

Sneller Verbatim/MS

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J3173/01

2002-12-06

In the matter between

MAWETHU HARDWARE

Applicant

and

NOKUPHIWA NONO NPOSULA

Respondent

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J U D G M E N T

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REVELAS, J:

1. The applicant applies for the condonation of the late filing of its application for rescission of judgment granted by this court on 30 October 2001 in its absence. The application for condonation is opposed.
2. In considering whether to grant condonation or not, I have to consider the following factors:
3. The degree of lateness, the explanation for the delay, prospects of success and the importance of the case to

the parties seeking the condonation or indulgence from the court.

1. 1.4. In this matter it is alleged in the founding affidavit that at some stage the respondent had indicated to the applicant that she would no longer pursue the matter against the respondent, and on that belief that the applicant had not pursued its rights any further. This allegation is vehemently denied by the respondent.
5. The respondent also contends that the applicant has failed to give an adequate explanation for the delay after the writ of execution was brought to the attention of the applicant.
6. However, on the papers of the applicant - and this is not dealt with at any length by the respondent - I am not able to find that there is not a reasonable prospect of success demonstrated by the applicant in its papers.
7. In the decision of *Melane v Santam Insurance Co 1992 (4) SA 531 (AD)* at 532, the learned Judge President Corbett stated, that in the end it is all a question of fairness to the parties and a matter of justice.
8. In my view, to deny the applicant condonation at this stage and in effect bar the applicant at this stage from proceeding with the matter, would be unjust.

9. In the circumstances I make the following order:
1. The condonation for the late filing of the application for rescission is granted.
  2. The court order dated 30 October 2001 is hereby rescinded.
  1. 3. The applicant (Mawethu Hardware) is to file its application for the rescission of the arbitration award with the Commission for Conciliation, Mediation and Arbitration by no later than 7 January 2003, failing which the respondent (Ms Mposula), may set the matter down to have the award made an order of court and the respondent shall be barred from opposing the matter.
  4. There is no order as to costs.

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