



THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JA17/24

In the matter between:

**THE SOUTH AFRICAN COMMERCIAL CATERING
AND ALLIED WORKERS UNION (SACCAWU)**

Appellant

and

IRVIN PUTINI

Respondent

Heard: 28 November 2024

Delivered: 30 January 2024

Coram: Van Niekerk, Nkutha-Nkontwana JJA et Mooki AJA

JUDGMENT

NKUTHA-NKONTWANA, JA

Introduction

- [1] This is an appeal against the whole judgment and order of the Labour Court on 21 July 2023. The appellant (SACCAWU) impugns, firstly, the Labour Court's exercise of discretion to make the arbitration award an order of the court in

terms of section 158(1)(c) of the Labour Relations Act¹ (LRA). Secondly, the appellant takes issue with the Labour Court's order which granted relief beyond what was awarded in the arbitration award.

Background

- [2] This litigation has a long and unfortunate history. The respondent (Mr Putini) was dismissed in 2010. He successfully challenged his dismissal at the CCMA. On 24 June 2011, the CCMA issued an arbitration award that ordered SACCWU to reinstate Mr Putini. Unhappy with the arbitration award, SACCWU launched a review application, which met its demise on 26 November 2015. Determined to challenge the award, on 18 December 2015, SACCWU applied for leave to appeal the judgment and order dismissing its review application.
- [3] While awaiting the outcome of the application for leave to appeal, on 12 August 2016, Mr Putini applied for the award to be made an order of the court in terms of section 158(1)(c). Mr Putini contends that, even though there was a pending application for leave to appeal at the time, his action was prompted by the uncertainty on the prescription of arbitration awards, which was consequent to the jurisprudence that emerged at that time.
- [4] On 25 August 2017, SACCWU's application for leave to appeal was dismissed with costs. Still not disheartened, SACCWU successfully petitioned this Court for leave to appeal. On 15 February 2018, this Court issued an order granting SACCWU leave to appeal and directing that the appeal record be filed within 60 days. It is common cause that SACCWU failed to file the record of appeal. Consequently, the appeal lapsed on 17 May 2018.
- [5] Since no further steps were taken by SACCWU, on 3 October 2018, Mr Putini, through his attorneys of record, caused a letter to be sent to SACCWU's attorneys informing them that, given the fact that the appeal had lapsed, he would proceed to enrol the section 158(1)(c) application. On 10 October 2018, SACCWU's attorneys responded, intimating that the appeal was still being

¹ Act 66 of 1995, as amended.

pursued and that the appeal record would be filed once finalised and shall be accompanied by a condonation application. Pertinently, SACCAWU, through its attorneys, requested that the enrolment of the section 158(1)(c) application be deferred. Mr Putini acquiesced. Yet, SACCAWU failed to make good on the promise to prosecute the appeal.

- [6] With a clear indication that SACCAWU had abandoned the appeal which, in any event, had lapsed, on 23 March 2019, Mr Putini's attorneys approached the Registrar of the Labour Court, requesting that the section 158(1)(c) application be set down. The matter was accordingly set down for hearing on 10 February 2021 and served before the Labour Court, per Govender AJ.
- [7] A strange turn of events then transpired. SACCAWU opposed the section 158(1)(c) application on the basis that it had been ousted by clause 16.1 of the Labour Court Practice Manual² which states that "*... the Registrar will archive a file... in the case of an application in terms of Rule 7 or Rule 7A, when a period of six months has elapsed without any steps taken by the applicant from the date of filing of the application, or the date of the last process filed...*".
- [8] To the extent that clause 16.3 of the Practice Manual provides that "*where a file has been placed in archives, it shall have the same consequences as to further conduct by any respondent party as to the matter having been dismissed*", SACCAWU was insistent that the Labour Court had no jurisdiction to entertain the archived section 158(1)(c) application absent an application for reinstatement.³
- [9] The Labour Court rejected SACCAWU's contention that the section 158(1)(c) application automatically acquired the status of being archived and deemed dismissed when a period of six months lapsed without Mr Putini taking further steps after delivering the replying affidavit on 28 October 2016. Likewise, it rejected the alternative contention that, even if the computation of the six months as referred to in clause 16.1 commenced from 17 May 2018, when SACCAWU's appeal was deemed to be withdrawn, the further step taken by Mr

² Practice Manual of the Labour Court of South Africa, effective 1 April 2013 (repealed, 17 July 2024).

³ Clause 16.2 of the Practice Manual provides that a party to a dispute in which a file has been archived may apply, on an affidavit, for the retrieval of the file, on notice to all other parties to the dispute.

