

Sneller Verbatim/LR REVISED /NOT REPORTABLE  
**IN THE LABOUR COURT OF SOUTH AFRICA**

**BRAAMFONTEIN**

**CASE NO: J3032/00**

Heard on: **2001-07-24**

Delivered on : **2001-07-26**

In the matter between

**J J SLABBERT**

Applicant

and

**COMMISSION FOR CONCILIATION,**

**MEDIATION AND ARBITRATION**

First Respondent

**S.A. MAGWAZA**

Second Respondent

**SPRINGBOK PATROL (PTY) LTD**

Third Respondent

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## **J U D G M E N T**

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**PILLAY AJ:** This is a review of the decision of the second respondent commissioner refusing condonation of the late referral to conciliation.

The first ground on which the decision is challenged is that the application for condonation had been granted on 5 July 1999 by Commissioner F Ahwirengobeng; therefore the matter was *res iudicata* before the second respondent.

The third respondents submitted that Commissioner F Ahwirengobeng had indicated that she could not hear an application for condonation and that such application should be heard by the arbitrating commissioner *in limine*. This is a dispute of fact.

The second respondent had in fact considered and issued a ruling on condonation on 22 June 2000. He pertinently stated that he enquired about his jurisdiction and "it came to attention that this matter was not properly condoned at conciliation." There was no proof that a ruling had been issued following the proceedings of 5 July 1999 other than the applicant's mere allegation to that effect. There is no basis to set aside this finding of the second respondent.

Accordingly, the argument that the ruling should be set aside on the grounds that the matter was *res iudicata* is rejected.

The second argument was that the second respondent was bound to arbitrate the dispute once the certificate had been issued on the basis of the decision on the matter of *Fidelity Guards Holdings (Pty) Ltd v Epstein NO & Others [2000] 12 BLLR 1389 (LAC)*. The certificate is *prima facie* but not irrefutable proof that the dispute had been conciliated - nothing more, nothing less. Furthermore, if the jurisdiction of the commission is challenged the arbitrating commissioner is duty bound to consider such an application relating to the jurisdiction of the CCMA. The failure by the arbitrator to consider such an application could result in the award being reviewed and set aside.

The application to review and set aside the second respondent's ruling under case number GA53438 in which the second respondent refused to condone the late referral for condonation is refused with no order as to costs.

PILLAY J

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