

SOUTH AFRICA / JUDGMENT

Sequiera v SSH Design (Pty) Ltd (C519/2019) [2021] ZALCCT 74 (12 October 2021) [2021] ZALCCT 74

COURT

Labour Court Cape Town

BEFORE

Rabkin-Naicker

CASE / FILE NUMBER

C519/2019

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REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Not Reportable

C519/2019

In the matter between:

CHARMAINE SEQUIERA Applicant

and

SSH DESIGN (PTY) LTD Respondent

Date heard: 3 June 2021 by virtual hearing

Delivered: 11 October 2021 by means of email. Deemed delivered at 10.00 on the 12 October 2021.

RABKIN-NAICKER J

- [1] The applicant brings an application for condonation for the late referral of a claim in terms of section 191(5)(b)(11) in relation to her dismissal in terms of section 189A.
- [2] The respondent opposes the application for condonation. If condonation is granted, it raises a special plea on the basis that this Court lacks the necessary jurisdiction to adjudicate the dispute in as far as the applicant's case is for procedural unfairness of her retrenchment is concerned.

- [3] The applicant was dismissed on 3 June 2019. On the 18 June 2019, she referred an unfair dismissal dispute to the CCMA which was conciliated on 5 July 2019. A certificate in terms of section 135 of the LRA was issued on that day reflecting that the matter remained unresolved. Her dismissal for operational requirements took place in terms of section 189(A).
- [4] The applicant then consulted an attorney who at the time was employed by the applicant's attorney of record. Her attorney applied for a case number on 13 August 2019 and erroneously concluded that the matter had been properly referred to this Court.
- [5] The Statement of Case was only finalized during the first week in March 2020 after various consultations between applicant and the attorney. It is conceded by the applicant that the degree of lateness is excessive but the reason for the delay is blamed on the negligence of the attorney.
- [6] It is submitted on behalf of the respondent that the delay of 278 days is egregious and calls for an exceptionally cogent and, at least, thorough explanation. The explanation is as follows:

6.1 The attorney held the belief that applying for a case number constituted a referral to the Labour Court under section 191 (11).

6.2 Having attained a case number on 13 August 2019 with the 90 day referral period set to expire on 3 October 2019, there is no evidence of the attorney taking any steps until 17 October 2019, when an unnamed counsel was briefed. This 50 day period of the delay is entirely unexplained.

6.3 There is no explanation given as to when precisely the applicant became aware of the fact that the referral was out of time. It is undisputed on the papers before me that she must have been aware at the very latest on 25 October 2019, when she consulted with her legal team.

6.4 Despite being aware from the 25 October 2019, a further five month period passed before the statement of claim was delivered. No reasonable and full explanation is offered for this period.

6.5 The condonation application was only served on the 7 July 2020 – 74 days after delivery of the statement of case without explanation for the delay.

- [7] It is submitted by Mr Leslie for the respondent that given the applicant is a human resources practitioner herself, with experience in labour arbitration procedures, she cannot be regarded as blameless. Although she knew her referral was late as of 25 October 2019, she only followed the matter up with her attorney on one occasion, being by email on 14 January 2020.
- [8] It is clear from the above that there are periods of time during the lengthy delay left unexplained by the applicant, which is unacceptable.[1] What explanation there is, amounts to laying the blame on her representative. It is trite that there is a limit beyond which a

litigant cannot escape the results of an attorney's lack of diligence[2] or negligence, or the insufficiency of an explanation tendered[3].

[9] I am of the view that the applicant has not placed an acceptable or reasonable explanation for the excessive delay in delivering her statement of case. In these circumstances, the Court does not need to delve into the prospects of success in the main action. As was stated in *Colett v Commission for Conciliation, Mediation & Arbitration*[4], an unanimous judgment of the LAC:

"[38] There are overwhelming precedents in this court, the Supreme Court of Appeal and the Constitutional Court for the proposition that where there is a flagrant or gross failure to comply with the rules of court condonation may be refused without considering prospects of success. In NUM v Council for Mineral Technology it was pointed out that considering whether good cause has been shown the well-known approach adopted in Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A) at 523 C-D should be followed, but —

'[t]here is a further principle which is applied and that is without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without good prospects, no matter how good the explanation for delay, an application for condonation should be refused'."

[10] In all the above circumstances, I am of the view that the application for condonation should be dismissed. Costs do not necessarily follow the result in Labour matters[5]. I am of the view that the principles of law and equity do not require the applicant to pay the costs in casu.

[11] I make the following order:

Order

1. The application for condonation is dismissed.
2. The referral in terms of Rule 6 is dismissed.
3. There is no order as to costs.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Appearances:

Applicant: Preshnee Govender Attorneys Inc

Respondent: GA Leslie SC instructed by Harmse Kriel

[1] NUMSA v Hillside Aluminium [2005] ZALC 25; [2005] 6 BLLR 601 (LC) para 12

[2] Saloojee & Another v Minister of Community Development 1965 (2) SA 135(A) 141B-E

[3] Superb Meat Supplies CC v Maritz (2004) 25 ILJ 96 (LAC) at paragraph 16

[4]

(2014) 35 ILJ 1948 (LAC)

[5] Zungu v Premier of the Province of KwaZulu-Natal & others (2018) 39 ILJ 523 (CC)

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