

Sneller Verbatim/JduP

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J2742/02

2002.12.12

In the matter between

OCEAN BASKET, WAVERLEY

Applicant

and

SHERRIF PRETORIA NORTH

1st Respondent

2nd Respondent

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J U D G M E N T

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REVELAS, J:

1. In this matter the applicant, the Ocean Basket of Waverley, has approached the court on an urgent basis, seeking the following relief:
- "2. **That an order be made instructing the second respondent to release the applicant's goods attached in terms of a writ of execution issued on 28 November 2002 under case number**

J2741/02 pending finalisation by the Honourable Court of the rescission application launched by the applicant under the abovementioned case number on 10 October 2002."

2. Mr Savvas Nicholas deposed to an affidavit that Mr Louw was a person whose full and further particulars were unknown to him. Furthermore he states that on 7 March 2002 he attended at the offices of the Commission for Conciliation Mediation and Arbitration in Marshalltown, Johannesburg at approximately 08h15 and proceeded to the thirteenth floor, where it was discovered that the applicants were absent, and the matter was dismissed. That, Mr Nicholao says, was what he thought was the last of the matter. He makes no mention of the reasons which led to him having to appear at the CCMA, e.g. that Mr Louw was a previous employee and what the dispute was about.
3. On 9 December 2002 the sheriff apparently arrived at his premises to attach and remove the assets of the Ocean Basket ostensibly, he says, in accordance with the court order issued in the applicant's absence on 19 November 2002. There is such an order granted by Mr Justice Modise.
4. He further states (under oath) that the applicant did not receive any notice from the respondents regarding the filing of any papers with the Labour Court, and

therefore he was unaware of any proceedings held on 19 November before Modise AJ.

1. 5. An application in terms of section 165(a) of the Labour Relations Act, 66 of 1995, to rescind the order of Modise AJ was brought on 10 December 2002. Since the deputy sheriff, ("the second respondent"), has attached goods in terms of the court order and refuses to release such goods, which consists mainly of tables and chairs and which were removed on 9 December, this urgent application is brought.
6. I have no quarrel with the urgency of the matter. The applicant has however made out no case on the merits to entitle it to the relief it seeks, on any basis, let alone on an urgent basis. I say this for the following reasons.
7. From the respondent's answering affidavit the following facts emerged, about which Mr Nicholao remained entirely silent.
8. Subsequent to the confusion regarding the time scheduled on 7 March 2001 by the CCMA, the matter was rescheduled for 14 March 2001. On this day the applicant failed to attend the arbitration proceedings, and a default award was made by a commissioner of the CCMA, Miss Kate Savage. A copy of the award is attached to the papers of the respondent supporting out

that fact. This award was then faxed to the applicant on 16 March 2001. This fact is supported by a copy of the covering letter from the Commissioner for Conciliation Mediation and Arbitration to the respondent's business address.

1. 9. On 20 March 2001 the applicant applied for rescission of the award in terms of section 140 of the Act. The award was rescinded on 3 August 2001 by another commissioner of the CCMA, namely a Mr Ian MacGregor. His rescission ruling is attached to the answering papers as annexure E. The rescission ruling therefore confirms that the applicant had been in contact with the CCMA, and that it did receive notices from the CCMA at the correct address and responded to them. There must have been some kind of correspondence then.
10. The matter was then rescheduled for arbitration on 2 May 2002. On this day the applicant once again failed to attend the proceedings. It appears from the notice of set down that the document was only faxed to the applicant's business fax number in Pretoria and not the fax number of the applicant's representatives given as a chosen address in the rescission application. The matter was therefore postponed. A copy of the notice of set down is attached to the answering papers as

annexure F.

11. A further rescheduling took place, and the matter was ultimately set down for 4 June 2002. The notice of set down was faxed to the applicant's fax number in Pretoria and that of its representative in Johannesburg. There could surly be no complaint about proper service of the notice of set down in this instance. The notice of set down is attached to the papers as annexure G.

1. 12. Annexures H and I to the answering papers reflect that the representative of the respondents - at that stage already - notified the applicant of the date of hearing. The notice of set down for the application in terms of section 158(1)(c) of the Act heard on 11 November, was also duly served on the applicant. An affidavit in support of proof of service was also placed before the court in those proceedings. This is annexure I. Herein the deponent makes reference to the fax number for service as being the number which appears on the applicant's own Notice of Motion in the rescission application it had brought before the CCMA.

13. It appears that the applicant had not been frank with its representatives. Otherwise they would never have approached this court and omitted to state all these facts in the supporting affidavit or perused this type

of relief.

14. In the circumstances, the application should be dismissed. Since this application was based on untruths and it is vexatious and frivolous in the circumstances. Consequently a punitive costs order is clearly indicated.

15. I make the following order:

1. The application is dismissed.
2. The applicant is to pay the respondent's costs on a scale as between attorney and client.

E. Revelas

ON BEHALF OF THE APPLICANT: Mr. VAN LOGGENBERG

form the NATIONAL

ASSOCIATION OF PRIVATE EMPLOYERS

ON BEHALF OF THE RESPONDENT: Riki Anderson form

ANDERSON & KLOPPERS ATTORNEYS