

SOUTH AFRICA / JUDGMENT

Sekgotho and Another v Commissioner for Conciliation, Mediation and Arbitration and Others (JR2158/17) [2021] ZALCJHB 218 (6 August 2021)

[2021] ZALCJHB 218

COURT

Labour Court Johannesburg

BEFORE

L King

CASE / FILE NUMBER

JR2158/17

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR2158/17

In the matter between

ANGEL KHALE SEKGOTHO First

Applicant

NOLUSINDISO MAJOLA Second

Applicant

and

THE COMMISSION FOR COMMISSION FOR

CONCILIATION, MEDIATION AND ARBITRATION First

Respondent

COMMISSIONER RAYNOLD BRACKS N.O Second

Respondent

ABSA BANK LIMITED Third

Respondent

Considered: In chambers

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 06 August 2021.

JUDGMENT

KING, AJ

- [1] In a judgement delivered on 12 June 2019, this Court dismissed the applicants' application for review. The Applicants have since filed an application for leave to appeal and an application for condonation for the late filing of their application for leave to appeal against the whole of that judgment and order.
- [2] The application for leave to appeal and the application for condonation for the late filing of the application for leave to appeal (the condonation application) have not been opposed by the Respondents.
- [3] Prior to dealing with the application for leave to appeal, I am required to consider the condonation application. It is noted that the Applicants submissions were also filed outside the prescribed time period.
- [4] In considering the application condonation the principles laid out in *Melane v Santam Insurance Co*[1] must be taken into account. An application for condonation must set out grounds for condonation and must include the following a consideration of the degree of lateness; the reason for the lateness; prospect of success; and any prejudice to the other party, and any other relevant facts.
- [5] The other relevant facts to be considered in an application for condonation include the respondents interest in finality; avoidance

of unnecessary delay in the administration of justice.[2]

- [6] The onus is on the applicant for condonation to satisfy the Court that condonation should be granted. In *NUMSA v Hillside Aluminium*[3], Murphy AJ held that:

"condonation is not there merely for the asking. Applications for condonation are not a mere formality. The onus rests on the applicant to satisfy the Court of the existence of good cause and this requires a full, acceptable and ultimately reasonable explanation"[4].

- [7] I will now analyse each of the grounds for condonation submitted by the applicants in their condonation application herein under:

Degree of lateness

- [8] Judgment was delivered in the review application on 12 June 2019. In terms of Rule 30 of the Rules for the Conduct of proceedings in the Labour Court[5] (the Rules), an application for leave to appeal must be made either by way of a statement of the grounds for leave, at the time of the judgment or order or within 15 days of the date of the judgment or order against which leave to appeal is sought.
- [9] The time period for the applicants to bring their application for leave to appeal expired on 3 July 2019. The applicants' condonation application and application for leave to appeal was only filed in Court on 23 December 2021, some approximately 17 and a half months after the expiry of the prescribed time period. A delay of some approximately 17 and a half months is most certainly excessive in itself.

The reason for lateness

- [10] In summary the Applicants contend that they pursued various avenues in order to launch their application for leave to appeal by approaching a number of legal representatives to assist them with their application for leave to appeal.
- [11] The prosecution of their application for leave to appeal was bedevilled by a lack of funds and delayed instructions from Legal Aid to the current attorneys of record and counsel as per the Applicants

submissions.

- [12] Whilst the applicants appear to have attempted (to a degree) to prosecute their application for leave to appeal, there are significant time gaps in their explanation for the excessive lateness. In this regard as early as 12 July 2019, the applicants were aware of the fact that their application for leave to appeal was out of time and that they would be required to bring an application for condonation.
- [13] During August 2019, their erstwhile attorney of record withdrew from the matter. The applicants fail to provide a reasonable explanation for the delay in prosecuting their application for leave to appeal between the period August 2019 to 20 June 2020 (which is when they made contact with Adv Budlender), save as to state that they approached Legal Aid .
- [14] It is interesting to note that the applicants set out details of what steps they took after 20 June 2020, but do not provide a detailed

account of the steps they took for the period August 2019 to 20 June 2021 and in doing so do not provide a detailed account of what steps they took to follow up their matter with Legal Aid, this despite the fact that they had full knowledge that their application for leave to appeal was already out of time.

[15] Further, the Applicants have to date not filed any confirmatory affidavits in support of their condonation application. The following dictum from *CRWUSA v Girlock SA (Pty) Ltd*[6] is apposite in the context of this present matter:

“The explanation must be sufficiently full to enable the court to access (sic) their conduct and motives”

[16] In *Academic and Professional Staff Association v Pretorius*[7] the Labour Court refused to condone a delay of three weeks. The Labour Court dismissed an application for condonation. The learned

judge also confirmed that the respondent’s interest in finality and avoidance of unnecessary delay in the administration of justice are factors that must be taken into consideration when considering condonation[8].

