



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

Not Reportable
C363/2016

In the matter between:

KETSO JACOBUS MABUSELA
and

Applicant

NORTHERN CAPE DEPARTMENT OF EDUCATION

First Respondent

KHUDUGA THALE

Second Respondent

EDUCATION LABOUR RELATIONS COUNCIL

Third Respondent

Date heard: 2 June 2021 by means of virtual hearing

Delivered: Sent 28 October 2021 by email. Deemed delivered on 29 October at 10.00hr.

JUDGMENT

RABKIN-NAICKER J

- [1] The applicant seeks condonation for the late referral of a review application and the review of an Award under case number PSES299-151-15/16NC. I deal with the condonation application at the outset.

- [2] In the founding affidavit seeking condonation, the applicant acknowledges that the review was filed some 13 weeks after the six week prescribed period. His explanation for the delay is set out as follows:

“9. I respectfully submit that at the time the Review Application was due, I was still in the process of raising the necessary funds in order to secure legal representation to act on my behalf to bring the Application.

10. Due consideration must be given to the fact that I was dismissed from Public Service with immediate effect and since my dismissal I have been unemployed.

11. Therefore I have been unable to generate an income and as a result had great difficulty in financing this Application, as my monthly salary was my only source of income.

12. As is apparent from what I have stated above, at all material times I wished to pursue the Review Application and I submit that I have not willfully acted in breach of the time limits laid down by the Honourable Court.”

- [3] As is apparent from the above, there is no detailed explanation for the delay or any evidence tendered as to the steps that the applicant took in the 13 week period, or during the 6 week period after receipt of the Award, to pursue the review. The applicant was a Principal at a High School before his dismissal in June 2015. His reliance simply on the allegation that he could not raise the funds, without more, is not a reasonable explanation for a significant delay.
- [4] In any event, I note that the applicant was legally represented at the arbitration process in the Northern Cape and elected to appoint legal representatives in the Western Cape for the purposes of the review. These facts do not assist the applicant in convincing the Court that he has provided a reasonable explanation for the delay.
- [5] The applicant also states in his condonation application that there will be no prejudice to the first respondent or the Court, should he be granted condonation. I cannot agree with this proposition. It is trite that a review is by its very nature urgent as the Practice Manual and many judgments of this Court reflect. The principle of expeditious resolution of disputes guides such jurisprudence and practice.

- [6] I am of the view that the principles set out in **Colett v Commission for Conciliation, Mediation & Arbitration (2014) 35 ILJ 1948 (LAC)** a unanimous judgment of the LAC, apply *in casu*:

“[38] There are overwhelming precedents in this court, the Supreme Court of Appeal and the Constitutional Court for the proposition that where there is a flagrant or gross failure to comply with the rules of court condonation may be refused without considering prospects of success. In NUM v Council for Mineral Technology it was pointed out that considering whether good cause has been shown the well-known approach adopted in *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 523 C-D should be followed, but —

‘[t]here is a further principle which is applied and that is without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without good prospects, no matter how good the explanation for delay, an application for condonation should be refused’.

[39] The submission that the court a quo had to consider the prospects of success irrespective of the unsatisfactory and unacceptable explanation for the gross and flagrant disregard of the rules is without merit.”

- [7] Given the applicant has not provided a reasonable and acceptable explanation for the delay, it is not necessary for me to consider the prospects of success in the condonation application. The condonation application stands to be refused, and as a result I order that the review application be dismissed. There is no basis in law or fairness to order that costs follow the result. I make the following order:

Order

1. The application for condonation is refused.
2. The review application is dismissed.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Appearances:

Applicant: T Du Preez instructed by Malcom Lyons & Brivik

First Respondent: Lulama Lobi Inc

LABOUR COURT