

Sneller Verbatim/P

IN THE LABOUR COURT OF SOUTH AFRICA  
BRAAMFONTEIN

CASE NO: J4412/01

Date of Hearing 2003-03-27

In the matter between :  
SEBENZA SHIPPING CONSULTANCY

Applicant

and

P Phakane

Respondent

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## J U D G M E N T

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PILLAY J:

[1] This is an application for condonation which prefaces an application for the rescission of an order granted by this court in terms of Section 158 (1) (c) of the Labour Relations Act No. 66 of 1995 ( LRA) on 04 December 2001.

[2] The applicant became aware of the order on 7 December 2001. It launched the rescission application on 23 September 2002 i.e more than eight months after the application ought

to have been made. This is an extremely long period of delay, a fact which is conceded by counsel for the applicant.

[3] The explanation for the delay in a nutshell is that the applicant believed in good faith that it had settled the matter with the respondent and that it was therefore not required to either oppose the application in terms of section 158(1)(c) or launch a rescission application. That it held with such a belief is purportedly on the basis that the applicant was naive in dealing with this matter throughout.

[4] The first difficulty with the application for rescission and this condonation application is that there are periods of delay for which there are absolutely no explanations. The general submission of the applicants being of the bona fide belief that the matter was settled and that the applicant was naïve are simply unconvincing reasons for explaining the period of delay.

[5] The delay *per se* and the explanation such as it is, also do not convince the court as to the merits of the applicant's defence. The applicant's defence is that the application in terms of

section 158(1)(c) ought not to have been granted because the matter had been settled finally. The more probable conduct one would expect of a business which is what the applicant is, is to assert its stance at the earliest possible moment, that is when it became aware that there was an application pending in terms of section 158(1)(c). It did nothing to oppose that application. The applicant began settlement discussions only after having received notice that the sheriff was about to attach its goods.

[6] A previous attempt at settling the matter was made on 1 February 2002 in terms of which the respondent was given 24 hours to accept the offer failing which it would be withdrawn. The respondent did not accept that offer. Nothing further was done between 1 February and 6 March when the sheriff was instructed to effect an attachment.

[7] Even if I were to view the applicant's case sympathetically, the applicant has not said in its application that it was not aware that the application for rescission had to be brought timeously or had to be brought within a reasonable period. It also does not say what steps if any, it took, to obtain an indulgence

from the respondent, whilst the alleged settlement discussions were continuing.

[8] In these circumstances I find that the period of delay in launching the application for rescission is inordinate. The explanation to the extent that there is an explanation is inadequate. The probabilities of success on the merits are unconvincing. I disgress to point out that there appears to be a dispute of fact as to whether there was or was not a settlement of the dispute. The finding I make that the probabilities of success on the merits is unconvincing, is based on the fact that there has been such an inordinate delay.

[9] I have not considered or investigated whether the respondent's version or the applicant's version is more credible on the evidence that has been presented. However, in view of my finding that the delay in itself causes me to take a negative view of the probabilities of success does not require me to go into the respective versions of the parties as to whether the dispute had in fact been settled. As stated above, a party who is pursued in litigation in a dispute which it

believes in good faith was resolved is likely to protest vehemently and firmly at the first opportunity. This the applicant did not do.

[10] In the circumstances the application for condonation is refused with costs.

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D PILLAY D, J

30 May 2003

ON BEHALF OF THE APPLICANT : ADV P J JOOSTE  
INSTRUCTED BY  
: LEONARD  
SINGER ATTORNEYS

ON BEHALF OF THE RESPONDENT : ADV C ORR  
INSTRUCTED BY : CHEADLE THOMPSOM AND  
HAYSOM