Putini in requesting the enrolment of the section 158(1)(c) application was undertaken when the six months period had already lapsed.

[10] The Labour Court granted the following order:

- '1. The arbitration award dated 25th of June 2011, handed down by Commissioner Nhlahla Mathe under the auspices of the Commission for Conciliation, Mediation and Arbitration, under case number KNDB127/11 is hereby made an order of this court;
2. The Respondent is ordered to comply with the arbitration award within 14 (fourteen) days of the issuing of this court order, by reinstating the Applicant with no loss of benefits retrospectively to the position of organiser on terms no less favourable than those governed by his employment prior to his dismissal. The reinstatement order shall apply retrospectively to 22nd of December 2010 at the rate of R8 782.82 per month.
3. The Respondent is to pay the Applicant the arrear salary, benefits and annual salary increases as accrued to the Applicant from 22nd of December 2010, plus legal interest thereon from the date of the arbitration award up to date of final payment to allow the Applicant to resume duty and to pay the Applicant his monthly salary at the end of each month after the date of this court order...'

In this Court

[11] In this Court, SACCAWU persists with its contention that the Labour Court erred in granting an order in terms of section 158(1)(c) when that application had been automatically archived and deemed dismissed in terms of clause 16.1 of the Practice Manual. To buttress this contention, Mr Itzkin, counsel for SACCAWU, referred us to the dictum in *E Tradex (Pty) Ltd t/a Global Trade Solution v Finch and Others*⁴ (*E Tradex*) where this Court equally grappled with the concept of a case being archived, albeit in terms of clause 11.2.7 of the Practice Manual, and made the following observations:

⁴ [2022] ZALAC 106; (2022) 43 ILJ 2727 (LAC) at paras 9 - 10.

[9] The notion of a case being 'archived' was invented by the drafters of the Practice Manual as a penalty for dilatoriness and to relieve the burden of carrying dormant cases indefinitely. The consequence of a case being archived is serious. Upon archiving, in terms of clause 11.2.7, a matter is "... regarded as lapsed, unless good cause is shown why the application should not be archived or be removed from the archive" (own emphasis). To add to that provision, clause 16.3 states unequivocally that: "*Where a file has been placed in the archives, it shall have the same consequences as to further conduct by any respondent party as to the matter having been dismissed*" (own emphasis added). Moreover, clause 16.2 is equally unequivocal: "*A party to a dispute in which the file has been archived may submit an application on affidavit, for the retrieval of the file...*" There can be no plausible doubt that once the case is 'archived' it requires the intervention of the court to 'un-archive' it. There is no room to read into these provisions a role for the registrar to 'resuscitate' the case.

[10] The use of the term 'archived' is peculiar to the Labour Court Practice Manual. In the general civil courts, for example, the failure to prosecute an appeal timeously results in the appeal having lapsed. The effect of that is that the case shall not be dealt with by a court unless an application to reinstate the appeal is made. It is, in our view, plain that the archiving of a Labour Court case was intended to have the identical effect; indeed, clause 16.3 goes even further, to equate the consequence of an archiving of a case to be understood to mean the application is 'dismissed', albeit that a procedure exists to reinstate the case on good cause shown.'

[12] Mr Putini contends that SACCAWU's reliance on *E Tradex* is misplaced given the context on this matter. Mr Mgaga, from Mr Putini's attorneys of record, submitted that we should not be beguiled by the tactical stance pulled by SACCAWU with the hope of cashing in from its remiss conduct. SACCAWU created an impression that it was seriously prosecuting the appeal even after it had already lapsed and Mr Putini candidly granted it an indulgence. Therefore, SACCAWU's contention that, from 18 May 2018 to 23 March 2019, a period of six months lapsed without Mr Putini taking any further steps to prosecute the section 158(1)(c) application is absurd. If it were to be upheld, it would mean

that the SACCAWU successfully set a trap for Mr Putini by seeking an indulgence regarding the filing of its appeal record, conduct that is contrary to the spirit of cooperation between litigants and the granting of an indulgence to each other as promoted in the Practice Manual.

