



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

**CASE NO: JS 431/12**

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| (1) | <u>REPORTABLE: YES/NO</u>                            |
| (2) | <u>OF INTEREST TO OTHER JUDGES:</u><br><u>YES/NO</u> |
| (3) | <u>REVISED.</u>                                      |

In the matter between -

**MMUSI MASEMOLA**

**Applicant**

and

**CGM RESTAURANT CC**

**Respondent**

**Date of judgment: 02 May 2013**

**Summary: Default judgment. Claim for unfair dismissal for operational reasons-Sec 189 of the Labour Relations Act.**

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**JUDGMENT**

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**MOLAHLEHI J**

- [1] This is an application for a default judgment arising from a claim of an alleged unfair dismissal. The dismissal was according to the applicant based on operational requirements.

- [2] The applicant was prior to his dismissal employed by the respondent. According to him the respondent dismissed him for operational reasons without following the provisions of section 189 (1) of the Labour Relations Act 66 of 1995. The dismissal was consequent to a letter addressed to the applicant dated 31 December 2011, in which the respondent informed the applicant that it will no longer trade and that it was relocating to some other place. According to the applicant the respondent has to date not relocated and continues operating.
- [3] The applicant contends in his affidavit in support of this application that the statement of claim in this matter was duly served on the respondent on 24 May 2012. He further contends that, despite proper service of the statement of claim, the respondent has failed or neglected to file its notice of intention to oppose this claim. The time for filing the notice of opposition to this claim expired on 7 June 2012.
- [4] The only version before this Court concerning the alleged unfair dismissal is that of the applicant. In the absence of the challenge to this version, there is no basis or reason to doubt its veracity. It follows that the respondent has failed to discharge its onus of showing that the dismissal was both procedurally and substantively fair.
- [5] In addition to being satisfied that the applicant has made out a case for a default judgment I am also satisfied that his dismissal was both procedurally and substantively unfair.

#### The order

- [6] In the premises, the following order is made:

1. The dismissal of the applicant is both procedurally and substantively and unfair
2. The respondent is ordered to compensate the applicant in the amount equivalent to 12 months remuneration calculated on the monthly remuneration which was R5 467, 03 per month.
3. The respondent is ordered to pay the applicant the amount of R19 134, 65 being an amount equivalent to 1(one) weeks' salary for each completed year of service.
4. The respondent is to pay interest at the prescribed rate of 15.5% a *tempore mora*.
5. The amounts referred to in this order shall be subject to tax and or other digital deductions.

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**E MOLAHLEHI**  
**JUDGE OF THE LABOUR**  
**COURT OF SOUTH AFRICA**

**Appearances:** Matter considered in Chambers