

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

Not Reportable

Case no: C554/2019

In the matter between:

**MALIBONGWE CEKISO**

**SIPHO ALEX MAKIBI**

Applicants

and

**BUILDING INDUSTRY BARGAINING COUNCIL**

First Respondent

**LM TAYLOR- COMMISSIONER**

Second Respondent

**MOSS CONSTRUCTION & TIMBERFRAME HOMES**

Third Respondent

**Date heard: 11 May 2021 on the papers**

**Delivered: 17 May 2021 to Court for collection by the Applicants**

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**JUDGMENT**

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**RABKIN-NAICKER J**

[1] This is an unopposed application to review an Award under case number BIGH284-19. In terms of the Award the second respondent (the Commissioner) found that the applicants had not discharged the onus to show that they were dismissed and were not entitled to any relief.

[2] The applicants have brought this review without legal assistance. They set out their case in the pro-forma application as follows:

“We are not satisfied with the award we received because of the way Commissioner handled it. First question he asked us that when did we work for the company second time and he need proof of the date we were dismissed. We explain there is no paperwork we found from him so something like payslip or paper of layoff The Commissioner told us that if we don't have proof of dismissal then the case we will never win. We are disappointment of working

for this guy long time then he fired us like so. Commissioner made us confused because he asked only us about dismiss. He didn't ask Keith Moss about what he gave us on last day because in Belville BIBC they called him the time we were making this claim. They asked him did he gave us a lay off letter he said no he didn't looked. So the Commissioner didn't ask Keith Moss those question when we raise that they say we can't ask that. The reason we didn't like that the award is we get commissioner sitting together with the employer. The date of arbitration court (unclear) comes differently because they give us 23 July we went and they change said commissioner is sick we wait. They call us and gave 15 August That's where we see something wrong. Mr Taylor didn't want to see our first claiming paper. He said we claim on 7 June where were us for the period of three months. We showed the Commissioner our first letter from BIBC he said that one doesn't work. That is the reason we didn't satisfied with his award. We ask appeal and we will bring our witnesses the workers. Thank you."

[3] It is clear from the above, that while the applicants were dissatisfied with the Award, they were unable to set out any legal grounds for the review of it. They did however file the transcript of the arbitration proceedings and the Award which the Court has considered. The Commissioner was robust in the inquisitorial approach he took at the proceedings but did not conduct these in a way that render his Award reviewable.

[4] Having heard the evidence before him, the Commissioner recorded amongst other things the following:

"18. It is evident from the testimony of the parties that the working arrangements were based on available projects. Cekiso worked elsewhere when there was no work available with the respondent and Makibi could not state where and how he supposedly worked on a continuous basis for the respondent from March 2016. He changed his version and stated that he returned to the respondent's employ in October 2018 after being away for a while but could not state where or how he worked for the respondent from then. The respondent's version that Makibi did not work for him for two years went unchallenged. Makibi did not present a credible version as he was evasive and continually contradicted himself."

- [5] In as far as Mr Cekiso was concerned, the respondent's testimony was to the effect that the work dried up in August 2018 and he arranged for him to work directly for one of his clients which he did for about 6 weeks. The Commissioner records at paragraph 13 of the Award as follows:

"13. Moss stated that mid-January 2019, he was approached by a client for the painting of handrails. He then asked Cekiso to come in and do the job. He also asked Cekiso to bring a friend to help him Cekiso brought Makibi to help. This was the first time he had seen Makibi in two years as he had left and never returned. Moss stated they worked for nine days and were told that they would be called back when there was painting work after the house he was building was completed. He commenced building in January 2019 and this would take up to two and a half months to complete. The general understanding was that the applicants would be called if and when there was painting work on a project by project basis."

- [6] The above evidence was not disputed by the applicants. The Commissioner found that the applicants were well aware that they would work for the respondent on projects as painters as and when those arose. They would wait until the next project arose or find other work in between projects. Having considered the record, I find that the outcome of the Award is well within the bounds of reasonableness. The applicants did not discharge the onus to prove that they were dismissed on 25 January 2019 as they claimed.

- [7] In view of the above, I make the following order:

Order

1. The review application is dismissed.

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H.Rabkin-Naicker

Judge of the Labour Court

Representation on the papers

Applicants: In person

LABOUR COURT