

Sneller Verbatim/JduP

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J1768/01

2001-11-13

In the matter between

SAMUEL SILINGANA

Applicant

and

JUMBO CASH & CARRY

Respondent

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J U D G M E N T

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REVELAS, J:

1. On 24 April 2001 an arbitrator of the Commission for Conciliation Mediation and Arbitration (the CCMA) made an award in favour of Mr Samuel Silingana in terms of which he was reinstated in the employ of the respondent. The applicant and the respondent apparently had settled the matter, in terms of the agreement. The applicant was not to be reinstated, but was to receive an amount of R7 000.
2. There is a settlement agreement dated 8 June 2001, signed by both the applicant and the respondent, before me.
3. The applicant approached the court on 7 August 2001, and obtained an award in terms of which the award was made an order of court, without informing Moerane AJ, presided, of the settlement agreement.
4. The respondent was not notified by the registrar to appear in court. It appears from the court file that the respondent was not notified of the application to have the order made an order of court, or of today's

hearing, for that matter.

- 5.The applicant then sought to compel the respondent to comply with the court order, despite the settlement agreement, by bringing an application for contempt of court.
- 6.In terms of the Act I am entitled to rescind a court order of this court if it is obtained in the circumstances of this case.
- 7.Subsequently, the court order issued by Moerane AJ should be rescinded, and the application, to have the award made an order of court, be dismissed. I also grant costs in this matter due to the applicant's conduct as demonstrated herein.
- 8.Employees should be discouraged from abusing the court process which does not require a notice to the respondent, where matters perceived by default normally, to obtain orders when they do not bring to the court's attention that settlement agreements have been reached.
- 9.In these circumstances I deem the costs order against the applicant, even though he is unemployed, as fitting.
- 10.I make the following order:

- 1.The court order dated 7 August 2001 of Moerane AJ is rescinded.
- 2.The application in terms of section 158(1)(c) is dismissed.
- 3.The applicant, Mr Silinga, is to pay the respondent=s costs.

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E. Revelas