

Sneller Verbatim/ASS

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JS77/02

2003-02-26

In the matter between

V L MORGAN

Applicant

and

BARONSCOURT SA (PTY) LIMITED

Respondent

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J U D G M E N T

EX TEMPORE

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REVELAS J:

1. This was an application for an order rescinding the judgment and order of Francis J dated 17 April 2002. The application was brought in terms of section 165 of the Labour Relations Act, 66 of 1995, as amended. The order was granted pursuant to referral by the respondent of an alleged unfair dismissal dispute in terms of section 191 of the Labour Relations Act 66 of

1995 ("the Act").

1. 1. 2. Rule 16(a) of the Rules of the Labour Court requires the applicant to show that the order was erroneously granted in its absence and it has *prima facie* and *bona fide* defence on the merits. I have to go further and state that there must also be an adequate explanation and that good cause has to be shown.
3. The explanation advanced by Mr Lewis (of the respondent) for not opposing the matter, was that he did not know about the application for default judgment in that he was not notified. It is correct that the Registrar of this court did not notify the respondent, but then, in terms of the Rules, the Registrar is not obliged to notify a party who has not done anything to oppose the matter. No answering statement has been filed by the respondent up to date. This, in my view, would have indicated some willingness on the part of the respondent to oppose the matter as it now wishes to do.
1. 4. It is common cause that the respondent received the applicant's statement of case, chose not to oppose it and advanced the simple explanation that Mr Lewis had elected to see "what would happen next" in the case. Mr Lewis did so at his peril I am afraid. In the

applicant's statement in case the respondent is put on terms to file an answering statement and the applicant's address of service was set out very clearly. It was argued that Mr Lewis does not know about the labour court rules and there was some explanation to the effect that the statement of case was erroneously seen as a letter of demand. However, quite clearly, the statement of case titled with a heading which states: **"IN THE LABOUR COURT OF SOUTH AFRICA (HELD AT JOHANNESBURG) ."** Such a notice would cause the reasonable person to pay attention to the documentation and take steps. The respondent chose not to deal with the documents and the rules of this court were thereby flouted.

5. I have also considered the prospects of success advanced by the respondent at this late stage, and there is nothing therein that persuades me that the prospects of success, if any, outweigh the other considerations which I have taken into account.
6. In the circumstances I am not inclined to rescind the order. Therefore, the application for rescision is dismissed with costs.

E. Revelas