

Sneller Verbatim/ASS

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J2989/98

gment: 2000-02-05

In the matter between

VINCENT GEORGE LAITY

Applicant

and

B & D MINES

Respondent

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J U D G M E N T

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REVELAS J:

1.The applicant, Mr Laity, was unsuccessful in attempting to execute a written execution which he obtained on the basis of an award of the CCMA being made an order of court in his favour. He subsequently brought an application to have Mr Struck, an erstwhile or current, director (that is in dispute) be joined as a party and as a respondent. On 26 September 2000 Ngcamu AJ made an order to the effect that Mr Struck was joined as the second respondent in the matter.

2.

3.It came to the attention of the first and second respondents, who are B & D Mines (Proprietary) Limited and National Manganese Mines (Pty) Limited, that the application for joining would be brought. However, they received no notification of when the order would be set down. According to the respondent's attorneys of record, Ms Powett of their offices attended at court, went through the court file, but found no notice of

set down 26 September 2001, but in fact found the order of Ngcamu J which he handed down on 26 September. In other words, the order was obtained without notification to the first and second respondents and in their absence.

4. In the circumstances, I must rescind that order. I do not believe that it is appropriate at this stage as to find whether Mr Struck should have been joined as a director insofar as he claimed that he had nothing more to do with the respondents and in particular with National Manganese Mines (Pty) Limited.

5. The applicant, is therefore, not precluded from applying to court again, to join Mr Struck, when the matter can be properly ventilated. In my view the question of the directorship should probably be dealt with by way of oral evidence, but that should be decided by the judge hearing application.

6. In the circumstances, I make the following order:

1. The judgment of Ngcamu J dated 26 September 2000 is rescinded.

2. I do not make an order as to costs, because it is not the applicant's fault that the court registrar did not notify the respondents of the court date.

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E. Revelas

nt: In person

ent: Mr. D Short from,

Sampson, Okes, Higgins Inc.