fora in which that right must be enforced and specifies the remedies available for a breach of that right.[18] The Rules of the CCMA or bargaining councils, the Rules of this Court and the Practice Manual navigate litigation that may arise within the realm of labour relations and disputes.

[60] I have to endorse the aim of the LRA namely to resolve labour disputes speedily and without delay. Granting the relief sought and retrieving the referral from the archives in a case like this would not be in the interest of justice as it would undermine the statutory purpose of expeditious dispute resolution, another factor that weighs heavily in the Respondent's favour.

[61] On an objective conspectus of all the facts, the Applicants' application for retrieving the referral from the archives falls hopelessly short of the mark. The Applicants did not discharge the onus to show good cause and to provide an acceptable and plausible explanation for a lengthy and material delay.

[62] This application is a sad example of the detrimental and devastating consequences that follow when labour disputes are not pursued and resolved expeditiously.

Costs

[63] The last issue to be decided is the issue of costs.

[64] In so far as costs are concerned, this Court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of law and fairness.

[65] The requirement of law has been interpreted to mean that the costs would follow the result. In considering fairness, the conduct of the parties should be taken into account and mala fides, unreasonableness and frivolousness are factors justifying the imposition of a costs order.

- [66] In *Zungu v Premier of the Province of KwaZulu-Natal and Others*, [19] the Constitutional Court confirmed that the rule that costs follow the result does not apply in labour matters. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing those parties to bring to this Court (or oppose) cases that should not have been brought to Court (or opposed) in the first place.
- [67] Mr Olivier for the Respondent submitted that the First Applicant should pay the cost as it would be unfair to burden the Respondent with the costs associated with opposing this application. This matter has a long history and the Respondent has spent a lot to pursue it and to oppose this litigation, which is meritless.
- [68] Ms Chetty for the Applicants conceded that the Applicants were seeking an indulgence from the Court, she submitted that there should be no order as to costs, but ultimately left it in the hands of this Court.
- [69] This is a case where I have to strike a balance and, in view of the facts of this case and the tardiness of the Applicants to pursue and finalise their case, I am satisfied that the Respondent is entitled to costs. The Applicants had no regard for the need to resolve the dispute expeditiously. The First Applicant is a well-established and experienced trade union which litigates in this Court regularly and that should know and understand the need for the speedy resolution of labour disputes. A delay of almost one year is not explained at all, which NUMSA should have known would cause difficulties in retrieving the referral from the archives.
- [70] Furthermore, no reasons were advanced as to why the trade union, acting on behalf of the employees, should not be ordered to pay the costs of this application and there is no indication that a cost order will not harm the parties' collective bargaining relationship.
- [71] In the premises, I make the following order:

Order

1. The application for retrieving the Applicants' referral from the archives is dismissed;
2. The First Applicant is to pay the Respondent's cost.

Connie Prinsloo

Judge of the Labour Court of South Africa

Appearances:

On behalf of the Applicants: Ms S Chetty from Serena Chetty Attorneys

On behalf of the Respondent: Mr J Olivier from Webber Wentzel Attorneys

- [1] Practice Manual of the Labour Court of South Africa, effective 1 April 2013.

- [2] Act 66 of 1995, as amended.
- [3] Commercial Workers Union of SA v Tao Ying Metal Industries and others
(2008) 29 ILJ 2461 (CC), where the Constitutional Court held at para 63 that: “These disputes, by their very nature, require speedy resolution. Any delay in resolving a labour dispute could be detrimental not only to the workers who may be without a source of income pending the resolution of the dispute, but it may, in the long run, have a detrimental effect on an employer who may have to reinstate workers after a number of years”.
- [4] GN 1665 of 1996: Rules for the conduct of proceedings in the Labour Court.
- [5] Ralo v Transnet Port Terminals and Others (2015) 36 ILJ 2653 (LC), Tadya Trading CC t/a Tadya Consulting Services v Steiner and Others (2014) 35 ILJ 1672 (LC).
- [6] (2017) 38 ILJ 1790 (LAC) at paras 16 - 17.
- [7] D Harms, ‘Civil Procedure in the Superior Court’, (LexisNexis South Africa) at B27.6.
- [8] 1962 (4) SA 531 (A) at 532 C - F.
- [9] See NUM v Council for Mineral Technology [1999] 3 BLLR 209 (LAC).
- [10] (2004) 25 ILJ 2195 (LAC) at para 23.
- [11]
- [2014] 6 BLLR 523 (LAC).
- [12] (2015) 36 ILJ 232 (LC).
- [13]
- (2016) 37 ILJ 313 (CC).
- [14] See Independent Municipal and Allied Trade Union on behalf of Zungu v SA Local Government Bargaining Council & others
(2010) 31 ILJ 1413 (LC).
- [15]
- (2014) 35 ILJ 121 (CC) at para 51.
- [16] Edcon Ltd v Steenkamp and others
(2018) 39 ILJ 531 (LAC) at para 34.
- [17] Toyota SA supra at para 1.
- [18] Steenkamp and others v Edcon Ltd 2016
(3) SA 251 (CC) at para 130.

[19]

(2018) 39 ILJ 523 (CC) at para 24.

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