

**NOT REPORTABLE/ OF INTEREST  
IN THE LABOUR COURT OF SOUTH AFRICA  
HELD AT DURBAN**

CASE NO    **D179/2001**

In the matter between:

UKD MARKETING CC & 5 OTHERS Applicants

and

THE COMMISSION FOR CONCILIATION,  
MEDIATION AND ARBITRATION First Respondent

COMMISSIONER PAT STONE Second Respondent

BARGAINNG COUNCIL FOR THE FURNITURE  
MANUFACTURING INDUSTRY Third Respondent

AND

In the matter between:

SAXON JOINERY AND 4 OTHERS Applicants

and

THE COMMISSION FOR CONCILIATION,  
MEDIATION AND ARBITRATION First Respondent

COMMISSIONER PAT STONE Second Respondent

BARGAINNG COUNCIL FOR THE FURNITURE  
MANUFACTURING INDUSTRY Third Respondent

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## JUDGMENT

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PILLAY J

30 APRIL 2002

- [1] The application for condonation is dismissed.
- [2] The first and second applicants in the first matter and the first and fifth applicants in the second matter, and the attorney of record is ordered to pay the third respondent's costs jointly and severally on the appropriate High Court scale, including the costs of preparing the record.
- [3] The applicants' attorney of record is given leave to deliver an affidavit within seven days setting out why this order should not be granted against him. The third respondent is given an opportunity to respond to that affidavit within seven days of receipt thereof. The Court having considered the affidavits, thereafter will determine whether this order, in relation to the applicants' attorneys should be varied.
- [4] My further reasons for this order will be delivered *ex tempore* in the course of the week.

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REASONS FOR JUDGMENT

2 MAY 2002

**PILLAY, D**

- [1] This application for review is prefaced by an application for condonation of a late delivery of the review. As the review proceeds in terms of Section 145 to set aside the award of the second respondent Commissioner, it is

common cause that the award was served on the fifth applicant, Saxon and Joinery Works CC in the second application on 21 November 2000. The review should have been launched within six weeks from that date. An incomplete application was only delivered about six weeks later on 13 February 2001.

[2] The application for condonation was made by the applicant's attorney. There are no supporting or confirmatory affidavits by any of the applicants to the application for condonation. The application was delivered on 18 April 2002 without any explanation for that delay.

[3] Mr *Bezuidenhout*, for the applicants, requested an opportunity to call his instructing attorney to testify about the reasons for the late application for condonation. Mr *Acker* objected. I refused the request, firstly because that is not how an application for condonation is made for the late filing of another application for condonation. Counsel ought to have known better than to make such a request. Secondly, the applicants' conduct, and possibly that of their attorney, was dilatory, inept and grossly negligent, as will become evident hereunder. Thirdly, the bargaining council, that is the second respondent, had pointed out in the heads of argument filed on its behalf that the condonation application was late and without an explanation therefor. The applicants did not attempt to remedy this situation before the hearing.

[4] The first reason for the delay in launching the application for review was that the award had not been served on all the applicants. The submission was irrelevant since the applicants had not challenged the fact that they had

allegedly not been served with the award. They were all aware of it before they participated in consultations in early December 2000. The second reason for the delay was the availability of counsel during December and January. He was briefed "during the course of December 2000". He fell ill "during early January 2001". It was decided not to withdraw the brief from counsel as there would have been no significant time-saving, having regard to the length of the arbitration. Who made that decision is not clear from the attorney's affidavit.

[5] The period of delay is substantial, especially since the explanation therefor is incomplete. The explanation for the delay is wholly unacceptable. No precise dates were furnished about when counsel was briefed, when he went on leave, when he fell ill and when the applicants and their attorney became aware that counsel would not be able to react timeously to the brief. What steps counsel took in December when he had received the brief to ensure that he prepared the papers timeously for filing on or about 2 January 2001, is also not explained. The affidavit also does not disclose who was at fault in causing the delay. It is not alleged that the applicants were unaware of the date for launching the review. They had regular interaction with Mr *Hamilton*, the attorney for the bargaining council, about the review. Above all, Mr *Hamilton* made it clear to the applicants that the bargaining council required a formal application to be made. The applicants' attorney did not disclose in his affidavit what application was being referred to here, nor does he specify when the discussion with Mr *Hamilton* occurred.

