



REPUBLIC OF SOUTH AFRICA
IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN
JUDGMENT

Not Reportable

C696/2013

In the matter between:

JOSEPH CEDRAS

First Applicant

GERT PEDRO

Second Applicant

BAYWATCH TERRACES BODY CORPORATE

Respondent

Date heard: 16 April 2014

Delivered: 31 July 2014

Summary: Condonation application

JUDGMENT

Rabkin-Naicker J

- [1] This was an opposed application for condonation for the late filing of a statement of case. An application for joinder was also made which is unopposed, and will be dealt with in this judgment if condonation is granted. The applicants were represented pro bono and it was evident that much effort had been put into such representation, which the court appreciates.

- [2] The statement of claim in question, which was founded on an alleged automatically unfair dismissal, was filed some six months out of time, which is an excessive delay.
- [3] The applicants started employment with the respondent on 1 March 2012 and 1 July 2012 respectively. They were maintenance assistants and their duties consisted of gardening, general cleaning and general maintenance. On 10 October 2012, they were notified in writing of possible retrenchments due to operational requirements. The reason given for such retrenchments was the decision by the body corporate to outsource these functions to an external service provider.
- [4] The applicants had joined a union, the EAMWU SA. An official represented them at a consultation meeting with the body corporate on 23 October 2012. The applicants were required to make proposals regarding alternatives to their retrenchment before 30 October 2012. Various communications took place between the union and the body corporate and the applicants were formally notified of their retrenchments on the 1 November 2012.
- [5] The applicants attended at an unsuccessful conciliation meeting on the 22 November 2012 with a union representative. According to their averments, they believed the official would then take the matter further. It was only sometime in January 2013 that they attended at the union offices to find out more about the status of the matter. It is emphasised in the founding papers that this was still within the 90 day period. They were informed that the official, who had represented them, had resigned towards the end of 2012 and that union was unable to assist. The union advised them to seek pro bono assistance. They then attended at the Cape Law Society offices on the 17th of January 2013.
- [6] The applicants filled in application forms and were told that the Law Society would make an assessment as to whether they could assist. More than a month later, shortly after 26 February 2013, the Cape Law Society sent them a letter informing them that they required further documentation. The letter reads in part as follows: “.. the above matter, your pro bono application dated 17 January 2013, as well as the telephone conversation between yourself and

writer hereof on 14 February 2013, refers. Kindly be advised that we are still awaiting your municipal property value, your wife's sworn affidavit of unemployment, as well as a copy of the award of the CCMA as requested. Upon receipt of the requested information your application will be further considered."

- [7] The application forms which were filled in by the applicants and dated 17 January 2013 when they visited the Cape Law Society, clearly state as follows: "Please note that your application will not be processed unless the information requested in this form has been provided. It will be in your best interest to complete and submit the form on time and have the relevant documents in your possession when you have been contacted for consultation..." It is clear from the annexures to the founding affidavit that the applicants delayed in getting the necessary information between 17 January 2013 and 1 March 2013. It is of concern that the founding affidavit does not take the court into their confidence in this respect.
- [8] After providing the documents, the applicants aver that they heard nothing until they telephoned the Cape Law Society on 1 August 2013 and were informed that they should attend the SASLAW pro bono office at the Labour Court which operates on a Friday morning. The five month period in which they made no follow up with the Law Society is explained in the founding affidavit as follows: "We heard nothing from the Cape Law Society for quite some time but verily believed that the delays were not out of the ordinary".
- [9] Various reasons are then given for the delay until 23 August 2012 in attending the SASLAW clinic, including a public holiday on August 9 and a funeral that first applicant had to attend on 16 August.
- [10] It is evident from the above that there are lengthy periods within the six months in question for which there are no adequate reasons provided for the inaction of the applicants. Particularly problematic is the lack of a reasonable explanation for the period from the end of February until 1 August 2013 during which the applicants made no attempt to follow up on their application with the Cape Law Society.

[11] It is trite that in an application for condonation, without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and the court may refuse condonation on that basis.¹ The delay in bringing this matter to court was excessive and the explanation for it is simply not acceptable- as referred to above, the applicants sat on their hands for the most part of the six months in question. Given the pro-bono representation of the applicants, I do not make a costs order in the circumstances of this case. I therefore make the following order:

1. The application for condonation is dismissed.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

¹ See inter alia NUM @ Others v Western Holdings Gold Mine (1194) 15 ILJ 610 (LAC) at 613E

Appearances:

Applicants: Adv. Craig Bosch instructed by Bowman Gilfillan

Respondent: Adv. Grobler instructed by Jacques Maree Attorney

LABOUR COURT