

SOUTH AFRICA / JUDGMENT

Xaba v Revlon (Pty) Ltd (JR1291/2006) [2008] ZALCJHB 16 (19 March 2008)

[2008] ZALCJHB 16**COURT**

Labour Court Johannesburg

BEFORE

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CASE / FILE NUMBER

JR1291/2006

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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR1291/2006

DATE: 2008-03-19

In the matter between

ELIZABETH XABA Applicant

And

REVLON (PTY) LIMITED Respondent

J U D G M E N T

CELE J: This is an application in terms of Section 166 of the Labour Relations Act, 66 of 1995 hereafter referred to as the Act, for leave to appear before the Labour Appeal Court against a final decision of this court. It was an ex tempore judgment, delivered on 5 September 2007.

Both parties were in attendance and one would have expected that both would have noted the judgment, however, the application for leave to appeal was filed only on 13 December 2007 and this was after an edited copy of the judgment had been served to the parties.

The matter came before me on 20 February this year and I pointed out that the application for leave to appeal was not properly before me because it was not lodged in time, there was a period of 56 days for which there was a deviation from the rule.

It is clear in terms of Rule 30 of the rules of this court, that is particularly Rule 30(2) that the application should have been lodged within 15 days of the date of the judgment. The rule reads:

“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”.

In this case, the exception does not apply because there was no application for this court to extend the period, no good cause was shown. So we are dealing with a condonation application for the late filing of the application for leave to appeal and as is the law, one has to find guidance, among others in *Melane v Santam Insurance* 1962 (4) SA 531 (A) 532C-F, which is a judgment by Holmes JA. It sets out those considerations that apply when a condonation application has to be considered.

In the present case, having identified the period being 56 days out of time, the next aspect is to look at the reasons or the rationale underlying the delay. The only reason that has been proffered here is that the attorney who was in attendance was negligent in not noting the judgment and thereafter in advising the applicant to proceed immediately within 15 days to file the application for leave to appeal. Regrettably, there is no confirmatory affidavit coming from the attorney who had appeared on that day and from the address that has been given to me today by Mr Mashego, all is not well between that attorney and the union which represents the applicant. Regrettably, this was not covered through any affidavit which would then have to substantiate the position of the applicant. The reason itself is not so plausible a reason.

I am dealing with the period of 56 days which is a material period. I would not say it is an excessive period but it is a considerable period and therefore I have to weigh that period, look at the reasons in favour of this applicant who suddenly finds herself back to the help of the union and not the attorney. I am called upon here to look further at the prospects of success, having noted that the reason provided is not a plausible one, it is not so good a reason. It is not a worse off reason. Clearly it suggests that the problem lay at the door of an attorney as Mr Mashego has suggested. A court should not always blame or attribute the blame of an attorney to the client and necessarily there is a limit beyond which that can be accommodated

I look then at the prospects of success. It was always common cause during the hearing of this matter at the arbitration and during the review application that, the applicant had lent money to one of her colleagues at work. There was a question about whether or not this was done during or after working hours. In my judgment I accommodated a scenario where such lending could have taken place after the working hours, that is how I found it. I then went on to check on whether this rule which had clearly been proved, could be used in a situation where money lending activity took place after working hours, if it would have impacted on the productivity of the company, put otherwise, if it had a negative effect on the employer. There are a number of cases that deal with that principle. I found that this rule, would be incorrectly limited if it applied only to a situation where money is lent outside working hours and that there should be proof of loss of productivity. I said, one may not have to go so far as proving the loss of productivity.

We have here two supervisors of the employer who were approached by the applicant, she complained that the person she had lent money to was not playing the game, was not bringing the money back as promised. The two appeared to be helping her or in fact the one, because the first one did not do much about it but the second manager took this matter up to the human resources.

Human resources personnel said the applicant was to put this complaint of hers in writing as if to help the applicant to deduct that money from the salary of the other colleague. Law and behold there is the applicant now being charged for infringing a rule of the company. This is a case where the applicant shot herself on the foot. She knew about this rule, it is not been disputed but she thought for a moment she could escape it merely because her version would have been that the money lending activity took place at her house and outside of the company premises.

It is clear that by her involving the services of the two supervisors, she was interfering with them performing their duties. I dealt with this in the judgment. It extended to the human resources personnel. Again, the applicant was seeking to utilise the tools of trade, the tools of work of the employer to recoup her money. What more does one need to have to find that this was interfering with the workings of the company? This company was not designed to be running a money lending scheme, it had therefore created a rule against money lending.

In my view, the grounds that have been proffered by applicant, there are four of them, they revolve around how I interpreted this rule. In my view these grounds are not unassailable. In my view the applicant has not shown that another court is likely to arrive at different conclusion. In fact, if one looks carefully at authorities I have intimated before, once an employee behaves himself in such a way that his or her behaviour negatively affects his working environment, even if that behaviour happened outside, it could have an impact and therefore that may well be taken into consideration against such employee.

The other consideration to come to play when an application for leave to appeal is dealt with relates to whether or not this is a matter of importance, this is an dismissal of a single employee, in my view there is not really much importance in this matter. Of course, I am aware of the fact that – to the applicant and the applicant alone it probably is important because it revolves around her having lost her employment but when seen against a bigger picture and when seen against the peace that ought to be maintained in a working environment of the applicant, clearly it is more important for the working environment to be conducive to good working relationships of the employees. In this case already, because of this money lending scheme, the applicant and the person who loaned money from her were no longer in good terms, again creating problems, that could have divided the staff into two.

Clearly in my view therefore, the case did not have any much more importance so that one would find that it merits granting the application for leave to appeal. Therefore, the test for success has not been met by the applicant in this matter, in terms of the prospects of success.

The prejudice, indeed the respondent, the company is entitled to a finality of this matter. I think that point has long been reached.

Accordingly, the application for condonation of the late filing of the application for leave to appeal is not granted, the application is dismissed with costs.

CELE AJ

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On behalf of the Applicant: Mr Mashego

On behalf of the Respondent: Advocate Wesley

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