IN THE HIGH COURT OF SWAZILAND

JUDGMENT

HELD AT MBABANE **Case No. 1433/18**

In the matter between:

Kobe Ramokgadi Advanced Learning

Academy **Applicant**

And

The Presiding Commissioner at CMAC Mbabane **1st Respondent**

Mduduzi Khumalo **2nd Respondent**

Felix Vilakati **3rd Respondent**

Concilliation Mediation & Arbitration Commission **4th Respondent**

Neutral Citation: **Kobe Ramokgadi Advanced Learning Academy v. The Presiding Commissioner at CMAC Mbabane & Others (1433/18) [2018] SZHC 33 (14 December 2018).**

Coram: **J.S Magagula J**

Date Heard: **14 December 2018**

Date delivered: **14 December 2018**

Summary: ***Application for review of arbitration award made by CMAC- Review application filed outside the period prescribed by Section 85 (4) (b) of the industrial Relation Act, 2000 – whether court has authority to condone such non – compliance.***

[1] In this application the applicant sought an order in the following terms:

> ***" 1. Condoning the Applicant's late filling of the Application for review.***
>
> ***2. Reviewing setting aside and correcting the 1ST Respondent's award dated the 20th June 2018 for CMAC Ref SWMB 024/18; replacing it with the following:***
>
> ***3. The application under CMAC Ref: 024/18 between MDUDUZI KHUMALO & ANOTHER and KOBE RAMOKGADI ADVANCED LEARNING ACADEMY is hereby dismissed.***

4. Directing the 4th Respondent to prepare and file the record of proceedings under CMAC REF NO: 024/18

5. Costs to be paid by the Respondent if the matter is opposed .

6. Further and/or alternative relief."

[2] I heard arguments on the application on the 14th December 2018 and issued on ex-tempore order dismissing it. I have now been requested to give reasons for my judgment and I proceed to do so hereunder.

[3] In paragraph 4 of their opposing affidavit the 2nd and 3rd respondents raised what appeared to me to be valid points of law. The points of law raised by the said respondents are four (4) in number. However, having upheld the first two (2) I did not find it necessary to deal with the rest of the points. I accordingly dismissed the application with costs.

[4] The first two points raised by the said respondents are as follows:

"4. 1 The Applicant's application is grossly defective improper and unprocedural in that it was filed after the mandatory 21 days stipulated by the Legislature had lapsed. Accordingly the applicant's application has prescribed.

4.2 The stipulated statutory period of 21 days within which a review application against an award must be instituted cannot by law be overlooked or condoned by the above Hounourable cour. The Hounorable court is obligated to apply the law as is and as passed by Parliament."

[5] In their heads of argument the respondent referred the court to section 85 (4) of the Industrial Relations Amendment Act, 2005 which provides:

" If the matter is referred to arbitration –

(a) the arbitrator shall determine the dispute within thirty (30) days of the end of the hearin;g and

(b) a party who is aggrieved by a determination made by an arbitrator in terms of paragraph (a) may apply within 21 days after the making of such determination to the High Court for review."

[6] In paragraph 18 of its founding affidavit the applicant states that it received the award on the 27th June 2018. It is evident ***ex-facie*** the notice of motion that the present application for review was launched on the 10th September 2018, way beyond the 21 days stipulated by law.

There is therefore no doubt in my mind that the application has prescribed.

[7] The applicant further submitted that this court has authority to condone its non- compliance with the provisions of the law. I must say that I reject the contention straight away. For this court to extend time limits prescribed by the Legislature would be totally fully. The court would be creating its own law and ignoring that which was promulgated by the law giver. This would make nonsense of the whole exercise of prescribing any periods by Parliament for the performing of any act.

[8] Having said that I am of course mindful that there are instances where Parliament in making a law provides for condonation by the courts of non-compliance therewith. However unless Parliament has specifically granted

such authority to the courts to condone non-compliance with certain provisions of a legislative enactment, the courts have no authority to grant such condonation.

[9] The piece of legislation referred to in ***casu*** makes no provisions for condonation by the courts of failure to comply with it. This court accordingly has no authority to condone failure to comply with the statutory period of 21 days in lodging an application for review of an arbitral award.

[10] For the foregoing reasons it was my determination that the application ought to fail on these two grounds and I accordingly ordered as I still do that:

(i) The application be and is hereby dismissed;

(ii) Applicant is to bear the costs of the application.

J.S MAGAGULA J

For the Applicant: **M. Ndlangamandla**

For the 2nd & 3rd Respondents: **B.S Dlamini**