



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

**Case No: JR 1628/16**

In the matter between:

**CYLINDER HEADS FOR AFRICA (PTY) LTD**

**First Applicant**

**COMPONENTS FOR AFRICA CC**

**Second Applicant**

and

**MOTOR INDUSTRY BARGAINING COUNCIL**

**First Respondent**

**COMMISSIONER SHAMIMA BHABHA N.O**

**Second Respondent**

**JOHN TSUPI DIALE & 2 OTHERS**

**Third Respondent**

**Considered:**

**In Chambers**

**Delivered:**

**7 September 2017**

---

**JUDGMENT: LEAVE TO APPEAL**

---

**MAKINTA AJ**

- [1] This is an application for leave to appeal against this Court's judgment dated 26 May 2017, in terms of which the Court dismissed the applicants' application for the review and setting aside of the CCMA's certificate of non-resolution, to the

effect that the dispute remained unresolved as on the 9<sup>th</sup> May 2016.

- [2] The applicants submit that this Court erred in finding that a fifteen (15) weeks' delay is excessive but does not substantiate this submission, except to say that, the law prescribes that the review application should be instituted within a reasonable time, and not within six (6) weeks.
- [3] What the applicant fails to appreciate is that, it is trite law that, six (6) weeks is regarded as the reasonable time intended by the law.<sup>1</sup>
- [4] The applicants submit that this Court did not attach *'the necessary weight to the prospects of success'* in the applicants' case, but does not address what those prospects are.
- [5] The judgment is to the effect that the issuance of a certificate of outcome has no legal significance, does not in any way prejudice the applicants, and is therefore not reviewable. The applicants do not address this finding in their application for leave to appeal.
- [6] If the issuance of the certificate is not reviewable, then the applicants can never have good prospects of success with having it set aside.
- [7] The applicants raise errors allegedly committed by the Court, but do not give facts on the basis of which another court would find that this Court erred.
- [8] As an example, the applicants contend that this Court erred in finding that the certificate of non-resolution has no legal significance, but fail to state what its legal significance is, if it has any.
- [9] The applicants contend that this Court erred in finding that the issue of the lateness of the referral or condonation can be raised at the level after issuance of the certificate, but do not explain why it cannot be raised. It is trite that, before

---

<sup>1</sup> *University of Venda v Maluleke and Others* [2017] ZALCJHB 72; (2017) 38 ILJ 1376 (LC) (28 February 2017) at para 7

arbitration or adjudication of any dispute that has been conciliated upon, each party is entitled to raise any jurisdictional issue one could have raised at conciliation, as long as that issue has not been determined by the commissioner before.

[10] It should be noted that, the applicants' application for review was against the issuance of the certificate of non-resolution, and not against the commissioner's condonation ruling. This is clear from prayers 1 to 4 of the Notice of Motion, especially prayer 1.

[11] It is not this Court's finding that condonation can be considered at a later stage, but that if the issue of the late referral of the dispute has not been determined by the conciliating commissioner, the issue can still be raised for the arbitrating commissioner to determine. It is only if there is a ruling on condonation that the applicants can come to court to have it reviewed and set aside.

[12] This Court is not persuaded that the applicants have made out a case that another court would reasonably arrive at a decision different from that of this Court. Accordingly, the application for leave to appeal stands to be dismissed.

[13] In the premises, the following order is made:

#### Order

- 1 The application for leave to appeal is dismissed
- 2 There is no order as to costs.

---

E.S Makinta

Acting Judge of the Labour Court of South Africa