

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH**

Case No.: **2902/2018**

In the matter between:

MARLENE VIVIERS

Applicant

and

**MINISTER OF LABOUR,
DEPARTMENT OF LABOUR**

First Respondent

**DIRECTOR-GENERAL,
DEPARTMENT OF LABOUR**

Second Respondent

JUDGMENT (Rescission of Order dated 22 October 2019)

NTSEPE AJ:

1. This matter came before me on 22 October 2019 as an unopposed motion wherein Ms I Bands appeared for the applicant and moved for an order in terms of the Applicant's Supplementary Notice of Motion dated 25 April 2019.
2. I was, however, not satisfied with some aspects of the prayers sought in the said Notice of Motion whereafter the matter stood down for Ms Bands to prepare a draft order dealing with the Court's concerns.

3. A Draft Order was prepared on behalf of the Applicant which was thereafter made an order of Court in the absence of the Respondents (“the Order”).
4. It later appeared to the Court that there were omissions and/or issues that may have required the variation of the Order. Ms Bands was requested to approach the Court in Chambers. On or about 5 November 2019 Counsel appeared in Chambers and it was brought to her attention that the Order does not stipulate a date on which the respondents are to appear. Ms Bands was required to prepare a further draft order and to confirm whether the individuals named in the Order were indeed the incumbent Minister and Director General. Counsel confirmed that the persons named in the order were the correct officials, however; whilst I was considering the further draft order (which was emailed to this Court’s Registrar on or about 08 November 2019) it appeared to me that there remain issues with the Order and/or that the Order was erroneously granted:

- 4.1 The applicant seeks an order that the respondents appear and/or render a satisfactory explanation for failing to comply with two previous Court Orders granted by this Court; failing which the respondents are to be held in Contempt of Court. However, the supplementary affidavit filed in support of this application does not identify/name the individuals against whom the Contempt of Court relief is or will be sought. In the Supplementary Notice of Motion, the respondents are identified

as Nelisiwe Mildred Oliphant and Thobila Lamati respectively. As it turns out, the Minister of Labour at the date of the order, *inter alia*; 22 October 2019, was/is Thulas Nxesi and not the Nelisiwe Mildred Oliphant referred to and against who the order was granted; and

4.2 Furthermore, the Order directs the respondents to appear before Court however, the date on which the respondents are required to appear is not stated therein.

5. At the time and date on which the order was granted, the Court was not aware of the omissions set out above and had the Court been aware of these omissions it would not have granted the Order.
6. In the circumstances, the Order is *mero muto* rescinded in terms of Uniform Rule 42 (1) (a) for reason that same was erroneously granted.
7. The Applicant is directed to serve a copy of this judgment to the Office of the State Attorney, 29 Western Road, Central, Port Elizabeth for the attention of the designated Assistant State Attorney and or/the Acting State Attorney within three (3) calendar days of this order.
8. This application is removed from the roll with no order as to costs.

Counsel for the Applicant:

Adv I Bands, instructed by Randell &
Associates Port Elizabeth

Date Heard:

22 October 2019

Date Delivered:

12 November 2019