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**IN THE LABOUR COURT OF SOUTH AFRICA**

**(HELD AT BRAAMFONTEIN)**

**BRAAMFONTEIN**

CASE NO: JR909/01

2002-01-22

In the matter between

**AMOS MADONSELA**

Applicant

and

**CCMA & OTHERS**

Respondent

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**J U D G M E N T**

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**LANDMAN J:**

1. Mr Madonsela, who was previously employed by

Sabers W Services, applied to this court to review and set aside a ruling by the CCMA dated 22 April 2001 wherein the Commissioner refused to condone the late filing of his application.

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2. It appears that the Commissioner took into account the application for the condonation of the late filing which was lodged by Mr Madonsela and the statement filed on behalf of Sabers Wholesalers. The Commissioner came to the conclusion that although the application was late it, was not excessively late. The Commissioner was influenced by the fact that the employer had set out that there were no prospects of success.
3. I am of the opinion that the Commissioner committed a grave irregularity. The Commissioner failed to adhere to the rules of the CCMA. Rule 19 requires the answer to the application for condonation to be under oath. Sabers Wholesalers filed an unsworn statement. There is no indication that Mr Madonsela was informed that he could reply to that statement. The Commissioner did not call on the parties to appear and deliver their arguments. The rules of the CCMA are there to ensure that effect is given to the rules of natural justice.

Mr Madonsela had no opportunity to deal with the allegations made by Sabers Wholesalers. There is no indication that he even knew about it.

4. In the circumstances the application succeeds.
1. The ruling of 22 April 2001 is reviewed and set aside.
2. The matter is remitted to the CCMA to convene a hearing to decide on whether the application for condonation should be granted.
3. This hearing is to take place before a Commissioner other than Commissioner M M Baloyi. This hearing is to be held before the end of February 2002.
4. Sabers Wholesalers are ordered to pay Mr Madonsela's costs.

Signed and dated at BRAAMFONTEIN this 26<sup>th</sup> Day of February 2002.

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AA Landman

Judge of the Labour Court of South Africa