[17] I am not convinced that the applicants in fact took all reasonable steps to prosecute their application for leave to appeal timeously,

more over since the applicants knew as early as 9 July 2019 that their application for leave to appeal was out of time.

Prospects of success

[18] After having considered the Applicants submissions on prospects of success, which are set out in detail in the Applicant’s application for condonation as well as their submissions in regard to the prospects of success, I am not convinced that there are any reasonable prospects that the facts of this matter would receive different treatment from the Court above or that there is a legitimate dispute on a point of law.

[19] The Labour Appeal Court held as follows in *National Union of Mineworkers v Council for Mineral Technology*: [9]

“...without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused.”

Prejudice

[20] The applicants do not deal with prejudice in their affidavit in support of their application for condonation. In their submissions, the applicants merely state that the third respondent will not suffer any prejudice insofar as condonation is granted as the matter involves two individual employees’ and no evidence is required.

[21] In conclusion and having considered the excessive delay, the time gaps in the applicants’ explanation for the excessive delay as well as the weak prospects of success, I find that no basis exists upon which the applicants ought to be granted condonation for the late filing of the application for leave to appeal in this Court

[22] In light of the above conclusions and applicable legal principles, the condonation application for the late filing of the applicant's

application for leave to appeal ought to be dismissed.

[23] In the premises the following order is made:

Order

1. The application for condonation for the late filing of the application for leave to appeal is dismissed.
2. There is no order as to costs.

L. King

Acting Judge of the Labour Court of South Africa

[1] 1962 (4) SA 531

[2] Academic and professional staff association vs Pretorius (2008) 29 ILJ 318 (LC).

[3]

[2005] ZALC 25; [2005] 6 BLLR 601 (LC); City of Cape Town v SA Local Government Bargaining Council

(2014) 35 ILJ 163 (LC)

[4] See also: A Hardodte (SA) (Pty) Ltd v Behardien

(2002) 23 ILJ 1229 (LAC), Meintjies v H.D. Combrink (Edms) Bpk 1961 (1) SA 262 (A) at 263H - 264A, Saloojee v Minister of Community Development 1965 (2) SA 135 (A) at 138 E-F; Glazer v Glazer 1963 (4) SA 694 (A) at 702H.

[5] 'Application for leave to appeal to the Labour Appeal Court: (1) An application for leave to appeal to the Labour Appeal Court may be made, by way of a statement of the grounds for leave, at the time of the judgment or order. (2) If leave to appeal has not been made at the time of judgment or order, an application for leave must be made and the grounds for appeal furnished within 15 days of the date of the judgment or order against which leave to appeal is sought, except that the court may, on good cause shown, extend that period.'

[5] 'Application for leave to appeal to the Labour Appeal Court:

- (1) An application for leave to appeal to the Labour Appeal Court may be made, by way of a statement of the grounds for leave, at the time of the judgment or order.
- (2) If leave to appeal has not been made at the time of judgment or order, an application for leave must be made and the grounds for appeal furnished within 15 days of the date of the judgment or order against which leave to appeal is sought, except that the court may, on good cause shown, extend that period.'

[6] [2001] JOL 8678 (LC) at para 16

[7] (2008) 29 ILJ 318 (LC): NUMSA obo Thilivali v Fry's Metals

(2015) 36 ILJ 232 (LC)

[8] At paragraph 17 of the judgment. The Courts have shown no hesitation in refusing condonation where the applicant fails to explain the entire period of the delay: 'The of the largely unexplained delay in referring the matter to adjudication is compounded by the delays throughout the other

processes for which the applicant has advanced no adequate explanation'

[8] At paragraph 17 of the judgment. The Courts have shown no hesitation in refusing condonation where the applicant fails to explain the entire period of the delay:

'The of the largely unexplained delay in referring the matter to adjudication is compounded by the delays throughout the other

processes for which the applicant has advanced no adequate explanation'

[9] [1999] 3 BLLR 209 (LAC); Production Institute of Southern Africa (Pty) Ltd v CCMA

(2011) 32 ILJ 1712 (LC).

[9] [1999] 3 BLLR 209 (LAC); Production Institute of Southern Africa (Pty) Ltd v CCMA

(2011) 32 ILJ

1712 (LC).

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Prepared on 12 October 2026 · Esheria