



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

CASE NO: JR 958/07

In the matter between:

SACCAWU OBO SELETELE J

APPLICANT

and

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

FIRST RESPONDENT

COMMISSIONER BONGE MASOTE N.O.

Second Respondent

SHOPRITE CHECKERS (PTY) LTD

Third Respondent

Heard: 28 October 2011

Delivered: 09 December 2011

judgment

BHOOLA J

Introduction

[1] This is an application for rescission of my judgment of 11 June 2010 in which I dismissed the applicant's application for review with no order as to costs.

Background facts

[2] The applicant was dismissed by the third respondent on 7 July 2006. He referred a dispute arising from his unfair dismissal to conciliation and it then proceeded to arbitration before the second respondent on 7 February 2007. On 19 February 2007 the arbitrator delivered an award dismissing the applicant's claim. Thereafter on or about 23 April 2007 the applicant served and filed an application for review of the award. Almost two years later, on or about 13 March 2009, the applicant served and filed a supplementary affidavit. It then filed its notice in terms of Rule 7A(6) on the respondents on 6 April 2009. The third respondent served its answering affidavit on the applicant's attorneys on or about 30 April 2009. The applicant filed a replying affidavit on 19 June 2009, a period of approximately 40 days late and also filed a condonation application. The parties were directed to file heads of argument, and in compliance the third respondent filed heads of argument on or about 8 December 2009. The applicant did not file its heads of argument.

[3] The matter came before me on 11 June 2010, and the applicant was not present in court when the matter was called. The third respondent's counsel, Ms Lapham made its submissions and I dismissed the review application.

[4] The applicant brought an application for rescission of this judgment which was served on the third respondent on 19 July 2010. The matter came before Judge AJ in December 2010 when it was postponed and the applicant ordered to pay costs *de bonis propriis*.

[5] On the date allocated for hearing the In considering the merits of the rescission application, Mr Seletele appeared in person and indicated he wanted to proceed as his union and legal representatives had let him down. I have had regard to the pleadings as well as oral submissions and heads of argument.

Merits

[6] Rule 16A (1)(a)(i) provides that this court may of its own motion or on application rescind or vary any order or judgment made erroneously. Rule 16A(1)(a)(ii) provides for a party to make application for rescission of any order granted in its absence. The applicant is required (see *inter alia* *Edgars Consolidated Stores Ltd v Dinat & others* (2006) 27 ILJ 2356 (LC)) to show that good cause exists for the rescission and that he has a *bona fide* defence on the merits. In the present matter the applicant would have to persuade this court that he has prospects of success in the review.

[7] In deciding whether to rescind my judgment of 11 June 2010 I am required to determine whether there was good cause for the failure to appear when the matter was set down. The applicant was previously appeared at the time to be represented by its attorneys of record, Messrs Segale Attorneys, who had filed a notice of appointment on 7 April 2009. They withdrew on 4 February 2010 and were at some point replaced by Messrs De Villers Attorneys. The latter have never presented themselves in court. The applicant is vague on whether he was represented at the time or not. The applicant does not indicate who informed him on the day that the file had gone missing. In any event it later transpired that this was not the case. Whether the file is missing or not it is his obligation as *dominus litis* to appear in court when his matter is called. The applicant then stated that he had not received the notice to appear in court on 11 June 2010. In regard to the prospects of success on review the video footage moreover of the incident for which he was charged and dismissed indicates that he was guilty of the assault. When he made submissions before me the applicant indicated that it was not him on the video and this was the reason why he sought to review the arbitration award. In his pleadings he states that the video exonerates him. In addition, he states that the chairperson of the disciplinary enquiry was biased. There appears to be no indication of this on the record.

[8] The third respondent did not persist in seeking costs given that the applicant is no longer represented.

[9] Therefore, I make the following order :

[10] The application is dismissed with no order as to costs.

U BHOOLA

Judge

APPEARANCES

APPLICANT: In person

THIRD

RESPONDENT: K Lapham

Instructed by Perrot Van Niekerk Woodhouse Matyolo Inc.