

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN

Case No. JA28/2000

In the matter between:

PAPER PRINTING WOOD & ALLIED WORKERS UNION First Appellants
JOSEPHINE SHAKANGA & OTHERS 2nd and Further
Appellants

And

SEBBA T/A REPUBLIC BRUSHWARE -
NEWLANDS WHOLESALE
Respondent

JUDGMENT DELIVERED ON 19 APRIL 2001

DAVIS AJA

Introduction.

[1] This is an appeal against the dismissal by the Industrial Court of an application in terms of Rule 30 of the Rules of the Industrial Court in which appellants sought quantification of the amount payable by respondent to the second and further appellants in terms of an order of the Industrial Court dated 7 October 1994 ('the order').

[2] The order was granted after default judgment had been entered against respondent. Although the employees reported for work in accordance with the order, respondent refused to allow them to resume work. On 21 July 1995 respondent applied to the Industrial Court for the rescission of the default judgment which application was dismissed on 6 October 1995. On 11 November 1995 respondent appealed to the Labour Appeal Court against the dismissal of its rescission appeal, which appeal was dismissed on 30 October 1996 with the respondent being ordered to pay costs on an attorney and client scale.

[3] Respondent finally allowed the employees to resume work on 18 November 1996 after the dismissal of its appeal to the Labour Appeal Court. The parties failed to reach agreement on compensation owed by respondent to the employees, apparently because of differing interpretations of the order. Consequently, on 26 November 1997 appellants applied in terms of Rule 30 of the Rules of the Industrial Court for an order clarifying the order by quantifying the compensation payable by respondent to employees granted in terms of the order.

[4] Respondent opposed the application both on the merits and in terms

of a point raised in limine which disputed the relief sought on the grounds that respondent had been incorrectly cited. In response to this point, an application was brought by appellants to amend the citation in terms of Rule 15(1).

[5] The presiding officer, Mr Shear, found that the Industrial Court was not empowered to make a ruling in terms of Rule 30 which went beyond the terms of the order. As the order did not require clarification nor did the dispute relate to an omission or error on the part of the Court, Rule 30(1) was inapplicable to the dispute. The Court went on to find in favour of respondent in respect of the objection in limine in that as the lis had come to an end upon the judgment of the Labour Appeal Court, the Court was functus officio to grant the relief sought in terms of Rule 15(1), namely an order amending the citation of respondent.

[6] Appellants now appeal both against the dismissal of the application in terms of Rule 15(1) and the application in terms of Rule 30.

The application in respect of the incorrect citation.

[7] In its answering affidavit in response to appellant's notice in terms of Rule 30, Mr Sebba on behalf of respondent stated, "Although respondent was cited as Sebba Group trading as Republic Brushware - Newlands Wholesale, I have brought it to the attention of the applicants that the true and proper entity of the respondent is Granhotra (Pty) Limited t/a Republic Brushware. This is apparent for instance in the application for rescission referred to paragraph 5.1 of the replying affidavit of attorney Christopher Orr".

[8] In his replying affidavit appellant's attorney, Mr Orr, admitted that the respondent was incorrectly cited and consequently he made an application in terms of Rule 15(1) to correctly cite the respondent as Granhotra (Pty) Limited t/a Republic Brushware.

[9] Rule 15(1) provides as follows:

"If in any proceedings it appears that any party in the proceedings had been incorrectly or defectively cited, the court may, unless precluded by the Act from doing so, on application, correct the error or defect, or order the substitution of a party and, if the matter relates to the function of the Court under section 17(11)(a),(bA), or (f) of the Act, make such order as to costs as it may deem fit."

[10] Mr Shear found that, as the wording of Rule 15 made clear that an application may only be brought during the course of the proceedings, the application could not be successfully brought in the present dispute because it had been brought after the proceedings had been terminated.

