



CONSTITUTIONAL COURT OF SOUTH AFRICA

F&J Electrical CC v MEWUSA obo E Mashatola and Others

CCT 131/14

Date of judgment: 17 February 2015

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today the Constitutional Court handed down judgment in an application regarding the Labour Court's incorrect dismissal of a rescission application under labour law provisions.

The applicant, F&J Electrical CC (F&J), sought leave to appeal against a judgment of the Labour Court which dismissed its application for rescission of an order granted by that Court against F&J in its absence. The order of the Labour Court that F&J sought to rescind was for the payment of more than R 1 000 000 to each of a number of its former employees who had allegedly been retrenched. The respondents are the former employees of F&J and the Metal and Electrical Workers Union, which represented them throughout.

F&J applied to this Court for leave to appeal after the Labour Court and Labour Appeal Court both dismissed its applications for leave to appeal. This Court invited the parties to deliver written submissions on the matter and dealt with the matter on the basis of those submissions, without an oral hearing.

In a unanimous judgment, Zondo J held that this was a matter in which leave to appeal should be granted because the order of the Labour Court was based on a finding that F&J violated the right of every worker to join a trade union of his or her choice. F&J, as the employer, should be given an opportunity to show that this finding should not have been made against it.

Zondo J noted that the Labour Relations Act, which empowers the Labour Court to rescind its previous orders or judgments, does not require the party applying for rescission to show good or sufficient cause for its failure to deliver its response to a statement of claim. All that is required under that section is that such a party should show that the previous order or judgment was erroneously sought or granted.

The Court held that there were a number of errors by the Labour Court in its initial order, which required that F&J pay each worker 24 months' remuneration. Among these was that the Labour Court based its order on affidavits that the workers delivered to the Court, which were not served on F&J. These affidavits stated that the workers had been dismissed for union membership. This evidence was contrary to what they had stated in their statement of claim and in a prior CCMA arbitration. There they had said that they did not know the reason for their dismissal. At the arbitration, F&J's representative presented a document which showed that the employees had been dismissed due to operational requirements. The CCMA commissioner accepted this and accordingly ruled that the CCMA did not have jurisdiction as the dispute should have been referred to the Labour Court. Zondo J pointed out that the workers, in their affidavits submitted to the Labour Court, had stated that they were dismissed for union membership despite the document referred to and the ruling of the CCMA. This meant that F&J were unknowingly faced with the possibility of a far greater award being made against them, as the Labour Relations Act provides for twice the amount of compensation where the unfair dismissal is due to the employees' union membership.

The Court also noted that the union had failed to refer the dispute to the Labour Court within the prescribed period of 90 days from the date of the completion of the conciliation process and did not apply to the Labour Court for the condonation of its failure. This meant that the Labour Court did not have jurisdiction to entertain the dismissal dispute and make an order that F&J pay the workers the amounts that it ordered. The Court concluded that the order of the Labour Court had been erroneously granted and should have been rescinded. The appeal was upheld, the rescission order of the Labour Court was set aside and F&J was granted leave to defend the unfair dismissal claim in the Labour Court.