



**IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**

**Not Reportable**

Case no: C1222.18

In the matter between:

**SOUTH AFRICAN POLICE SERVICE**

Applicant

and

**SAFETY AND SECURITY SECTORAL**

**BARGAINING COUNCIL**

First Respondent

**JANA DELL**

Second Respondent

**SAPU obo RIAAN SMIT**

Third Respondent

**Date heard: 26 August 2021 on the papers**

**Delivered: By means of email on the 26 August 2021, delivery deemed to be on the 27 August at 10.00hr**

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**JUDGMENT**

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**RABKIN-NAICKER J**

[1] This is an opposed Rule 11 application by the third respondent to dismiss a review brought by the applicant. I shall refer to the parties as SAPS and SAPU in this Judgment.

[2] On 13 December 2018, SAPS filed a review application under case number C1222/18, for the Arbitration Award under case number PSSS876-16/17 to be

reviewed and set aside. Since filing the Rule 7A(5) notice on 18 February 2018, no action had been taken by SAPS to prosecute the review as of the 17 December 2019, when SAPU brought the application to dismiss the review.

- [3] A Notice of Opposition under the above case number was filed on the 7 April 2021 (it erroneously referred to opposing an application for leave to appeal). The opposing affidavit in the dismissal application was only filed on or about 6 August 2021.
- [4] I am not going to repeat all the averments as to reasons for the delay in prosecuting the review contained in the opposing papers, save to say that they are premised on the administrative disarray in the Office of the State Attorney in Kimberley. It appears that the state attorney only “realized that the review was never prosecuted” when advised by its client, SAPS, that it had received the application to dismiss the review in March 2021. The CD of the proceedings was only found during July 2021 and the transcript was filed in this Court in August 2021.
- [5] The heads of argument filed on behalf of SAPS submit that the reasons for the delay in prosecution of the review have been duly explained, and amount to a reasonable explanation. I beg to disagree. The Court simply cannot accept this explanation which is unreasonable and oft repeated by this particular Office of the State Attorney. I am not convinced by the legal submissions that justice and convenience should compel a more lenient approach. As the Constitutional Court has stated:
- '(T)here is a higher duty on the state to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifeline. It is the Constitution's primary agent. It must do right, and it must do it properly.'<sup>1</sup>
- [6] SAPU has pointed out that the review application is in any event deemed dismissed, in terms of the Practice Manual of the Labour Court, and no steps

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<sup>1</sup> MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute 2014 (3) SA 481 (CC) at paragraph 82

have been taken to reinstate it. In dealing with this challenge the submissions filed on behalf of SAPS argue that the provisions of the Practice Manual are not peremptory but only guidelines. The status of the Manual has been dealt with by the LAC:

“[14] The consolidated Practice Manual which came into operation on 2 April 2013 constitutes a series of directives issued by the Judge President over a period of time. Its purpose is, inter alia, to provide access to justice by all those whom the Labour Court serves; promote uniformity and/or consistency in practice and procedure and set guidelines on standards of conduct expected of those who practise and litigate in the Labour Court. Its objective is to improve the quality of the court’s service to the public, and promote the statutory imperative of expeditious dispute resolution.

[15] The Practice Manual is not intended to change or amend the existing Rules of the Labour Court but to enforce and give effect to the rules, the Labour Relations Act as well as various decisions of the courts on the matters addressed in the practice manual and the rules. Its provisions therefore are binding. The Labour Court’s discretion in interpreting and applying the provisions of the Practice Manual remains intact, depending on the facts and circumstances of a particular matter before the court.”<sup>2</sup>

[7] In **Macsteel Trading Wadeville v Van der Merwe NO & others**<sup>3</sup> the LAC dealt with Clause 11.2 of the Manual in particular:

“[21] Clause 11 of the Practice Manual of the Labour Court (Practice Manual) which was adopted to give effect to the requirement of expedition, as contemplated in the LRA and the rules, states in relation to review applications that:

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<sup>2</sup> Samuels v Old Mutual Bank (2017) 38 ILJ 1790 (LAC)

<sup>3</sup> (2019) 40 ILJ 798 (LAC)

‘11.2.2 For the purposes of Rule 7A(6), records must be filed within 60 days of the date on which the applicant is advised by the registrar that the record has been received.

11.2.3 If the applicant fails to file a record within the prescribed period, the applicant will be deemed to have withdrawn the application, unless the applicant has during that period requested the respondent’s consent for an extension of time and consent has been given. If consent is refused, the applicant may, on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time. ...

11.2.7 A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Argument) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not be archived or be removed from the archive.’

[22] The underlying objective of the Practice Manual is the promotion of the statutory imperative of expeditious dispute resolution. It enforces and gives effect to the Rules of the Labour Court and the provisions of the LRA. It is binding on the parties and the Labour Court. The Labour Court does, however, have a residual discretion to apply and interpret the provisions of the Practice Manual, depending on the facts and circumstances of a particular case before the court.”

[8] The Manual is thus binding and the review application is deemed withdrawn. The condonation application proffered in opposing papers (even if I should consider it as an application to reinstate the review), consists of an unacceptable explanation for an excessive delay. There is no need for this Court to consider at

the prospects of success of the review<sup>4</sup>. There are no circumstances calling for a particular interpretation of the Practice Manual *in casu*, nor is there a dispute on its meaning on the papers before me.

[9] In all the above circumstances, the Rule 11 application must succeed. I make the following order:

Order

1. The Rule 11 application to dismiss the review of the Award under case number PSSS876-17/17 is granted.
2. There is no order as to costs.



H.Rabkin-Naicker

Judge of the Labour Court

Representation on the papers

Applicant: State Attorney

First Respondent: SAPU official

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<sup>4</sup> Colett v Commission for Conciliation, Mediation & Arbitration & others (2014) 35 ILJ 1948 (LAC) at paragraph 38

LABOUR COURT