



**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Case No: JS 910/15

In the matter between:

**HENRY MFIHLENI NHLEKO**

**Applicant**

and

**GAUTENG DEPARTMENT OF EDUCATION**

**Respondent**

**Heard: 29 November 2019**

**Delivered: 21 January 2020**

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**JUDGMENT**

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**LALLIE J**

[1] The applicant was employed by the respondent. Subsequent to the termination of the employment relationship he referred a dispute to the Education Labour Relations Council (the ELRC) alleging that he had been unfairly dismissed on 6 December 2013 for reasons unknown to him. As the dispute was referred in excess of a year after the alleged unfair dismissal, the applicant sought to have the delay condoned. His condonation application

was dismissed in a ruling which was issued on 7 April 2015. On 27 June 2018 the applicant filed a statement of claim at the Labour Court seeking a nullification of the condonation ruling as well as compensation for his alleged unfair dismissal.

[2] In response to the statement of claim the respondent raised a number of exceptions. As the exception was raised late the respondent filed an application for condonation of the delay. Although the applicant filed no opposing papers, he argued that condonation should be refused on the grounds that the delay was occasioned by the respondent's defiance. I have considered the papers filed and the submissions made in respect of condonation. I am satisfied that the interests of justice justify that condonation be granted. The respondent's averment that the delay resulted from human error was not refuted. Of significance is the applicant's omission to refute the respondent's averment that the Labour Court lacks jurisdiction to adjudicate the dispute which has been referred by the applicant. Fairness and justice require that jurisdiction be determined as soon as possible to protect both parties from incurring unnecessary costs. Condonation of the late filing of the notice of exception is therefore granted.

[3] The first exception raised by the respondent is that the applicant failed to make the necessary averments for the relief of the annulment of the condonation ruling. It is common cause that in a letter dated 14 April 2015 the ELRC informed the applicant that the condonation ruling was final and binding and that it could only be set aside by the Labour Court. The applicant was further informed that he had 6 weeks from the date of receipt of the condonation ruling to approach the Labour Court should he wish to exercise his right to have the condonation ruling set aside.

[4] In the statement of claim the applicant expressed the view that the condonation ruling is defective. Section 145 (1) of the Labour Relations<sup>1</sup> (the LRA) is clear. It requires a party who alleges a defect in an arbitration award (arbitration awards include condonation rulings) to apply to the Labour Court for an order setting the arbitration award aside. No reason has been proffered

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<sup>1</sup>Act 66 of 1995 as amended

by the applicant for not following the procedure laid down in section 145 (1) in challenging the condonation ruling. Further, he made no averments supporting his allegation that the condonation ruling be annulled. The first exception is therefore upheld.

[5] The second exception is based on jurisdiction on the grounds that the applicant failed to make averments which will place his dismissal dispute within the jurisdiction of the Labour Court. It is common cause that the applicant has alleged that his dismissal was unfair as envisaged in section 191 (1) of the LRA. He further alleged that his services were terminated for no reason, without notice and without a hearing having been held. The applicant's case is therefore that his dismissal for reasons unknown to him was both substantively and procedurally unfair. In terms of section 191 (5) (iii) of the LRA the dispute the applicant referred in his statement of claim falls under the jurisdiction of the Commission for Conciliation Mediation and Arbitration (the CCMA) or a bargaining council. The second exception is therefore upheld.

[6] The third exception is linked to the second in that the respondent submitted that absent jurisdiction over an unfair dismissal dispute, the Labour Court lacks jurisdiction to grant the relief of compensation sought by the applicant. This exception is valid as any order for compensation must be preceded by a finding that the dismissal was unfair. As the Labour Court lacks jurisdiction to adjudicate the fairness of the applicant's dismissal, it equally lacks jurisdiction to grant any form of relief arising from the dismissal including compensation. The third exception is therefore upheld.

[7] The basis of the fourth exception is that the applicant failed to plead sufficient facts to sustain the relief of compensation for being dismissed by the respondent in a manner that is automatically unfair. Section 187 of the LRA provides for conduct which constitutes an automatically unfair dismissal. In his statement of claim, the applicant made no allegation that his dismissal was automatically unfair as envisaged in section 187 of the LRA. In the absence of such allegations the relief he is seeking is incompetent. The fourth exception must be upheld.

[8] Jurisdiction is the authority to hear a dispute<sup>2</sup>. As the exceptions which have been upheld include the one on the Labour Court's lack of jurisdiction, the applicant's claim stands to be dismissed.

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

Order

1. All the exceptions raised by the respondent are upheld.
2. The applicant's claim is dismissed.
3. There is no order as to costs.

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Z. Lallie

Judge of the Labour Court of South Africa

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<sup>2</sup> *Gcaba v Minister of Safety and Security and Others* [2009] 12 BLLR 1145 (CC)

Appearances:

For the Applicant: In Person

For the Respondent: Advocate T. Molokomme

Instructed by: State Attorney, Johannesburg

LABOUR COURT