

IN THE LABOUR COURT OF SOUTH AFRICA

HELD IN PORT ELIZABETH

Case no. P 45/99

In the matter between:

Zamiwonga Magaqa

Applicant

AND

Commissioner Botha Du Plessis

1st Respondent

Commission for Conciliation Mediation

and Arbitration

2nd Respondent

Auditor General

3rd Respondent

JUDGMENT

MLAMBO J.

1. This is an application for the review of a decision of the Commission for Conciliation Mediation and Arbitration (“the Commission”) refusing to grant condonation for the applicant’s late referral of a dispute.
2. The pertinent facts of the matter are that the applicant resigned as an employee of

the auditor general with effect from 20 December 1997. He allegedly resigned as a result of what he perceived to be his employer's conduct of making continued employment intolerable for him.

- 3.
4. It appears from the applicant's founding affidavit that he instructed attorneys whose brief is not clear. The applicant states in his affidavit that he instructed attorneys to act in his best interests and on his behalf in resolving internally the problems he was experiencing with the auditor general's refusal to transfer him from Cape Town to the Eastern Cape.
5. It appears that the attorneys did nothing and when the applicant, allegedly, discovered this state of affairs he terminated their mandate and referred a dispute to the Commission on 15 November 1998. The referral was therefore some eleven (11) months out of time.
6. It is trite that in cases where condonation is sought good cause must be shown. In other words the applicant must, inter alia, provide a satisfactory explanation for the delay in referring the matter. This court has also followed a long line of cases to the effect that there is a limit up to which a person can hide behind his legal representative's negligence.
7. It is also trite that the Commissioner who considered the condonation application

had a discretion which he had to exercise judicially. For this application to succeed it must be shown that the commissioner failed to exercise his discretion or that he ignored the material before him and relied on irrelevant facts or facts not before him.

8. The applicant's request for condonation is set out in a letter dated 9 November 1998. The letter set out the following:

**“LETTER OF CONDONATION ON THE MATTER BETWEEN MAGAQA Z
VERSUS OFFICE OF THE AUDITOR GENERAL**

Dear Sir/ Madam

I am writing this letter in connection with the submission of my LRA 711 forms to the CCMA on the 10th of October 1998 whereas my dispute arose the 29th of July 1997 letter to that effect is attached on the forms. As you are aware that state matters take long time to be attended, this is evident by letters that were sent to the Office of the Auditor General on this matter from my lawyers whilst I was waiting for the outcome I decided not to take this matter with your office as my lawyers referred the matter to the State Advocate Notshe for his own opinion, on the advise of my lawyers whilst the case was still on after Mr Van der Merwe threatened me that if I don't report in Cape Town he is going to treat my case as if I have absconded, as I was advised to resign by my lawyers but I make it a point that I was forced to do that on my letter of resignation see attached copy on the forms.

After all avenues were exhausted on this matter and no positive results yielded I decided on the advise of my lawyers to refer this matter to you i.e CCMA. I was not able to refer it within 30 days as stated because of that. As all documentary evidence to this effect were submitted. This case is not on your system yet.

Judging by the response of Mr Hennie Van der Merwe of the Office of the Auditor General on the letters I have submitted as evidence, we were dealing with a man who doesn't care for a black person in other words he has got no interest of a human being at heart so it took us some time to come to this decision of referring the matter to you because of his arrogance.

Hoping that this will suffice. If more information is needed my contact numbers are 083 740 4010 or (0403) 625041

**Yours faithfully
Zamiwonga Magaqa”**

9. This letter contains no facts whatsoever on which the late referral of the dispute could be condoned. This letter therefore provided the commissioner with no basis on which the late referral could be condoned. In papers before the court no case is also made out on which this court can conclude that the late referral was condonable.

10. At most the letter displays the actions of a person(s) who were oblivious of the Labour Relations Act no. 66 of 1995 (“the Act”) and its provisions. Whilst the applicant attempts to attach blame on his attorneys for the late referral, he fails to name these attorneys and to explain what their brief was. He also fails to set out in any detail what he personally did to ensure that the matter was not delayed unduly.

11. It is also correct that the extent of the delay is unreasonably long, some 11 months. A condonation request of a referral this late must contain reasons occasioning such a lengthy delay. Prospects of success also seem doubtful as the applicant resigned under circumstances believed by him to justify it.

12. It is apparent from the reasons furnished by the commissioner that the contents of

the applicant's letter seeking condonation were considered, as well as the input from the auditor general. The commissioner's reasons further shows that he considered both parties' submissions and applied his mind to those submissions. Having considered all the above the court is of the view that the commissioner's decision to refuse condonation can be justified in relation to the reasons given for it. It follows therefore that the application must fail.

13. The order of the court is therefore:

14. The application for review is dismissed.

15. There is no order as to costs.

MLAMBO J.

Date of judgment: 17 June 1999