

Sneller Verbatim/PJ

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J774/00 & J769/00

2001-04-25

In the matter between

RADEBE, A M, CERBONE, A and 15 OTHERS

Applicant's

and

CORONET EQUITIES (PTY) LTD

Respondent

J U D G M E N T

REVELAS, J:

- 1.This is an application for condonation of the late filing of the applicants' statement of claim. The applicants in this case are Radebe and 12 others. There is also another matter arising from the same dispute, which occurred on the same day where the employees are A Savone and three others. The case number in that matter is J774/00.
- 2.The applicants also seek an order that the application under case no J774/00 ("the Cerbone matter") be consolidated with the application now before me ("the Radebe matter") in terms of rule 23 of the Rules of Conduct for Proceedings of the labour court.
- 3.In the Radebe matter the dispute about the dismissal was some four months out of time. In the Cerbone matter the dispute was referred six months out of time.
- 4.The respondent filed its answering affidavit opposing the applicant's application for condonation, outside of the prescribed limits as well.

The respondent has also brought an application for condonation for the late filing of this answering affidavit. Condonation was granted at the hearing of the matter.

5. It appears to be common cause that the applicants' services were terminated in circumstances where there was no prior consultation as contemplated by section 189 of the Labour Relations Act, 66/1995 ("the Act"). In future this might be explained, by the fact that the applicant was listed on the stock exchange and could indeed be closed overnight. There are further indications that some of the respondent's employees, (though none of the applicants) were engaged in fraudulent conduct which would, as the respondent put it, "probably" lead to the liquidation of the application.

6. All of the aforesaid of course indicated that the prospect of success of the applicants in pursuing their claim albeit late, are good.

7. The applicants explained their delay as set out in the respective founding affidavits and in short the explanation is that they believed that because the respondent was facing liquidation, pursuing their claims might be a futile exercise. As it was put in the affidavit, they believed that "it would be flogging a dead horse".

8. Furthermore there are also difficulties in obtaining funds to sponsor the litigation. One of the explanations given was, that a erstwhile director of the respondent had promised to fund their legal representation but he was no longer able to do so.

9. The delays in this matter are by no means insignificant. They are substantial delays. On the other hand, they are also not excessive. It is trite law, that the factors I have to consider would be the degree of the delay, explanation for the delay, the prospects of success, as well as the importance of the matter. (See: *Malane v Santam Insurance Co Limited* 1962 (4) SA 531 (A), *Mkhize v First National Bank & Another*

(1998) 11 BLCR 1141 LC, *Moodley v Umzinto North Town Board* 1998 (2) SA 188 SCA, *Potgietersrus Platinum Limited v CCMA* (1999) 20 ILJ 2679 (LC), *Transnet Limited v Hospersa & Another* (1999) 20 ILJ 1293 (LC), *Swanepoel v Albertyn* (2000) 21 ILJ 2701 (LC), *Chetty v Law Society, Transvaal* 1985 (2) 750 (AD)).

10. As I have stated before the prospects of success are good. The explanation for the delay is acceptable. The degree of lateness, in having regard to the circumstances surrounding the matter, is not excessive.

11. In considering this matter, I was to a great extent influenced by the judgment of the Supreme Court of Appeal in *Moodley v Umzinto North Town Board* 1998(2) SA 188 SCA at 192 E-G, where MOHAMMED, C.J. held the following:

"In the result the record is lodged some four months after the date on which it was required to be lodged in terms of rule 5[4]. The explanation for a part of this delay is not very persuasive, but what is clear is that the appellant was determined to pursue which had serious consequence for him. In my view the degree of non compliance is, in the circumstances of this case, not so substantial as to itself justify a refusal of the application for condonation for the appellant's failure to file a record of the proceedings timeously. [*Federated Employers Fire and General Ins. Co. Ltd and Another v McKenzie* 1969 [3] SA 360 [A] 362-G; *National Union of Metal Workers of SA v Jumbo Products CC* 1996 [4] SA 735 [A] 741E-I. The decisive issue is whether the appeal has any prospects of success on the merits."

12. In my view, the aforesaid dictum covers the facts of the matter before me. In the circumstances, condonation should be granted.

13. It is a matter of convenience that the two cases be consolidated, since the dismissal occurred on the same day ostensibly for the same reasons by the same employer and there is no reason why the two cases should be pursued separately.

14. It is so, that this might have costs implications, but as counsel on behalf of the applicants correctly pointed out, that would be an issue to be decided by the trial judge who would then have all the facts before him or her.

15. In respect of costs on this matter both parties have been dilatory and I believe that each party should pay their own costs. In the circumstances I make the following order:

1. The late filing of the applicants' statements of claim in case no J769/00 and J774/00 is condoned.
2. The application under case no J774/00 and J769/00 are to be consolidated.
3. There is no order as to costs.

E. Revelas

Applicant: Adv. Leon Halgryn

by: Burt Meaden Att.

Respondent: Adv. Ross Hutton

by: Perrott Van Niekerk and Woodhouse Inc