

SOUTH AFRICA / JUDGMENT

Swaedi v Bhele NO and Others (JR2291/15) [2021] ZALCJHB 367 (21 October 2021) [2021] ZALCJHB 367

COURT

Labour Court Johannesburg

BEFORE

Van Niekerk

CASE / FILE NUMBER

JR2291/15

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE

NO: JR 2291/15

In

the matter between:

BENNET
SWAEDI Applicant
and
COMMISSIONER NOMUSA
MBHELE N.O. 1st
Respondent
NATIONAL BARGAINING
COUNCIL FOR THE ROAD
FREIGHT &
LOGISTICS INDUSTRY 2nd
Respondent
IMPERIAL RETAIL
LOGISTICS (PTY) LTD 3rd
Respondent
(In Chambers: 21
October 2021)

JUDGMENT**VAN NIEKERK J**

- [1] This is an application filed by the third respondent in terms of Rule 11. The third respondent seeks to dismiss an application filed by the applicant to review and set aside an arbitration award issued by the first respondent. (For convenience, I refer to the parties as they are cited in the review application.)
- [2] The review application was filed in November 2015. Seven days later, the third respondent filed a notice of intention to oppose the application. At the time, the Rule 11 application was filed, on 2 June 2016, the applicant had taken no further steps to prosecute the review application.
- [3] The applicant filed an answering affidavit on 6 July 2016. In essence, he states that he was waiting for the first and second respondents to notify him that the record of the arbitration had been despatched to the court and that he arrived in Johannesburg only on 20 June 2016 to discover that the record had not been dispatched.
- [4] What the answering affidavit ignores is that the applicant was represented at the arbitration hearing by the Inqubelathambili Trade Union (ITU). The review application was clearly prepared with the assistance of the union, although no mention is made on the face of the application of the ITU. Contrary to what the applicant avers in his answering affidavit, the record was filed on 20 January 2016. His claim that in June 2016 the record was still not available is clearly false, and there is no explanation for the fact that the applicant failed to comply with the provisions of Rule 7A (6) and (8) after the record was filed.
- [5] The explanation for the failure to comply with Rule 7A is patently unsatisfactory. In so far as the prospects of success are concerned, the threshold for review is set high. The founding affidavit in the review application makes no reference to the two-stage test to be applied, and simply asserts that the award was ‘manifestly unfair’. This is not a proper ground for review.
- [6] Section 145 contemplates that review applications will be prosecuted with due diligence. Indeed, the Practice Manual regards review applications as urgent applications. The applicant’s inactivity has led to a situation where six years after the arbitration award that he seeks to review, the review application remains pending. In these circumstances, the third respondent is entitled to the finality it seeks.

I make the following order:

1. The review application filed under case number JR 2291/2015 is dismissed.

André van Niekerk

Judge of the Labour Court

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