

**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT BRAAMFONTEIN)**

CASE NO: JR804/06

In the matter between

**ASSOCIATION OF IMMIGRATION
PRACTITIONERS OF SOUTH AFRICA**

APPLICANT

And

**COMMISSIONER FOR CONCILIATION,
MEDIATION AND ARBITRATION**

1ST RESPONDENT

COMMISSIONER D NGWENYA N.O

2ND RESPONDENT

MADELEINE PRETORIUS

3RD RESPONDENT

JUDGMENT

MOLAHLEHI AJ

Introduction:

[1] This is an application in terms of which the applicant, Association of Immigration South Africa, sought an order to have the rescission ruling issued by the first respondent, reviewed and set aside.

[2] The review application was brought subsequent to the arbitration award issued in default of attendance of the applicant under case number GAJB 9006-05 on 15 February 2006.

[3] In terms of the award, the applicant was ordered to pay compensation to the third respondent (the employee) in the amount of R33 000-00.

Grounds for Review:

[4] The applicant challenged the seconds respondent's ruling on the following grounds:

“7.3.1 The second respondent has failed to consider the fact that the third respondent had not received the Notice of Set down notifying it to attend the arbitration. Such never reached the applicant. The applicant submits that should it receive the Notice of Set down it should have attended the first respondent.

7.3.2 The second respondent failed to consider or to read all documents presented to the first respondent by applicant.

7.3.3 The first respondent and the second respondent should have not dismissed the application for rescission made by the applicant in that the applicant had not declined deliberately to attend the arbitration hearing and that it was genuinely unaware of the date of set down.

7.3.5 The second respondent has not applied his mind in dealing with the rescission and has not considered that the applicant was not deliberately and in wilfully to avoid delivery of the Notice of Set down in question and that the Notice of Set down was not received by applicant since he moved offices from 15-4th Street, Roodepoort-North to 309-3rd Cape House, 15 McClaren Street, Johannesburg: Tel (011) 838-6208.”

[5] The applicant contended that it was not in wilful default in not attending the arbitration hearing. Failure to attending the arbitration was due to the fact that the CCMA failed to effect a proper Notice of Set down on it.

[6] It is common cause that the CCMA used the following addresses in effecting the Notice of Set down on the applicant.

(a) 54-4th Street, Roodeport North 1724 and,

(b) 15-14 Street, Roodeport North 1724.

[8] The above service was effected through a registered mail and the two above postal addresses are for both the applicant and the employee respectively.

[9] It is undisputed that an attempt was made by the CCMA to effect service through faxination on the 26th August 2005 at fax number 011-7635654. The transmission record reveals that the faxination was unsuccessful.

[10] The applicant did not dispute the correctness of both the postal

address and the fax number used by the CCMA. However, the applicant contended that by the time the CCMA sought effect service, it had moved offices, and accordingly both its postal address and fax number had changed.

[11] It was not the applicant's case that they had either advised the CCMA or the employee of the change in their contact details.

[12] The Commissioner in dismissing the applicant's application for condonation reasoned as follows:

“The applicant relied on the change of its contact details as the grounds for alleging that its absence at the hearing was not wilful. ...The applicant was aware that an arbitration was pending, and the failure to inform either the CCMA or the respondent about an event (change of details) that would result in the notice not being received by it (applicant) seems to me to be conduct calculated to enable the applicant to have grounds not to attend the hearing. I am thus of the view that the conduct of the applicant was calculated to enable the latter to have a reason to be absent from the hearing.”

[13] The question of the approach to be adopted in dealing with

rescission under section 144 of the Labour Relations Act no 66 of 1995 (The LRA) has been clarified by the Labour Appeal Court in the case of *Shoprite Checkers v CCMA & others*: Case No **PA5/05**. The Court held that a party applying for rescission of a CCMA award or ruling has to show good cause.

[14] Turning to the facts of the current case, I am in full agreement with the conclusion and the reasoning of the Commissioner that the applicant was aware of the pending arbitration hearing and that it was incumbent on it this reason to have informed the CCMA or the respondent of the change of its address.

[15] The applicant has therefore failed to show good cause why it did not attend the arbitration hearing. The applicant was, in this regard the author of its own.

Order:

1. The review application is dismissed.
2. There is no order as to costs.

MOLAHLEHI AJ

DATE OF HEARING : 02 MAY 2007

DATE OF JUDGMENT : 17 AUGUST 2007

APPEARANCES

For the Applicant : S Dibakoane Union Official for AIPSA

For the Respondent: Non-appearance