

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR1004/17

In the matter between:

ROSINAH MOABELO AND OTHERS

Applicants

And

CHRISTAL CLEAN HYGIENE AND CLEANING

SERVICES (PTY) LTD

First Respondent

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

Second Respondent

SAM ALIDZULWI MUVHANGO N.O

Third Respondent

Heard: 09 January 2019

Delivered: 22 May 2019

JUDGMENT

NTSHEBE, AJ

Introduction

- [1] The applicants seek an order condoning the late service and filing of the review application. The award that the applicants seek to review and set-aside was issued on 6 October 2014. The review application was instituted in June 2017. In essence, on the applicants' own version, the review application is 30 months out of time.
- [2] The applicants' explanation is briefly that they instructed an attorney, Nyoffu to challenge the arbitration award. However, they did not have money for his fees as some of them were earning too little whilst others were not employed.
- [3] As a result, in early 2015, they approached Mokopane Labour Center but were referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) Polokwane offices. They attended at the Polokwane offices of the CCMA on four occasions without any assistance. Around June or July 2015, they were told that the matter was out of the CCMA's hands and that they should approach this Court.
- [4] As they are based in Mokopane, they could not afford to travel to Johannesburg. As a result, they approached the Law Society's offices in Polokwane and were referred to a certain attorney, Mr Kgomo based in Mahwelereng. The applicants state that they went to Mr Kgomo's office about three times but no assistance was forthcoming. As a result, they

then approached another attorney, Mr Mamabolo who demanded an amount of R50,000.00 before he could assist them.

[5] Due to the fact that they could not afford Mr Mamabolo's fees, they returned to Nyoffu. Nyoffu agreed to assist the applicants with their provident funds. According to the applicants, Nyoffu went on to claim from the provident fund and that resulted in some of the applicants being paid and others not. This was in September 2016 and nothing was done until they met their current attorneys in June 2017 when the review application was instituted.

[6] In dealing with condonation applications, the Constitutional Court, per Zondo J in *Grootboom v National Prosecuting Authority and Another*¹; held that:

“Although the existence of the prospects of success in favour of the party seeking condonation is not decisive, it is an important factor in favour of granting condonation. The interests of justice must be determined with reference to all relevant factors. However, some of the factors may justifiably be left out of consideration in certain circumstances. For example, where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of reasonable prospects of success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party. As a general proposition the various factors are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice.”

[7] In *Collett v Commission for Conciliation, Mediation and Arbitration*², a unanimous judgement of the Labour Appeal Court LAC, Musi AJA held as follows:

¹ (2014) 1 BLLR 1 (CC)

“There are overwhelming precedents in this court, the Supreme Court of Appeal and the Constitutional Court for the proposition that where there is a flagrant or gross failure to comply with the rules of court condonation may be refused without considering the prospects of success.”

[8] In this matter, the period of delay is more than two years. This is undoubtedly an excessive delay.

[9] In respect of the explanation offered by the applicants is not reasonable at all. In fact, it amounts to no explanation when considering the period of delay. There is no mention as to when exactly did they attend to the Law Society's offices in Polokwane, when they went to Kgomo Attorneys and also Mamabolo Attorneys. There are periods which have also not been explained by the applicants. For example, there is no explanation for the period between September 2016 to June 2017. The applicants' explanation amounts to no-explanation at all when one has regards to the excessive period of delay.

[10] Based on the excessive delay, the unsatisfactory explanation and the law, the applicants have failed to make a case for the granting of condonation.

Costs

[11] Although the applicants' condonation application is way out of time, I do not believe that it will be in the interests of justice and fairness to order a costs order against them.

[12] In the premises, I make the following order;

Order

1. The application for condonation in respect of the review application is dismissed; and
2. No order as to costs

² [2014] 6 BLLR 523 (LAC)

T. Ntshebe

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicants: Mr MES Makinta of ES Makinta Attorneys

For the Respondent: Mr K McAdam of Lee and McAdama Attornyes