

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

CASE NO: JS 669/17

In the matter between

NEHAWU obo LJ MOTHOA

Applicant

and

**CONSTRUCTION EDUCATION AND TRAINING
AUTHORITY**

Respondent

Judgment: 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 7 May 2019, when the court dismissed an application

to condone the late referral of a dispute. The present application was itself filed late, and the applicant seeks condonation.

- [2] The application for leave to appeal ought to have been filed on 21 May 2019. It was filed on 24 May 2019. The delay is not excessive, and the reason for the delay is acceptable. In terms of the matrix of factors to be applied, the applicant must satisfy the court that she has reasonable prospects of success in the main application. The relevant facts are recorded in the judgment, and I do not intend to repeat them here. The referral was made 477 days late, an inordinate delay. The explanation for the delay was found to be unacceptable, and the prospects of success were found to be such that they did not outweigh the excessive delay and unacceptable explanation for it.
- [3] The present application adds nothing to the mix. It should be recalled that when it considers an application for condonation, the court exercises a discretion. An appeal court will rarely interfere with the exercise of a discretion, and ordinarily does so only if the decision is arbitrary or irrational. In the present case, the interests of finality were found to prevail, so were the interests of expeditious dispute resolution. As I pointed out in the judgment, the applicant was dismissed more than five and a half years ago.
- [4] In short, the applicant has failed to establish that her prospects of success are such that the late filing of the application for leave to appeal should be condoned. Further, the interests of justice dictate that the condonation be refused.

I make the following order:

1. Condonation for the late filing of the application for leave to appeal is refused.
2. The application for leave to appeal is dismissed.

André van Niekerk
Judge