



**IN THE LABOUR COURT OF SOUTH AFRICA**

**(HELD IN DURBAN)**

Case no: D 1782-17

Not Reportable

**In the matter between:**

**LONDEKA GWALA**

**Applicant**

**and**

**CCMA**

**First Respondent**

**SIZWE M NGUBANE N.O.**

**Second Respondent**

**CHICKENLAND (PTY) LTD t/a NANDOS**

**Third Respondent**

**Heard: 2 July 2020**

**Judgment delivered: 5 August 2020**

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**JUDGMENT**

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**WHITCHER J**

- [1] The application to review and set aside a condonation ruling by the second respondent (“the commissioner”) is dismissed for the following reasons.
- [2] The review application does not pass the stringent test for a review and the very circumscribed basis upon which a court is entitled to interfere with a discretionary ruling.

- [3] It is evident from the ruling that the commissioner appreciated the factors that needed to be considered in a condonation application and applied his mind thereto.
- [4] It cannot be said that no reasonable commissioner could have found that the applicant failed to provide a reasonable explanation for the delay and failed to demonstrate good prospects of success in the dismissal dispute.
- [5] It is common cause that the applicant was warned in his dismissal letter that if he chooses to refer his matter to the CCMA, it must be done within 30 days.
- [6] The applicant did not require the third respondent's disciplinary code to refer his matter to the CCMA. In any event, one does not need a disciplinary code to confirm that the allegations proffered against the applicant constituted a dismissible offence.
- [7] The minutes of the disciplinary proceedings and the outcome report indicate that the applicant has very poor prospects of success on the main charge.
- [8] In the premises, the review application is dismissed.

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**Benita Whitcher**

Judge of the Labour Court of South Africa

**APPEARANCES:**

**APPLICANT:** Xaba Attorneys  
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**THIRD RESPONDENT:** Guardian Employers Organisation  
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