



CONDONATION RULING

Case Number: **GATW 12404-20**
Commissioner: **BUTI MALUBANE**
Date of Ruling: **13 MARCH 2021**

In the matter between

MR. RODNEY NDUNGASE CHAUKE

(Applicant)

And

BUKA HATTINGH KATLEGO SECURITY SERVICES

(Respondent)

Employee's representative: Mr. Rodney Ndungase Chauke

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Employer's representative: Buka Hattingh Katlego Security Services

Employer's address: 151 Elizabeth Street
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BACKGROUND OF THE CASE

- [1] This is a condonation application between Mr. Rodney Ndungase Chauke (Applicant) and Buka Hattingh Katlego Security Services (Respondent).
- [2] This is an application for condonation brought to the CCMA in terms of Rule 31 of the CCMA Rules. The application is opposed and decided on paper based on written submissions of both parties.

ISSUE TO BE DECIDED

- [3] I am required to determine if the averments submitted in this condonation application warrant the application to be condoned or denied.

Applicant's submission

- [4] The Applicant was dismissed on 21 September 2020. On 16 February 2021 he referred an unfair dismissal dispute to the CCMA outside the prescribed 30 days' period, accompanied by a condonation application.
- [5] He submitted that the referral was 111 days late as he was advised that in terms of the CCMA rules the period between 16 December and 07 January is not counted for. He submitted that the reason behind the late referral was that he was dismissed on 21 September 2020, he asked the Respondent to provide him with the dismissal letter, but the Respondent refused. He was not aware of the 30 days' time frame. He was not informed of the 30 days' period by neither the CCMA nor the employer.
- [6] As far as prospects of success was concerned, he submitted that he was charged for requesting leave from his supervisor due to personal reasons. He took time off. He was charged for failing to follow lawful instruction of not reporting for duty.
- [7] Under prejudice he submitted that he was unemployed and he had no other recourse to take his matter further. The Respondent will not suffer any prejudice either financially or in any manner.

Respondent's submission

- [8] In opposing the application the Respondent submitted as follows:
 - (a) Degree of lateness: The Applicant was dismissed on 21 September 2020. The Applicant waited for 105 days from the date of his dismissal to refer his case to the CCMA and or to make contact with his legal advice center. The Applicant was not honest when he stated that the Respondent refused to give him a dismissal letter as everything was issued to him. His submission that he was not aware of the 30 days' period cannot be an excuse.

- (b) Prospects of success: The Applicant does not have any good prospects of success at all as his case is based on frivolous and vexatious arguments which cannot excuse an application from being 105 days late. The Applicant abandoned his disciplinary hearing which he was fully aware of.
- (c) Prejudice: The Respondent will be prejudiced if CCMA accepts this case to place it on roll based on the Applicant's unsubstantiated version of why the application was referred a 105 days late with no valid grounds. The Respondent will be prejudiced as the Applicant's excuse for referring the matter a 105 days late holds no water and cannot be seen as a valid excuse.

ANALYSIS AND SURVEY OF SUBMISSIONS RECEIVED

Facts Considered in Making the Ruling:

DEGREE OF LATENESS

- [9] The Applicant was dismissed on 21 September 2020 and referred the dispute on 16 February 2021 accompanied by a condonation application. The referral is therefore 118 days late.

REASON FOR LATENESS

- [10] The Applicant submitted that he asked the Respondent to provide him with the dismissal letter, but the Respondent refused. He was not aware of the 30 days' time frame. On the flipside the Respondent submitted that it was not true it refused to provide the Applicant with the dismissal letter as everything was given to him after dismissal.

PROSPECTS OF SUCCESS

- [11] The Applicant only submitted that he was charged for requesting leave from his supervisor due to personal reasons. He took time off and he was charged for failing to follow lawful instruction of not reporting for duty. The Respondent submitted that the Applicant abandoned his disciplinary hearing which he was aware of.
- [12] The time limit within which a dispute of an alleged unfair dismissal must be referred to the CCMA is governed by section 191(1)(b)(i) of the Labour Relations Act, 66 of 1995 as Amended, which provides as follows:
"If there is a dispute about the fairness of a dismissal...(b) a referral in terms of paragraph (a) must be made (i) 30 days of the date of a dismissal or if it is a later date, within 30 days of the employer making a final decision to dismiss or uphold the dismissal...."
- [13] The Applicant should have filed the referral on or before 21 October 2020, by the time he referred the dispute on 16 February 2021, the referral was 118 days late.
- [14] In the case of *Melane V Santam Insurance co Ltd 1962 (A) at 532B-C*. It was held that the factors that should be considered in an application for condonation are interrelated and not individually decisive. The weight to be attached to any one of these factors may vary from case to case. What is needed is an objective conspectus of all factors. A slight delay and a good explanation may help to

compensate for prospects of success which are not strong, or the importance of the issue and strong prospects of success may tend to compensate for a long delay.


- [15] The above case law is supported by what the Constitutional Court held in the case of *EThekweni Municipality and Ingonyama Trust 2014 (3) SA 240 (CC)*. The court held that the two factors assume importance in determining whether condonation should be granted. They are the explanation furnished for the delay and the prospects of success. The court went on to state that an application for condonation must give full explanation for the delay, the delay must cover the entire period of the delay, and the delay must be reasonable.
- [16] Considering the above case law, 118 days is inordinate. The submission by the Applicant that the period between 16 December and 07 January were not counted was incorrect as the days are counted. The Applicant's submission that he was not aware of the 30 days' period could sometimes be accepted to compensate a plausible explanation for the delay. In this case the Applicant only submitted that he asked the Respondent to give him a dismissal letter of which the Respondent refused. Under normal circumstance an aggrieved unfairly dismissed employee cannot wait for the dismissal letter for a protracted time of 118 days.

PREJUDICE

- [17] I am of the view that the prejudice to the Applicant will be outweighed by that to the Respondent on the basis that the reason behind the late referral is highly improbable, the delay is excessive, the Applicant has a remote prospects of success.
- [18] Based on the above, the Applicant has shown no good cause for the late referral to be condoned.

RULING

- [19] The condonation application is denied.
- [20] CCMA case management is hereby directed to serve this ruling to the parties and close the file.
- [21] I made no order as to cost.



COMMISSIONER'S SIGNATURE:

CCMA COMMISSIONER: BUTI MALUBANE
