



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

Not Reportable  
Case no: JR 1501/15

In the matter between:

**KETLHWOECOENG MILDRED SETLABA**

**1<sup>st</sup> Applicant**

**THWALA CAROLINA LETANTA**

**2<sup>nd</sup> Applicant**

and

**MPE NGCOSANE N.O**

**1<sup>st</sup> Respondent**

**GPSSBC**

**2<sup>nd</sup> Respondent**

**DEPARTMENT OF HUMAN SETTLEMENTS:**

**FREE STATE**

**3<sup>rd</sup> Respondent**

**Heard: 13 JULY 2018**

**Delivered: 17 January 2019**

**Summary:** Application for review of arbitration award – section 145(1)(a)  
Labour Relations Act, 66 of 1995 (as amended).

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**JUDGMENT**

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## **RAPHULU, AJ**

### Introduction

- [1] The applicants were found guilty of misconduct and were subsequently dismissed. They appealed their dismissal, but their appeal was unsuccessful. They then referred an unfair dismissal dispute to the second respondent where the first respondent upheld their dismissal. In these proceedings, the applicants seek to have the arbitration award of the first respondent dated 13 May 2015, reviewed and set aside.
- [2] The third respondent opposes the review application. It claims that the applicants were late in filing their application to review the arbitration award, and did not make an application for condonation for the late filing of the notice of motion, which was filed on 01 September 2015. The third respondent also claims that the applicants failed to comply with this court's Practice Manual and the application was therefore archived and there is no application to de-archive and/or re-instate the review application. Accordingly, the third respondent seeks to have the review application dismissed with costs.

### Background

- [3] The applicants were in the employ of the third respondent and were dismissed after they were found guilty of misconduct, namely:
- 3.1 They engaged in unauthorised and/or irregular negotiations with contractors to facilitate irregular and undue payments to the contractors;
  - 3.2 They falsified documentation to the Finance Division of the Department to facilitate irregular and undue payments to the contractors; and
  - 3.3 They solicited and/or required and/or received undue/irregular gratification in the form of cash and/or otherwise from the contractors in exchange for the facilitation of the falsified and undue claim payments as mentioned above.

- [4] The applicants appealed their dismissals, but the appeal was dismissed by the third respondent. Following which, the applicants referred an unfair dismissal dispute to the second respondent. Conciliation was conducted on 07 July 2013 and arbitration proceedings were concluded on 01 April 2015.
- [5] The arbitration was conducted by the first respondent, and his award was given on 13 May 2015, which stated:

“[63] The applicants’ dismissal is upheld.

[64] The application is dismissed.

[65] There is no order as to costs.”

- [6] The second respondent served the award on the third respondent on 15 June 2015. The applicants state that they were only made aware of the award of 16 July 2015. The applicants seek to review and set aside this arbitration award.

### Condonation

- [7] If the version of the applicants are correct and they did in fact only become aware of the arbitration award on 16 July 2015, their application to review the award would have been due on or before 28 August 2015. The applicants filed their review application on 01 September 2015, outside of the 6 week period prescribed under the Labour Relations Act<sup>1</sup> (LRA). The applicants did not seek condonation for their late application.
- [8] If the version of the applicants are incorrect and they were sent the arbitration award on the same day as the third respondent, on 15 June 2015, their application to review the award would have been due on or before 27 July 2015, even further outside of the 6 week period as by the LRA.

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<sup>1</sup> 66 of 1995, as amended.

- [9] Clause 11.2.2 of the Practice Manual of the Labour Court of South Africa reads as follows:

For the purposes of Rule 7A(6) [of the Labour Court Rules], records must be filed within 60 days of the date on which the applicant is advised by the registrar that the record has been received.

- [10] It is not clear when the applicants were advised by the registrar in terms of Rule 7A (6) of the Labour Court Rules but it is clear that the applicants took longer than 60 days of being advised by the registrar that the record has been received, to file the record.
- [11] The second respondent filed its Notice of Compliance in terms of Rule 7A (2)(b) on 15 October 2015. It appears from the papers that the second respondent did not file the full record, and there was a reconstruction process held on 8 and 9 November 2016. On 30 March 2017 the applicants filed a Rule 7A (6) notice, furnishing the registrar and the respondents with the “additional record”.
- [12] According to clause 11.2.3 of the Practice Manual, should an applicant fail to comply with clause 11.2.2 (supra), the matter will be deemed to have been withdrawn by the applicant, unless the extension of time has been agreed upon by consent between the parties or is granted by the Judge President of this Court.
- [13] It is clear that a period of more than 60 days passed between the applicant receiving notice from the registrar and the applicant filing the record. At the hearing of this matter, the applicants did not deny this, and said that this Court would have been aware of their ongoing interest in this matter by virtue of the fact that they were taking steps, such as pursuing the full record. The difficulty is that there is neither an agreement between the parties to extend the time periods, nor is there an extension of time granted to the applicants by the Judge President of this Court, as required by clause 11.2.3.

- [14] Further, clause 11.2.7 reads as follows:

A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within 12 months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive.

- [15] The applicants commenced the review application on 01 September 2015. As it is nearly 3 years later, and unless good cause for the delay can be shown by the applicants, the application will be deemed to have lapsed.
- [16] The applicants were legally represented at various time periods, and on the hearing of this matter they declined the assistance of the pro bono legal services provided by this Court.
- [17] The applicants have not applied for condonation providing an explanation or good cause to explain the delay and give the necessary detail to this Court of what transpired during the various time periods in the past 3 years. Without such an application, this Court has not been given the benefit of being able to apply its mind to the delay.
- [18] It is on these premises, in accordance with clauses 11.2.3 and 11.2.7 of the Practice Manual, that I must strike this application from the roll
- [19] In the circumstances the following order is made:

Order

1. The review application is struck from the roll.
  2. No order is made as to costs.
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**L. Raphulu**

Acting Judge of the Labour Court of South Africa.

LABOUR COURT

Appearances:

For the Applicants: Self-Representing

For the Respondent: Advocate P.H Kirstein

Instructed by: Johan Gouws Attorneys

LABOUR COURT