

Sneller Verbatim/HVDM

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J2762/00

2001-10-18

In the matter between

THABO B MANYAKA

Applicant

and

DIPLOMAT DUTY FREE SUPPLIERS (PTY) LTD

Respondent

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J U D G M E N T

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LANDMAN J: This is an application brought by Diplomat Duty Free Suppliers (Pty) Ltd to rescind a judgment of this court granted on 13 September 2000.

Mr Manyaka's application for relief following an alleged unfair dismissal was served on his employer on 26 June 2000 by telefax. The application came to the notice of the employer, although it had been addressed to one Mr Kevin Greyling. Mr Greyling had previously worked for the employer. It was established that it was necessary to file a notice of opposition and to prepare a defence. Instructions were duly given to the employer's attorney. A search was made to find Mr Greyling. However, no letter was sent to the applicant asking for an extension

of time to file a notice of opposition. Mr Greyling was eventually located, consultations took place, the employer prepared its defence. It filed a notice of opposition and a statement of response which also contained an application for condonation for the late filing of the notice of opposition. This of course may not have been sufficient, but I merely set out the facts.

The notice of opposition and the other documents were served upon the union representing the applicant on 8 September 2000. This appears from the receipt which is recorded on the notice. In the meantime, on 23 August, the registrar of this court had sent a notice of set down to both parties informing them that the matter would be heard on 13 September 2000. This notice was received by an employee of the employer. But nothing was done about it.

On 13 September judgment by default was granted. The employer became aware of it and applied to rescind the judgment. The applicant for rescission sets out details regarding the employer's prospects of success. I am not able to say that the employer has no prospects of success. Indeed it has made out a *prima facie* case.

The main question is whether or not the employer was in wilful default. In other circumstances I would have come to the conclusion that the employer was in wilful default because it was extremely negligent. However, it is apparent to me that whoever appeared on behalf of the applicant, and I assume this to be a union representative, did not inform the court when he or she appeared that a notice of opposition had been received on 8 September. The notice was accompanied by a statement of response. An application for condonation was set out in the statement. This fact should have been drawn to the attention of the court. Had the court decided nevertheless to grant default judgment then the employer would not have been able to have it set aside. On that ground alone I

am of the opinion that the judgment by default should be rescinded.

The judgment granted on 13 September 2000 under case no. J2762/2000 is hereby rescinded. The matter is to be enrolled for hearing of the application for condonation. Having regard to the fact that the employer was *prima facie* grossly negligent, I will make no order as to costs.

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A A Landman

Judge of the Labour Court of South Africa

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