



IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C295/2019

In the matter between:

SHAKEEL JONKERS

Applicant

and

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Respondent

ANTHONY VERHOOG

Second Respondent

SOUTH AFRICAN BREWERIES LTD

Third Respondent

Date heard: 11 March 2021 on the papers

Delivered: 10 June 2021 by means of email

JUDGMENT

RABKIN-NAICKER J

[1] This is an application by the third respondent to set aside certain irregular steps in the prosecution of Applicant's review application under the above case number. The application is brought under Rule 11 of the Rules of the Labour Court after the failure of the applicant to remove the causes of complaint in a Notice of Objection dated 19 January 2021.

- [2] During or about May 2019, the applicant instituted a review application in this matter. Despite the third respondent being cited as a party to the proceedings, the applicant did not serve the review application on the third respondent.
- [3] The third respondent became aware of the review application on 13 May 2019, when the first respondent sent its notice dispatching the record of the arbitration proceedings to the Labour Court. Consequently, on 16 May 2019, the third respondent served and filed a notice of intention to oppose the review application.
- [4] Following numerous requests by the third respondent to the applicant to be provided with a copy of the review application, the applicant provided the third respondent with a copy of the review application on 23 May 2019.
- [5] On 30 December 2020, the third respondent received a notice of set down from the Labour Court indicating that the review application was set down for hearing on 11 March 2021. The third respondent submitted that the set down of the review application for hearing on 11 March 2021, in the circumstances referred to below, was irregular and premature.
- [6] On 8 January 2021, the third respondent established from the court file that the applicant filed a notice in terms of Rule 7A(6) and that the transcribed record of the arbitration proceedings was in the court file. The filing of the notice in terms of Rule 7A(6) and transcribed record of the arbitration proceedings was done without having been served on the third respondent as a party to the proceedings. Therefore, it submits that the applicant's failure to serve the notice in terms of Rule 7A(6) and transcribed record of the arbitration proceedings on the third respondent constitutes an irregular step.
- [7] On 8 January 2021, the third respondent further established from the court file that the applicant filed a notice in terms of Rule 7A(8) in the court file. The filing of the notice in terms of Rule 7A(8) was done without the record having been served on the third respondent as a party to the proceedings. Again it submits that the applicant's failure to serve the notice in terms of Rule 7A(8) on the third respondent constitutes an irregular step.
- [8] The third respondent therefore filed a Rule 11 application, giving notice of the aforesaid irregular steps and afforded the applicant 10 (ten) days to remove the

causes of complaint. This would entail serving the notice in terms of Rule 7A(6) and transcribed record of the arbitration proceedings on the third respondent, as well as withdrawing the premature notice in terms of Rule 7A(8). The application was set down on the 11 March on the papers, with the review application having been removed from the roll on my direction and on notice to both parties by the Registrar.

- [9] There is no proper opposition to the Rule 11 application. In an email dated the 3 March 2021, to third respondent's attorneys of record and filed in Court, the applicant wrote the following:

"I trust that you are well

Your email dated 24 February refers.

Kindly be advised that my Attorneys on record I assume they have been in contact with you via email correspondences. They are unable to represent me on the 11 March 2021 due to lack of financial instructions from my side as I have no money and I am currently unemployed.

With I would like to advise you that the matter will be heard on papers I have a problem with the matter being heard on the 11th March as I do not possess any pleadings with me and they are in the possession of my attorneys and they will not give it to me as I owe them legal fees for the professional services rendered.

I therefore humbly request that the matter be removed from the Roll and be re-enrolled on a later date in order to be given enough time to raise funds to pay my Attorneys and/or uplift the file at the labour court make copies and compile my bundle and prepare thoroughly for the matter."

- [10] The third respondent has emphasized in submission and by means of annexed correspondence, that it has made the applicant aware of his material non-compliance with the rules, and advised him how to comply but he has not done so. It asks the Court to uphold its Objection to the various irregular steps taken with costs.

[11] That certain irregular steps have been taken in the prosecution of the review is evident. The third respondent has incurred costs in bringing the Rule 11 application. Taking into account principles of law and fairness in respect of costs orders in this Court, the order I give will allow for the applicant to make all efforts to ensure the transcribed record is served on the third respondent. He shall only be liable for costs of the Rule 11 application if he does not comply, within the stipulated time period in my Order below. I make the following order:

Order

1. The filing of the record of the review under case number C295/2019 and the filing of a Notice in terms of Rule 7A(6) are hereby set aside as an irregular steps.
2. The filing of the Rule 7A (8) Notice is hereby set aside as an irregular step.
3. The applicant is granted leave to serve and file the record and issue the appropriate notices in terms of the Rules of the Labour Court, within 20 court days of receipt of this Order.
4. Should the applicant not serve and file the record within the 20 day period, the Respondent may draw up a bill of costs in respect of the Rule 11 application and present same to the Taxing master of this Court.

H.Rabkin-Naicker

Judge of the Labour Court

Representation on the papers

Third Respondent: Bowman Gilfillan Inc