[6] The affidavit opposing the application for condonation had attached to it a

letter from Mr *Hamilton* to the applicants' attorney dated 24 January 2001, informing him that it was his firm instructions not to agree to a condonation. It seems to me that the applicants' attorney deliberately avoided taking the Court into his confidence about very pertinent issues. This calls for an explanation from the attorney.

[7] The applicants' woes do not end with the wholly inadequate application for condonation and the absence of an application for condonation of that application. They failed to deliver their heads of argument timeously. That delay is not explained, nor is there an application to condone it. Their application for condonation is not indexed and paginated. Not all the applicants are properly before this Court. In so far as confirmatory affidavits were filed by some of the applicants, none of them confirm that they were authorised to bring the application for review on behalf of the entities they represent. Only Mr Premraj, the second applicant in the first matter, delivered a substantial affidavit. However, nowhere does he testify that he was authorised to bring the application on behalf of the other applicants. Nor does his founding affidavit disclose who the other applicants are. The only applicant who is properly before this Court is Premraj, the second respondent. As it happens, no relief was granted by the Commissioner against him.

[8] Although the responsibility for preparing the record rested with the applicants, this was left to the bargaining council to complete. Correspondence calling on the applicants to prepare the record went unanswered. Hence Mr *Hamilton* had to complete the preparation of the record himself.

[9] Finally, the applicants and their representatives demonstrate utter lack of care and diligence in the preparation of the affidavits. As the matter was the consolidation of two cases, special care had to be taken to ensure the proper citation of the parties throughout the pleadings. The inattention of the applicants and their representatives in this regard has further inconvenienced the Court and no doubt the second and third respondents.

[10] The conduct of the applicants and their representatives manifest a blatant and unashamed disregard for the rules of Court. They labour under the serious misapprehension that condonation is a mere formality to be granted on the mere asking.

[11] Against the background of such shoddy preparation, the Court was expected to prepare itself with a record of more than 1166 pages. In these circumstances the applicants do not deserve to have the merits of the application for condonation to be considered. Furthermore, as regards the merits of the application for condonation itself, the applicants' attorney makes the bald allegation that there were good prospects of success. Neither the applicants, nor their representatives, took the trouble to summarise the facts on which that allegation is made in the affidavits in support of the application for condonation.

[12] For these reasons I granted an order on 30 April 2002 on the following terms:

[i] The application for condonation is dismissed with costs.

[ii] The first and second applicants in the first matter and the first and fifth applicants in the second matter and the applicants' attorneys are to pay

the bargaining council's costs on the appropriate High Court scale jointly and severally, the one paying the other to be absolved.

[iii] The applicants' attorneys of record are given leave to deliver an affidavit within seven days from the date hereof to show cause why this order should not stand as regards the attorneys of record.

[iv] The third respondent, the bargaining council, is given leave to respond to the applicants' attorneys' affidavit within seven days of receipt thereof.

[v] The Court, having studied the affidavits, will determine whether this order should be varied.

[13] It follows from the foregoing that the application for review is also dismissed.

**D PILLAY**  
**JUDGE OF THE LABOUR COURT**

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30 APRIL 2002

30 APRIL 2002

2 MAY 2002

3 JUNE 2002

ADV W F BEZUIDENHOUT

OF RESPONDENTS: ADV B A ACKER SC

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**VARIATION OF ORDER**

**3 JUNE 2002**

Having considered the submissions by the applicants' attorneys,

the order of costs against them is withdrawn.

**Pillay D, J**