

SOUTH AFRICA / JUDGMENT

Power M Security (Pty) Ltd v Azkim and Others (JR 336/21) [2021] ZALCJHB 221 (12 August 2021) [2021] ZALCJHB 221

COURT

Labour Court Johannesburg

BEFORE

G. N. Moshwana

CASE / FILE NUMBER

JR 336/21

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

no: JR

336/21

In

the matter between:

POWER

M SECURITY (PTY)

LTD Applicant

and

BUNAYA

AZKIM AND

OTHERS Respondents

Heard: 11

August 2021 (on papers)

Delivered: 12

August 2021 (This judgment was handed down electronically by emailing a copy to the parties. The 12th

August 2021 is deemed to be the date of delivery of this judgment).

Summary: Review

of a ruling refusing condonation and rescission of a default award.

Held: (1) The ruling is reviewed and set aside. (2) Condonation granted and the dispute is remitted to the CCMA to consider the rescission application. (3) No order as to costs.

JUDGMENT

MOSHOANA, J

- [1] Before me is an unopposed review application in terms of which the applicant seeks to review and set aside a ruling issued by Commissioner Boitumelo Mokoena (Mokoena) on 15 February 2021. In terms thereof Mokoena refused condonation and closed the dispute.
- [2] On or about 21 October 2020, Commissioner Nonceba Hlaba (Hlaba) issued a default award in favour of Mr Bunaya Azkim (Azkim). Aggrieved thereby, Power M Security (Pty) Ltd (Power) sought rescission of the default award by filing an application on or about 3 November 2020. Mokoena did not entertain the application because it was filed 10 days out the prescribed time period and she refused condonation. Aggrieved thereby, Power launched the present application.
- [3] It is indeed so that refusal or granting of condonation involves an exercise of discretion. A Court of review cannot interfere with the exercise of discretion unless the discretion is exercised capriciously or it is based on wrong principles. I take a view that Mokoena applied wrong principles applicable to condonations, in particular she ignored the interest of justice factor. She accepted that the delay of 10 days was not excessive and thus excusable. She was however not satisfied that Power possessed prospects of success in the rescission application.
- [4] It is unclear why Mokoena reached a conclusion that Power did not possess prospects of success in instances where Power indicated that it was not notified of the hearing date because a wrong email address was used. A factor that would lead to the granting of rescission is one where the presiding officer was unaware of a factor. Had Hlaba become aware that Power was not notified she would have not issued a default award.
- [5] For all the above reasons, this Court concludes that Mokoena applied wrong principles and her exercise of discretion is interferable. Condonation ought to have been granted. Since the CCMA has failed to entertain the rescission application, this Court is not empowered to entertain the rescission application and in doing so it will be usurping the powers of the CCMA.
- [6] In the results I make the following orders:

Order

1. The ruling issued by Boitumelo Mokoena under case number GAJB9883-20 dated 15 February 2021 is hereby reviewed and set aside.
2. It is replaced with an order that condonation for the late filing of rescission application is granted.

3. The dispute is remitted back to the CCMA in order to determine the rescission application through another Commissioner other than

Boitumelo Mokoena.

4. There is no order as to costs.

G. N. Moshoana

Judge of the Labour Court of South Africa

Appearances:

On the papers: No appearance.

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Prepared on 12 October 2026 · Esheria