

SOUTH AFRICA / JUDGMENT

South African Commercial Catering and Another v Commission for Conciliation Mediation and Others (JR327/21) [2024] ZALCJHB 267 (19 July 2024)

[2024] ZALCJHB 267

COURT

Labour Court Johannesburg

BEFORE

RN Daniels

CASE / FILE NUMBER

JR327/21

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Source record

THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case

no: JR327/2021

In

the matter between:

SOUTH
AFRICAN COMMERCIAL CATERING
Applicants
AND
ALLIED WORKERS UNION (“SACCAWU”)
and
COMMISSION
FOR CONCILIATION,
First Respondent
MEDIATION AND
ARBITRATION
XOLANI
NYAMEZELE NO
Second Respondent
DELANI
MASEKO
Third Respondent

Heard:

13
June 2024

Delivered: 19 July 2024

Summary: Application to reinstate review in terms of Practice Manual. No case made out. Application dismissed, no costs.

JUDGMENT

DANIELS J

Introduction

[1] This is an application to reinstate a review application, which was deemed to have been withdrawn in terms of clause 11.2.3 of the Practice Manual of the Labour Court. This court made an order to that effect on 5 August 2021. The application is opposed by the third respondent.

[2] This matter has a long and tortured litigation history. I intend to recount the history only insofar as it is relevant to this

application.

Material

facts

[3] The third respondent (hereafter “Maseko”) was engaged by the applicant, as a union organiser, initially on a probationary

basis. The applicant conducted a probationary assessment and Maseko was found wanting. His probationary period was extended to allow him an opportunity to improve. In his second assessment Maseko was found wanting once again. His employment contract was terminated.

[4] Maseko referred a dispute to the CCMA, alleging that he had been unfairly dismissed.

[5] The CCMA enrolled the dispute for arbitration on 15 July and 18 August 2020, but did not proceed on either of these dates.

[6] The dispute was then enrolled for arbitration on 7 October 2020. On 5 October 2020, the applicant, SACCAWU, became aware that its

representative had become sick and had been declared unfit to return to work before 14 October 2020.

[7] On 7 October 2020, a union official by the name of Mr Sicelo Maqanti (“Maqanti”) was instructed to apply for a postponement.

Maqanti attended the arbitration and provided a sick note to the commissioner.

- [8] The commissioner decided not to postpone the matter and proceeded with the dispute. An arbitration award was, effectively, taken by default. It appears that Maqanti did not attempt to place any evidence before the commissioner. In fact, it is unclear whether a formal request for a postponement was made by Maqanti at all.
- [9] Thereafter, SACCAWU applied to rescind the arbitration award. The application to rescind was refused.
- [10] An application to review and set aside the rescission ruling was launched on 22 February 2021, though only filed at court on 8 March.
- [11] On 4 March 2021, the Registrar notified the applicant that the CCMA had filed the arbitration record at court.
- [12] In accordance with clause 11.2.2 of the Practice Manual, the applicant was required to deliver the record within 60 days of 4 March 2021. That period expired on 26 May 2021. However, the applicant only delivered the record on 21 July 2021. Clause 11.2.3 of the Practice Manual states that, if the applicant has failed to file the record within the prescribed period, the application is deemed to have been withdrawn.

Reinstatement application

- [13] It is trite that an applicant must make out a case in its founding papers.
- [14] In this matter, the founding affidavit contains absolutely no reasons for why the record was filed late. In fact, after stating that the Registrar informed it on 4 March 2021 that the record had been filed, the applicant states nothing further in relation to the record. In addition, the founding affidavit states nothing about the applicant's prospects of success in the review application.

Legal principles and analysis

- [15] This Court has likened an application to reinstate to a condonation application. The trite principles relating to condonation also apply in determining whether the reinstatement application should succeed. The full extent of the test is set out in *Samuels v Old Mutual Bank*.^[1] In essence the reinstatement application must be made bona fide; it should set out a reasonable explanation which covers the entire

period of the delay; the applicant must have reasonable prospects of success in the main review application; and the applicant must show that it is in the interests of justice.

- [16] Our courts have often stated that “where a delay is significant and the explanation poor, the prospects of success do not play a significant role” and “if the delay is short but the explanation is unsatisfactory and reasonable prospects of success exist, condonation should be granted.” In either scenario, there must be reasonable explanation for the delay,

or reasonable prospects of success.

[17] Here, the applicant does not set out any facts or submissions upon which this court can exercise its discretion to reinstate the review. This court must therefore accept that there is no explanation for the delay, and there are no prospects of success either.

Conclusion

[18] In the result, for the reasons set out above, the reinstatement application is dismissed. There is no order as to costs.

RN Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mr Y Dockrat

Dockrat Inc

For the Respondent:

Mr A Goldberg

Goldberg Attorneys

[1] [2017] 7 BLLR 681 (LAC)

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Prepared on 13 October 2026 · Esheria