

SOUTH AFRICA / JUDGMENT

Ramorakane v City Lodge Hotel Group Limited and Others (C332/2020) [2023] ZALCCT 14 (11 April 2023) [2023] ZALCCT 14

COURT

Labour Court Cape Town

BEFORE

Rabkin-Naicker

CASE / FILE NUMBER

C332/2020

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REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Not Reportable

C332/2020

In the matter between:

PHOKA SIMON RAMORAKANE Applicant

and

CITY LODGE HOTEL GROUP LIMITED First Respondent

ANNA MARIE FOURIE N.O. Second Respondent

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION Third Respondent

Date heard: 2 February 2023

Delivered: 11 April 2023 by means of email

RABKIN-NAICKER J

[1] This is an application to review a rescission ruling under case number FSBF6631-19. In terms of the ruling, the second respondent (the Commissioner) dismissed the applicant's application for rescission of her decision to dismiss his referral of a dispute.

- [2] On the 11 March 2020, the Commissioner took the said decision on the basis that the applicant and his attorney were not present at the arbitration proceedings. The employee applied for rescission by means of a pro forma affidavit on the basis that he himself was not aware of the date of the arbitration. At the rescission ruling, both the applicant and his attorney were present. Although duly notified, the first respondent (the employer) was not present but had opposed the application and filed an affidavit. The Commissioner stated in her Ruling, that she determined the application on the papers filed, as well as the verbal submissions on behalf of the applicant at the hearing.
- [3] The Commissioner also records that according to the employee's attorney, Mr Keyl, he had applied for postponement of the arbitration on the 11 March 2020, as he had another case to attend to in Welkom. Proof of this was annexed to the application for postponement which was timeously filed on the 18 February 2020 at the CCMA with a copy sent to the employer party. The Sid postponement application was not in the CCMA file however. Mr Keyl submitted that the employer had acted mala fide in continuing to come to the arbitration and failing to inform the tribunal about the application for a postponement
- [4] In paragraph 14 of the Award, the Commissioner correctly records that the test for good cause in an application for rescission "normally involves the consideration of at least two factors, firstly, the explanation for the default and secondly whether the applicant has a prima facie defence."
- [5] The Commissioner correctly states that the attorney for the applicant should have followed up on the postponement application, especially if no response to the application was filed. As to the requirement of the prima facie defence, she had this to say:

"[17] The employee's attorney referred to his prospects of success. He claimed to have been dismissed for something he did not do. However, on the other hand, the Employer claimed that the Employee had been dismissed for dishonesty thus, the employee's

prospects seem average at best. There is nothing persuading me that he has exceptional prospects to succeed with his dispute There are two opposing versions." (emphasis mine)

- [6] It is evident from the above, that the Commissioner applied the incorrect legal test in considering the second leg of the requirements for rescission, whether there were prospects of success at arbitration, as submitted on behalf of the applicant in the founding affidavit before me. She should have considered whether the case for the employee if established at the arbitration, would entitle him to the relief asked for.
- [7] The opposing affidavit in this application duly confirms that the rescission application was set down for hearing on the 13 July 2020. However, there is no explanation as to why the employer did not attend it. It is further not disputed that the application for a postponement was served on the employer on the 18 February 2020. No explanation is offered as to why the postponement application was not disclosed to the Commissioner at the arbitration hearing.

[8] This is a situation in which the attorney for the employee was negligent in not sending somebody from his office to attend to the arbitration hearing to raise the postponement application. However, having been informed by his attorney that the hearing would not take place, (as the attorney stated under oath in papers before the Commissioner), the employee himself cannot be said to have been in willful default. The binding authority of the law to be applied makes this clear.

[9] In *Pack 'n Stack v Khawula NO & others*[1] the LAC dealt with the principles to be applied in section 144 of the LRA applications thus:

“[11] Although the application for rescission was dealt with before the amendment of s 144 of the Labour Relations Act 66 of 1995, the requirement of good cause was already part of our labour law when dealing with rescission applications. In Shoprite Checkers (Pty) Ltd v Commission for Conciliation, Mediation & Arbitration & others, it was said that:

'The test for good cause in an application for rescission normally involves the consideration of at least two factors. Firstly,

the explanation for the default and, secondly, whether the applicant has a prima facie defence. In *Northern Province Local Government*

Association v CCMA & others (2001) 22 ILJ 1173 (LC); [2001] 5 BLLR 539 (LC) at 545 para 16, it was stated:

"An applicant for the rescission of a default judgment must show good cause and prove that he at no time denounced his defence, and that he has a serious intention of proceeding with the case. In order to show good cause an applicant must give a reasonable explanation for his default, his explanation must be made bona fide and he must show that he has a bona fide defence to the plaintiff's claims."

[12] In *MM Steel Construction CC v Steel Engineering & Allied Workers Union of SA & others*, it was said that:

'Those two essential elements ought nevertheless not to be assessed mechanistically and in isolation. Whilst the absence of one of them would usually be fatal, where they are present they are to be weighed together with relevant factors in determining whether it would be fair and just to grant the indulgence.'

[13] In *Harris v Absa Bank Ltd t/a Volkskas, Moseneke J* set out the principles that ought to guide a court in the determination whether a party was in wilful default. He said the following:

'Before an applicant in a rescission of judgment application can be said to be in "wilful default" he or she must bear knowledge of the action brought against him or her and of the steps required to avoid the default. Such an applicant must deliberately, being free to do so, fail or omit to take the step which avoids the default and must appreciate the legal consequences of his or her actions.'

[10] In view of the all the above, the Commissioner committed mistakes of law when she considered the application and arrived at an unreasonable result. In the Court's view, the Ruling should be set aside and substituted. I make the following order:

Order

1. The Ruling under case number FSBF-19 is reviewed and set aside and substituted as follows:

1.1 The dismissal of the dispute under case number FSBF-19 is rescinded.

1.2 The dispute must be set down for arbitration before a Commissioner other than second respondent.

2. There is no order as to costs.

H.Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicant: Louis

Block Inc

Respondent: C&

A Friedlander Inc

[1] (2016) 37 ILJ 2807 (LAC)

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Prepared on 13 October 2026 · Esheria