



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case No: JR 2744/12

In the matter between

STEPHEN MNGOMEZULU AND OTHER

Applicant

and

DENGA MULIMA N.O
Respondent

First

SAFETY AND SECURITY SECTORAL BARGAINING
COUNCIL

Second Respondent

SOUTH AFRICAN POLICE SERVICES
Respondent

Third

Heard: 19 July 2017

Delivered: 7 November 2017

Summary: Condonation application: The Applicants filed their review application 3 years and four months late. Relied, among others, on that they waited for their pension payouts. The Applicants however still filed the review

application 10 months after receiving pension payouts. The delay is inordinately long and reasons for the delay superficial and unconvincing. Condonation application dismissed.

JUDGMENT

MOLEBALOA AJ

Introduction

[1] This is an application for the condonation of the late filing of the review application. The application is opposed.

Background facts

[2] The Applicants are former members of the South African Police Services (SAPS). They were charged and dismissed for misconduct. It was alleged that they apprehended suspects in the act of crime, seized their property and demanded money from them to release the seized property.

[3] Aggrieved by the outcome of the disciplinary hearing, the Applicants, assisted by their union POPCRU, referred to the Second Respondent a dispute of unfair dismissal. The dispute was arbitrated by the First Respondent. On 15 May 2009 the First Respondent issued an award confirming the Applicants' dismissal as fair. POPCRU received the award on 19 May 2009.

[4] Applicants requested Mr. Mofokeng, a POPCRU shop steward who represented them at the arbitration hearing, to review and set aside the award. The request was elevated to POPCRU's Head Office. By September

2009, the Head Office had not as yet decided whether or not it will launch the review application. Mofokeng then advised the Applicants to save money to launch the review application by themselves.

[5] In September 2010 the Applicants were informed that the head office declined their request to review the First Respondent's award. Since the Applicants had no income they waited for their pension money payout to instruct lawyers to launch the review application. The payout delayed. They were then advised of a legal practitioner in Pretoria that can assist in the release of their pension monies. On 03 December 2010 they consulted the legal practitioner. They however only received their pension monies in January 2012.

[6] The review application was filed on 26 November 2012 with condonation application.

The condonation application

[7] The review application was launched three years and four months late. The Applicants' explanation for the delay is three pronged: POPCRU's delay in responding to their request to review the award; their financial constraints and the Third Respondent's delay in releasing their pension monies.

Evaluation

[8] The principle relating to a condonation application is trite.

[9] In *Melane v Santam Insurance Co Ltd*¹ it was held that

“in deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a

¹ 1962 (4) SA 531 (A) at para. 532.

consideration of all the facts, and is in essence it is a matter of fairness for both sides. Among the facts usually relevant are the degree of lateness, the reasons for the lateness; the prospects of success and the importance of the case”.

[10] The constitutional court in the matter of *eThekweni Municipality and Ingonyama Trust*² said the following:

“As stated earlier, two factors assume importance in determining whether condonation should be granted in this case. They are: the explanation must cover the entire period of delay. And, what is more, the explanation given must be reasonable. The explanation given by the applicant falls short of these requirements. Her explanation for the inordinate delay is superficial and unconvincing.”

[11] In the case of *Uitenhage Transitional Local Council v South African Revenue Service*³ it was held as follows:

“One would have hoped that the many admonitions concerning what is required of an applicant in a condonation application would be trite knowledge among practitioners who are entrusted with the preparation of appeals to this Court: condonation is not to be had merely for the asking; a full, detailed and accurate account of the causes of the delay and their effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility. It must be obvious that, if the non-compliance is time-related then the date, duration and extent of any obstacle on which reliance is placed must be spelled out”.

[12] The matrix of the Applicants’ condonation application which is approximately 3 years and four month’s days is that their representatives, POPCRU, delayed in considering their request for review. In the case of *National Union of Metal*

² 2014 (3) SA 240 (CC) at para 28.

³ 2004 (1) SA 292 (SCA) para. 6.

