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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN CASE NO: J3498/00

2001-10-18

In the matter between

GOMBO SECURITY SERVICES (PTY) LTD Applicant

and

SECURITIES COMBINED CIVIL WORKERS

UNION AND 36 OTHERS Respondents

J U D G M E N T

LANDMAN J: This is an application for the rescission of a judgment. The applicant is Gombo Security Services (Pty) Ltd. The respondents are the Securities Combined Civil Workers Union and 36 members who were formally employed by the company.

On 21 November 2000 the respondents obtained a judgment by default in terms of section 158(1)(c) of the Labour Relations Act 66 of 1995. The court ordered:

"1. The arbitration award issued on 26 June 2000 by Commissioner B Moyo of the

Commission for Conciliation and Mediation under case no. GA65087 is made an order of court in terms of section 158(1)(c) of the Labour Relations Act 66 of 1995.

2. The respondent is to pay the applicants' costs.

3. The respondent is ordered to pay compensation of R523 740 to the 35 applicants and the amount of R24 000 to the 36th applicant."

Thereafter the union sought to enforce the award. This resulted in the company applying for the rescission of the judgment. The application for rescission was slightly out of time. There is no reason why it should not be condoned, and it is condoned.

The application for rescission of the judgment must, in my view, be approached on two legs. The first relates to paragraph 1 and 2 of the order, that is those parts of the order making the arbitration award an order of court and ordering the company to pay the union's costs. The second leg relates to the order of compensation. This is set out in paragraph 3.

In so far as paragraph 3 is concerned this appears to be an order which was erroneously granted. First, there was no application to quantify the award before the court. Essential information, such as the date of dismissal, the length of the respective contracts of employment of the individual applicants, and the wages was lacking.

In my opinion this part of the award therefore falls to be rescinded on this ground alone. The company would have had no notice whatsoever that this kind of relief was being sought.

As regards the remainder of the order it is incumbent on the company to show that it was not in wilful default and that it has a *bona fide* defence. The company says that it did not receive notice of the fax sent by the CCMA informing it of the date of set down of the arbitration proceedings. This is merely a bald

statement. The company has apparently not investigated whether or not it received that notice as it has done in respect of other faxes. The inference to be drawn is that this matter has not been properly investigated. The company admits that it received a copy of the award. This copy was filed away by an administrative assistant and nothing was done about it. The company also admits it received a copy of the application to make the award an order of court, but it does not know what was done about it. Apparently no employee can be traced who did anything about it, but it is admitted that the document was received.

The company has been grossly negligent (negligence which is bordering on recklessness), in regard to process emanating from the CCMA and this court. The company was aware that there had been a failed conciliation and that therefore there was a dispute pending in the CCMA. It knew where it could obtain information as regards the progress of that matter, but it failed to do so.

In my opinion the company was in wilful default, both as regards the proceedings in the CCMA and in this court.

I turn to the question whether the company has a *bona fide* defence. The company admits that it owed leave pay to the 35 individuals. It says however it could not pay them. It goes on to say that a strike took place and that the employees were dismissed for striking. This may be its perception, and the commissioner points it out, but employees are not obliged to work if they are not paid. There must be some doubt as to whether or not they were dismissed for striking. What points against them being dismissed for striking is the fact that the employer dismissed them on one month's notice. This is not something which is usually done in a strike situation. I am of the opinion that the company has not shown that it has a *bona fide* defence. The company has not shown that it has the prospects of succeeding in an application to rescind the CCMA's award nor has it

shown grounds for this court to rescind paragraphs 1 and 2 of the order of this court made on 21 November 2000.

In the result therefore the application in so far as it relates to paragraphs 1 and 2 of the order 21 November 2000 is dismissed. Paragraph 3 of that order is rescinded. No order is made as to costs.

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A A Landman

Judge of the Labour Court of South Africa

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