

REPUBLIC OF SOUTH AFRICA
IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG
JUDGMENT

JS 204/2021

NOT REPORTABLE

In the matter between:

OOSTHUIZEN S.M.

Applicant

And

THE MEMBER OF THE EXECUTIVE COUNCIL:

DEPARTMENT OF EDUCATION, NORTH WEST

First Respondent

THE HEAD OF DEPARTMENT:

DEPARTMENT OF EDUCATION, NORTH WEST

Second Respondent

THE SCHOOL GOVERNING BODY OF THE

POTCHEFSTROOM HIGH SCHOOL FOR BOYS

Third Respondent

POTCHEFSTROOM HIGH SCHOOL FOR BOYS

Fourth Respondent

MEYER C.H.

Fifth Respondent

Date heard: 3 March 2023

Delivered: 17 May 2023 (This judgment was handed down electronically by circulation to the legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing-down is deemed to be 10h00 on 18 May 2023.

JUDGMENT

RABKIN-NAICKER J

[1] This is an opposed application brought by the respondents in the above matter for condonation for the late filing of the Statement of Response.

[2] The respondents' attorney of record avers in her founding affidavit that the applicant had first filed a statement of claim on 12 March 2021. The said claim alleges unfair discrimination. On the 27 May 2021, a supplementary statement of claim was filed. It was on receipt of this supplementary pleading that the respondents briefed their attorney of record. Counsel for the respondents was instructed on the 30 June 2021. No explanation is offered for the month's delay. The affidavit then sets out the following averments regarding the period of delay from the 30 June 2021 to the 7 October 2021 when the Statement of Response was filed. These read as follows:

“5.4 Unfortunately, our Legal Team was unable to consult with the Respondents due to the fact that:-

5.4.1 The Schools embarked on School Holidays;

5.4.2 Corona Virus Lockdown restrictions were imposed on inter-provincial travel, whereas Counsel was from Johannesburg;

5.4.3 The erstwhile SGB, which was affected by the allegations illustrated in the statement of Claim had to be consulted and were difficult to locate.

5.5 To that extent, our first consultation with the Respondents was conducted on 01 August 2021.

5.6 Pursuant to the aforementioned consultation and the allegations which the Respondents were obliged to respond to, further information and policies were needed in order to meet their case.

5.7 The Information was collected from various sources, namely the school itself, the Department of Education Provincially and Nationally, which took time.

5.8 Subsequently, and after through consideration of the acquired information and policies, the Respondents were in a position to formulate an adequate response to the Statement of Claims (including the Supplementary thereof).

5.9 Consequently, the Respondents' Answering or Response thereof was served on the 7th of October 2021.

5.10 In that regard, we hereby aver that, the Respondents conducted this matter in a bona fide manner, with no prejudice intended but just to

enable this Honourable court to make an informed determination herein having the benefit of all the relevant information thereto.

5.11 We further humbly aver that, as contemplated in the rules, the respondents in this affidavit demonstrate a Good Cause for its delay, which has the effect to curtail and expedite the matter to reach its finality in an equitable manner.”

[3] As submitted on the part of the applicant, the condonation application fails to attach any documentary proof to support the reasons for the delay. No confirmatory affidavits are filed. The extent of the delay in this matter is excessive (over six months if calculated on the date of filing of the statement of claim and over four months if calculated from the date of the supplementary statement.). As reflected in paragraph 2 above, no proper and reasonable explanation can be found as to each period of delay involved. The respondents were also tardy in applying for condonation, only doing so on the 29 November 2021 after repeated demands by applicant’s attorney. The first such demand was made by applicant’s attorney on the 20 July 2021.

[4] There is also a further significant difficulty with the content of the condonation application before me. It makes no mention of the prospects of success in the main action. It further does not incorporate the statement of defence by reference. In *National Education Health & Allied Workers Union & others v Metrofile (Pty) Ltd & others*¹ the LAC dealt with an appeal against the refusal to grant condonation, in circumstances in there was an inordinately long delay in the filing of a review application. The LAC described the explanation for the delay as deplorably inadequate and stated:

¹ (2021) 42 ILJ 1914 (LAC)

“[11] Where time-limits are set, whether statutory or in terms of the rules of court, a court has an inherent discretion to grant condonation where the interests of justice demand it and where the reasons for non-compliance with the time-limits have been explained to the satisfaction of the court....

[12] The well-established principles applicable to the consideration of condonation were restated by this court in *Department of Agriculture, Forestry & Fisheries v Baron & others* as follows:

‘It is trite that in condonation applications, good or sufficient cause must be shown by the party seeking condonation for a delay. This not only involves giving a full explanation for the delay, but also showing that it has reasonable prospects of success. Generally, a slight delay and good explanation for the delay could compensate for weak prospects of success, and good prospects could make up for a long delay.’”

[5] The LAC emphasized that the prospects of success were not addressed in founding papers of the condonation application. It restated the trite principle that an applicant must stand or fall by the contents of its founding papers. The LAC held that the court a quo had correctly declined to consider a statement of claim for purposes of assessing prospects of success, because the statement was not incorporated by reference in the condonation affidavit.²

[6] The condonation application in this case also stands to be described as deplorably inadequate. It evinces a disrespect for the rules of this Court and disregard for the principle of speedy resolution of labour disputes. In all these circumstances, condonation must be refused. This is a matter in which, given the prejudice caused to the applicant by the delays in question, costs should follow the result. I make the following order:

² Para 22 and 24

Order

1. The application for condonation for the late filing of the Statement of Response is dismissed.
2. Respondents to pay the costs, jointly and severally, the one paying the other to be absolved.

H.Rabkin-Naicker
Judge of the Labour Court

Appearances

Applicant in the main action: GL Laubscher Attorney
Respondents: Karabo B Kgoroadira
Instructed by Sifumba Attorney