

SOUTH AFRICA / JUDGMENT

Strydom v Pauline Binfa and Associates CC t/a PBA Brokers (JR92/21) [2024] ZALCJHB 409 (10 October 2024) [2024] ZALCJHB 409

COURT

Labour Court Johannesburg

BEFORE

Ntsoane

CASE / FILE NUMBER

JR92/21

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Amended

11 November 2024

IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case

No: JR 92/21

In

the matter between:

SANETTE
MAGDALENA SUSANNA STRYDOM
Applicant
and
PAULINA
BINFA & ASSOCIATES CC
t/a
PBA BROKERS
Respondent
In

re: PAULINA
BINFA & ASSOCIATES CC
t/a
PBA BROKERS
Applicant
and
COMMISSION
FOR CONCILIATION
MEDIATION
AND ARBITRATION
1st
Respondent
JACOB
DANIEL SELLO
2nd
Respondent
SANETTE
MAGDALENA SUSANNA STRYDOM
3rd
Respondent

Heard: 9 May 2024

Delivered: 10 October 2024

Edited: 04 November 2024

JUDGMENT

NTSOANE, AJ

- [1] This is a rescission application in terms of rule 16A(1)(a)(i) alternatively in terms of rule 16A(1)(b) of the Labour Court Rules, brought by the applicant who is the third respondent in the review application, seeking to rescind an order of this Court by my sister Justice Nkutha-Nkontwana (as she was then), dated 24 November 2021. For purposes of this judgment and for ease of reference, I will refer to the applicant as Ms Strydom and the respondent as PBA Brokers. This application is opposed.
- [2] In this brief judgment, I will state only the relevant and pertinent facts, evidence, submissions and documents pertaining to this particular matter, as properly presented before me in this application, and relevant to this rescission application.
- [3] It is common cause that, following her dismissal, Ms Strydom referred an unfair dismissal dispute to the CCMA which then then gave rise to a default arbitration award dated 2 April 2019, as PBA Brokers had failed to attend the arbitration scheduled for 19 March 2019. In terms of the default award, Ms Strydom's dismissal was found to have been occasioned on unfair procedural and substantive grounds and she was accordingly awarded compensation. PBA successfully rescinded the said default award and a further arbitration process was

scheduled which determination thereof gave rise to an arbitration award issued in the matter on 29 September

2020. In terms of the second award, the Commissioner had similarly found the dismissal to have been procedurally and substantively unfair and accordingly ordered compensation, payment of unlawful deductions as well as payment of outstanding remuneration.
- [3] The second arbitration award became a subject matter of a review application filed under JR92/21 on 22 January 2021, by PBA Brokers seeking to review and set it aside in terms of section 145 of the Labour Relations Act. This review application was undeniably filed outside the legislative prescribed period of six weeks within which is required to file a review application however a condonation was sought in the PBA Brokers' papers.
- [4] It is subsequent to the filing of the review application that Ms Strydom vehemently argues that the review process was tainted by several procedural irregularities and that should this Court have been aware of, an order would not have been granted. Amongst its submissions, is the issue of PBA Brokers' failure to properly comply with rule 7A(6), incomplete records and also its failure to comply with rule 7A(8). Whilst Ms Strydom's averments are pertinent and have been considered, I do not think it is really necessary to enter into this fray at this stage.
- [5] Central to this application and most alarming though is the Court Order of Justice Nkutha-Nkontwana dated 24 November 2021 which order reads as follows:

'By agreement between the parties:

IT IS ORDERED THAT:

