

**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD IN JOHANNESBURG)**

CASE NO. : JR1393/03

In the matter between :

MAPHALU NTSHAVENI FRANCE Applicant

And

NATIONAL BARGAINING COUNCIL	
FOR THE ROAD FREIGHT INDUSTRY	1st Respondent
JAN STRYDOM	2nd Respondent
KINTENTSU WORLD EXPRESS SOUTH	
AFRICA (PTY) LTD	3rd Respondent

EX TEMPORE JUDGMENT

MAYA J.

[1] This is an unopposed application on review. The applicant seeks, in the main, to have reviewed and set aside a ruling made by the second respondent dismissing his application for condonation for the late filing of his referral of a dispute challenging his alleged unfair dismissal by the third respondent.

[2] He alleges in two affidavits filed in support of this application that he was in the third respondent's employ since 2000. On 19 March 2003 the third respondent charged him with fraud. He was subsequently found guilty and dismissed from his employment at a disciplinary enquiry conducted on 25 March 2003. On 9 April 2003, well within the relevant time frames, he referred the matter to the CCMA which customarily dealt with all third respondent's disputes. On 17 April 2003 he received a letter from the CCMA which advised him to refer the dispute to the third respondent as it claimed to have no jurisdiction to entertain the matter. The dispute was finally lodged with the first respondent on 12 May 2003 after his union representatives had taken various steps to have it adjudicated.

[3] In a ruling dated 7 July 2003, the second respondent dismissed the matter on the basis that the applicant had failed to show good cause for

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the grant of the condonation sought. He also concluded that it was impossible to determine the applicant's prospects of success on the merits as he had made no averments to prove an unfair dismissal, having merely alleged that the dismissal was unfair as it was based on his conduct.

[4] The grounds for the review application are, *inter alia*, that the second respondent failed to apply his mind properly or at all to the evidence placed before him, did not consider the applicant's affidavit and misled the dispute committee by, for example, failing to inform it of the earlier and timeous referral to the CCMA.

[5] These allegations are not supported by the record and have no merit whatsoever. It is very clear on a reading of the applicant's affidavit, which he filed with the first respondent, that he failed to make a number of material allegations in support of his case. For example, he did not state the date on which he made the referral to the CCMA. How could the second respondent have determined that such referral, even if erroneous, was timeous as alleged? He did not state the date on which he received the facsimile message from the CCMA. The second respondent then properly made the assumption that he received it on the date reflected on it, 16 April 2003, which proved to be not far off the mark on the allegations now made by applicants in the present application. He then failed to explain the 25-day delay between his receipt of the letter from the CCMA and lodging the dispute with the first respondent.

[6] These are the very observations made by the second respondent in his reasons for his ruling which leave me in no doubt that he considered all the facts placed before him and correctly applied the relevant legal principles. The applicant's affidavit was simply too inadequate to support his case. I may point out that even in the present proceedings the founding affidavit was just as lacking in detail. It is only in a subsequent, supplementary affidavit that a number of material allegations were made.

[7] I am unable to find that the second respondent's ruling is wrong in all the circumstances. The application is accordingly dismissed.

For the Applicant : Mr Philemon Bhembe (Union Representative)

Heard and delivered on 17 August 2004