

SOUTH AFRICA / JUDGMENT

National Union of Mineworkers and Another v Commission for Conciliation, Mediation And Arbitration and Others (JR 1520/11) [2015] ZALCJHB 233 (4 August 2015)

[2015] ZALCJHB 233

COURT

Labour Court Johannesburg

BEFORE

Tlhotlhemaje

CASE / FILE NUMBER

JR 1520/11

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR 1520/11

DATE: 04 AUGUST 2015

Not Reportable

NATIONAL UNION OF MINEWORKERS.....First Applicant

NKOSI LUCAS.....Second Applicant

And

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION.....First Respondent

COMMISSIONER SS MOLAPO.....Third Respondent

STEFANUTTI STOCKS.....Third Respondent

Delivered: 4 August 2015

TLHOTLHALEMAJE, AJ

Introduction:

- [1] This is an unopposed application in terms of which the applicants seek to review and set aside the ruling issued by the second respondent (Commissioner) under case number GATW9474-10 dated 15 April 2011. In his 'ruling', the Commissioner dismissed the applicants' referral of an alleged unfair dismissal dispute in their absence. The ruling also followed upon the Commissioner's dismissal of the applicants' objection to the respondent being represented by a member of an employers' association, whom the applicants had contended did not have locus standi.
- [2] The review application was filed and served on 4 July 2011. No opposing documents were filed by the respondent. The applicants had then filed an application to compel the first and second respondents to comply in terms of the provisions of Rule 7A (3) of the Rules of the Court.
- [3] On 24 August 2012, the applicants filed an application to compel the first and second respondents to comply with the provisions of Rule 7A (2) and (3) of the Rules of this Court.
- [4] On 18 March 2013, the applicants filed a Notice in terms of Rule 7A 8 (b) indicating that they stood by the Notice of Motion. The respondent still failed to oppose the application. The second respondent had then filed an affidavit on 9 December 2013, indicating that a record of proceedings was not available.
- [5] As appears from the 'ruling', the dispute was dismissed without the hearing of the merits of the matter after the Commissioner had allowed a representative of an employers' association CTL Management Forum, to represent the respondent in those proceedings. On the applicants' version, they had then sought written reasons for the Commissioner's

ruling

as they formed the view that the Commissioner had not applied his mind to the provisions of Rule 25 of the Rules of the CCMA. The

Commissioner had declined to furnish such reasons.

- [6] The applicants had also applied for a postponement which was promptly refused. It is at that stage that the applicant had then left the proceedings, resulting in their referral being dismissed.
- [7] Ordinarily, in the light of the applicants having walked out of the proceedings, the Commissioner was entitled to view such conduct as amounting to a waiver of the applicants' right to proceed with the matter, and was therefore entitled to dismiss it in their absence.

[8] The issue however does not end there as before the Court is a review of the ruling insofar as it is alleged that the Commissioner had misconstrued and misapplied the provisions of Rule 25 of the CCMA Rules in allowing an individual who had no locus standi to represent the respondent. To the extent that a case has been made out as to the reason the ruling should be set aside, and further to the extent that the review application remained unopposed, the following order is made;

Order:

- i. The 'ruling' issued by the second respondent on 15 April 2011 under case number GATW9474-10 is reviewed and set aside.
- ii. The matter is remitted back to the First Respondent to be heard de novo by a Commissioner other than the Second Respondent.
- iii. There is no order as to costs.

Tlhotlhalemaje, AJ

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr B Zwane (NUM Official)

For the First Respondent: Mr Q Donaldson of CTL Management Forum

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