

Sneller Verbatim/HVDM

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J125/01

2003-02-07

In the matter between

JOHANNES JACHIMUS HEYNEKE

Applicant

and

I C NISSAN

Respondent

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J U D G M E N T

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REVELAS J:

1. This was an opposed application for the rescission of a cost order granted by myself in the absence of the applicant. The cost order was granted against the applicant, Mr Heyneke. The costs, according to the respondent, would include the costs of an urgent application by the respondent to stay the execution of an order granted in terms of 158(1)(c) of the Labour Relations Act 66 of 1995 ("the Act") making an

arbitration award (in favour of the applicant) an order of court.

2. The applicant was not informed of the date of hearing of the recission application. The notice of set down was only sent to the respondent's attorneys. The respondent denies that this was so, but I have had sight of the notice of set down myself and no mention is made of the applicants.
3. The applicant further averred that he agreed with the respondent's attorney that he would not oppose the respondent's application for recission of the order granted in terms of section 158(1)(c), that costs would not be sought against the applicant.
4. This agreement is also in dispute. However, there is a letter which the respondent did not put before me, clearly written by the applicant to the respondent, wherein he states that he would not oppose the application for recission, provided that no cost order is made against him. According to the respondent it had sent the applicant a reply wherein it is set out in no uncertain terms that they do not agree to his proposal. This letter is not signed and it is sent to the applicant's home address, whereas all previous correspondence was sent to his office. The applicant contends that he did not receive the letter. In the

circumstances I believe the applicant. The probabilities indicate that he did not receive the letter.

5. It was further contended by the respondent that I granted the cost order against the applicant because the applicant brought the application in terms of section 158(1)(c) of the Act, knowing that there was a recission application pending at the Commission for Conciliation, Mediation and Arbitration regarding the seeking a recission of the award and that the applicant had not informed the court hereof. Not all the facts were before me and I would not have given a cost order against the applicant had all the facts been before me.
6. In the circumstances I rescind the order only in respect of the costs. The recission stands but the cost order is rescinded.

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E. Revelas