



REPUBLIC OF SOUTH AFRICA

Not reportable

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Case no: C 480/2011

In the matter between:

SIVUYILE MEYNDEKI

APPLICANT

and

MEC FOR HEALTH WESTERN CAPE

RESPONDENT

Date of judgment: 18 July 2016 (in chambers)

RULING: LEAVE TO APPEAL

VAN NIEKERK J

- [1] This is an application for leave to appeal against a judgement delivered by this court on 12 October 2015. The application for leave to appeal was filed only on 2 March 2016. The applicant has applied for condonation for the late filing of the application for leave to appeal, and I deal with this issue below. The delay in the issuing of the present ruling relates to the fact that for reasons that are not apparent, this file was made available to me only during the second week of July 2016.
- [2] The judgment records the relevant facts and I do not intend to repeat them here. For present purposes, it is sufficient to note that the applicant was dismissed for misconduct after having been found guilty on a number of charges of misconduct, which included drunkenness and his abandoning of an ambulance on the N2 freeway. After the respondent had led its witnesses, the arbitrator concluded that the respondent had failed to discharge the onus to show that the applicant's dismissal was fair and went on to grant absolution from the instance. As I noted in the judgment, on the basis of the applicable authority, it is not open to commissioners to grant absolution from the instance. Further, and in any event, the record of the proceedings under review makes it clear that the first respondent elected not to lead evidence and closed his case. At no stage did he ask for absolution nor make any submissions in this regard. In my judgment, I held that the manifest in of law committed by the commissioner renders the award reviewable and that in any event, it could not be said, having regard to the record, that the decision to which the arbitrator came was a reasonable decision having regard to the evidence that served before him.
- [3] The application for condonation for the late filing of the application for leave to appeal was filed some 75 days late in circumstances where the application was filed in this court on 1 March 2016 but never served on the state attorney. It is apparent from the application that the applicant took some 2 ½ months after delivery of the judgement before he contacted the union in relation to a possible review. This in itself is an inordinate period for which there is no satisfactory

explanation thereafter, the applicant approached the law faculty at the local university for assistance and a firm of attorneys who ultimately agreed to assist him. While he submits that the delay is that of his advisers, this is clearly not the case. A significant portion of the delay was caused by the applicant's tardiness are not because he received *pro bono* assistance. In so far as the applicant's prospects of success in the application for leave to appeal are concerned, in my view, these are minimal having regard to the material error of law committed by the commissioner when he granted absolution in circumstances where he simultaneously declared his award to be final and binding. Insofar as prejudice is concerned, the applicant was dismissed in August 2010, almost 6 years ago. The respondent's interest in finality far outweighs any prejudice that may be caused to the applicant by refusing to condone the late filing of the application for leave to appeal. In the face of an unacceptable explanation for any inordinate delay, and no prospects of success in the main application, there is no basis on which the late filing the present application should be condoned.

[4] For these brief reasons, I make the following order:

1. The application for leave to appeal is dismissed.

ANDRÉ VAN NIEKERK

JUDGE OF THE LABOUR COURT