



IN THE LABOUR COURT OF SOUTH AFRICA

JOHANNESBURG

Not Reportable

CASE NO: JR 2461/07

In the matter between

LENTIKILE NATHANIEL MATHOBISA

Applicant

and

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

First Respondent

CINDY DICKENS N.O

Second Respondent

EDCON LTD t/a JET STORES

Third Respondent

Heard: 6 September 2016

Delivered: 4 July 2017

Summary: Judgment may not be granted in the absence of the third respondent when the applicant is unable to prove proper service of the notice in terms of Rule 7A (8)(b) on the third respondent.

JUDGMENT

LALLIE J

- [1] The applicant launched this application seeking an order reviewing and setting aside a ruling of the second respondent. The application is unopposed.
- [2] Before an order can be granted in the absence of the respondents the applicant has to prove proper service of its papers on the respondents. In the affidavit confirming service of the notice in terms of Rule 7A (8) (b) of the Rules for conduct of Proceedings in the Labour Court (the Labour Court Rules), the applicant's legal representative stated that he served the Rule 7A (8) (b) notice on the respondents by fax. Clause 14.1.5 of the Practice Manual of the Labour Court of South Africa (the Practice manual) provides as follows:
- '14.1.5 When a party serves any document by fax in terms of Rule 4, the deponent to any affidavit filed in terms of Rule 4 (2)(b) must, in addition to providing proof of the correct fax number and confirmation that the whole of the transmission was completed, state under oath that the party to whom the fax was addressed telephonically confirmed receipt of the whole of the fax transmission and the name of the person who confirmed receipt of transmission'.
- [3] The affidavit confirming service of the Rule 7A (8) (b) notice is defective in that it does not confirm that the third respondent in particular, received it. The significance of the service of the Rule 7A (8)(b) notice is that answering affidavits can only be filed after it has been filed and served on the respondents. As clause 14.1.5 of the Practice Manual has not been complied with, a decision cannot be properly reached to proceed with the hearing of the application in the absence of the third respondent on the basis that it is in wilful default. The review application is therefore not properly before Court for lack of proper service of the Rule 7A (8)(b) notice on the

respondents. The applicant needs to cure the defect if he wishes to pursue his review application.

[4] In the premises, the following order is made:

Order:

1. The matter is removed from the roll.

Z Lallie

Judge of the Labour Court of South Africa

Appearance

For the Applicant: Advocate Maharaj of the Justice Centre

LABOUR COURT