

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT CAPE TOWN)

CASE NO: C468/01

13-2-2002

In the matter between:

SIYAKHA CLEANING SERVICES CC

Applicant

and

G N NDLANGA

Respondent

J U D G M E N T

LANDMAN J:

1. Siyakha Cleaning Service CC applies to rescind an order granted by **Cheadle AJ** on 11 September 2001 making an order of the Commission for Conciliation, Mediation and Arbitration ("the CCMA")

an order of this Court. The application is opposed.

2. Siyhaka did not receive notice of the referral of the dispute for arbitration by the CCMA and consequently did not attend the hearing. Had Siyhaka attended the hearing it would have had, on the facts set out in the founding affidavit, a reasonable prospect of success. Siyhaka had earlier received notification of the conciliation process but only after it had transpired. The notice had been sent to Siyhaka's previous address. Siyhaka learnt of the arbitration award when payment of the amount stipulated in the award was demanded by Ms Ndlanga's attorneys. Siyhaka immediately attempted to have the award rescinded.
3. The application for rescission was lodged with the CCMA on 15 March 2001. A copy of that application, which was in fact a letter, was not served on the employee Ms Ndlanga. The application itself did not comply with the CCMA's rules. The CCMA was aware of these deficiencies, as appears from e-mail correspondence, but did not inform Siyhaka about them until 22 October; some 10 days before the rescission hearing was scheduled. Siyhaka received the

notice of application to make the award an order of this Court, however, the secretary who received it and who has since left the employment of Siyhaka, merely filed the papers away. This, of course, is not satisfactory but it does explain why Siyhaka did not apply to Court for a stay of the award pending the rescission application.

4. Siyhaka seeks to rescind the order of this Court in terms of Rule 16A(1)(a)(i) on the grounds that the order had been granted erroneously. I am of the opinion that the order was not granted erroneously as an application to the CCMA to rescind an award does not constitute *lis pendens*. Siyhaka was obliged to apply to Court to stay the execution of the award. Ms Ndlanga's attorneys had not received a copy of the application for rescission and therefore they were not at fault in not informing the Court about any possible rescission. They clearly could not do this as they were not aware of it. However, the order was granted in the absence of Siyhaka, who was not in wilful default, who has prospects of success and it would be in the interests of justice that the dispute be properly ventilated. I propose to rescind the order. Ms Ndlanga's opposition to the

application was not unreasonable, having regard to the manner in which Siyhaka dealt with the application for rescission and the way in which it dealt with the notice of motion.

5. In the result:
 1. The order of this Court dated 14 September 2001 is rescinded.
 2. The applicant in this application, Siyhaka Cleaning Services CC, is ordered to file its original application for rescission on the respondent in this application, Ms G N Ndlanga, together with an affidavit. This is to be done within 10 days. If this is not done Ms Ndlanga, the respondent in this matter, may re-enrol the application to make the award an order of Court.
 3. The applicant in this application, Siyhaka Cleaning Services CC, is ordered to pay Ms Ndlanga's costs of opposition.

Signed and dated at BRAAMFONTEIN this 26th day of February 2002.

AA Landman

Judge of the Labour Court of South Africa