



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR699/2021

In the matter between:

JOSEPH KEKGALEMILE LECOGO

Applicant

and

**GENERAL PUBLIC SERVICE SECTORAL
BARGAINING COUNCIL**

First Respondent

P J GREYLING N. O

Second Respondent

**DEPARTMENT OF LOCAL GOVERNMENT
AND HUMAN SETTLEMENTS: NORTH WEST**

Third Respondent

D MOKEKE

Fourth Respondent

Heard: 21 January 2025

Summary: variation application – third respondent was ordered to pay the applicant an amount equal to eight months remuneration calculated at the rate of his remuneration at the end of the month before 20 October 2022. Applicant not satisfied with the amount he received from his employer – applicant seeking variation and clarification in respect of ambiguous interpretation of

the order adopted by parties – courts decide real disputes between the parties and do not give gratuitous legal advice - application dismissed.

Delivered: This judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date for hand-down is deemed to be 27 January 2025.

JUDGMENT

PHAKEDI, AJ

Introduction

[1] The applicant approached this court seeking an order in the following terms:

1. That the late filing of this application be condoned in terms of Rule 42(1)¹ of the Labour Court Rules as amended.
2. That Order 32.3 of the judgment of the Honourable Court per Snider AJ delivered on 20 October 2022² be varied and clarified in terms of Rule 41 (1)(b) read with Rule 16A(1)(a)(ii)³ with regards ambiguity.

[2] The applicant filed a review application under the above-mentioned case number and the matter was considered and decided by Snider AJ on 20 October 2022. The applicant's claim of unfair labour practice was successful and the award was reviewed and set aside. His employer, the Third Respondent was then ordered to pay him an amount equal to eight months remuneration calculated at the rate of his remuneration at the end of the month before 20 October 2022. The third

¹ This subrule provides that *"the court may extend or abridge any period prescribed by these rules on application, and on good cause shown, unless the court is precluded from doing so by an Act"*.

² Paragraph 32.3 of the order reads *"the third respondent is ordered to pay the applicant, within 14 days of the date of this judgment, an amount equal to eight months remuneration calculated at the rate of his remuneration at the end of the month before the handing down of this judgment"*.

³ GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.

respondent implemented the court order on 28 November 2022 and paid the applicant his basic salary of R38 075.50 prior to deductions. The third respondent does not oppose this application.

[3] The applicant contends that the third respondent remunerated him on the wrong scale instead of R41 103.87 which includes incentives and allowances.

[4] The order was implemented in November 2022 and the applicant only brought this application two years later on 23 October 2024. No explanation has been provided for his failure to comply with the time periods prescribed in the Rules discussed hereunder.

Variation applications

[5] Applications for variation are governed by section 165 of the Labour Relations Act⁴ (LRA) which provides that the Labour Court, acting of its own accord or on the application of any affected party may vary or rescind a decision, judgment or order

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- ‘(a) erroneously sought or erroneously granted in the absence of any party affected by that judgment or order;
- (b) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or
- (c) granted as a result of a mistake common to the parties to the proceedings.’

[6] Rule 46 (1)(a) of the Labour Court Rules regulates rescission and variation applications and provides that the court may, in addition to any other powers it may have, of its own motion or on application of any party affected, rescind or vary any order or judgment:

- ‘(i) erroneously sought or erroneously granted in the absence of any party affected by it;

⁴ Act 66 of 1995, as amended.

- (ii) in which there is an ambiguity or a patent error or omission, but only to the extent of such ambiguity, error or omission;
- (iii) granted as the result of a mistake common to the parties.’

[7] Rule 46 (2) prescribes that any application for rescission or variation must be filed within 15 days of the applicant’s acquiring knowledge of the defect, order or judgment and the court may, on good cause shown, set aside the order or judgment on such terms as it deems fit.

[8] The primary ground relied upon in this application is that the dispute between the parties relates to their ambiguous interpretation of paragraph 32.3 of the order dated 20 October 2022. I am not convinced that section 165 read with Rule 46 finds application in the circumstances mentioned herein. The ambiguity mentioned in these prescripts does not include the parties’ ambiguous interpretation of the order.

Evaluation

[9] It is trite that the moment the final judgment is granted, the court’s authority and jurisdiction over the subject matter ceases. However, in labour matters, this is subject to specific exceptions outlined in section 165 of the LRA and Rule 46 of the Labour Court rules. Section 165(b) read with Rule 46 (1)(ii) provides that the court has an inherent power to vary a judgment containing an obvious error or omission only to the extent of that error or omission. In *First Consolidated Leasing Corporation Ltd v McMullin*,⁵ the court held that a “*patent error or omission meant*”.... “*A result of which the judgement or order granted does not reflect the intention of the judicial officer pronouncing it*”.

[10] In *Minister for Correctional Services and Another; In Re: Van Vuuren v Minister for Correctional Services and Others*⁶ the Constitutional Court considered Rule 42 of the Uniform Rules (which is identical to section 165 of the LRA) and held that:

⁵ 1975 (3) SA 606 (T) at 608.

⁶ 2011 (10) BCLR 1051 (CC) at para 8.

‘A court may clarify its order or judgment to give effect to its true intention which is to be ascertained from the language used without altering the sense and substance of the judgment if, on its proper interpretation, the meaning remains unclear. But once a court has pronounced a final judgment or order, it has, itself, no authority to correct, alter or supplement it. The rationale for this principle is delineated by Ngcobo J in *Zondi v MEC Traditional and Local Government Affairs* that:

“In the first place a Judge who has given a final order is *functus officio*. Once a Judge has fully exercised his or her jurisdiction, his or her authority over the subject matter ceases. The other equally important consideration is the public interest in bringing litigation to finality. The parties must be assured that once an order of Court has been made, it is final and they can arrange their affairs in accordance with that order.”

[11] In *First National Bank of South Africa Ltd v Jurgens and Others*,⁷ the court held that the error or the omission must be attributable to the court itself, and relief will only be accorded where the terms of the judgment do not reflect the true intention of the presiding judge. In this matter, it is not the applicant’s case that the ambiguity arises from the judgment itself but that both parties have adopted an ambiguous interpretation. In essence, what the applicant is seeking before this court is a gratuitous legal advice and the Labour Court is a creature of statute and can only do what is within its powers as envisaged in section 158 read with 165 of the LRA. The order dated 20 October is clear and unambiguous in respect of the obligations imposed on the third respondent.

[12] In *Radio Pretoria v Chairman, Independent Communications Authority of South Africa, and Another*⁸ the Supreme Court of Appeal held that:

‘Courts of appeal (including courts of first instance) often have to deal with congested court rolls. They do not give advice gratuitously. They decide real disputes and do not speculate or theorise... Furthermore, statutory

⁷ 1993 (1) SA 245 (W) at 246 E – G.

⁸ 2005 (1) SA 47 (SCA) at para 41.

enactments are to be applied to or interpreted against particular facts and disputes and not in isolation.'

[13] The last hurdle faced by the applicant in this matter is that he failed to take the court into confidence and provide an explanation as to why it took him two years to bring this application. In the absence of any condonation application explaining why he could not bring this application within the prescribed period of fifteen days from the date he became aware of the existence of the order, I am not satisfied that he has shown good cause that he is entitled to the order sought in his notice of motion.

[14] The application was unopposed as such the issue of costs does not arise.

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

Order

1. The application is dismissed.
2. There is no order as to costs.

G.C. Phakedi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: TJ Matsimela

Instructed by: Tau Matsimela Attorneys Inc.

For the Respondent: No appearance