



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
CASE NO: JS 317/14

In the matter between:

**NATIONAL UNION OF MINeworkERS obo
MOROBÉ AND 4 OTHERS**

Applicants

and

PROTEA COIN GROUP

Respondent

Heard: 27 November 2018

Delivered: 26 February 2019

JUDGMENT

LALLIE. J

[1] This matter was set down for a pre-trial conference before a Judge on 27 November 2018. Ms Kungoane for the respondent objected to the pre-trial conference being held on the grounds that the statement of case was filed on 2 June 2014. She argued that owing to the respondent's delay, the file was archived by the Registrar in terms of the Practice Manual of the Labour Court¹ (the Practice Manual). Mr Molotsi for the applicants argued that the pre-trial conference should proceed. He further argued that clause 6.1 of the Practice Manual was

¹ 2 April 2013.

not designed to trump the Rules of the Labour Courts. He sought to rely on the Registrar's omission to archive the file and the respondent's silence on the prejudice that the delay has caused it. Mr Molotsi added that the applicants did not adopt a supine attitude but took steps to pursue their case and even wrote letters to the respondent's attorneys. Ms Kungoane denied and argued that after the applicant's letter which was sent to the respondent's attorneys in 2015, the applicants took no further steps until March 2018. She sought an order that the respondent be directed to bring an application to retrieve the file from the archives.

[2] Clause 16.1 of the Practice Manual provides as follows:

"In spite of any other provision in this manual, the Registrar will archive a file in the following circumstances:

in the case of referrals in terms of Rule 6, when a period of six months has elapsed from the date of delivery of a statement of case without any steps taken by the referring party from the date on which the statement of claim was filed, or the date on which the last process was filed; and"

Clause 16.3 provides as follows:

"Where a file has been placed in archives, it shall have the same consequences as to further conduct by any respondent party as to the matter having been dismissed"

[3] The Practice Manual provides that its aim is to promote access to justice and consistency and to set guidelines on the standards of conduct expected from those practising in the Labour Court. The Practice Manual is not a substitute for the Rules but facilitates their

application. Its provisions are flexible where flexibility is required to promote their purpose.

- [4] The respondent seeks to rely on clause 16.1 and 16.2 of the Practice Manual which require the applicants to file an application for the retrieval of their file from the archives because of their failure to take steps to pursue their matter for a period in excess of six months from the date of delivery of their statement of case. The applicants filed their statement of case on 2 June 2014. The six-months period envisaged in clause 16.1 of the Practice Manual expired in December 2014. The file should have been placed in the archives shortly thereafter. In terms of clause 16.3 and on the respondent's argument that the file was archived, the consequences of the archiving of the file on the respondent were that the matter had been dismissed. When a matter is dismissed, the parties may not file papers to pursue it. The respondent filed its response to the statement of case on 19 June 2015, six months after the file should have been archived. The respondent's conduct is inconsistent with provisions of clause 16.3 of the Practice Manual. The respondent therefore took a decision not to comply with the provisions of clause 16.3 of the Practice Manual. In terms of the doctrine of peremption the respondent stands and falls by its decision. It may not blow hot and cold. It may also not pick parts of clause 16 of the Practice Manual it seeks to comply with and disregard others. The respondent may not be allowed to be opportunistic and use clause 16 of the Practice Manual other than the purpose it was created for. The respondent's conduct of filing the response to the statement of case is consistent with the applicants' argument that the file was never archived. The applicant therefore failed to establish grounds to have the applicant ordered to apply for the retrieval of the file from the archives.

- [5] In the circumstances the following order is made:

Order

1. The application to have the applicant apply for the retrieval of the file from the archives is dismissed.
2. The parties are directed to file a pre-trial minute within 21 days of this order.

Z Lallie
Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate M Molotsi

Instructed by: Malebaoa Attorneys

For the Respondent: Ms Kungoane of Lancaster Kungoane Attorneys