1. The Applicant's late filing of the application is condoned;
 2. The arbitration award dated 29 September 2020 under the auspices of the First Respondent is reviewed and set aside;
 3. The ruling in the arbitration issued by the Second Respondent is substituted with an order that the dismissal of the Third Respondent was substantively fair;
 4. There is no order as to costs'.
- [6] It is common cause between the parties that there was no agreement in the matter. Ms Strydom on one hand submits that, it was her intention to oppose the review including the condonation application however she was misguided by union representative and even when she received the notice of set down, she once again contacted her union representative who indicated to her that it was not necessary to attend the hearing. Ms Strydom vigorously relies on the order that was fraudulently obtained as not only did she not accede to the order being obtained as reflected but the application was not properly before the Court and that she had intentions of opposing the review application. Ms Strydom further submits that the order seeks to review and set aside the arbitration award in its

entirety (both substance and procedure) despite the review application only challenging the substantive part of the award. The order thus does not deal with the apportionment of the amount awarded for the procedural portion of the award therefore the question remains in terms of what then happens to the procedural portion of the award. Ms Strydom further submits that the award further awards two amounts of R22,090.00 and R10,000.00 for outstanding remuneration and unlawful deduction, respectively. Whilst Ms Strydom has since been paid the R22,090.00 amount, the R10,000.00 remains a contested issue which the Court Order seems to have omitted to deal with.

- [7] PBA Brokers on the other hand, denies that there were non-compliance in so far as the review application is concerned and that it had properly followed the rules of the Court. It also avers that Ms Strydom is in fact in possession of the full records including the supplementary records and simply failed to file her answering affidavit leaving the matter to be an unopposed matter. Ms Strydom did not oppose the review to her own peril and she is thus precluded from arguing about the review process which she carelessly elected not to partake in. PBA Brokers particularly concedes that there was no agreement between the parties in so far as the Court Order seems to portray and such inference to the order being granted by agreement is a typographical error.
- [8] I must indicate that the issue of irregular process in as far as the review application is concerned as well as the reasons for Ms Strydom's omission to attend the review hearing, is not a fray that I am inclined to enter into at this stage. I am however particularly and with grave concern, make my determination solely on the Court Order questionably reflecting "by agreement between the parties" when there was clearly no such agreement. During the hearing of this rescission application, I sought to intimately check and peruse the Court file and it appears that on 24 November 2021, my sister Justice Nkutha-Nkontwana wrote on the Court file that "the order is granted in terms of the draft order marked "X". Despite diligent search of the mentioned draft order, same simply could not be located in the Court file. Of more concern also is the fact that PBA Brokers' legal representatives also do not seem to have this draft order despite them having handed same to the Court.
- [9] At the hearing of the rescission application, I specifically ordered the parties to obtain the records of the 24th of November 2021 and on 23 May 2024, I received a letter from BJ Erasmus Pieterse Attorneys, Ms Strydom's attorneys of record, that the records could not be located. The letter further attached what purports to be a draft order sent to the Judge on the day in question and which draft order was received from PBA's Advocate at that time. It appears that the application was determined on papers and that there was in fact no appearance in observation of the Covid-19 regulations which applied at the time.
- [10] This Court is undeniably confronted with a Court Order that reflects "by agreement between the parties". Even if I were to accept that this was a typographical error by the Labour Court as submitted by PBA Brokers, a pertinent question remains why PBA Brokers did not attend to get the said order varied. Also, I am strongly of the view that there are pertinent and influential issues that the review Court was inclined to deal with and should they have been

properly brought to the attention of the Court, they could have persuaded the Court otherwise; put differently, the Court would have reached an informed decision. The issues such as the procedural aspect of the dismissal as well as the R10,000.00 items contained in the award, I determine, must be properly ventilated and cannot be outrightly taken away from Ms Strydom when they were not contained in the review application in the first place. This is in addition to the compliance issue particularly relating to records or incomplete thereof. The review as granted, naturally adversely affected or took away the procedural aspect of Ms Strydom as well as her R10,000.00 deduction despite these issues not formally the basis for the review. It is on these bases that a rescission of the Court Order must succeed.

[11] In the premise I make the following:

Order

1. The Court Order of Justice Nkutha-Nkontwana of 24 November 2021 is hereby rescinded.
2. The Applicant (Ms Strydom) is directed to file her answering affidavit to the review application within ten days of this order and the Respondent (PBA Brokers) must file its replying affidavit five days thereafter.
3. There is no order as to costs.

Ntsoane AJ

Acting Judge of the Labour Court of South Africa

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Prepared on 10 October 2026 · Esheria