
SOUTH AFRICA / JUDGMENT

Oliver v Commission for Conciliation, Mediation and Arbitration and Others (JR1578/15) [2016] ZALCJHB 565 (12 August 2016) [2016] ZALCJHB 565

COURT

Labour Court Johannesburg

BEFORE

van der Merwe

CASE / FILE NUMBER

JR1578/15

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case No: JR 1578/15

In the matter between:

ANDREW KELLY OLIVER

Applicant

and

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Respondent

MATTHEWS RAMOTSELA

Second Respondent

ESKOM HOLDINGS LTD

Third Respondent

Heard: 12 July 2016

Delivered: 12 August 2016

Summary: Review application – ruling of commissioner that there never was an employment relationship – matter not properly before Court unless there is either proof of timeous filing at Court or condonation has been applied for and granted; also insufficient proof of service upon employer – removed from roll.

VAN DER MERWE, AJ

- [1] The Applicant is pursuing a claim for the setting aside of a jurisdictional ruling issued under the auspices of CCMA, in which the commissioner had concluded that there never was an employment relationship between the Applicant and the Third Respondent.
- [2] The matter came before Court on an unopposed basis.
- [3] On the Applicant's version, it received the ruling on 17 July 2015.
- [4] The review application was filed at this Court on 8 December 2015 although the notice of motion had been signed on 21 August 2015.
- [5] In the papers originally paginated for court, an affidavit in support of proof of service by Charlotte Clarke dated 21 April 2016 and filed on 30 May 2016 indicated that she served the notice of motion and founding affidavit on the Respondents by fax. She indicated further that she contacted the Respondents to confirm the fax numbers and again contacted them telephonically to confirm receipt of the founding papers.
- [6] When this matter was heard on 12 July 2016, the Applicant's representative handed up an affidavit in support of service by Suvashni Padayachee dated 26 November 2015 and filed on 8 December 2015, indicating that she served the founding papers on the Respondents via fax.
- [7] Apart from that the affidavits appear contradictory in the sense that both deponents claimed to have self-done the serving by fax, it is not clear whether the fax numbers used were correct and who they spoke to in confirmation and when. Paragraph 14.1.5 of this Court's Practice Manual was not sufficiently adhered to.
- [8] In the foregoing, I am not satisfied that there had been proper service of the main application upon the employer.
- [9] Again, although fax transmission slips suggest that the application may have been served upon another party or other parties on 21 August 2015 and/or 16 March 2016, there is no indication that the original application had been filed at this Court within the prescribed six week period. The Court stamp that does exist suggests that the application was filed quite late.
- [10] Unless there is proof that the main application was filed at court timeously or unless condonation is granted, this matter is not properly before court.
- [11] It would not be in the interests of justice to dismiss the application at this time.

Order

[12] In the absence of a condonation application pertaining to the review application as well as absence of proper proof of service of the review application upon the employer, this matter is removed from the Court's roll.

van der Merwe, AJ

Acting Judge of the Labour Court of SA

Appearance

For Applicant: Attorney J Kotze

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