

SOUTH AFRICA / JUDGMENT

## Sibanda v Value Logistics Personnel Services Proprietary Limited (JS636/2023) [2024] ZALCJHB 357 (9 September 2024) [2024] ZALCJHB 357

COURT

Labour Court Johannesburg

BEFORE

Reed

CASE / FILE NUMBER

JS636/2023

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### Source record

The

Labour Court of South Africa, JOHANNESBURG

Not Reportable

Case No: JS636/2023

In the matter between

THANDI BRIGITTE

SIBANDA

Applicant

and

VALUE

LOGISTICS PERSONNEL SERVICES

PROPRIETARY

LIMITED

Respondent

Heard:

15 May 2024

Delivered:

09 September 2024

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**JUDGMENT**

REED, AJ

**Introduction**

- [1] The Applicant has applied for condonation for the late filing of her statement of claim. The application is opposed by the Respondent.

**Background**

- [2] The Applicant was employed by the Respondent until her summary dismissal for misconduct on 26 April 2023.
- [3] On 16 May 2023, the Applicant referred her unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA).
- [4] On 19 May 2023, the Applicant's attorneys of record were informed by the CCMA that the matter ought to have been referred to the National Bargaining Council for the Road Freight and Logistics Industry (Bargaining Council) and transferred the dispute to the Bargaining Council.
- [5] The dispute was set down for conciliation on 26 June 2023. On the same date, the Bargaining Council issued a certificate of non-resolution
- which provided for a referral to arbitration.
- [6] The dispute was referred to arbitration on 29 June 2023.
- [7] An arbitration award was handed down by the Bargaining Council on 12 December 2023. The Bargaining Council concluded that it did not have the requisite jurisdiction to arbitrate the dispute (award).
- [8] On 19 February 2024, the Applicant filed her statement of claim.

**Evaluation**

- [9] The Applicant chose to be legally represented by Mr Willemse of Haasbroek-Willemse Inc from the inception of her dispute.
- [10] Mr Willemse received the Bargaining Council's award on 12 December 2023, two days prior to closure of Haasbroek Willemse Inc. for a period of approximately one month.
- [11] It is the Applicant's version, which is confirmed in a confirmatory affidavit by Mr Willemse that, it was only upon Mr Willemse's return almost one calendar month after the award was received, that either Mr Willemse and or the Applicant began to take steps to address the fact that a statement of claim needed to be filed.

- [12] The statement of claim was then delivered approximately six weeks later by the Applicant utilising the services of another attorney since it is alleged that Mr Willemse did not have the necessary expertise to attend to matters to be heard in this Court.
- [13] In the Respondent's heads of argument, it refers to several decisions of this Court and other Courts regarding an applicant's reliance on legal representation and provides that the extent to which litigants may rely on the lack of expertise or ineptitude of their attorney is limited.
- [14] The Respondent fails in her application to take this Court into her confidence and explain what steps she took as the Applicant and client of Mr Willemse to attend to her referral. She also fails to provide any explanation as to why Mr Willemse would be aware of the processes to be followed in the CCMA but not in this Court in circumstances where these processes are dealt with in the same section of the applicable legislation. The Applicant merely alleges that Mr Willemse did not have the necessary expertise to attend to a matter in this Court and does not take the matter any further, thereby failing to take this Court into her confidence.
- [15] The Respondent also provides significant detail of the reasons for the Applicant's dismissal in its papers. The details include allegations of dishonesty and refusal to abide by her contract of employment. Rather than address these allegations properly in her replying affidavit, she issues a bare denial and refers to the Bargaining Council's ruling which provides that the dismissal was clearly related to her pregnancy.

[16] In my view, the Applicant erred as follows:

16.1 her reliance on her legal representative was not limited but rather excessive and there is no evidence that she took any action to ensure the matter was dealt with expeditiously. She also failed to explain to this Court why her legal representative could not attend to the matter in this Court insofar as to at least the number of days to refer a dispute was concerned and why he did not alert her to the time periods which are clearly provided for in the legislation. Her explanation for the delay is accordingly not accepted as being reasonable; and

16.2 Her failure to deal with prospects of success adequately and in full particularly where in its answering affidavit, the Respondent provided significant details of its reasons for the decision to dismiss is problematic and renders this portion of the application wanting

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

Order

1. The application for condonation is dismissed;
2. There is no order as to costs.

J. Reed

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant :

Instructed by :

For the respondent :

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Prepared on 12 October 2026 · Esheria