

DURBAN

REVISED

REPORTABLE

IN THE LABOUR COURT OF SOUTH AFRICA
SITTING IN DURBAN

CASE NO D962/2000

DATE 2001/02/21

In the matter between:

MURUVIAH NADAS

Applicant

and

GAME STORE AND OTHERS
COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION
AFZUL SOOBEDAAR

First Respondent

Second Respondent

Third Respondent

**JUDGMENT DELIVERED BY THE HONOURABLE MS JUSTICE PILLAY
ON 21 FEBRUARY 2001**

TRANSCRIBER
SNELLER RECORDINGS (PROPRIETARY

J U D G M E N T

PILLAY J

1] This is an application for costs. The applicant withdrew his application to review a decision of the second respondent without tendering to pay the third respondent's costs. The application was made in terms of Rule 13 of the Rules of the Labour Court. The equivalent Rule in the High Court is Rule 41(1)(c) which provides:

"If no such consent to pay costs is embodied in the notice of withdrawal, the other party may apply to court on notice for an order for costs".

2] In the matter of **Nel v O.V.S. Staalkonstruksie en Algemene Sweiswerke 1977(3) 993**, the Court held that,

"The reason why Rule 41(1)(c) only requires a notice and not an affidavit is that all the relevant documents which are required for such an application are already before the Court. All that is necessary is the summons, the declaration – in the event of one having been delivered, a defendant's notice of intention to defend and the plaintiff's notice of withdrawal. Although an applicant for an order for costs need only deliver a notice of his intention to ask for an order as to costs, it nevertheless remains an application for costs directed to the Court. In the event of a party who has withdrawn his claim not being entitled to oppose the application there would be no reason to give him notice thereof."

The Court in that matter stated further that an opportunity should be given to the other party to oppose an application for costs by filing affidavits if necessary.

3] In the circumstances of this case all the facts on which the employee relied for resisting the application for costs were not in dispute and it would have served no purpose to allow the employee an opportunity to file affidavits in the circumstances.

4] The Union withdrew this matter because it was not able to contact the applicant. There was no other explanation for either the withdrawal or why the applicant should not be ordered to pay the costs.

5] In the circumstances the Court makes an order awarding costs to the first respondent.

JUDGE PILLAY

For the Applicant: S A Hlongwa

Instructed by:

For the Respondent: B Stirling

Instructed by: Shepstone & Wylie

RESPONDENT