



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not reportable

Case No: P 412/08

In the matter between:

RONALD GODFREY ROBERTS

Applicant

and

**WORKMENS COMPENSATION
COMMISSIONER**

DEPARTMENT OF LABOUR

First Respondent

**SOUTHAFRICANRAILWAYS
(TRANSNET)**

Second Respondent

Heard: 22 May 2013

Delivered: 6 JUNE 2013

Summary: An application for condonation for the late filing of a rescission application will be denied when the applicant lacks prospects of success in the main application.

JUDGMENT

LALLIE, J

- [1] In this application the applicant seeks an order rescinding a judgement handed down on 15 August 2011. The application is opposed by the first respondent. The applicant also seeks condonation of the late filing of the rescission application. As the answering affidavit was filed late, the first respondent has applied for condonation of the lateness. Both condonation applications are opposed.

Factual Background

- [2] This matter has a long history which starts on 14 July 1967 when the applicant sustained a back injury on duty. The claim which the applicant lodged with the first respondent pursuant to his injury was repudiated on the grounds that the latter was not satisfied that the injury arose out of the scope of the applicant's employment. Agrieved by the decision the applicant filed an objection leading to a hearing being held in January 1969. The objection was upheld and his degree of permanent disability was determined at 5%. The applicant was not satisfied with the finding and lodged a further objection which was dismissed. He pursued his dispute with the first respondent. In 1988 he filed a review application at the High court. His application was dismissed. He did not lodge an appeal against the High Court decision.
- [3] In 2001 the applicant sought advice from the Judge President of the Eastern Cape Local Division who informed him that he had exhausted all his remedies and that the matter could not be taken any further. He advised the applicant that he could launch a review application with the Workmen's Compensation Commissioner in terms of the section 24 (1) (f) of the Workmen's Compensation Act 30 of 1941. That advice notwithstanding, the applicant approached this court in 2008. Both Cele and Pillay JJ advised him via directives that this court lacks jurisdiction to adjudicate his case. In 2010 he lodged an appeal at this court. The matter was opposed by the first respondent. There was no appearance by or for

the applicant when the matter was set down for hearing on 15 August 2011 and his appeal was dismissed. It is the dismissal order the applicant seeks this court to rescind.

Application for the late filing of the answering affidavit

- [4] I considered it convenient to deal with the first respondent's condonation application first. The first respondent's answering affidavit was filed 22 days late. The reasons proffered by the first respondent for the delay are that while the attorney delivered the brief to counsel timeously it got mislaid. Part of the delay was attributed to work pressure and consequences of the fact that the counsel she had briefed was a victim of crime. Notwithstanding, opposition by the applicant and the reason thereof I am satisfied that the delay is not excessive. Its explanation is reasonable and the first respondent has good prospects of success as the dismissal order which is the subject of the rescission application is based on this court's lack of jurisdiction over the dismissed dispute. The first respondent will suffer prejudice should its application be refused as it will be denied the opportunity of opposing the rescission application, for these reason I am satisfied the first respondent has shown good cause for the grant of its condonation application as it has satisfied the requirements in *Melane v Santam Insurance Co Ltd*¹. In the premises the condonation application is granted.

Application for the condonation of the late filing of the rescission application

- [5] The applicant's application falls within the purview of Rule 16 A. He was therefore required to file it within 15 days after acquiring knowledge of the judgment. The condonation application is opposed by the first respondent. The applicant submitted that the attorney whose service he had enlisted failed to attend court on 15 August 2011. He was aware of the date on which his case was set down. This allegation turned out not to be true. Although he did not disclose the date on which he became aware of the judgement he seeks this court to rescind the probabilities

¹ [1962] 4 ALL SA 442 (AD)

are that he got to know of the judgement shortly after it was handed down. His attorney should have told him, alternatively, he should have taken an interest in his case and enquired from the Labour Court what the outcome of his case was. The rescission application was filed on 27 February 2012 more than 5 month after the judgement had been handed down. The delay is substantial. The applicant attributed the delay to the negative approach by all the legal personnel he approached to enquire about the relevant information for the application.

- [6] Three Judges of this court and then Judge President of the Eastern Cape Local Division informed him that this court has no jurisdiction to adjudicate his case. He was even directed to the correct forum he could take his dispute to but he unreasonably insisted on coming to this court. Granting a litigation with no prospects of success in the main dispute defies logic.
- [7] Amongst the consequences of granting the condonation application is denying the first respondent closure on this dispute. Such denial is unfair, the first respondent needs closure on the matter which it continues to defend at considerable cost to the tax payer. The applicant has no prospects of success in the rescission application as he has neither a valid reason for his default nor a *prima facie* defence. When his condonation application is considered in its totality the only logical conclusion that can be reached is that he was not shown good cause for the grant of his condonation application. Even the interests of justice are not in his favour. In the circumstances his application cannot succeed. The condonation application therefore stands to be dismissed.

Costs

- [8] Section 162 of LRA requires that the law and fairness be taken into account when the issue of costs is determined. Although the first respondent sought costs on the attorney and client scale I have considered that the applicant is a lay litigant who was assisted briefly by an attorney. He found new evidence after his case was dismissed at the first respondent and believes that he has a right to present such

evidence at this court. In his quest for justice, he seeks to exercise his constitutional rights in and through this court. In the circumstances, I am not convinced that justice requires that a costs order be granted against him.

[9] In the circumstances the following order is made:

- 9.1 The application for the condonation of the late filing of the first respondent's answering affidavit is granted.
- 9.2 The application for the late filling of the rescission application is dismissed.
- 9.3 The rescission application is dismissed.
- 9.4 No order is made as to costs.

Lallie, J

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Ronald Godfrey Robert in person

For the first Respondent: Advocate Rawjee.

Instructed by State Attorney

LABOUR COURT