



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS836/14

In the matter between:

**ELECTPROPS 97 (PTY) LTD t/a MANHOUR
ROOTS BUTCHERY PROTEA GARDENS
Applicant**

**First Applicant
Second**

and

**UCIMESHAWU obo ROBERT
KHOSA AND 13 OTHERS
Respondents**

First to Further

In re:

**ICUMESHAWU obo ROBERT
KHOSA AND 13 OTHERS**

Applicants

and

**ROOTS BUTCHERY CC AND
ELECT PROPS (PTY) LTD / MANHOUR**

Respondent

Heard: 19 July 2018

Delivered: 27 September 2018

Summary: Application brought in terms of the provisions of Section 165(a) of the Labour Relations Act, No 66 of 1995 as amended, read with Rule 16A(1)(a)(i) of the Labour Court Rules granted by Steenkamp J, on 23 August 2016¹ Judgment granted erroneously and is rescinded and set aside.

JUDGMENT

SEDILE, AJ

Background Facts

- [1] The First Applicant, Manhour is in the business that is providing staff to a variety of clients. It may be termed a temporary employment service (TES) as envisaged in section 198 of the Labour Relations Act² (LRA).
- [2] One of Manhour's clients is the Second Applicant, Roots Butchery.
- [3] The Roots Butchery situated at Protea Gardens, Soweto, expressed an interest for Manhour to provide it with individuals that would render a service at its business.
- [4] An unprotected strike took place during December 2013 and all the employees that participated therein were dismissed for such participation and also for the misconduct perpetrated during the strike action.
- [5] A dispute was then referred by the union and employees to the Commission for Conciliation, Mediation and Arbitration (CCMA). Manhour attended the

¹ Wherein it is stated that the court may, in addition to other powers it may have, of its own motion or on application of any party affected, rescind or vary any order or judgment erroneously sought or erroneously granted in the absence of any party affected by it.

² Act 66 of 1995 as amended.

conciliation hearing. The matter remained unresolved and was then referred for arbitration which was set down for hearing on 21 May 2014 at the offices of the CCMA in Johannesburg.

- [6] Manhour was also present at the arbitration proceedings where the Commissioner issued a ruling indicating that the Labour Court has jurisdiction to entertain the claim.
- [7] It appears from the pleadings before Court that the union and employees filed their statement of claim on 26 September 2014, if regard is had to the court stamp appearing thereon. In this statement of claim it was averred that the matter wasn't resolved at conciliation and that a ruling was issued on 5 June 2014 by Commissioner Thee.
- [8] The First and Second Applicants never received the statement of claim as the address and telephone numbers entered thereon are those of Manhour and not the Second Applicant and no proof of service is contained in the court file pertaining to the service of the statement of claim.
- [9] The default judgment application was also not received by the Applicants as no proof thereof was filed.
- [10] According to the facsimile report, 26 pages were faxed to facsimile number 086 425 8210 containing the application for default judgment. This facsimile number is only used by Manhour when the main facsimile number 011 391 5676 is out of order whenever there are technical difficulties experienced by Telkom.
- [11] The Applicants were not aware of the default judgment application that was set down for hearing on 23 August 2016 as it appears from the facsimile transmission report of the Registrar of this office that an attempt to fax to set down notice to Manhour facsimile number 011 391 5676 was not successful.

Analysis

- [12] It is clear that when granting the order, the court, per Steenkamp, J was not aware of the true facts that existed at the time, which could have precluded the court from granting the default order if the court had been aware of those facts.
- [13] Certainly the facsimile transmission report is no more than *prima facie* proof that the transmission has been sent and thus it has been rebutted by evidence showing that the transmission was not received by the Applicants.
- [14] The court was unaware of the fact that the Applicant had the intention to oppose the relief sought by the Respondents.

Conclusion

- [15] The Applicants have made out a case for rescission of the judgment in that they never received any notification of the application from the Respondents and notice of set down from the Registrar's office. That the order was erroneously granted within the meaning of section 165(a) of the LRA read with Rule 16A(1)(a)(i).

- [16] In the premises, I make the following order:

Order

1. The judgment of Steenkamp J dated 23 August 2016 is rescinded and set aside.
2. There is no order as to costs

P. Sedile

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicants: Advocate WP Bekker

Instructed by: Nothagel Attorneys

For the respondents: No appearance

LABOUR COURT