

REPUBLIC OF SOUTH AFRICA



IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Not Reportable

Case no: **D1318/17**

In the matter between:

MJAYELI SECURITY (Pty) LTD

Applicant

and

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

First Respondent

COMMISSIONER CARESSA VENKATIAH

Second Respondent

NTOMBI NTULI

Third Respondent

HEARD: 3 September 2020. In Chambers, with the consent of both parties

Delivered: This judgment was handed down electronically by circulation to the parties and /or their legal representatives by email. The date and time for handing-down is deemed to be 12h00 on 03 September 2020.

JUDGMENT

GUSH J

- [1] The applicant applies for the “award/ruling” of the second respondent “dated 15 August 2017 under case number KNDB 12183/16” to be reviewed and set aside. The applicants application is opposed by the 3rd respondent.
- [2] The ruling that is the subject of this application and the decision the applicant wishes to be set aside is a “rescission ruling” and is annexed to the applicant’s papers at page 57 of the pleadings. In this ruling the second respondent refused the applicants application rescission of a default award heard on 15 May 2017 and dated 23 May 2017.
- [3] In order for the applicant to establish that the “rescission ruling” (award/ruling) is reviewable and that it should be set aside the applicant is obliged in terms of the rules of this court to:
- “upon the [CCMA] to dispatch, within 10 days after receipt of the notice of motion, to the registrar, record of the proceedings sought to be corrected or set aside, together with such reasons as required by law desirable to provide and to notify the applicant that this has been done.¹
- [4] Not only has the applicant not complied with this requirement; the applicant has in addition failed to file the record of the proceedings. Specifically the applicant has not filed its written submissions in support of its application for rescission, let alone explain why in the light of such representations the ruling of the 2nd respondent is reviewable.

¹ Rule 7A (2) (b)

- [5] Despite the fact that the applicant wishes the 2nd respondent's "award/ruling", that deals only with the issue of its application for rescission, the applicant appears to rely on issues that are more pertinent to the merits of the default arbitration award dated 23 May 2017.
- [6] In its heads of argument the applicant confirms that this application is an application to review and set aside the "award/ruling" of the second respondent "dated 15 August 2017 under case number KNDB 12183/16".
- [7] The award dated 23 May 2017 was a default award issued by the 1st respondent in the absence of the applicant. In order to succeed with an application for rescission the applicant is required to have complied with or justified its default in accordance with the provisions of section 165 of the Labour relations act and/or the rules of this court.
- [8] In the absence of any explanation for its default or record of its application for rescission there is no basis upon which this court can even consider whether the 2nd respondent's "award/ruling" is reviewable.
- [9] Whilst it is so that the applicant has elected to be represented by employees this is no excuse for the applicant's failure to comply with the basic requirements of an application of this nature. It is no reason why the applicant did not pay the respondents costs.
- [10] In the circumstances I make the following order:
- a. applicants application is dismissed;
 - b. the applicant is ordered to pay the 3rd respondent's costs.

D H Gush
Judge of the Labour Court of
South Africa

LABOUR COURT