

SOUTH AFRICA / JUDGMENT

Eloff Sand en Klipwerke CC v Solidarity obo De Kock and Others (J1537/12) [2016] ZALCJHB 115 (24 March 2016) [2016] ZALCJHB 115

COURT

Labour Court Johannesburg

BEFORE

Lagrange

CASE / FILE NUMBER

J1537/12

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THE

LABOUR COURT OF SOUTH AFRICA

HELD

AT JOHANNESBURG

Not

reportable

Case

no: j1537/12

In

the matter between:

ELOFF SAND EN

KLIPWERKE CC

First Applicant

and

SOLIDARITY

obo DE KOCK CA

First

Respondent

COMMISSION FOR

CONCILIATION, MEDIATION AND ARBITRATION

Second Respondent

MUHLURI DIFFERENCE

MAHLAWULE N.O.

Third Respondent

Heard:

23 March 2016

Delivered:

24 March 2016

Summary: (Application to rescind)

JUDGMENT

LAGRANGE J

Introduction

- [1] The applicant has applied to rescind this court's default order of 25 March 2014 in which the court ordered that the arbitration award in favour of the first respondent and a rescission ruling also in her favour were made orders of court.
- [2] It is trite that an applicant for rescission must demonstrate a justifiable reason for its default and a bona fide defence.
- [3] The applicant's representative, Mr Lewies sought to persuade me that, what I should focus on is the rescission ruling of the third respondent in which he disbelieved the applicant's claim that it did not receive the notice of set down on account of cable theft because the fax transmission slip showed that the transmission had been successful. The arbitrator also expressed the view that the applicant ought to have notified the CCMA if its fax line was not working. Even if, this last proposition is dubious, I cannot say that the arbitrator's conclusion that the fax transmission slip indicating a successful transmission was inconsistent with the fax line and being cut is a conclusion that no reasonable arbitrator might have reached.
- [4] In relation to the application to make the ruling award an order of court, there was ample evidence of correspondence from Solidarity from the end of February to mid May 2012 calling upon it to remedy the patent defect in its purported review application to set aside the rescission ruling and to prosecute the review application without delay. The applicant could offer no plausible explanation for its failure to respond to this correspondence, or even offer an explanation why, despite the evidence of it being transmitted to its attorneys of record, it never came to anyone's attention. Even if this correspondence only came to the applicant's representatives attention when it received the first respondent's application under section 158 of the Labour Relations Act, 66 of 1995 ('the LRA'), it did nothing to rectify its failure to prosecute a review application properly, despite acknowledging that this application was received.
- [5] Further, no justification is provided why the section 158 application was not opposed. In the circumstances, the matter proceeded by default.
- [6] It was urged on me to infer from the applicant's failure to act that it did not have knowledge of the correspondence or the section 158 application and that it would have responded if it was aware of those documents. The difficulty I have with this is that, the evidence all points to the applicant's attorneys having received the various documents and court process over a

period of some months without any explanation how so many communications could have simply gone astray. What is clear is that the applicant never pursued the review application diligently, which in itself is a strong indication of a party that is conducting

matters in an extremely dilatory fashion, with no real interest in matters being concluded.

[7] In all the circumstances, I am not satisfied that the applicant has provided any reasonable justification for its abject failure to oppose the section 158 application or to prosecute an application to review the rescission application at a time when it should have done so. As things stand, there is no review application pending more than three years after the ruling the applicant claims it wishes to set aside. The applicant's failure to justify its activity is sufficient reason in my mind to dismiss the application.

Order

[8] The application to rescind the order of this court dated 25 March 2014 is dismissed.

[9] The applicant must pay the first respondent's costs.

Lagrange J

Judge of the Labour Court of South Africa

APPEARANCES APPLICANT: JWA Lewies of Lewies & Kitching Inc FIRST RESPONDENT: G J Visser of Solidarity

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Prepared on 13 October 2026 · Esheria