[11] A tribunal is only functus officio once it has given a decision in respect of the matter to which it relates. See, for example, *Thompson t/a Maharaj and Sons v Chief Constable, Durban* 1965(4) SA 663(D)(CLD) at 668 D. In the present case the Industrial Court could not have been functus officio until such time as it disposed of the Rule 30 application. Accordingly it was duly empowered in terms of Rule 15(1) to grant the amendment of a citation. In any event it was common cause that the original citation of

respondent was incorrect. Furthermore, it could not be said that the lis had come to an end upon the judgment of the Labour Appeal Court and that "therefore, this Court is functus officio to grant any relief sought under Rule 15(1)". The dispute continued, both at the Industrial Court in respect of the Rule 30(1) application and on appeal to this Court in respect of the same matter. For these reasons I find that the Industrial Court erred in not exercising its power in terms of Rule 15(1) to grant the necessary amendment.

Clarification of the Order.

[12] Rule 30(1) provides as follows:

"A party to an award made by a Court in terms of section 45 or 46 may request the Court to correct an omission or error or clarify any provision of such award by delivery of a notice to the Registrar or parties upon which such award is binding and the Industrial Court having jurisdiction".

[13] As appellant had launched an application in terms of this Rule, the question which arises for determination is whether there was an omission, an error or an ambiguity which required clarification of the order.

[14] The relevant paragraph of the order reads as follows:

"The Applicants No's. 2 - 16 included on the said Schedule are hereby reinstated in the employ of the Respondent on terms and conditions no worse than those prevailing on 14 April 1993. The reinstatement order is made retrospective to 8 April 1994 (6 months). This reinstatement order is subject to the individual Applicants on the list reporting for work time on Tuesday 11 October 1994, failing which this portion of the order will fall away in respect of anyone who does not report for work."

[15] Mr Kennedy, who appeared on behalf of appellants, conceded that if there had been no further appeal after the order was granted on 7 October 1994, there would have been no difficulty with the order in that the wording per se was clear. Thus, the dispute did not turn on ambiguous wording. The presiding officer, Mr Shear, summarised the nature of the dispute succinctly as follows: "In effect, the applicants seek an order where they are entitled to receive the money payable in respect of the Court order from the date of the Order, until the matter is finally disposed of by the Labour Appeal Court, in November 1996".

[16] In essence appellants sought to obtain a supplementary order quantifying the amount of money which had to be paid by respondent in terms of the order. This second order was sought because quantification of moneys to be paid by respondent was required as a result of the uncertainty created by the order having been suspended pursuant to an appeal and the matter having only been finally disposed of in November 1996 when the Labour Appeal Court delivered judgment.

[17] For this reason, the application in terms of Rule 30 had little to do with an inherent ambiguity or uncertainty of the order but rather with the legal effect upon an order of an appeal which was subsequently dismissed. It cannot be said that the application brought by appellants had

anything to do with the kind of ambiguity or omission in an order which would thus fall within the scope of Rule 30.

[18] Mr Kennedy directed his argument to the question of the entitlement of appellants as a result of the matter having been finally determined by the Labour Appeal Court in November 1996, that is more than two years after the granting of the order. He submitted that this Court should not apply a formalistic interpretation of the Rules but should engage with the clear substance of the matter, namely the effect on the rights of appellants caused by respondents' prosecution of an appeal and the ultimate dismissal of that appeal by the Labour Appeal Court. The difficulty with this submission is that it was never raised before the Industrial Court nor in the notice of appeal to this Court. The record of this case reflects that this issue was never canvassed. The notice of appeal sets out the essential nature of the appeal as being that the Industrial Court had erred in finding that the relief sought in the application did not fall within the ambit of Rule 30. I should add that nowhere in appellant's heads of argument was any argument directed to this argument nor was any authority cited in support of appellant's interpretation of the effect of a judgment against which an appeal has been lodged and in which the appeal is ultimately dismissed.

[19] For these reasons I find that the appeal in respect of the Industrial Court's decision as to the application of Rule 30(1) should be dismissed. Given that each party has been successful in respect of one aspect of the appeal, each party is to pay its own cost.

DAVIS AJA

I agree
ZONDO JP

I agree
DU PLESSIS AJA