

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT DURBAN**

Case No: D445/97

In the matter between:

SAAWU

Applicant

and

**EVERITE BUILDING PRODUCTS
(PTY) LTD**

Respondent

PRESIDING JUDGE:

LANDMAN J

ON BEHALF OF APPLICANT:

MR KIKINE *OF* **SAAWU**

ON BEHALF OF RESPONDENT:

MR BELL *OF* **C & A FRIEDLANDER ATTORNEYS**

DATE OF HEARING:

20 AUGUST 1998

PLACE OF PROCEEDINGS:

DURBAN

J U D G M E N T

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LANDMAN J:

[1] The South African Allied Workers' Union has instituted an application against Everite Building Products (Pty) Limited for certain relief.

[2] As at today's date there are two issue which require a decision. The first one is whether or not the late filing of the notice of opposition and statement of response by Everite should be condoned and, secondly, Everite has raised a point in limine going to the jurisdiction of this Court.

[3] The difficulty in dealing with both points is that, for various reasons, possibly attributable to the administration of this Court, the applicant did not file a complete form. Paragraphs 6 and 7 dealing, inter alia, with the material statement of facts upon which the applicants rely, have not been filed.

[4] The applicant was, however, alerted to this deficiency by Everite in its statement of response. I refer particularly to paragraph 7.3.

[5] I, however, find it necessary to deal with the application for condonation. For an application for condonation to succeed, I must be satisfied in regard to the reason for the delay, the degree of lateness, the prospects of success on the merits and the importance of the case.

[6] In this particular matter there is an explanation for the delay which, although by itself would probably not be adequate, it is adequate if the other factors which must be taken into account are considered, particularly that of jurisdiction.

[7] If there is no jurisdiction then there is a reasonable prospect of success.

However, here I am slightly hampered because I do not know what the facts are on which the applicant relies. The applicant has not set them out, as I have explained earlier in this judgment.

[8] However, on the facts which the respondent has placed before me, there is a reasonable prospect of success in that this Court may come to the conclusion that it does not have jurisdiction. For that reason, the respondent's application for condonation succeeds but it is necessary to allow the applicant an opportunity to remedy its papers, if it can do so, and to allow the respondent an opportunity to reply to such an attempt to amend its papers.

[9] In consequence, the Order which I make is the following:

1. The respondent's application for condonation is granted.
2. The applicant is ordered to amend its papers, if it do desires, within 10 days of today. The respondent may answer within 7 days of the receipt of the applicant's amended papers. Thereafter
the matter may be re-enrolled for hearing of the point in
limine as it stands or as it may be amended.
3. The applicant is ordered to pay today's costs.

**SIGNED AND DATED AT CAPE TOWN ON THIS 23RD DAY OF SEPTEMBER
1998**

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JUDGE A A LANDMAN

This judgment is available on the Internet at the following website:
<http://www.law.wits.ac.za/labourcrt>