

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 87/10
[2010] ZACC 22

In the matter between:

SABELO ZWANE First Applicant

AARON MADONSELA Second Applicant

PETROS MADONSELA Third Applicant

EZEKIEL NKOSI Fourth Applicant

WILLIAM MASHABA Fifth Applicant

DAVID MATADI Sixth Applicant

and

ALERT FENCING CONTRACTORS CC Respondent

Decided on : 23 November 2010

JUDGMENT

THE COURT:

[1] This application for leave to appeal is a further effort by the applicants to cling to a default judgment secured by them in the Labour Court, without notice to the respondent, to the effect that they had been unfairly dismissed by the respondent. This happened

because the respondent's legal representatives had failed to attend a pre-trial conference before a judge in the Labour Court and that judge had, in terms of rule 6(7) of the rules of that Court,¹ barred the respondent from defending the proceedings. The matter was then set down for default judgment without being brought to the attention of the respondent. The respondent's legal representative had apparently not attended the pre-trial conference because its date had been wrongly diarised.

[2] The Labour Court subsequently, at the instance of the respondent, rescinded the judgment that had been obtained by default on the basis of the respondent's explanation.

[3] The Labour Appeal Court on appeal against the rescission order held, relying on its own judgment in *Eberspächer v National Union of Metalworkers of SA on behalf of Skade & Others*,² that rule 6(7) required notice of the application for default judgment to be given to the respondent as a pre-requisite to judgment being granted. The applicants contend that this conclusion was incorrect.

¹ Rule 6(7) of the Rules for the Conduct of Proceedings in the Labour Court provides:

“If any party fails to attend any pre-trial conference convened in terms of subrule (4)(a), 5(b) or (5)(c), or fails to comply with any direction made by a judge in terms of subrules (5) and (6), the matter may be enrolled for hearing on the direction of a judge and the defaulting party will not be permitted to appear at the hearing unless the court on good cause shown orders otherwise.”

² (2009) 30 ILJ 880 (LAC).

[4] The application in this Court was lodged 10 days late. There is a satisfactory explanation by the applicants for this relatively short delay and condonation must be granted.

[5] We disagree however that the decision of the Labour Appeal Court is susceptible to criticism. That decision was correct. The application for leave to appeal must be dismissed.

[6] One further difficulty must however be alluded to. The applicants were retrenched on 31 May 2004, almost six and a half years ago. The chronology went something like this:

- a. The default judgment in favour of the applicants was granted a year after their dismissal;³
- b. The process for the rescission of judgment took almost two and a half years;⁴
- c. The process of leave to appeal aimed at securing an appeal to the Labour Appeal Court took a little more than a year and a half;⁵ and
- d. The appeal process took about one year.⁶

³ On 25 May 2005.

⁴ The application for rescission was made on 6 June 2005 and was granted on 2 November 2007.

⁵ The application for leave to appeal was made on 2 November 2007 and granted on 17 June 2009.

⁶ From 17 June 2009 until 28 May 2010.

[7] It is unacceptable that a claim for unfair dismissal has not been finalised for such a long time. In the circumstances the Judge President of the Labour Court is urged to do everything possible to ensure that this case is heard as a matter of urgency.

Order

[8] The following order is made:

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.
3. The Registrar of this Court is directed to draw the contents of paragraph [7] of this judgment to the attention of the Judge President of the Labour Court and to the Registrar of that Court.

Ngcobo CJ, Moseneke DCJ, Brand AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Mogoeng J, Nkabinde J, Skweyiya J and Yacoob J.