

SOUTH AFRICA / JUDGMENT

Rifilwe and Other v TN Rescue Services (JS673/2020) [2021] ZALCJHB 249 (16 August 2021) [2021] ZALCJHB 249

COURT

Labour Court Johannesburg

BEFORE

I.I. Mahomed

CASE / FILE NUMBER

JS 673/2020

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

No: JS 673/2020

Revised

16/08/2021

In

the matter between:

MHLARI

RIFILWE AND

OTHER Applicants

and

TN

RESCUE

SERVICES Respondent

Heard: 07

July 2020

Delivered: (In

view of the measures implemented as a result of the Covid-19 outbreak, this judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be 16 August 2021.)

JUDGMENT

MAHOMED, AJ

1. This case is an application for condonation for the late filing of the Statement of Case. It appears that the matter last came before the Labour Court on 1 December 2020 when Mabaso AJ removed the matter from the roll and directed the applicants to deliver a condonation application.
2. This application was considered on the papers in Chambers. The Applicants indicated that they did not seek an oral hearing of the application. This is in line with the COVID-19 Directives.
3. The underlying dispute relates to a claim of an unfair dismissal for operational reasons, with the applicants having been dismissed on 28 October 2019. In the condonation application the applicants allege that they simply received a "Notice of Retrenchment Letter" from the respondent on 28 October 2019.
4. The applicants allege that they approached Mr Davey Khosa of law firm Davey Khosa and Associates for assistance in respect of their dismissals. They were correctly advised by Mr Khosa to refer the claim to the CCMA for conciliation. This was done but conciliation was unsuccessful. It is alleged that Mr Khosa soon after the conciliation "started ignoring" the calls of the first applicant and that they were subsequently informed by Mr Khosa "that the courts are closed and not taking any matters until February 2020" and that the applicants "would have to wait until courts were open". It is alleged that despite an assurance from Mr Khosa that he "would handle the matter" that by end of February 2020 Mr Khosa was ignoring the applicants. The applicants allege that they then decided to proceed on their own and thus approached the CCMA for advice on the next steps. The CCMA advised the applicants to seek arbitration before the CCMA and that the CCMA did not advise them that they may also approach this court for an adjudication of their claim.
5. In early March 2020, the applicants requested arbitration from the CCMA. This is when Mr Khosa made contact with the applicants and advised that he was able to represent the applicants at arbitration. In September 2020, there was an in limine point raised at arbitration. Mr Khosa it is alleged argued that the applicants sought an adjudication by this court. The CCMA ruled that it lacked jurisdiction under section 191 and that the claim was to be referred to the Labour Court. Mr Khosa was retained by the applicants to refer their claim to the Labour Court and they allege that Mr Khosa "reassured" them that "he would handle the matter and expeditiously" refer the claim. The statement of Case was filed on 19 October 2020, soon after the issue of the CCMA jurisdictional ruling dated 29 September 2020. In the ruling the Commissioner refers to Mr Khosa as a union official.[1]
6. The extent of delay in filing in the Labour Court is approximately a year from the date of conciliation.

7. The explanation for the delay is that the applicants were unaware that the Labour Court had jurisdiction and that they acted expeditiously in approaching this court once it was discovered that the claim be heard by this court. This is indeed correct in that from September 2020 (being the issue of the CCMA ruling) to the filing of the statement of case in this court in October 2020 is a short period.
8. The prospects of success are alleged to be excellent with the applicants alleging that there were no consultations, no reasons provided for the dismissals and that no severance payments being made to the applicants.
9. Significantly, the application for condonation is unopposed. The respondent has obviously been alive to this claim when it was at arbitration before the CCMA in September 2020. The applicants allege that the respondent will suffer no prejudice where condonation is granted.
10. There are certain inconsistencies in the founding affidavit when read against the jurisdictional ruling of the CCMA issued by Commissioner Neo Moloi dated 29 September 2020. I point to those below:
 1. At the CCMA hearing on 15 September 2021 the applicants represented themselves. In the condonation application they allege that Mr Khoza represented them at the CCMA hearing.
 2. Mr Khosa is referred to as a union official in the CCMA ruling. Mr Khoza is referred to as an attorney in the condonation application.
 3. The certificate of deadlock of 19 November 2019 directed the applicants to refer the claim to the Labour Court. According to Commissioner Moloi, Mr Khoza informed them that he will refer the claim to the Labour Court.
11. The CCMA ruling casts some doubt on the explanation for the delay^[2] provided in the condonation. This notwithstanding, because the prospects of success appear to be good, the application for condonation is unopposed, the respondent knew in September 2020 that the applicants were contesting their dismissals and have also not defended the main matter^[3] (so there cannot in reality be prejudice) and the statement of case was filed shortly after the CCMA ruling, I am prepared to grant the applicants condonation.^[4] It is also in the interest of justice to do so. I thus make the following order:

Order

1. The late filing of the Statement of Case is condoned under section 191(11) (b) of the Labour Relations Act, 1995.
2. The Registrar is directed to enroll the matter for a hearing on the default judgment roll.
3. The applicants are to serve a copy of this judgment and order on the respondent within a month of this order. The applicants are to seek the assistance of the Registrar on how to effect service under the rules of this court.

4. There is no order for costs.

I.I. Mahomed

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant: In Person

For the respondent: No Appearance

[1] In the as yet unreported judgement in *Mmatlou Moloantoa v CCMA; Commissioner T Manganyi N.O & ESKOM (SOC) Limited* (JR1281/19),

Moshoana J makes an interesting observation that the authority of *Saloojee and another NNP v Minister of Community Development* 1965

(2) SA 135 (A) did not have trade unions in mind when it stated the limit beyond which a litigant can escape the consequences of an attorney's lack of diligence.

[2] In respect of a review, rights must be vindicated without delay see: *City of Cape Town v Aurecon South Africa (Pty) Ltd* 2017 (6) BCLR

730. But, not every delay is fatal see: *Rikhotso v Premier, Limpopo Province and Others* 2021 (4) BCLR 436 (CC)

[3] An application for default judgment has been made by the Applicants.

[4] *Melane v Santam Insurance Co. Ltd* 1962 (4) SA 531 (A) and various authorities following this judgement.

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Prepared on 28 October 2026 · Esheria