



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR2499/12

In the matter between:

MALOSE KEITH TEFO

Applicant

and

THABO SEKHABISA N.O.

First Respondent

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

Second Respondent

CITY OF TSHWANE

Third Respondent

Heard: 4 July 2014

Delivered: 12 August 2014

Summary: Review application without prospects of success - no point in granting condonation - application for condonation for late filing of review application dismissed with costs

JUDGMENT

BARNES AJ

- [1] This is an opposed application to review and set aside an arbitration award handed down by the First Respondent under the auspices of the Second Respondent on 14 May 2012. The review application is accompanied by an opposed application for condonation for the late filing thereof.
- [2] The Applicant, Mr Keith Malose, was employed by the Third Respondent as a constable in the Metropolitan Police Service, Tshwane. The Applicant was employed on a fixed term contract which was renewed on three occasions over the period from June 2006 to March 2011. When the Applicant's contract was not renewed upon its expiry on 31 March 2011, the Applicant referred a dispute to the Second Respondent contending that the Third Respondent's failure to renew his contract constituted a dismissal in terms of section 186(1)(b) of the Labour Relations Act 66 of 1995 and that such dismissal was substantively and procedurally unfair.
- [3] The Applicant's fixed term contract, and the subsequent addenda thereto, contained the following clause:
- “any extension of the initial contract must not create an expectation that such an extension will lead to permanent employment or further extensions.”
- [4] The Applicant confirmed in the arbitration that he was aware of this clause and understood its meaning. The Applicant did not claim that he had received any promise or assurance from the Third Respondent,

whether express or implied, to the effect that his contract would be renewed after 31 March 2011. The Applicant's evidence in the arbitration was to the effect that he hoped that he would be employed on a permanent basis by the Third Respondent.

[5] At the end of the arbitration the First Respondent concluded as follows:

"I conclude that there was no implied or express assurance that was given to the effect that the applicants' fixed term contracts would be renewed on same or similar terms subsequent to 31 March 2011. The fact that the applicants' contracts were renewed on previous occasions did not in any way create an expectation that their fixed term contracts would be renewed on the same or similar terms after 31 March 2011. The applicants were aware that in terms of their fixed term contracts there was a disclaimer that no expectations were created that their contracts would be renewed."

[6] The Applicant seeks to review the arbitration award on the ground that it is not justifiable in relation to the reasons given for it and on the grounds that the First Respondent failed to apply his mind to the evidence and misunderstood the evidence before him. These grounds of review are not substantiated in the Applicant's review application.

[7] The review application was instituted late and the first question which arises is accordingly whether condonation ought to be granted.

[8] The First Respondent's arbitration award is dated 14 May 2012 and there is evidence that it was faxed to both parties on 29 May 2012. The Applicant contends however that he only received the arbitration award on 17 July 2012. The review application was then launched on 23 November 2011, over four months later. The Applicant's explanation for why the arbitration award only came to his attention on 17 July 2012 and why it then took a further four months to launch the review application is not entirely satisfactory. It is however not necessary to consider the

Applicant's explanation in any detail because I am of the view that the Applicant's review application has no prospects of success.

[9] The Applicant failed to establish that he had a reasonable expectation that his fixed term contract would be renewed and the First Respondent cannot be faulted for finding that there was no dismissal. The grounds of review raised by the Applicant have no merit. Counsel for the Applicant conceded in argument that the Applicant's review application has no real prospects of success and that being the case, there would be no point in granting condonation.

[10] I accordingly make the following order:

- (a) The Applicant's application for condonation for the late filing of its review application is dismissed.
- (b) The Applicant is to pay the Third Respondent's costs.

BARNES AJ

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv L Masako

Instructed by: Johan Gouws Attorneys

For the Third Respondent:

Instructed by: Gildenhuis Malatji Attorneys