

SOUTH AFRICA / JUDGMENT

Zulu v Independent News Papers (JS 510/10) [2014] ZALCJHB 504 (10 December 2014)

[2014] ZALCJHB 504**COURT**

Labour Court Johannesburg

BEFORE

Molahlehi

CASE / FILE NUMBER

JS 510/10

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Source record**REPUBLIC****OF SOUTH AFRICA****THE****LABOUR COURT, JOHANNESBURG****Case****No: JS 510/10****DATE:**

10 DECEMBER 2014

Not

Reportable

In

the matter between-

ZULU

SAMUEL

JACK.....Applicant

And

INDEPENDENT

NEWS PAPERS.....Respondent

Heard:

21 October 2014

Delivered:

10 December 2014

Summary:

Application to dismiss the statement of case because of unreasonable delay in the prosecution of the claim. The principles dealing with the approach to adopt when dealing with reasonable delay restated.

JUDGMENT**MOLAHLEHI J****Introduction**

- [1] This is an interlocutory application in terms of which the applicant seeks an order dismissing the applicant's statement of case on the grounds of unreasonable delay. The main case in this matter concerns the alleged unfair dismissal of the applicant for operational reasons.
- [2] The applicant instituted his claim of unfair dismissal on 26 July 2010 and the respondent filed its statement of defense on 06 August
2010. Thereafter the parties exchanged correspondence relating to the convening of the pre-trial conference and producing the pre-trial minutes. The pre-trial conference was held on 05 and 27 September
2012. At the pre-trial conference the parties apparently discussed the possibility of a settlement. The applicant undertook to revert to the respondent with a settlement proposal.
- [3] There was no further engagement between the parties since 27 September 2012 when the applicant forwarded draft pre-trial minutes

to the respondent for comment.

The applicable legal principles

- [4] It is now trite that the Court has discretion to bar a litigant from proceeding further with his or her case where he or she is guilty of unreasonable delay in the prosecution of the case. The discretion that the Court exercises to bar the party from proceeding further with the case when there is a delay in prosecution of the claim has its basis on the consideration that unreasonable delay may cause prejudice to the other party and the need for speedy of resolution of disputes.
- [5] In considering an application to dismiss a claim due to unreasonable delay the Court take into account the following factors:
- Ø the length of the delay;
 - Ø the explanation for the delay; and
 - Ø the effect of the delay on the other party and the
 - Ø prejudice that that party will suffer should the claim not be dismissed.
- [6] The basic approach to adopt when dealing with unreasonably delay in the prosecution of a matter is set out in *Bezuidenhout v Johnston NO & others*[1], in the following terms:

"When an Applicant party has been dilatory in pursuit of his relief, and finds himself outside prescribed periods, it is vital that a good explanation needs to be provided for such delays as may have occurred in order to warrant the granting of an indulgence to the defaulting party... The prejudice suffered by parties as a result of undue delays is another fact to consider..."

[7] The other consideration to take into account when determining whether to exercise the discretion to bar the applicant from proceeding

further with the matter relates to the action or inaction of the respondent. The responsibility, depending on the facts of a given

case, to ensure that there is no delay in the prosecution of a matter rests, also on the respondent. The respondent could for instance

approach the Registrar and request that a directive be issued directing the pre-trial be heard before a judge.

[8] In *Karen-beef Van Niekerk J* in dealing with this issue that the respondent is also responsible for ensuring that there is no delay had the following to say:

"[9] This is not to say that a respondent party is entitled to lie in wait, intending to ambush the applicant once a period of delay

becomes sufficiently protracted to justify the filing of an application to dismiss. In the *Bezuidenhout* judgment, Nel AJ observed that the respondent party also bears a responsibility to ensure that disputes are resolved expeditiously,

inter alia by ensuring that the applicant party complies with the time periods applicable to it, for example, by compelling compliance.

In *Sishuba*, Molahlehi AJ noted that the Rules as they related to the filing of process in review applications did not preclude a dilatory party or representative from being placed on terms, nor was a degree of self-help prohibited:

"Whilst there is indeed a practice well-known in this Court that a matter will be set down only once the Applicant has filed the Heads of Argument, there is no rule governing this practice. There is, however, in my view, no reason why an Employee faced with a delay on the part of the Applicant cannot file Heads of Argument prior to that of the Employer, and thereby activate the process of the Registrar setting the matter down. I also see no reason why the Employee did not, in the circumstances of this case, place the Employer on terms and called upon him to file his Heads of Argument before bringing this application."

[9] In addition to the above factors it should be noted that the dismissal of a claim due to unreasonable delay is a drastic step that may limit the right of a litigant provided in section 34 of the Constitution,[2] to have his or her dispute fully ventilated through the Courts or other independent dispute resolution bodies.

[10] In my view, ultimately key to the consideration in an application to dismiss a claim due unreasonable delay is whether the interest of justice would be served in dismissing a matter on that basis.

Evaluation

[11] The delay in the prosecution of the present matter is undeniably excessive. It is apparent that the factor that contributed significantly to the delay is the scheduling of the pre-trial conference and finalizing the pretrial minutes. In this respect I do not believe that the respondent is innocent. The respondent could have approached the Registrar and requested that the matter be placed before a judge for a directive to have the pre-trial conference held before a judge.

[12] In the premises the applicant's application to have the statement of claim of the applicant dismissed due unreasonable delay is dismissed with no order as to costs.

Molahlehi J

Judge of the Labour Court Johannesburg

Appearances:

For the Applicant: Mr W. Chisora of Jansens Attorneys.

For the Respondent: Lauren Salt of Cliff Dekker Hofmery Inc.

[1] (2006) 27 ILJ 2337 (LC)

[2] Section 34 of the Constitution reads: "Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

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Prepared on 11 October 2026 · Esheria