

SOUTH AFRICA / JUDGMENT

McCoy's Doors and Windows v Security, Cleaning, Manufacturing and Allied Workers Union and Others (JR553/13) [2013] ZALCJHB 309 (3 December 2013)

[2013] ZALCJHB 309

COURT

Labour Court Johannesburg

BEFORE

Cele

CASE / FILE NUMBER

JR553/13

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REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR 553/13

In the matter between:

McCOY'S DOORS & WINDOWS Applicant

and

SECURITY, CLEANING, MANUFACTURING AND

ALLIED WORKERS UNION First

Respondent

L DIRKHING & 26 OTHERS Second

Respondents

Delivered: 3 December 2013 (in chambers)

RULING: LEAVE TO APPEAL

CELE J

- [1] This is an application for leave to appeal against the order of this court made on 29 June 2013 in which the court confirmed the rule nisi. It is trite on the applicant in this application to establish that another court, in this case, the Labour Appeal Court, will come to a different conclusion than the one reached by this court.
- [2] The applicant filed its application for leave to appeal on 18 July 2013; the application was filed on time. The applicant's submissions were filed on 31 July 2013. The respondent filed its notice to oppose this application on 19 August 2013. The respondent did not file any submissions which were supposed to be filed by 7 August 2013, that is, 5 days from the date the applicant filed its submissions.
- [3] On 11 November 2013, the applicant was faxed a directive, together with a transcript of the proceedings of 29 June 2013. In the directive, the applicant was directed to go through the transcription and inform this court if it still persists with its application. To date the applicant has not responded to the said directive. In the absence of such response, it is taken for granted that the applicant persists with this application and the court will make a ruling based on the papers before it.
- [4] On 29 June 2013, Mr Ngobeni appeared for the respondent (the applicant in this application) with instructions to oppose the granting of the final order because, according to him, the course of action no longer existed. I am not going to burden this ruling with word to word of what transpired during the proceedings but for the fact that Mr Ngobeni conceded to the confirmation of the rule nisi (this is apparent from the transcript that was provided to the applicant), I therefore find absurdity in the whole application.
- [5] The striking workers have since being dismissed and it was indicated that the dismissal has been referred to the CCMA. I fail to understand what purpose, if any, would the discharging of the rule nisi serve to the dismissed employees. Discharging the rule would have been to suggest that there was no rationale in dismissing the employees, especially when there is an ongoing dispute between the parties.
- [6] For these reasons, I am not persuaded that there is any reasonable prospect that another court will come to a different result.
- [7] I therefore make the following order:
1. The application for leave to appeal is refused.
 2. The applicant is ordered to pay the costs of this application.

Cele J

Judge of the Labour Court of South Africa

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