

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR 2275/11

J 1960/17

In the matter between:

LA CRUSHERS (PTY) LTD

Applicant

and

**THE COMMISSION FOR CONCILATION
MEDIATION AND ARBITRATION**

First respondent

COMMISSIONER JOSIAS MAAKE N.O

Second Respondent

NUM obo MOLIMI RICHARDS AND 3 OTHERS

Third Respondent

Heard: 31 October 2019

Delivered: 14 February 2020

JUDGMENT

LALLIE, J

[1] This is an application to reinstate an application for review which had been withdrawn by the applicant. The third respondent filed its answering affidavit five months late. The applicant objected to the delay but the third respondent failed to file a condonation application. The applicant argued that the answering affidavit should be disregarded and the application heard on an unopposed basis. Counsel for the third respondent conceded that the answering affidavit was not properly before Court. In light of the concession, the application will be decided on the unopposed basis.

- [2] The individual third respondents were employed by the applicant. They were dismissed for misconduct and referred an unfair dismissal dispute to the first respondent which in an award issued on 26 September 2011, found their dismissal unfair and ordered the applicant to pay them compensation. The applicant launched an application to have the arbitration award reviewed and set aside. The application was unopposed. It was set down for hearing on 23 February 2016 but was withdrawn by the applicant before the matter was heard. The reason for the withdrawal was that when the application was launched, the legal position was that arbitration awards prescribed after three years of being issued.
- [3] The legal position changed when the Constitutional Court in *Myathaza v Johannesburg Metropolitan Bus Services (SOC) Limited t/a Metrobus and Others*¹ held that arbitration awards did not prescribe as the Prescription Act² is not applicable to matters pursued under the Labour Relations Act (LRA)³. The change nullified the basis of the applicant's decision to withdraw its review application necessitating the application at hand.
- [4] The review application was unopposed and the applicant's withdrawal was *bona fide* based on the legal position prevailing at the time. A decision reinstating the review application will not prejudice the third respondent which elected not to enforce the arbitration award for three years after it had been issued.
- [5] The right to be heard finds protection in the Constitution⁴ and cannot be denied easily. As the application for review was not considered and brought to finality on its merits, I could find no impediment to have the

¹ (2017) 38 ILJ 527 (CC); [2017] 3 BLLR 213 (CC).

² Act 68 of 1969

³ Act 66 of 1995

⁴ Act 108 of 1996.

review application reinstated particularly when the circumstances of this case including the reason for its withdrawal are taken into account.

[6] In the premises, the following order is made:

Order

1. The application for review under case number JR 2275/11 is reinstated.

Z Lallie

Judge of the Labour Court of South Africa

Appearances

For the Applicant:
Incorporated

C.J Geldenhuis of Geldenhuis @ Law

For the Respondent:

Advocate M. Maholo

Instructed by:

E.S Makinta Attorneys

LABOUR COURT