

IN THE LABOUR COURT OF SOUTH AFRICA
BRAAMFONTEIN

CASE NO: J347/03

In the matter between

NEWCONN INVESTMENTS (PROPRIETARY) LIMITED

t/a SANGIRO

APPLICANT

AND

MOSSAWU obo

MARY RANKO AND 220 OTHERS

RESPONDENTS

JUDGMENT

REVELAS J: In this matter an application was brought on an urgent basis by the applicant, Newconn Investments (Pty) Limited trading as Sangiro, against the Motor, Steel Security and Allied Workers Union (“MOSSAWU” or “the Union”) and 221 employees formally employed by the applicant.

The relief sought by the applicant is that the warrant of execution issued under case number J347/03 be set aside. The warrant was issued on 24 November 2004 in terms whereof I granted compensation to the employees during an application for default judgment. The application now requests that the judgment “be suspended” pending the finalisation of the applicant’s application for rescission of that judgment, which it intends to file by no later than 15 December 2004, which is in approximately twelve days’ time.

The applicants also seek costs against the first, second and third respondents (the third respondent being the attorneys of record, Mpila J Attorneys), jointly and severally, the one paying the other to be absolved, on a scale as between attorney and client and de bonis propriis.

The respondents served a copy of the statement of claim in default application the applicant’s attorneys of record. Previously the same attorneys had represented the applicant in an arbitration where the first and second respondents were involved. At that stage the applicant had provided the

address of its attorneys to the parties concerned. However in this dismissal dispute, there is no indication that the same attorneys would represent the applicant. The respondents, persisted in serving papers in the current matter at the address of the attorneys.

A list of the names of the employees involved in this matter was however served on the applicant itself (not the attorneys) without any other papers indicating the nature of dispute, or if there was to be one. That apparently only occurred two days ago. In such circumstances, I accept that it is reasonable that the applicant would not have ascertained, in such a short period, what the matter was about. The list was in any event received after judgment was granted.

According to the applicant, papers were never served on it and it was not obliged to permit its attorneys to accept service on its behalf *ad infinitum* of all the matters involving any of the respondents in the future. Therefore the service was not proper. It is a matter that could also be ascertained once the rescission application is properly heard.

What is of great concern to me in this matter was the respondent's contention that the warrant of execution was only issued as a means to prompt the applicants into settlement negotiations regarding the dismissal dispute between them. The warrant of execution is not in accordance with the judgment I gave. For instance, the warrant of execution makes provision for a claim of R8 852 422,17. This amount was arrived at by including provident payments into the equation, which have been calculated into compensation amounts and multiplied by ten years. Annexures A, B, C and pages thereafter, are attached in support thereof. These documents in which these calculations were made, were never before me when I heard the matter by default and gave a judgment therein. What was before me then, was a list of salaries which amounted to far less than the amount provided for in the warrant of execution.

I remember at the time of hearing the matter, I expressed my concern at the way the lists were compiled. The matter was then not opposed. I did have reservations about the manner in which the compensation was to be calculated for the employees.

Be that as it may, the writ of execution was totally unlawful. Tax costs are also provided for therein. One can only wonder about how the amount for taxed costs was arrived at. It is also an astronomical amount, being 8% on the aforesaid sum of approximately R8,9 million.

This writ of execution, including the costs, was signed by the attorneys of record, which are the third respondents in this matter. They are therefore party to this attempt to extract as much money from the applicant as possible, by unlawful means.

Accordingly I grant an order in terms of prayers 1,2,3,4 and 5 of the applicant's notice of motion.

E. REVELAS

Date of hearing: 3 December 2004

Date of judgment: 3 December 2004

For applicant: Gildenhuis van der Merwe Inc.

For the respondent: MOSSAWU