

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT CAPE TOWN

CASE NO: C390/99

In the matter between :

**NUWEYAARSRIEVER LANDGOED (PTY) LTD
t/a PAARL BRICKFIELDS**

Applicant

And

AKIAH & OTHERS

**First to 29th
Respondents**

And

AWAWU

**30th
Respondent**

**JUDGMENT
MacROBERT A.J.**

1. What follow are the reasons for the order handed down on 15 September 1999 to the following effect:
 - a) The Respondents have failed to comply with time limits set by Judge Revelas in her Order of 3 September 1999 and indeed have filed no application for condonation at all, nor any affidavits in respect of the proceedings on 15 September 1999;
 - b) Respondents are accordingly precluded from referring their dispute to the Labour Court or the CCMA;

- c) The Respondents are to pay the costs associated with the hearing, one or more paying, the others to be absolved, including the costs of Applicant's attorneys and counsel on the High Court scale and as between attorney and own client.
 - d) The reasons for this Order will follow.
2. The background to this matter and the reasons for the Order handed down by Judge Revelas on 3 September 1999 are fully set out in Judge Revelas' judgement and I do not propose to restate them in this judgement.
 3. The relevant part of the Order of Judge Revelas for the purposes of this application so handed down was to the following effect:

"It is ordered that: The Order handed down on 2 September 1999 is hereby varied by rescinding paragraph 3 of that Order and substituting it with the following.

3.1 The Respondent is to bring any application for condonation for their non-compliance with the time limits in the agreement of settlement dated 19 June 1999, by no later than 8 September 1999. The Applicant is to file its answering affidavit thereto by no later than 13 September 1999.

3.2 The condonation application is to be set down for hearing on 15 September 1999 and should the Respondent be unsuccessful in the condonation application, the Respondents are precluded from referring the dispute to the Labour Court for adjudication or the Commission for Conciliation, Mediation and Arbitration ("CCMA").

3.3 Should the Respondent fail to comply with the time limits set out above in respect of the application for condonation, the Respondent shall, similarly be precluded from referring their dispute to the Labour Court or the CCMA."

5. On 8 September 1999, Respondents filed a notice of application for leave to appeal against the whole of the judgement of Mrs Justice Revelas handed down on 3 September 1999 (whose order has been set out above) on certain grounds. This was apparently served on the Applicant on 9 September. This was accompanied by no affidavit or explanation on the part of the Respondents.

6. On 10 September 1999 the Applicant filed a notice of application which was served on Respondents' attorneys on the same day to the effect that application would be made on behalf of Applicant on 15 September for an Order as contemplated in paragraph 3 of the Order of Judge Revelas dated 3 September 1999, declaring that Respondents are precluded from referring the dispute to the Labour Court for adjudication or to the Commission for Conciliation , Mediation and Arbitration.

7. Adv SJ Kleynhans instructed presumably by Lloyd Fortuin Attorneys appeared on behalf of Respondents and Adv MA Crowe instructed by Attorneys Dykeman and Crossley appeared on behalf of the Applicant.

8. A preliminary question arose namely as to whether the agreement of settlement entered into between the parties dated 19 June 1999 had either implicitly or otherwise and whether in whole or in part, already been made an Order of Court. Counsel for Respondents indicated that in Respondents' view the agreement of settlement had not as at the date of hearing on 15 September 1999 been made an Order of Court, but that Respondents had no objection to it being made an Order by consent. This consent was subsequently withdrawn on the cusp of the Order being made on 15 September and therefore did not form part of the Order of Court made on that day. However, both counsel were of the view that this was not

integral to the determination of the matter, although it was the view of Applicant's counsel that it is implicit in the Order of Judge Revelas that at least a part of the settlement agreement had been made or incorporated in, the Order of Judge Revelas.

9. It was common cause that there has been no compliance by Respondents with the Order of Judge Revelas handed down on 3 September and nor was any explanation proffered as to why there had been no such compliance. It is further common cause that no papers or affidavits explaining the Respondents' position had been filed.

10. The only document filed on the part of the Respondents since 3 September is the notice of application for leave to appeal, referred to above. It was however conceded on the part of Respondents' counsel that this application for leave to appeal had been brought prematurely as Judge Revelas' Order of 3 September was not of final effect. In this regard s166(1) of the Labour Relations Act is of importance. Only if the Court gave an Order along the lines sought by Applicant in its notice of motion filed on 10 September which I have referred to above, would this be of final effect, although nonetheless potentially appealable should application for leave to appeal be granted or failing that, if a petition for leave to appeal was successful.

11. All that remained in the armoury of Respondents was a statement from the Bar made by Respondents' counsel that Respondents intended filing an application for review of Judge Revelas' Order and/or judgement based allegedly on an irregularity of proceedings, apparently to be brought in terms of Rule 10 of the Rules of Court, which was promised to be filed by no later than 14h00. This would have had the unusual consequence of the same Order and judgement being sought to be both appealed and reviewed.

12. In the result, no such review was filed even though the Court re-convened at 14h30 whereafter the Order was made. There were also no papers or affidavits in support of this statement of intent. In addition it appeared that if such a review were to be brought in terms of Rule 10, this would not be appropriate as such reviews take place in chambers and are relevant to liquidation proceedings which are not in issue in this matter.

13. Be that as it may, there was no such review before Court and the Court was therefore faced with the situation that an Order had been made by Judge Revelas on 3 September which was extremely clear in its terms and which had not been complied with by Respondents and in respect of which absolutely explanation whatsoever had been tendered in any proper form as to why it had not been complied with.

14. It was also not contested that this was truly a matter of urgency although it was contended somewhat faintly on behalf of Respondents that even though in the settlement agreement between the parties dated 19 June 1999 the parties had agreed to truncate the time periods for the filing of pleadings contained in the Rules of Court, nonetheless should there have been a breach of such obligation on the part of Respondents (which was admitted), then thereafter the ordinary time periods provided in the Rules of Court and the Rules themselves would apply. This proposition is bereft of any logical integrity, it being clear that the urgency arose precisely because the truncated time periods as agreed between the parties had not been complied with by the Respondents.

15. In the result there was no basis whatsoever for the Court to decline to implement the Order made by Judge Revelas on 3 September 1999 and accompanying that Order a suitable Order as to costs was made in the light of Respondents flagrant and unexplained disregard of Judge Revelas' Order. Moreover no application had been brought by Respondents in any form whatsoever, let alone proper form, to stay the Order of Judge Revelas on any ground.

16. Consequently the Order in the form as set out above was issued on 15 September 1999.

Acting-Judge of the Labour Court of South Africa

Date of Hearing: 14 September 1999

Date of Judgment: September 1999