



**IN THE LABOUR COURT OF SOUTH AFRICA**

**(HELD IN CAPE TOWN)**

Case No: C 267/2024

Not Reportable

**In the matter between:**

**DOMINIC IVOR WILLIAMS**

**Applicant**

**and**

**CCMA**

**First Respondent**

**COMMISSIONER S CHRISTIANSEN**

**Second Respondent**

**ACEPAK AUTOMATION (PTY) LTD**

**Third Respondent**

**Heard: 4 March 2025**

**Judgment delivered: 7 March 2025**

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**JUDGMENT**

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**WHITCHER J**

[1] The applicant wishes to review the commissioner's ruling<sup>1</sup> which dismissed his application for condonation for the late referral of his dispute to the CCMA.

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<sup>1</sup> Dated 20 May 2024: Case Number WECT 5240-24.

- [2] When considering applications for condonation, commissioners enjoy a wide discretion. Accordingly, a reviewing court should be cautious when interfering with such rulings. The test for a review is whether it can be said that the discretion was not exercised judicially: it was exercised 'capriciously, or upon a wrong principle, or in a biased manner, or for insubstantial reasons with no regard to the principles applicable to condonation applications.
- [3] In this case, it is evident from the award that the commissioner was alive to the correct enquiry in condonation applications. The commissioner correctly summarised the factors for consideration as set out by the Constitutional Court in *Grootboom v NPA and another*<sup>2</sup> and considered each factor with reference to the evidentiary material and submissions that was before him, namely the applicant's condonation application and the opposing affidavit.
- [4] In this regard, the commissioner found that the degree of lateness was considerable. No fault can be found with this finding. 173 days out of time is objectively excessive given the 30-day statutory time-period and that the LRA is designed to afford both parties a right to expeditious resolution of labour disputes.
- [5] The commissioner also found wanting the applicant's explanation for the delay. On the evidence before the commissioner, it cannot be said that this finding is one to which no reasonable commissioner could come. On the evidence, the applicant had been aware of the existence of the CCMA, he had sought legal advice in September 2023 which was still within the 30-day period and his averments regarding his attorneys and his claim that he was bedridden from December and thereafter required rehabilitation are significant by their lack of relevant information and evidence.
- [6] In any event, the most formidable obstacle for the applicant was his prospects of success. Here too, it cannot be said that the finding of the commissioner is one to which no reasonable commissioner could on the evidence before him. The documentary and other evidence furnished by the company in its opposing affidavit substantiated outright their claim that the applicant was employed as an independent contractor, and the 'factors' relied upon by the applicant in his claim that he was an employee were all reasonably explained away by the company.

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<sup>2</sup> (2014) 35 ILJ 121 (CC).

[7] Ultimately, it cannot be said the commissioner did not exercise his discretion judicially on a consideration of all relevant factors. There was no justifiable reason to require the company to put itself through a time-consuming arbitration process in circumstances where the applicant's application disclosed no prospects of success in the main hearing.

[8] In the premises, I make the following order:

The application to set aside the condonation ruling issued by the commissioner on 20 May 2024 under case number WECT 5240-24 is dismissed.

  
  
**B Whitcher**

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: The Applicant

For the Third Respondent: No appearance