

In the matter between

JOHANNESBURG COMMUNITY LEGAL CENTRE

Applicant

and

SIMON CHESHIRE

Respondent

J U D G M E N T

WAGLAY, J: The applicant suspended the respondent on full pay "pending a disciplinary hearing at the end of April 2003". Although the respondent received his monthly salary, the applicant failed to prefer misconduct charges against him. By early June, that is about three months later, the respondent decided to refer to the CCMA the dispute with the applicant, which he fashioned as being an unfair labour practice, the unfair labour practice being what he called an unfair suspension.

After the matter was referred to the CCMA, when respondent went to collect his salary for the month of June, applicant refused to pay the salary. Respondent considered this as constituting a dismissal. Respondent alleges that he was specifically told that the refusal to pay was linked directly to him having referred the suspension to the CCMA. The respondent then referred his alleged dismissal to the CCMA and on 6 August both the unfair labour practice and the dismissal dispute was set down for conciliation. The applicant failed to appear at the conciliation and a certificate of non-resolution of the dispute was then issued by the CCMA.

On receipt of the certificate aforesaid, the respondent launched an application claiming compensation on the grounds that his dismissal constituted an "automatically unfair dismissal". This application was served on the applicant. The applicant failed to respond thereto as required by the rules and the matter was then set down for default judgment.

Prior to the matter being heard by default, the applicant wrote to the respondent informing him that he was being charged with misconduct. A disciplinary hearing was to be held on 15 August 2003. Respondent refused to attend such a hearing and according to the applicant he was found guilty of misconduct and dismissed on 25 August 2003.

In the meantime the matter was set down for default judgment and came before this Court on 3 September 2003. This Court found that the respondent's dismissal was both substantively and procedurally unfair and ordered compensation in his favour and against the applicant.

The applicant now seeks rescission of this order. In order to succeed it must show sufficient cause, give a reasonable explanation for its non-appearance and satisfy this court that it has reasonable prospects of success or a defence to the respondent's claim. The explanation applicant provides for its default is that: (i) it required the benefit of counsel to appose the

matter and was unable to secure counsel timeously; (ii) that Mshayisa who was in effective control of the applicant, went on leave two days after receiving the respondent's statement of case and later when it did decide to oppose the matter, due to an oversight, failed to file any opposing papers.

The explanation as provided is totally unsatisfactory, more particularly since applicant is in the business of attending to legal processes. The applicant should have been aware of the need to read the statement of case filed and on reading would have discovered that opposing papers had to be filed. In any event, simply asking for an appointment of counsel and then going on leave without taking any action, displays a rather cavalier attitude, which does not engender any sympathy from this court. I find the explanation provided for its default totally unacceptable.

With regard to the prospects of success, applicant's main argument is that the respondent was not dismissed at the time the referral was made to the CCMA or when the matter was referred to this court. According to the applicant, the respondent was only dismissed on 25 August 2003. This is denied on the papers before me. While I accept that applicant informed the respondent of a hearing on 8 August, which was to take place on the 15th, and that he was dismissed on the applicant's version on 25th, the respondent's version is quite different. However, this dispute is not such that it cannot be resolved on the papers as they stand.

I am satisfied that the version of the respondent is more probable taking into account the totality of the evidence presented. In the circumstances it cannot be said that there is any prospect of success with regard to applicant's defence in the main action.

For the above reasons I make the following order:
The application for rescission is refused with costs.

WAGLAY,J