Discussion

- [13] It is well-accepted that tardiness in the prosecution of labour disputes undermines one of the primary objects of the LRA which is the expeditious resolution of disputes.⁵ Thus, as observed in *E Tradex*, the archiving of a case has serious consequences. Yet, the present case is distinguishable. The drafters of the Practice Manual never envisioned a situation where its provisions would be used by parties as a tactical ploy. Conversely, the provisions of the Practice Manual call for flexibility in their application when that is necessary to promote their purpose.
- [14] As a matter of practice, section 158(1)(c) applications are normally deferred pending the final determination of the review application or appeal.⁶ Thus, there were no further steps that Mr Putini ought to have taken in the prosecution of section 158(1)(c) application up until 17 May 2018, when SACCAWU's appeal lapsed. As correctly submitted by Mr Magaga, SACCAWU was alive to that reality, hence it sought indulgence to have the enrolment of the section 158(1)(c) application deferred further after its appeal had lapsed.
- [15] The indulgence granted to SACCAWU in October 2018 to prosecute the lapsed appeal was more than mere leniency. It was a noble pact between the parties which informed the further steps taken in the prosecution of the section 158(1)(c) application. Mr Putini could not have known that by seeking an indulgence, SACCAWU was buying time to outwit him in the end. However, once it was clear that SACCAWU was up to gimmicks, Mr Putini justly enrolled the section 158(1)(c) application on 3 March 2019.

⁵ See: *Macsteel Trading Wadeville v Van der Merwe NO and others* [2018] ZALAC 50; (2019) 40 ILJ 798 (LAC) at para 20.

⁶ See: *Gauteng Department of Education v Saunders: In re Saunders v Gauteng Department of Education and others* [2015] ZALAC 39; [2015] 12 BLLR 1187 (LAC) at paras 31-32.

[16] The Labour Court aptly expressed its dismay at SACCAWU's audacity to obstinately seek that Mr Putini be punished for the dilatory conduct in prosecuting the section 158(1)(c) application it had manoeuvred. Regrettably, SACCAWU is apathetic about the delay it has occasioned in this case, hence it is propagating further delaying tactics. No one remembers the thrill of South Africa hosting the Soccer World Cup in 2010, the year Mr Putini was dismissed. Yet Mr Putini, a vulnerable party, is yet to vindicate his constitutional right 15 years later. The Labour Court cannot be faulted for exercising its discretion in a manner that promotes the expeditious resolution of labour disputes in terms of the LRA. The following cautionary remarks by the Constitutional Court in *Booi v Amathole District Municipality and Others*⁷ drive this point home:

[50] ...Labour litigation, as envisaged by the LRA, is distinct from any other civil litigation. This is made abundantly clear in the Preamble to the LRA, and through the specialised system and institutions created by that Act. It has also been affirmed by this Court recently. It follows that labour disputes must not be perceived as ordinary civil disputes by the courts that adjudicate them. Our law is clear: labour dispute resolution must be expedient, simple, accessible and cost-effective. It is with this in mind that the LRA carves out unique litigious pathways for disputes that arise pertaining to employment relationships. ...

[51] ... the intention behind this choice was to prevent labour dispute-resolution procedures from becoming costly and time-consuming and, thereby, inadvertently favouring the party that wields greater resources and power. It was a pragmatic decision that serves the ends of justice and protects the rights enshrined in s 23 of the Constitution. ...'

[17] The second issue pertains to the Labour Court's order which granted a relief that is beyond what is provided for in the arbitration award. I do not have to say much on this point as Mr Putini concedes that the ancillary relief was erroneously granted by the Labour Court after he had unequivocally abandoned it. Thus, the parties agree that this part of the order stands to be set aside.

⁷ [2021] ZACC 36; (2022) 43 ILJ 91 (CC) at paras 50 - 51.

Conclusion

[18] The Labour Court exercised its discretion judicially in making the arbitration award an order of the court in terms of section 158(1)(c). Accordingly, the appeal falls to be partially upheld.

Costs

[19] In my view, the requirements of the law and fairness justify that SACCAWU be ordered to pay the costs of this appeal. Its conduct deserves censure as labour litigation is not a swindling game. Mr Putini's 15 years of waiting means nothing to SACCAWU, hence this meritless appeal. To the extent that the parties are *ad idem* that paragraphs 2 and 3 of the Labour Court's order were erroneously granted, a variation order could have been sought without saddling this Court with this appeal.

[20] The following order is made:

Order

1. The appeal is partially upheld and paragraphs 2 and 3 of the Labour Court's order are set aside and substituted with an order dismissing the relief sought therein.
2. SACCAWU shall pay the costs of the appeal.

Nkutha-Nkontwana JA

Van Niekerk JA *et Mooki AJA* **concur.**

Appearances:

For the appellant: Adv Riaz Itzkin

Instructed by: Dockrat Inc. Attorneys

For the respondent: Mr Bongani Mgaga of Garlicke & Bousfield Attorneys

LABOUR APPEAL COURT