

SOUTH AFRICA / JUDGMENT

Botha v Gauteng Department of Education and Another (JS719/14) [2016] ZALCJHB 109; (2016) 37 ILJ 1695 (LC) (22 November 2016) [2016] ZALCJHB 109

COURT

Labour Court Johannesburg

BEFORE

Mthombeni

CASE / FILE NUMBER

JS 719/14

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case

no: JS 719/14

In

the matter between

CATHRINA

BABY BOTHA

Applicant

and

THE

GAUTENG DEPARTMENT OF EDUCATION

First

Respondent

PRINSHOF

SCHOOL

Second

Respondent

Heard:

13
September 2016

Delivered:

22 November 2016

Summary: An applicant for rescission of judgment must give a reasonable explanation for the default, show that the application is bona fide and demonstrate reasonable prospects of success at the trial.

JUDGMENT

MTHOMBENI AJ

Introduction

- [1] This is an application for the rescission of the order, made on 1 August 2016 by Justice Van Niekerk, in terms of which the applicant's referral was dismissed in her absence. The application is unopposed.
- [2] The applicant is not legally represented. For this reason, she had stated in her founding affidavit that she seeks an order made by Justice Van Niekerk to be rescinded in terms of Rule 11. This Court has perused the documents and observed that the applicant, as a layperson, made obvious errors and should not, in fairness, for that reason be non-suited.
- [3] The Court is satisfied that the application, viewed in its context, falls within the parameters contemplated in Rule 16A (1) (b).

Background

- [4] The applicant was employed at the second respondent, a public school for the blind and visually impaired, as a book-keeper.
- [5] On 3 June 2014, the second respondent gave the applicant a notice of dismissal with effect from 30 June 2014.
- [6] Aggrieved by her dismissal, the applicant referred a dispute to the Commission for Conciliation Mediation and Arbitration ("CCMA")

for alleged automatically unfair dismissal.

- [7] The CCMA scheduled a concialtion/arbitration ("con/arb") for 20 July 2017, but the second respondent failed to appear or to be represented at the CCMA. The matter remained unresolved.
- [8] Consequently, on 20 August 2014 the applicant delivered a statement of case, while the respondents delivered their statement of defence nine months later and made a formal application for condonation for the late delivery of the statement of defence. On 12 June 2015, Acting Judge Coetzee granted the application for condonation.
- [9] Thereafter, the registrar set the matter down for trial for 2 June

2016. On that day, Justice Molahlehi postponed the matter to 3 June 2016 as the respondents' attorneys of record were not in attendance when the matter was called and only arrived after they were requested, at Justice Molahlehi's instance, by the applicant to attend at court.
- [10] On the arrival of Sindi Manitshana ("Manitshana"), the respondents' attorney of record, Justice Molahlehi postponed the matter to 1 August until 5 August 2016 and ordered Manitshana to submit an affidavit explaining their failure to attend at court.
- [11] On 1 August 216, the applicant failed to attend or to be represented at court when the matter was called. For this reason, Justice Van Niekerk dismissed the matter.

Applicant's

submissions

- [12] The applicant leaves in Mabopane Township outside Pretoria. As she uses public transport, on 1 August she left her house at 6h00 and took two taxis to reach Johannesburg.
- [13] When the taxi approached the pedestrian bridge over the M1 Highway next to the Grayston offramp, there was traffic owing to the earlier collapse of the pedestrian bridge and the reconstruction taking place.
- [14] The applicant, being without sufficient airtime to make a call to Court, at 9h45 requested her daughter in law to call the Court and explain her predicament. However, she was in a meeting and managed to call the court at 10:00.
- [15] In addition, the applicant sent Manitshana ("Manitshana"), a text message advising that she was on her way moving past Corlett Drive and requesting her to contact her and ask the court to stand the matter down. Manitshana did not respond.
- [16] Prior to her dismissal, the applicant had lodged a grievance with the first respondent, alleging unfair labour practice, unfair
- discrimination, and racism.
- [17] On 12 March 2013, the applicant made a disclosure concerning fraud and corruption, involving millions of rands, in respect of the financial year 2013, 2014.
- [18] When her grievance was left unattended, the applicant eventually escalated the matter to the relevant Gauteng Provincial Government
- Member of the Executive ("MEC"), but to no avail.
- [19] Finally, on 29 May 2014, the applicant submitted her disclosure regarding the alleged fraud and corruption to the Public Service

Commission.

Applicable legal principles

- [20] In *Sizabantu Electrical Construction v Guma & Others*[1], the court held that an applicant for rescission in terms of the Rules of this Court is required to give reasonable explanation for the default and prove that the application is bone fide and show reasonable prospects of success.
- [21] The applicant's explanation is reasonable and understandable. I am satisfied that the default was not wilful or that it was due to her gross negligence. For these reasons, the Court is persuaded to come to the applicant's assistance.
- [22] I am convinced, further, that the application is bona fide and have no reason to believe that is not actuated by a nefarious motive.
- [23] I hold the view that the applicant has demonstrated that on the merits, if the averments set out in her founding affidavit are established at the trial, she has reasonable prospects of succeeding with her claim.
- [24] In the light of the above reasons, I conclude that the applicant has demonstrated good cause.
- [25] In the result, I order the following:
1. The order made by Justice Van Niekerk on 1 August 2016 is hereby rescinded; and
 2. The registrar to schedule the matter for trial.

Mthombeni, AJ

Acting Judge of the Labour Court

APPEARANCE:

FOR APPLICANT: In person

FOR RESPONDENTS: No Appearance

[1]

[1999] 4 BLLR 387 at para [7]

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Prepared on 10 October 2026 · Esheria