

IN THE LABOUR COURT OF SOUTH AFRICA

CASE NO: J5614/01

In the matter between:

THE SOUTH AFRICAN COMMERCIAL CATERING  
1<sup>st</sup> Applicant

2<sup>nd</sup> to Further Applicants

and

Respondent

—

REASONS FOR JUDGMENT

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FRANCIS J

2. On the 18 January 2002 I dismissed the application that was brought by the applicants with costs. I indicated that I would provide my reasons later. These are my reasons.

3. On the 10 January 2002 the applicants gave notice that it intended applying to this

Court on 11 January 2002 at 14H30 for the following relief:

- “1 *Condoning the respondent’s non-compliance with the rules relating to the service and time periods and dealing with this application as one of urgency in terms of Rule 8.*
- 2 *Directing that a rule nisi be issued, calling upon the applicant to show cause at 14H30 on the 11<sup>th</sup> day of January 2002, or alternatively at a time and upon a date to be determined by this Honourable Court why the Labour Court order of Judge Pillay in the above case number dated 28 December 2001 (a copy of which forms annexures “IB” to the Founding Affidavit herein) should not be rescinded and set aside.*
- 3 *Ordering the applicant to pay the costs of this application.*
- 4 *Granting the respondents further and/or alternative relief.”*

4. The applicants seek to rescind an interim order that was granted by this Court on 28

December 2001 in favour of the respondent. The terms of that order are as follows:

*“1. The second and further respondents (Applicants in this application) are interdicted and restrained from:*

*1.1 Being in a radius of 100 metres of the entrance of the Applicant’s premises in Rivonia Road (including the slipway and pavement) and,*

*1.2 Entering the premises of the Applicant and,*

*1.3 Having any contract with any of the non-striking employees of the applicant and,*

*1.4 Committing any action of intimidation or violence in relation to any of the non-striking employees of the applicant, suppliers or clients of the applicant.*

5. The Respondents are given leave to anticipate the return date on 48 hours notice.

6. The return date is 29 January & 10 o’clock”.

4. On the 11 January 2002, the respondent filed opposing papers in the above matter.

When the matter came up before me, Mr Motane, who appeared for the applicants requested a postponement on the basis that he needed to consider the papers that were filed by the respondents. I raised with him whether the applicants were applying for an order to rescind the interim Order that was granted on 28 December 2001 or whether the applicants were anticipating the return date. Mr Motane stated that the application was to rescind the Order that was granted on 28 December 2001. The matter was postponed to 18 January 2002 to enable the applicants to file the necessary papers should they wish to do so. Costs were reserved.

5. When the matter came up before me again on 18 January 2002, I enquired again from Mr Motane whether he was persisting with the rescission application or that he was anticipating the return date. He stated that he was proceeding with a rescission application.
6. Mr Motane contended that Rule 16(A) of the Rules of this Court permit an applicant to apply to this Court to rescind any order granted by it. The said Rule does not refer to an interim order. The applicants were of the view that the Order of 28 December 2001 was wrongfully given which enabled the applicants to bring the rescission application. The applicants were persisting with the rescission application and were not anticipating the return date as provided for in paragraph 2 of the Order of 28 December 2001.
7. Mr Nel who appeared for the respondent, contended that he could not find any decided cases dealing with the issue at hand. He contended that section 165 of the Labour Relations Act 66 of 1995 (“the Act”) permits a Court to rescind orders. In terms of Rule 16(A), the Court has the power in addition to the powers it may have to rescind only final orders. He contended further that Rule 8 of the Rules of this Court makes provision for interim orders to be granted. A party could anticipate the return date of an order by giving the requisite 48-hour notice.

8. I am of the view that Rule 8 of the Rules of this Court regulates the procedure to be followed in urgent applications. Rule 8(8) gives a respondent the right to anticipate a return date of an interim interdict on not less than 48 hours' notice to the applicant and to the registrar. The course of action open to a respondent after an interim order has been granted against it, is to utilise the provisions of Rule 8(8) which was specifically designed to deal with it. The applicants have not followed this route but has instead despite me having raised this several times with Mr Motane, persisted to follow the route envisaged in Rule 16(A) which deals with rescinding of final orders.
9. The Order that was granted on 28 December 2001 did not finally dispose of the principal issues between the parties in this matter. The practical effect of the Order of 28 December 2001 is that the applicants in the present proceedings can anticipate the return date on 48 hours notice to the respondent. Interim orders are not of a final nature and can therefore not be rescinded in terms of Rule 16A .
10. It was for these reasons that I dismissed the applicants' rescission application with costs which included the costs of 11 January 2002.

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FRANCIS J

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

: A MOTANE - UNION OFFICIAL

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ENT : AR NEL INSTRUCTED BY SNYMAN VAN DER HEEVER  
HEYNS

: 11 AND 18 JANUARY 2002

IT : 21 JANUARY 2002