

SOUTH AFRICA / JUDGMENT

Moje and Another v Magalies Water (JR871/13) [2021] ZALCJHB 321 (6 October 2021) [2021] ZALCJHB 321

COURT

Labour Court Johannesburg

BEFORE

Mosam

CASE / FILE NUMBER

JR871/13

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IN

THE LABOUR COURT OF SOUTH AFRICA

Not

Reportable

Case

No:JR871/13

In

the matter between:

STEVEN
MOJE First
Applicant
MOMPHATI
TLHAPANE Second
Applicant
and
MAGALIES
WATER Respondent

Heard:

29 June 2021

Delivered:

06 October 2021

JUDGMENT

MOSAM, A J

Introduction

1. This matter concerns a rescission of the Court Order of Van Niekerk J granted on 12 February 2018 (“the Court Order”) wherein the Applicants’ referral was dismissed.
2. The matter was heard on 29 June 2021 and subsequently an application was brought by the Applicants in terms of Rule 34.10 of the Legal Practice Council’s Code of Conduct for Practitioners to permit additional case law to be considered. This application was opposed by the Respondent.

The Relevant Facts

3. It is not necessary for the purpose of the Judgment to restate the facts, but the salient ones are mentioned below.
4. On 6 September 2013, the Applicants delivered their statement of case. In response thereto, the Respondent filed its statement of response on 4 October 2013.
5. The trial was set down for 12 February 2018. On the day of the trial, the Respondent’s attorneys of record attended at the trial roll call before Van Niekerk J at 0945.
6. Neither the Applicants nor their legal representative were present at roll call at 0945. Van Niekerk J called the Applicants matter, however in light of their non-appearance at 09h45, the matter stood down three times to afford the Applicants an opportunity to appear. Notwithstanding this, by 09h55, the Applicants were still not present at court.
7. Subsequently, Van Niekerk J dismissed the Applicants’ statement of claim in light of their failure to timeously attend the trial roll call.

Application to re-open the case

8. The nub of the Applicants’ application to re-open the case is premised on the fact that Van Niekerk J was not entitled to dismiss the Applicants’ case on the merits where they failed to arrive at Court in time for the allocation of the matter.
9. Put simply, it was contended that the Court’s powers was limited to striking the matter from the roll. It was further argued by the Applicants that in order to succeed with the rescission, they need not show good cause or provide a reasonable explanation for their default.
10. There is no merit in this argument because in terms of Rule 16A(1)(a) and Rule 16A(1)(b) it is required in order to be successful in the rescission application to show good cause and provide a reasonable explanation for their default. This is trite.

The Legal Principles

11. In *Bayete Security Holdings v Mokgadi & Others*[1] the Labour Court distinguished between Rule 16A(1)(a) and Rule 16A(1)(b). Put simply, Rule 16A distinguishes between judgments erroneously

granted in the absence of a party (example where notice was not given to a party) and judgments granted in the absence of a party, other than erroneously (eg where notice has been properly given but the party was never absent). In relation to the first situation, there is no need to show good cause and there are not time limits, whereas in the second situation, good cause must be shown and the application must be brought within the prescribed time limit.[2]

12. The test or enquiry to be undertaken by the Court in assessing whether an order of judgment was erroneously made or granted, is set out in *Beverly Investment t/a KFC v Fraser & Another*[3] which states that:

“The enquiry which the Court has to conduct in determining whether the order or judgment which is the subject of the rescission application was erroneously made, essentially entails investigating whether there existed a fact, at the time the order or judgment was made, which the Court was not aware of and that had it been aware, it would not have made the order as it did.” [4]

13. Similarly, the High Court, in dealing with the application for rescission under Rule 42(1) of the Rules of the High Court in *Transport and General Workers Union and Others v Kempton City Syndicate & Another*[5] held that:

“If a Court holds that an order or judgment was erroneously granted in the absence of any party affected thereby it should, in terms of Rule 42(1)(a) without further enquiry, rescind or vary the order.”

14. It follows therefore that the Applicants in order to obtain an order rescinding the Court Order have to demonstrate the following:

14.1. Good cause for their failure to attend roll call; and

14.2. That there was a fact which the Honourable Court was not aware of and had the Honourable Court been aware of such a fact, the Court Order would not have been made.

Discussion

15. There is no merit in the Applicants’ contention that the Order should be rescinded for the following reason:

15.1. The Applicants’ attorneys were aware that the trial was set down for 12 February 2018 and that in terms of paragraph 10 of the Practice Manual of the Honourable Court (“the Practice Manual”) that roll call will be at 09h45.

15.2. Furthermore, on 8 February 2018, the Respondent's attorneys addressed a letter to the Applicants' attorneys of record wherein paragraph 10 of the Practice Manual was attached. There is therefore no merit in the contention by the Applicants to allege that they only became aware of paragraph 10.8.1 of the Practice Manual after investigating why the roll call was called 0945 on 12 February 2018.

15.3. The Applicants in their explanation have not shown good cause for their non-attendance at roll call on 12 February 2018. In addition, the Applicants have not provided a plausible and/or reasonable explanation why they were not aware of paragraph 10.8.1 of the Practice Manual.

15.4. Whilst alleging that they have a good case in the main claim, they provide no information in support of this allegation.

16. I am therefore not satisfied that there are grounds to grant the Applicants' rescission application.

Costs

17. The Court has broad discretion, established in section 162 of the LRA, to make an order for costs according to the requirements of law and fairness. Whilst the Respondent has been successful in this matter, I am mindful of the judgment of the Constitutional Court in *Zungu v Premier of KwaZulu-Natal & Others*[6] that confirmed the Rule that costs follow the result does not apply in labour matters.

18. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing those parties to bring to this Court cases that should not have been brought to Court in the first place. I am satisfied that there is no malice on the part of the Applicants and therefore I am not inclined to grant a cost order in this matter.

19. In the premises, I make the following Order.

Order

20. The application for rescission is dismissed.

21. There is no Order as to costs.

A MOSAM

ACTING JUDGE OF THE LABOUR COURT

APPEARANCES:

FOR THE APPLICANTS: ADV B FORD

Instructed by Bila Mashamba Attorneys

FOR THE RESPONDENTS: MS JEAN EWANG

Instructed by Cliffe Dekker Hofmeyr Inc

- [1] [2000] 9 BLLR 1020 (LC)
 - [2] [2000] 9 BLLR 1020 (LC) 1025 paras 6.1-6.3
 - [3] (2015) ZALCJHB 17 at para 10
 - [4] See also: The Department of Correctional Services v Abel Montgomery Baloyi [2016] 37 ILJ 2852 (LC) at para 13
 - [5] (2001) 22 ILJ 104 (W) at para 108C
 - [6] (2018) 39 ILJ 523 (CC) at para 24
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Prepared on 27 October 2026 · Esheria