

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

**JUDGMENT**

**Not reportable**

**CASE NO: JR 2333/18**

In the matter between:

**PATRICK SIPHO BUTA**

**Applicant**

And

**CCMA PRETORIA**

**First Respondent**

**PALESA MAWASHA N.O.**

**Second Respondent**

**MY ECO FUTURE**

**Third Respondent**

**Heard: 27 August 2019**

**Judgment delivered: 29 August 2019**

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## JUDGMENT

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VAN NIEKERK J

- [1] This is an unopposed application to review and set aside a ruling made by the second respondent (the commissioner). In his ruling, the commissioner refused to condone the later referral of an unfair dismissal dispute in circumstances where the referral had been made 128 days late in circumstances where the commissioner found that the applicant's explanation for the delay was unsatisfactory. The applicant resigned during March 2018 (he claims to have been constructively dismissed), and referred the dispute to the CCMA only on 20 August 2018.
- [2] The commissioner's reasoning is captured in the ruling, and I do not intend to repeat it here. It is sufficient for present purposes to record that this court's powers to intervene are limited – this court may review and set aside an award or ruling if and only if the award or ruling is unreasonable that no decision-maker could come to the decision to which the commissioner came. That is a high threshold, and given the nature of the test, it is not often that this court will set aside awards and rulings. The applicant appears to approach the present application on the basis that the commissioner's ruling is wrong; in other words, as an appeal. The relevant test is one which draws a clear distinction between a review and an appeal and, as I have indicated, limits the scope of intervention.
- [3] The applicant has not made out a case to the effect that the commissioner's ruling fails to meet the reasonableness threshold. The commissioner clearly appreciated the nature of the enquiry, and the test to be applied. The commissioner exercised a discretion, having regard to the extent of the delay, the explanation proffered for that delay, the applicant's prospects of success, and the

relative prejudice to the parties that would be occasioned by the application being granted or refused. There is no suggestion that his discretion was exercised arbitrarily or capriciously. The commissioner took into account the fact that the applicant referred the dispute only after his claim for compensation for an accident that he suffered in July 2015 failed. He also no doubt took into account the tone of the applicant's letter of resignation, which makes no mention of any intolerability of future employment and on the contrary, expresses regret for the short notice and gratitude for the employment opportunity. On the papers before me, I am unable to find that the commissioner's decision falls outside of a band of decisions to which a reasonable decision-maker could come on the available evidence. In the circumstances, the application to review the commissioner's ruling stands to be dismissed.

I make the following order:

1. The application is dismissed.

André van Niekerk  
Judge

REPRESENTATION

For the applicant: In person