



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR2105/24

In the matter between:

**KALAMAKI TRADING (PTY) LTD T/A
SOUL SOUVLAKI BEDFORDVIEW**

Applicant

and

**BARGAINING COUNCIL FOR THE RESTAURANT,
CATERING AND ALLIED TRADES**

First Respondent

PIETERSE, RG N.O.

Second Respondent

Heard: 18 March 2025

Delivered: 03 June 2025

JUDGMENT

ERASMUS, AJ

Introduction

[1] This matter concerns an application to compel the First and Second Respondents to comply with rule 37(2) of the Rules Regulating the Conduct of Proceedings of the Labour Court¹ (the Court rules) by, amongst others, dispatching the record of the proceedings under the auspices of the First Respondent to the registrar of this Court and to notify the parties that this has been done.

[2] The application is unopposed.

Background facts

[3] The applicant lodged an application to review and set aside an arbitration award issued by the Second Respondent under the auspices of the First Respondent. The review application was served on the First and Second Respondents on 20 November 2024.

[4] The review application called on the respondents to show cause why the decision/proceedings in question should not be reviewed or set aside and to provide the record of the proceedings and the reasons for the decision within 10 days of delivery of the application.

[5] The respondents did not provide the record and/or reasons.

[6] The applicant addressed a letter to the First Respondent, the Bargaining Council for the Restaurant, Catering and Allied Trades (BCRCAT), drawing their attention to the refusal and/or failure to comply with the Court's rules. The letter also noted with concern the delay being caused by the BCRCAT in prosecuting the review application.

[7] The letter furthermore called upon the BCRCAT to fully comply with their obligations in terms of the Court rules within 10 days from the letter, failing which an application would be lodged to compel them to comply. The BCRCAT was also

¹ Published 3 May 2024 in GG 50608. Effective 17 July 2024.

forewarned that the applicant will pursue a costs order against the BCRCAT in the event of non-compliance.

The legal framework

[8] Review applications by their very nature are urgent. The Court rules set out specific timeframes within which certain actions are to be taken and penalises an applicant if certain times frames are not met.

[9] Rule 37 deals with review applications and the relevant portions provides that:

- “(1) ...
- (2) The notice of motion must:
 - (a) call upon the person or body to show cause why the decision or proceedings should not be reviewed and corrected or set aside;
 - (b) call upon the person or body to dispatch to the registrar, within 10 days after receipt of the notice of motion, the complete record of the proceedings sought to be reviewed, and to notify the parties that this has been done; and
 - (c) ...
- (3) ... (6)
- (7) The person or body upon whom a notice of motion is served must comply timeously with the direction in the notice of motion in terms of subrule (2).
- (8) If the person or body fails to comply with subrule (7), or fails within the required period to apply for an extension of time to do so, any interested party may apply, on notice, for an order compelling compliance with the direction.”

Analysis

[10] The applicant complied with Rule 37(2) in that it called on the respondents in its notice of motion to comply with the relevant rules.

[11] The respondents have failed to comply with this Court’s rules as referred to above as at the date of hearing of this matter. The applicant is therefore entitled to the relief as referred to in Rule 37(8).

[12] The applicant also sought an amendment of a date in the notice of motion in the review application.

[13] Prayer 1 in the notice of motion in the review application refers to 31 July 2023 as being the date on which the award was received by the applicant. This is patently incorrect, as the award is dated 4 November 2024. The applicant moved for an amendment of the date to 13 November 2024. The respondents did not oppose such relief being sought and there is no reason not to grant such order.

Costs

[14] This brings us to the issue of costs.

[15] The respondent sought a costs order against the First Respondent on an attorney and own client scale of the High Court.

[16] It is noted with disconcertment that the respondents did not comply with the Court's rules by providing the record within the requisite 10-days or asking for an extension.

[17] To make matters worse, they also did not comply when a letter of demand was served on them wherein they were warned that a costs order would be pursued against them, should they remain in default.

[18] As if that it not enough, they continued to remain in default after the application to compel was served on them, which application asks for, and motivates for, a costs order on an attorney and own client scale.

[19] The non-compliance with the Court's rules undermines the integrity of the legal process. The respondents' disdain with which they treat this Court's rules, is a cause for concern and is completely unacceptable. The Court must address this to uphold the sanctity of its rules and ensure that future compliance is strictly adhered to. A costs order is therefore warranted.

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

Order

1. The first and second respondents are ordered to provide the record of the proceedings under case number 2427/24 to the Registrar of this Court in compliance with Rule 37(7) read with Rule 37(2) of this Court and to notify the parties that it has been done within 10 days of this order.
2. The applicant is granted leave to amend the date of receipt of the arbitration award in its notice of motion to 13 November 2024.
3. The first respondent is to pay the costs of this application on a party and party scale.

L. Erasmus

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: K Hlungwane of PS & Associates Attorneys