



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

CASE NO: P413/14

In the matter between:

EH WALTON PACKAGING (PTY) LTD

Applicant

and

ALAN MICHAEL CLARK

Respondent

Heard: 11 November 2014

Delivered: 11 November 2014

Summary: The Labour Court may invoke provisions of section 165 (a) of the LRA and rescind an order sought and granted without the application having been served on the respondent.

JUDGMENT

LALLIE J

- [1] On 11 November 2014 the applicant sought and was granted, on an urgent basis, the following order in the absence of the respondent:

- '1. The sale in Execution scheduled for 12 pm today, 11 November 2014 under the case number P 421/13 is hereby cancelled.
2. E H Walton Packaging (Pty) Ltd is declared to be under business rescue.
3. There is no order as to costs.'

- [2] On the same day I invoked the provisions of section 165 (a) of the Labour Relations Act 66 of 1995 ('the LRA') and rescinded the order. Section 165 (a) of the LRA enables the Labour Court, to rescind, of its own accord, an order erroneously sought and erroneously granted in the absence of any party affected by the order. In *McDonalds SA (Pty) Ltd v CCMA and others*¹ it was held that the purpose of section 165 was to provide an expeditious means of correcting an obviously wrong order. The court held as follows:

'The provisions of section 144 of the Act which apply to the CCMA, are repeated in section 165 of the Act with reference to the power of this Court to vary or rescind its orders. The provisions so enacted in sections 144 and 165 of the Act in turn correspond with the provisions of rule 42 of the Uniform Rules of the High Court.

In applying the provisions of rule 42, the High Court has held that the rule "is a procedural step designed to correct expeditiously an obviously wrong judgment or order" (see *Promedia Drukkers & Uitgewers (Edms) Bpk v Kaimowitz & others* 1996 (4) SA 411 (C) at 417C). Relief in terms of the rule will be granted on the basis that an order or judgment is erroneously granted if there was an irregularity in the proceedings; or if it was not legally competent for the court to

¹ [2003] 10 BLLR 1020 (LC) at page 1023

have made such an order; or if the court, at the time when the judgment or order was made, was unaware of facts which, if known to it, would have precluded the granting of the order such a, for example, where the application had not been served on the respondent (see *Promedial Drukkers & Uitgewers v Kaimowitz* (supra) at 417 G-I; *Brassey op cit* at A7:69; *Stander & another v Absa Bank* 1997 (4) SA 873 (E) at 883-884.’

- [3] At the time the order was granted, I was not aware that the application had not been served on the respondent. It is after the order had been granted that I realized that the applicant had not filed the service affidavit or any form of proof that it had served the application on the respondent. No submissions were made on behalf of the applicant confirming service of the application on the respondent. Had the applicant brought the omission to my attention I would not have granted the order. It is for this reason that I rescinded the order I granted on 11 November 2014.

Lallie J

Judge of the Labour Court of South Africa

Appearance

For the Applicant: Advocate Pask

Instructed by Vlok Attorneys

For the Respondent: No Appearance

LABOUR COURT