*Workers vs Kroon Gietary and Staal*⁴ the court refused a condonation application wherein the deponent attributed the delay to his representative. The court quoted in approval the case of *Regal v African Superstate (Pty) Ltd*⁵ where the court held that there is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence or the insufficiency of the explanation tendered. A litigant is not entitled to hand over his matter to his attorney and wash his hands of it.

- [13] Even in the matter *in casu* I am reluctant to allow the Applicants to attribute the delay to their representatives. They were advised in September 2009 by Mofokeng to save money to review the award. Subsequent to the advise by Mofokeng, there was no activity until September 2010 when the Applicants were informed that the head office declined their request to launch the review application. No explanation was provided for the lull period. No follow-ups with the union were done. Clearly the Applicants handed over their matter to POPCRU and washed their hands of it.
- [14] A further explanation for the delay was that the Applicants waited for pension payouts to brief a lawyer. The explanation did not assist the Applicants' case either. Actually it aggravated it. Applicants received their pension payouts in January 2012. They however only filed their review application in November 2012, about ten months after receiving their pension payouts. The explanation is thus disingenuous.
- [15] The Applicants were court orderlies transporting, as part of their job, accused or prisoners between police cells and court. I asked Mr. Teffo if the Applicants were not aware of Legal Aid services since they were court orderlies. No clear answer was provided.
- [16] The delay even in the matter *in casu* is inordinately long and the explanation provided is superficial and unconvincing. I was tempted to look into the

⁴ (JS 485/10) 2015 ZALCJHB 158 (13 May 2015).

⁵ 1926 (3) SA 18 AD.

Applicants' prospects of success in the review application, but the explanation of the delay is so weak that no measure of prospects of success can rescue this application. The degree is also so inordinately long that no tons of sympathy can salvage this application.

[17] In *High Tech Transformers (Pty) Ltd v Lombard the Honourable*⁶ the court held as follows about the unsatisfactory explanation:

“...An unsatisfactory and unacceptable explanation for any of the periods of delay will normally exclude the grant of condonation, no matter what the prospects of success on the merits...”

[18] This principle was stated by Myburgh, JP in *NUM v Council for Mineral Technology*⁷ as follows:

“There is a further principle which is applied and that is without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for delay, an application for condonation should be refused”.

[19] This principle was followed in the matter of *Moila v Shai and others*⁸ in which the then Honourable Judge President Zondo held:

“Indeed, it is clear from *PE Bosman Transport Wks Com v Piet Bosman Transport* 1980(4) SA 794 (4) at 799 D that in a case such as this one, it is not necessary to consider the prospects of success and that condonation could be refused no matter how strong the prospects of success are in a case such as the present one.”

⁶ (2012) 33 ILJ 919 (LC) at page 919.

⁷ (1999) 3 BLLR 209 (LAC) at 211 G-H at para 25.

⁸ (2007) 28 ILJ 1028 (LAC) at para. 36.

[20] The Third Respondent is entitled to finality in this matter. In *Van Wyk v Unitas Hospital and another*⁹ it was held that:

“A litigant is entitled to have closure on litigation. The principle of finality in litigation is intended to allow parties to get on with their lives. After an inordinate delay a litigant is entitled to assume that the losing party has accepted the finality of the order and does not intend to pursue the matter any further. To grant condonation after such an inordinate delay and in the absence of a reasonable explanation would undermine the principle of finality and cannot be in the interest of justice.”

[21] As fully enunciated in the above authorities, where the explanation is not compelling, the prospects of success would not assist. This is one of those cases. The Applicants have therefore failed to show good cause why the late filing of the review application should be condoned. The principle of finality would be undermined if condonation is granted and that cannot be in the interest of justice.

[22] Accordingly, I issue the following order:

Order

1. Condonation application is refused.
2. There is no order as to costs.

Molebaloa MS

Acting Judge of the Labour Court of South Africa

⁹ 2008 (4) BCLR 442 (CC) at para. 31.

Appearances:

For the Applicants: Advocate MD Teffo.

Instructed by: Phaladi Attorneys.

For the Respondent: Advocate S Tilly.

Instructed by: H Maponya of State Attorney.

LABOUR COURT