



**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Case No. JS 1052/16

Not Reportable

In the matter between:

**BIDVEST PROTEA COIN (PTY) LTD**

Applicant

and

**MISCHACK KGWEDI**

Respondent

**Heard on: 9 June 2017**

**Delivered: 14 June 2017**

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**JUDGMENT**

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Saloojee AJ

Introduction

- [1] This is an application to condone the late filing of a Statement of Defence.
- [2] The applicant is the respondent in the main action and the same applies to the respondent.

### Background of facts

- [3] On 26 January 2017, the respondent served a Statement of Claim on the applicant. The respondent applied for default judgment as the respondent did not oppose the action.
- [4] On 16 February 2017, the respondent served and an index to the default judgment on the applicant.
- [5] On 20 February 2017, the applicant acknowledged receipt of the index. On the same day, the respondent faxed a copy of the statement of claim to the applicant, which opposed the action.
- [6] The applicant served its Statement of defence on 13 March 2017.
- [7] In *Mankayi v Anglogold Ashanti Ltd*<sup>1</sup>, the Constitutional Court stated:
- “The test for the grant of condonation is whether the interests of justice permit. Factors relevant to this inquiry include, but are not limited to, the extent and cause of the delay, the prejudice to the opposing litigant, the reasonableness of the explanation, the importance of the issues to be decided and the prospects of success. The inquiry entails weighing each factor against the others and determining where the interests of justice ultimately lie.”
- [8] The applicant claims that the Statement of Defence is four days late while the respondent claims that it is twenty-three days late. On either construction, the delay is not severe and there is no real prejudice to the respondent.
- [9] The respondent's claim in the main action is based on an unfair retrenchment. The respondent, a security guard, claims that his employer ordered him to take a polygraph test, which he was later

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<sup>1</sup> [2011] 6 BLLR 527 (CC) at par. 8

informed that he had failed. On the last day of his employment, the respondent was handed a settlement agreement relating to voluntary retrenchment.

[10] The applicant relies on its contractual arrangement with its client to justify conducting the polygraph test and removing the respondent from site. Further, after the respondent failed the polygraph test, the applicant offered to secure an alternative site for the respondent. In the event that the applicant was unable to do so, then the applicant would have to retrench the respondent's services. The respondent did not want to be placed at an alternative site and requested retrenchment.

[11] The issues to be decided in the main application are important. The nature of the defence has reasonable prospects of success and it would be in the interests of the justice to condone the late filing of the Statement of defence.

[12] In the premise, the following order is made:

- a. The late filing of the Statement of Defence is condoned.
- b. Each party to pay their own costs.

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Acting Judge of the Labour Court

Appearance

For the applicant: S Lancaster

Instructed by: Lancaster Kungoane Attorney

For the respondent: S Mayet

Instructed by: Nadeem Mahomed Attorneys

LABOUR COURT