



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JS 625/13

In the matter between:

SATELLITE AND STEEL WORLD

Applicant

and

**GIDION MAROTHI MABOGWANA
AND OTHERS**

Respondents

Heard: 27 February 2015

Delivered: 31 July 2015

**Summary: Application for rescission of
judgment**

JUDGMENT

WHITCHER J

Introduction

- [1] This is an application in terms of Rule 16A and section 165 of the LRA to rescind the court order granted by this court on 14 November 2013 in terms of which it was ordered that the dismissal of the respondents for

operational reasons was substantively and procedurally unfair and that the applicant pay compensation to the respondents in the amount of R413 692.00, which order was granted in the applicant's absence.

- [2] The applicant submits that it was not in wilful default, has a reasonable explanation for not attending court on 14 November 2013 and has good prospects of success in the main case. The respondents oppose these submissions.
- [3] The applicant claims that on or about 17 June 2014 it became aware for the first time of the order of the court when the Sheriff attended its premises with a writ of execution. The writ was issued on the basis of the court order.
- [4] The applicant contends that the matter should not have proceeded in its absence because it had filed papers which clearly indicated that the matter was opposed and because it appears from the court file that the set down notice of the matter on 14 November 2013 was not served on it.
- [4] Regarding its contention that it ought to have been clear to the court that the matter was opposed, the applicant relied on the fact that on 1 November 2013 it had filed a notice of intention to oppose the respondent's statement of case. I note here that the respondent's statement of claim was served on 18 July 2013 and filed on 23 July 2013 and default judgment was applied for on 8 August 2013. So the notice to defend was filed 3 months after the statement of claim and the application for default judgment was filed.
- [5] The applicant contends that its filing of a response to the respondent's statement of claim further proves that it had always intended to oppose the respondents' claim. This response to the respondents' statement of claim was however only served and filed on 8 January 2014, namely 5 months after receipt of the respondents' statement of claim and after default judgment had already been granted to the respondents.

- [6] In essence that is the sum total of the applicant's claims regarding its contention that it has a reasonable explanation for its absence and was not in wilful default.
- [7] The applicant contended that it has good prospects of success in the main case. However, I do not see the need to consider this submission because in my view the applicant has failed to establish that the court ought to have considered the matter as an opposed one and have failed to provide a reasonable explanation for their failure to properly oppose the matter in time.
- [8] As noted above the respondents' served and filed their statement of case on 23 July 2013 and the matter was determined on 14 November 2013. By the 13 November 2013, almost 4 months after the filing of the statement of claim, all the applicant had filed was a notice of intention to oppose. As submitted by the respondents, a notice of intention to oppose is just a notice and is not a pleading or response to a statement of claim in terms of the Rules of the Labour Court. The matter was therefore not properly opposed. As such there was no need to send the applicant the notice of set down.
- [9] The applicant was forewarned that the matter would be heard in its absence should it fail to serve and file its response to the respondents' statement of claim. In their statement of claim the respondents warned the applicant that 'if a party intends to oppose the matter, a response must be served within 10 working days of the service of this statement in terms of rule 6(3) of the Rules of the Labour Court, *failing which the matter may be heard in that party's absence*'.
- [10] The applicant ought to have known that it ran the risk of having default judgment taken against it by excessively delaying filing a proper response to the statement of claim. It was represented at all times by legal experts, first Labournet and at the time of the filing of its notice of intention to oppose by attorneys. There is no explanation from any person from the applicant or their representatives as to why the proper pleadings were not filed in time and why the applicant did not take steps

to ascertain whether they were being duly processed. In fact the applicant's explanation for its actions is extremely vague.

- [11] The applicant has only itself to blame for its absence in that it failed to act timeously and to respond appropriately to the respondent's statement of claim.

Order

- [12] The application is dismissed with costs.

Whitcher J

Judge of the Labour Court of South Africa

APPEARANCES

FOR THE APPLICANT: Andrew Goldberg

Goldberg Attorneys

FOR THE RESPONDENT: A J Posthuma, Snyman Attorneys

LABOUR COURT