



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 2257/12

In the matter between:

SIMON MAGUMBO

Applicant

and

NKOMATI JOINT VENTURE

First Respondent

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

Second Respondent

COMMISSIONER DAVIS MAILA N.O.

Third Respondent

Date: 26 January 2016

Decided in chambers.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

TLHOTLHALEMAJE, J

Introduction:

[1] The Applicant's application to review and set aside the arbitration award issued by the Third Respondent was dismissed in terms of a judgment handed down on 16 September 2015. He has since lodged an application for leave to appeal against that judgment. The application is opposed by the First Respondent.

[2] In terms of Rule 30 (2) of the Rules of this Court, if leave to appeal has not been made at the time of judgment or order, an application for leave must be made and the grounds for appeal furnished within 15 days of the date of the judgment or order against which leave to appeal is sought, except that the court may, on good cause shown, extend that period.

- [3] The application for leave to appeal is defective on a number of fronts. Judgment having been delivered on 16 September 2015, the purported application for leave to appeal was only filed on 3 November 2015. Thus there is a delay of some 33 days. Furthermore, the Applicant had simply filed written heads of argument/submissions in terms of Rule 30(3A) read with paragraph 15.2 of the Practice Manual of the Labour Court on 3 November 2015 without an application for condonation in respect of the late filing of the application for leave to appeal.
- [4] It is also not clear as to when the application for leave to appeal was served on the First Respondent's attorney of record. There are two copies of affidavits of service as filed by the Applicant. In the first one filed as filed in this Court on 3 November 2015, the deponent (Irene Makwanya), averred that 'the Notice of Motion, affidavits and Annexures/Statement of claim with Annexures' were served on the First Respondent by way of telefax on 12 October 2015. In the second similar affidavit of service, filed on the same day in this court, another deponent, (Innocent Ndebele), averred that the same documents were served on the First Respondent by way of telefax on 2 November 2015. A further difficulty with the purported affidavits of service is that the details contained in the first affidavit are different from those on the attached fax transmission report in that the date and time reflected do not correlate.
- [5] In the light of the above, and more particularly in the light of the Applicant's failure to seek condonation in respect of the failure to comply with the applicable time frames in lodging applications for leave to appeal, there is no proper application before the court to consider, and accordingly, the application ought to be dismissed with costs.

Order:

The application for leave to appeal is dismissed with costs.

