

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

CASE NO: JR45/17

In the matter between:

THE MINISTER OF DEFENCE AND MILITARY

VETERANS

Applicant

and

PSA obo P.W MODITSWE

First Respondent

MARTIN SAMBO N.O

Second Respondent

GENERAL PUBLIC SERVICE SECTORAL

BARGAINING COUNCIL

Third Respondent

Judgment delivered: 10 September 2019

JUDGMENT

VAN NIEKERK J

- [1] This is an application for leave to appeal against the whole of the judgment delivered by this court on 21 May 2019, when the court held that a review application filed by the applicant was deemed to have been withdrawn and made an arbitration award issued by the second respondent an order of court.
- [2] The importance of filing a record of proceedings sought to be reviewed within the prescribed time limit has been highlighted by the LAC, as have the consequences of a failure to file a record timeously or seek an extension of the period within which to do so. All of these provisions have as their purpose the expeditious resolution of labour disputes. The applicant raises nothing in the present application that was not raised and canvassed in the main application. In essence, the applicant now seeks to make out a case (which was not made in the answering affidavit) that the state attorney was to blame for failing to file a complete record, and that the judgment has 'detrimental effects' for the applicant. The applicant attached correspondent to the founding affidavit in an effort to establish that between 9 February 2017 and 10 May 2019, it made regular enquiries as to the status of the matter. Two observations can be made. The first is that it is not open to an applicant to make out a case in an application for leave to appeal that ought properly to have been made in the answering affidavit in the main application. Secondly, the fact that there was no meaningful response to the applicant's enquiries directed to the state attorney for a period of more than two years ought to have alerted the applicant to that fact that the matter was being handled with a lack of due diligence.
- [3] In these circumstances, the application for leave to appeal stands to be dismissed. The applicant has only itself (and the state attorney) to blame for its misfortune, and the first respondent should not be deprived of the benefit of the award issued in his favour on that account.

I make the following order:

1. The application for leave to appeal is dismissed.

André van Niekerk
Judge

Labour Court