

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR235/02

2005-03-18

REPORTABLE

In the matter between

MMOLEDI, THABISO RALEBEKO

Applicant

and

MOTSEPE, HAZEL

1st Respondent

CCMA 2nd Respondent

CORMACK, GLEN A 3rd Respondent

EX TEMPORE J U D G M E N T

—
REVELAS, J: The applicant seeks an order to rescind a judgment handed down by *Pillemer, AJ* which was handed down on 22 July 2003. An order was made in the following terms:

- "1. The main review application is dismissed and the cross-review is upheld.**
- 2. The arbitrator's award is varied to read:**
 - (1) rescission application is dismissed with costs.**
 - (2) The applicant is to pay the costs of the review application."**

This rescission application before me is opposed. It is an application brought in terms of rule 16(a) of the Labour Court Rules. The matter has a very long history and the material facts which I believe are pertinent to this application are the following.

Ms Hazel Motsepe (Motsepe) was employed by the applicant (a medical practitioner) as a staff nurse during May 1997 and her services were terminated by him during August 1998, which is almost seven years ago. The alleged reason for her dismissal was that she misrepresented her qualifications to the applicant. Without going into the details of that offence, I must just mention

that there was also criminal proceedings brought against Motsepe and she was acquitted.

Motsepe then referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration ("The CCMA"). When conciliation failed the matter was arbitrated by Commissioner Zondi. The arbitration hearing became part heard when it was heard in February and subsequently finalised on 5 March 2001. The applicant did not appear on the latter date, and even though evidence was led by the applicant on the previous occasion. The arbitrator subsequently issued a default award on 7 March 2001, in which she found that the dismissal of Motsepe was both procedurally unsubstantively unfair and awarded the respondent compensation in an amount of R15 600,00. In April 2001 the applicant unsuccessfully applied to have the award of the arbitrator rescinded. The applicant then brought a review application to set aside Mr Cormack's (the second arbitrator) refusal to rescind the first arbitrator's award, which was made in favour of Motsepe. The respondent filed a cross- review due to commissioner Cormack's failure to deal with the issue of costs. Both parties filed heads of argument in respect of the review application and the matter was set down for hearing on 14 November 2002, 24 June 2003 and finally 22 July 2003.

On 22 July 2003 *Pillemer, J* noted that there was no appearance on behalf of the applicant. He then requested Mr Friedman who appeared on behalf of Motsepe, to make enquiries from the applicant's attorney's firm as to whether there would be any appearance and waited. It is also noted in the learned judge's judgment, that Mr Friedman was told by someone from the firm that there was no intention to brief anyone to appear.

In the founding affidavit of the applicant's former attorney, Mr Mbha, it is apparent that he could not attend court due to the fact that he attended to an interview with the Judicial Services Commission, which were held in Cape Town.

The attorney in question set out several explanations as to why he could not be in court. However, it is on record and that appears from a letter (page 22 of the record) that counsel Mr Mokoena was on brief to appear on behalf of the applicant and he was not available to come to court on 22 July 2003.

Courts do not hear matters when it is convenient for counsel. *Pillemer, J* made attempts to obtain the presence of the applicant at court. There was no co-operation in this regard. Furthermore there is a history in this matter showing that the applicant absented himself on several occasions. *Pillemer, J* very clearly found that there was no merit in the application to review Mr Cormack's ruling. It is of course not open to me to revisit the merits of the review application. The observations made by *Pillemer, J* are for my purposes, relevant because in granting a rescission of an order, the court is obliged to consider the prospects of success. They have been pronounced upon by *Pillemer, J*. Furthermore it is a shocking state of affairs that poor Ms Motsepe had an award made in her favour in 1998 and she has still not found justice. She had to contend for almost seven years with the applicants' delaying tactics. All matters should ideally be dealt with as much expedition as possible. That does not happen. But there is a more pressing obligation on Labour Court judges to see to it that labour disputes are resolved expeditiously or as

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expeditiously as possible. When employees have to wait seven years for the final conclusion of their matter that is indeed very unfair. The delays were caused by none other than the applicant, who like many employers in this court, delay proceedings to escape payment of compensation. There is no reason why the judgment in question should be rescinded and there is no reason why the applicant should not pay the costs of this matter.

In the circumstances I make the following order.
The application for rescission is dismissed with costs.

E.REVELAS

DATE OF HEARING: 18 MARCH 2005

DATE OF JUDGMENT: 18 MARCH 2005

ON BEHALF OF THE APPLICANT: Adv. TL Dikolomela

INSTRUCTED BY: Mbha & Obose Inc.

ON BEHALF OF THE RESPONDENT: Earle Friedman & Associates