CONSTITUTIONAL COURT OF SOUTH AFRICA

Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others

CCT 228/14

Date of hearing: 18 August 2015

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Tuesday 18 August 2015 at 10h00 the Constitutional Court will hear an application for leave to appeal concerning an alleged undue delay in prosecuting the review of an arbitration award.

In 2011 the applicant, Toyota SA Motors (Pty) Ltd (Toyota), dismissed one of its employees, Mr Makhotla, for being absent from work. Mr Makhotla tendered his resignation letter shortly before a disciplinary review resulting in his dismissal. He referred the dispute regarding his dismissal to the Commission for Conciliation, Mediation and Arbitration (CCMA) for arbitration. The Commissioner ordered that Mr Makhotla be reinstated and paid six months' lost wages. Toyota launched an application for review of the award in the Labour Court in 2011. In 2013, Mr Makhotla and the Retail and Allied Workers Union successfully applied for the dismissal of the review application because of the prolonged delay in prosecuting the review.

The Labour Court dismissed Toyota's application for review of the CCMA arbitration award on the grounds of undue delay in prosecuting the review. The Court then made the arbitration award an order of Court and later dismissed Toyota's application for leave to appeal to the Labour Appeal Court. The Labour Appeal Court also refused Toyota's application for leave to appeal.

Before the Constitutional Court, Toyota seeks leave to appeal against the decision of the Labour Court. It contends that the Labour Court erred in dismissing the appeal based on considerations of undue delay. Toyota submits that due to the difficulty in re-constructing

the missing record from the arbitration proceedings, it was unreasonable to expect Toyota to prosecute the review without delay. Toyota also argues that because Mr Makhotla resigned before his dismissal, the award to reinstate him cannot stand.

The respondents contend that Toyota failed to give an adequate explanation for the delay in prosecution, that the Commissioner's decision was reasonable and that the Labour Court correctly dismissed the review application.