

Sneller Verbatim/JduP

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J3014/99

2002-02-11

In the matter between

A B MURRAY & ASSOCIATES

Applicant

and

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Respondent

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J U D G M E N T

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REVELAS, J:

1. on 10 November 2000, Jammy AJ was presented with a situation where on behalf of the applicant certain documentation relevant to the question of the identity of the employer of the applicants came in dispute. The applicants alleged that the employer was A B Murray & Associates, and the respondents contended that it was not. The issue was pertinently raised in pre-trial

consultations between the parties, and the question of the relevance of the documentation concerned was in issue before Jammy AJ.

1. 1. 2. It appears that the applicants believed that the respondent has more than one identity or, moves from one identity to another, whatever the case may be. That was not the question that I had to decide.

3. During the proceedings before Jammy AJ, it was decided that the respondent - the applicant in the matter before me today - should be given the opportunity to apply for rescission of an order dated 28 October 1998, which is a considerable time ago. The application was brought on 3 October 2001, more than a year, let alone 21 days, after Jammy AJ gave the order, which reads as follows:

"1. The respondent should if he wishes to apply for rescission and condonation of the judgments in matter J1499/98 and J1490/99 do so within 21 days, failing which he [respondent] is barred from doing so.

2. The costs are reserved."

4. The matter came before me on 9 February 2002. There is no application for condonation of the late filing of the rescission application, which was not brought within 21 days.

5. It was submitted on behalf of the applicant,

(A B Murray and Others), that the condonation application need not take the form of a formal substantive application for condonation, and that the respondents must have been aware that it would pursue the application for condonation at the hearing of the rescission application. In order to pursue the rescission application it was believed that it was necessary that the matter be referred to oral evidence.

1. 6. I do not see the reason for this. I was asked to interpret Jammy AJ's rescission application in that the rescission application is coupled with an application for condonation. This is put in an affidavit. There is no proper explanation why the order of Jammy AJ was not complied with, but one aspect of Jammy AJ's order is very clear; namely: **"if the respondent does not comply with that, it is barred from applying for a rescission."**
7. There was also a submission that I, as a court of first instance, the Labour Court, may rescind Mlambo J's order on the basis that it was vague and unenforceable. This is clearly not so. I am certainly not in a position to set it aside, on those grounds, may be raised.
8. Consequently, in the absence of non-compliance with Jammy AJ's order, the respondent is barred from

bringing the application for rescission. The applicant is to pay the respondent's costs or expenses, if any.

E. Revelas