



REPUBLIC OF SOUTH AFRICA
IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN
JUDGMENT

Not Reportable

C942/2013

In the matter between:

G-WAYS CMT MANUFACTURING (PTY) LTD

Applicant

And

**NATIONAL BARGAINING COUNCIL FOR THE
 CLOTHING MANUFACTURING INDUSTRY
 (WESTERN CAPE SUB-CHAMBER)**

First Respondent

STEPHEN BHANA

Second Respondent

SACTWU OBO 58 MEMBERS

Third Respondent

Date heard: 8 August 2014

Delivered: 23 January 2013

JUDGMENT

RABKIN-NAICKER J

[1] In this unopposed application, the applicant seeks *inter alia* the following relief:

“1. Reviewing and correcting and/or setting aside, in terms of the provisions of section 145 read with 158 of the Labour Relations Act of 1995, the arbitration award handed down by the second respondent in his capacity as a commissioner of the first respondent in the matter between SACTWU obo 58 employees v Greenway CMT Manufacturing cc & Gway (case number CCCA 35 – 13) and substituting the award to read that Greenways CMT Manufacturing cc is the sole respondent in the matter;

2. In the alternative to prayer one above, reviewing and correcting and/or setting aside the rescission ruling handed down by the second respondent in the matter between SACTWU obo 58 employees v Greenways CMT Manufacturing cc & Gways (CCCA 35 – 13) and substituting/varying the award to read that Greenways CMT Manufacturing CC is the sole respondent in the matter.

3. The alternative to prayer 2 above, directing that the rescission ruling issued by the second respondent under case number CCA35-13 be reviewed and set aside and that the application for rescission be remitted to the first respondent to be heard de novo before a Commissioner other than the second respondent;”

[2] The applicant has brought the review application out of time and seeks condonation for the late referral. It avers that the reason for the delay was the necessity to wait for the issuing of the rescission ruling. The ruling is dated 28 October 2013. The notice of motion appears to have been filed on the 6 December 2013. The delay is not excessive and I therefore grant condonation and entertain the review application.

[3] The applicant wishes to substitute a close corporation, Greenways CMT Manufacturing CC as the sole respondent liable for paying compensation to the third respondents. It does so while averring in its papers that the CC in question was finally liquidated on 26 March 2013. In fact, a look at the annexure to the founding affidavit, which comprises a final order in the Magistrates Court for the district of Cape Town, reveals that a provisional

liquidation order was granted on 29 May 2013 and only made final on 26 June 2013.

- [4] In short, this application has been brought in order to avoid liability for the six months compensation that was ordered to be paid to the third respondents for their unfair dismissal. The applicant did not attend at the conciliation of the unfair dismissal dispute, or at the arbitration proceedings. However, in the award arising from the default arbitration proceedings, it was joined as a party thereto, albeit in the name of 'Gways'.
- [5] The applicant then proceeded to apply for rescission of the award and the ruling that ensued is enlightening. The second respondent states in his ruling as follows:

"Ms Greenway submitted that she was an employee of the first respondent Greenways CMT CC for many years and when first respondent had financial trouble, she opened her own business Gways (Pty)Ltd (sic). She stated that Gways started operating in May 2013 and referred to her supporting documentation as proof. It was further her submission that Gways had no affiliation to Greenways and had not employed or dismissed the applicants. She conceded that Gways operates from the same premises as Greenways.

Greenway's supporting documentation included a bank statement for her company. She alleged that she started operating from mid-May 2013 yet her bank statement is for the period 14 February 2013 to March 2013. It includes a line item for labour and payroll. Greenway's submissions are therefore not truthful. In addition, it is obvious that there is a family connection between Greenway and the owner of Greenways CMT, apparently mother and son. I had also taken cognizance of the fact that Greenway is 79 years and I find it highly improbable that anyone of that age would start a new business. Greenway admitted that she had employed some of Greenways' employees, but failed to explain how she did this and whether she took over Greenways contracts etc. The documentation submitted shows the entity to be G-Ways CMT Manufacturing Pty Ltd, and not Gways

(Pty) Ltd as Greenway claimed. It must also be noted that there is no supporting papers from the first respondent.

The applicant's submission is fraught with inconsistencies and lacks sufficient details to convince me that is entirely a separate entity. The application must therefore fail.

It is also noted that second respondent was joined as 'G ways'. It is clear from this application that the correct legal entity was not properly cited. I therefore substitute Gways (as noted in the award) with G-ways CMT Manufacturing (Pty) Ltd.

Ruling:

The application for rescission is declined."

[6] In the arbitration award sought to be rescinded, the first respondent had recorded the events leading up to the dismissals as follows:

"4. Christine Johannes testified for the applicants and stated that on 24 April 2013, the owner, Mr Greenways, called all the staff to a meeting where he alleged that some people were trying to liquidate the company. He added that he was fighting these attempts and that staff should not worry about their jobs. On 26 April, Greenways called another meeting when he said he had decided to liquidate the company at that instant. He told them to collect the termination cards on 29 April.

5. They duly collected their cards on the given date and their UIF 1-19 forms reflected the reason for termination as insolvency/liquidation. They were not shown or given any proof of the liquidation. Johannes added that on 27 April, Greenways called her and accused her of organising a toyi-toyi for 29 April, which she denied.

6. She visited the company premises on 4 June 2013 to collect documentation. The company was operating under a new name. G-ways and she saw previous colleagues of theirs (supervisors and mechanics, amongst others) still working there. The respondent had employed about 110 workers on 20 April 2013.

7. Sandy Adams testified for the applicants and corroborated Johannes' version in large. She added that only 60 of the 110 employees were dismissed and the rest are still employed by the respondent, albeit under a different name. On 29th April the factory was still operating and she also saw the cutting room manager working there.

8. Macebe added that there was no record of the liquidation on 26 April. A provisional order was only granted on 26 June 2013."

- [7] It is submitted on behalf of the applicant that the rescission ruling is not one that a reasonable decision-maker faced with the same facts and evidence could reach, that the second respondent unduly joined the applicant as a party to the arbitration proceedings, and unreasonably refused to rescind the award on application. It is also further submitted that the second respondent seriously erred in finding that the applicant should be joined without there being any application by the interested party to do so.
- [8] First, a consideration of the rescission ruling record reflects that the second respondent's findings are entirely reasonable. The discrepancies between the documentation and the sworn affidavit by Ms Greenway are glaring. As is that between her version in her founding affidavit in this matter, and the annexure containing the final liquidation order as referred to above. Furthermore, the arbitrator was within his rights to vary the citation in the rescission ruling. The variation was pursuant to information provided by the applicant and he was entitled to vary it *mero moto* as a look at the First Respondent's constitution reveals.
- [9] The applicant has failed to convince this court of its bona fides, which has been sorely lacking throughout the history of this dispute. In the circumstances, I make the following order:

1. Condonation is granted for the late filing of the review application.
2. The review application is dismissed

Rabkin-Naicker J

Judge of the Labour Court

Appearances:

Applicant: Carelse Khan Attorneys

LABOUR COURT