

POPCRU EST 1989
POLICE AND PRISONS CIVIL RIGHTS UNION

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To : All Provincial Secretaries

Enquiries : Mr. Ramafalo

Our Ref : L04/6/1/07/2015

Att : Provincial Secretaries

Date : October 15TH, 2015

From : Legal Department

Subject : LABOUR APPEAL COURT OUTCOME: SACOSWU//POPCRU

1. The above matter refers.
2. Kindly be advised that judgment was delivered yesterday in the application for leave to appeal brought out by SACOSWU.
3. The contention herein was whether SACOSWU is entitled to organisational rights and the validity of a related collective agreement. On the 5th September 2013, the court set aside the award and substituted the award with a determination that SACOSWU was not entitled for organisational rights and that the collective agreement concluded was invalid.
4. SACOSWU allegedly filed an application for leave to appeal against the outcome of the review application more than 2 years ago which the judge says it was not brought to his knowledge.
5. The judge indicated that SACOSWU has not acted in the manner a diligent litigant is expected to act where it comes to its application for leave to appeal. To remain supine for two years without even trying to explain what was done to prosecute the application for leave to appeal is inexcusable. The failure by SACOSWU to diligently prosecute its application could have the effect that the application must fail.
6. The judge indicated that in considering whether to dismiss an application for leave to appeal he looked at the length of the delay, any explanation for the delay, what steps have been taken to mitigate the delay or pursue the matter as well as consideration of justice and prejudice.

7. Under the circumstances, SACOSWU offered no explanation for the delay. He also found no indication of any steps taken to try and have its application for leave to appeal decided. He is convinced that had he not taken any action to deal with the application for leave to appeal, once he was fortuitously alerted to its existence, SACOSWU would still have done nothing with regard to its prosecution. He considers this to be untenable and an important factor in deciding whether to dismiss the application for leave to appeal for non-prosecution.
8. The judge says that the delay for some two years is grossly excessive and unpalatable.
9. The judge finally indicated that he has little hesitation in concluding that there has been an inordinate delay by SACOSWU in prosecuting its application for leave to appeal. The delay is unjustified and remains unexplained and SACOSWU has taken no positive steps to ensure finalisation of the application for leave to appeal and such conduct has led to an injustice and prejudice to POPCRU and in the end the application for leave to appeal has now become an abuse of process.
10. It is therefore found that SACOSWU's application for leave to appeal is dismissed.
11. We trust the above is in order and kindly circulate the judgment attached to the members at large.

Regards,



NKOSINATHI THELEDI
General Secretary