

SOUTH AFRICA / JUDGMENT

Probert and Others v RLS Engineering (J4936/99) [2001] ZALC 118 (2 August 2001)

[2001] ZALC 118

COURT

Labour Court

BEFORE

A A Landman

CASE / FILE NUMBER

J4936/99

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JUDGMENT

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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN CASE NO: J4936/99

2001-08-02

In the matter between

JACK SAMUEL PROBERT & OTHERS Applicant

and

RLS ENGINEERING Respondent

J U D G M E N T

LANDMAN J: This is an application for the rescission of judgment which was brought by Chris Pienaar against Jack Samuel Probert and Neville Britton Mr Pienaar alleges in his founding affidavit that he became aware of this matter when the writ of execution was served upon him. He also says that he served an application on the CCMA for rescission of the judgment and that Mr Probert and Mr Britton should have been aware of it before they applied to have the award that the Commissioner made an order of court.

However, in the court file, is an affidavit which was made by Mr Probert. He says that on 13 March 2000 he sent a copy of the notice of motion and affidavits by fax to the applicant, Mr Probert, at fax number 8182026. Their confirmation slip has been attached. Mr Pienaar in his founding affidavit does not say that he did not receive that document. He does not deal with it at all. In the circumstances he has failed to show to this court that he was not in willful default and in the circumstances his application for rescission must be dismissed and it is dismissed with costs.

Judge A A Landman Judge of the Labour Court of South Africa ---o0o---

However, in the court file, is an affidavit which was made by Mr Probert. He says that on 13 March 2000 he sent a copy of the notice of motion and affidavits by fax to the applicant, Mr Probert, at fax number 8182026. Their confirmation slip has been attached.

Mr Pienaar in his founding affidavit does not say that he did not receive that document. He does not deal with it at all. In the circumstances he has failed to show to this court that he was not in willful default and in the circumstances his application for rescission must be dismissed and it is dismissed with costs.

Judge A A Landman

Judge of the Labour Court of South Africa

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