

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT BRAAMFONTEIN
No. J306/97

Case

NATIONAL UNION OF METALWORKERS
OF SOUTH AFRICA
APPLICANT

FIRST

DAVID MAHLALELA AND OTHERS
APPLICANTS

SECOND & FURTHER

And

PONTIES TRUCK & COMMERCIAL CC
RESPONDENT

FIRST

PONTIES TRUCK & TRACKER CC
RESPONDENT

SECOND

JUDGMENT

ZILWA A J

INTRODUCTION

1. This matter consists of two applications by both the applicant and the second respondent. The second respondent is applying for condonation for the late filing of an exception to the applicant's statement of case in the main application. On the other hand the applicant is opposing the said application for condonation and is, in

turn, applying for a default judgment against the first and the second respondents.

APPLICATION FOR CONDONATION FOR LATE FILING OF EXCEPTION

2. The second respondent had made an application before this court for condonation for the late filing of its statement of defence. This was after the second respondent had been joined in these proceedings in terms of an order of this court dated 16th August 2000. In fact, the second respondent had been prompted by the application for default judgment that was set down for hearing on the 16th May 2001.
3. This application for condonation supported by an affidavit of Esterhuizen, its managing member, was based broadly on the following grounds:
 1. Although he was aware that a joinder application was pending against the second respondent, he only became aware that it had been granted on the 14th May 2001;
 2. He did not deem it necessary to respond to the applicant's allegations more so that the second respondent was not cited as a party to the proceedings in the applicants' statement of case, therefore, no allegations are made which would found any claim against the second respondent, and no relief was sought against it;
4. In the said application no attempt was made by the second respondent to explain what steps it took between the 18th August 2000, when the court order for the joinder was served by the sheriff on the second respondent, and May

2001.

5. The prospects of success seemed, although sketchy, to be based on the fact that there were no allegation against the second respondent and no relief sought against it in the applicant's amended statement of claim.
6. The said application for condonation was heard in this court on the 22nd March 2002 before the Learned Judge Ngcamu. During the said hearing the second respondent argued in the main that it was not necessary for it to apply for any condonation for the late filing of the statement of defence as it was not cited in the proceedings and that no relief was sought against it.
7. Mr. Justice Ngcamu ruled that the joinder order made it clear that the applicant was not obliged to file any further amendments and the second respondent should have filed its statement of defence within ten days from date of service of the joinder order. He also dismissed the application for condonation basically on three grounds that:
 1. The second respondent has not explained fully why steps were not taken to deal with the matter after the joinder order had been served;
 2. A period of seventeen months had not been explained for the delay;
 3. There was no proper explanation on the prospects of success.
8. The matter was then again set down for hearing for a default judgement in this court on the 24th April 2002. The matter was postponed at the instance of the second respondent, which was granted until the 2nd May 2002, and it was further ordered to file further papers by the 26th

April 2002.

9. On the 26th April 2002 the second respondent filed its application for condonation for the late filing of an exception. The reasons for the late filing were identical to those of the original application for condonation which was dismissed by this court on the 22nd March 2002. In fact, this application merely attached the former application and incorporated it into the supporting affidavit and no further facts were canvassed. The second respondent merely contends that applicants' claim has become prescribed on the 28th February 2000 and the second respondent was only joined in August 2000.

10. In my view the second respondent is abusing the process of this

court. It is clear that in essence there is no difference between

a statement of defence and exception to the statement claim in so far as both are responses which a respondent is entitled to make when faced with a statement of case.

11. This court as per Mr. Justice Ngcamu had already made a finding in respect of the facts and law upon which the second respondent was basing its application for condonation for late filing of its statement of defence and had dismissed it. The second respondent has now placed the same facts before this court in an attempt to persuade this court to find otherwise. Further, it has been the second respondent's contention all along that it was not obliged to seek any condonation in this matter as it was not cited in the proceedings.

12. In the premises I am of the same view that the second respondent has failed to proffer a satisfactory explanation for its delay in filing the exception. Due to the excessive

delay in this regard this application must fail moreso that the prospects of success are not good.

13. In view of the foregoing I make the following order:

1. that the second respondent's application for the late filing of an exception is dismissed;
2. the dismissal of the second and further applicants, listed in Annexure A, is declared automatically unfair;
3. the first and the second respondent are ordered jointly and severally, to pay compensation to each of the second and further applicants amounts equivalent to 24 months wages calculated in accordance with Annexure A to this order;
4. the second respondent is ordered to pay costs of this application for condonation in respect of the exception;
5. the first and the second respondent are ordered, jointly and severally to pay costs of the default judgment application.

ZILWA AJ

DATE OF JUDGMENT : 02 JUNE 2003

FOR APPLICANTS : CHEADLE THOMPSON &
HAYSOM INC.

FOR SECOND RESPONDENT : WANDRAG & MARAIS INC.