



IN THE LABOUR COURT OF SOUTH AFRICA

(HELD IN DURBAN)

Case No: D 96/22

Not Reportable

In the matter between:

MOGAMBERRY MADURAY PILLAY

Applicant

and

ETHEKWINI MUNICIPALITY:

COMMUNICATIONS DEPARTMENT

First Respondent

KESHREE KEMI N.O.

Second Respondent

SALGBC

Third Respondent

Heard: 13 November 2024

Judgment delivered: 20 January 2025

JUDGMENT

WHITCHER J

Introduction

[1] The applicant seeks to review a condonation ruling issued by the second respondent on 22 January 2022. The first respondent contends that the review

application has lapsed; accordingly, the court is not vested with jurisdiction to hear and determine the review.

The law

- [2] The critical clauses in the Practice Manual provide:

Clause 11.2.7:

‘A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation of hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should be archived or be removed from the archive.’

Clause 16.1:

In spite of any other provision in this manual, the Registrar will archive a file in the following circumstances:

In the case of an application in terms of Rule 7 or Rule 7A, when a period of six months has elapsed without any steps taken by the applicant from the date of filing the application, *or the date of the last process filed*. (own emphasis)

16.3:

Where a file has been placed in archives, it shall have the same consequences as to further conduct by any respondent party as to the matter having been dismissed.’

- [3] According to the Labour Appeal Court in *E Tradex*¹, clause 11.2.7 requires a written request from the applicant to the Registrar to set the matter down.
- [4] And, according to my interpretation, the written notice to the Registrar must also be filed within twelve (12) months of the date of the launch of the review.
- [5] The LAC, *supra*, further held that where the requirements, set out in clauses 11.2.7 and 16.1, are not met and the matter is regarded as lapsed, as a matter

¹ *E Tradex (PTY) Ltd t/a Global Trade Solution v Finch and Others (CA 12/2021) [2022] ZALAC 106; (2022) 43 ILJ 2727 (LAC) (27 September 2022)*

of law the court is obliged to strike the matter from the roll on the ground of lack of jurisdiction.

The relevant facts

- [6] The review application was launched on 7 March 2022.
- [7] The 12-month period in clause 11.2.7 expired on 7 March 2023.
- [8] The first respondent's answering affidavit was filed on 4 November 2022, that is, 4 months before the expiry of the 12-month period.
- [9] On 31 July 2023, the applicant informed the registrar in writing that the application is ready for allocation of hearing.
- [10] The matter was thus stagnant for more than 6 months before the notice to the registrar was filed and the notice was filed well outside the 12-month period, namely more than 4 months after the expiry of the 12-month period.
- [11] On these facts, whichever way one looks at the matter, the review had lapsed by the time the applicant requested a set down notice. The court is accordingly obliged to strike the matter from the roll on the ground of lack of jurisdiction.
- [12] As to costs, long before the matter was set down, the first respondent essentially warned the applicant's representatives that the review had lapsed, yet they persisted to court in the absence of an application to reinstate the review. The applicant's saving grace is that there is still an employment relationship with the first respondent.

Order

- [13] The review is struck from the roll on the ground of lack of jurisdiction.

Benita Whitcher

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: FAM Attorneys

For the First Respondent: Z Qono, instructed by Linda Mazibuko & Associates

Labour Court