



Not reportable

**THE LABOUR COURT OF SOUTH AFRICA  
HELD AT JOHANNESBURG**

**Case no: JS 687/15**

In the matter between:

**LEBOGANG MOKABA**

**First Applicant**

**TLANGELANI KEVIN MTEBULE**

**Second Applicant**

**TONY TLANGELANI SHIPALANA**

**Third Applicant**

and

**KGOLO BUSINESS TRUST T/A**

**First Respondent**

**KGOLO INSTITUTE**

**EPHRAIM MAKGOTO**

**Second Respondent**

**Heard:** 19 August 2016

**Delivered:** 23 August 2016

**Summary:** (Condonation)

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**CONDONATION RULING**

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LAGRANGE J

- [1] This is an unopposed application for condonation for the late referral of the applicants' statement of case. The applicants claim that they had been unfairly retrenched by the respondent at the end of June, alternatively beginning of July 2015. They referred an unfair dismissal case to the CCMA and claimed that they were misled by the presiding Commissioner at the conciliation proceedings on 13 August 2015 to sign settlement agreements.
- [2] They learnt subsequently that the CCMA would not enroll their unfair dismissal claims because of the settlement agreements. On 9 December 2015, they simultaneously referred a claim of unfair retrenchment to the Labour Court and an application to review and set aside the settlement agreement. They have filed a condonation application for the late referral of the dispute.
- [3] Assuming that the settlement agreements did not resolve the dispute that they had referred to the CCMA, they ought to have referred their unfair retrenchment claim to the Labour Court within 90 days of the conciliation which expired on 11 November. Accordingly, the referral was about a month late. The explanation for the delay is that firstly, they only learnt that their unfair dismissal case would not proceed in the CCMA at the end of August. Secondly, they struggled to find advice what to do until they were referred to a former unionist who eventually help them in November to formulate their claim. It appears that the applicants attempted to serve the papers using a courier company, but the company refused to accept service and instructed the courier company to return it to the third applicant. In the circumstances, there is sufficient evidence to show that non-receipt of the statement of claim by the respondent was solely on account of the respondent refusing to accept the courier delivery. In any event, the applicants also served the respondent by fax and email.
- [4] I am satisfied that the applicants pursued a claim with reasonable diligence and on the face of it, their services were terminated without a proper retrenchment process having taken place so they have a reasonable prospect of success.

- [5] In so far as the settlement agreements may constitute an obstacle to them proceeding further with their case, there is at least a reasonable prospect that a Court would not regard those agreements as constituting a settlement which was in full and final settlement of their unfair dismissal claim. They could also seek to amend their statement of case to include relief setting aside the settlement agreements on contractual principles.
- [6] The citation of the first respondent has been amended to accord with the letterhead provided by the applicants.

Order

- [7] The late referral of the applicants' statement of case is condoned.

[8] N  
o order  
is  
made

as to costs.

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**Lagrange J**  
**Judge of the Labour Court of South Africa**

**APPEARANCES**

APPLICANTS:

In person

RESPONDENTS:

No appearance

LABOUR COURT