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CASE NO: GPRFBC17106

In the matter between:

MISTER MOVER CC

APPLICANT

AND

RAYMOND KHUMBULA MPHAPHULI

RESPONDENT

APPLICATION FOR RESCISSION - RULING

1. Following a referral of an alleged unfair dismissal dispute by the Respondent/Employee, the matter was then set-down for arbitration on 08 September 2011. The Applicant/Employer had failed to attend the arbitration proceedings and a default award was issued in favour of the Respondent/Employee on 14 September 2011.

2. The Applicant/Employer on or about 27 September 2011 had filed an application for rescission of the default award. As at the writing of this ruling, the application remained unopposed.

3. In his affidavit in support of the application, John Van Druten, a member of the Applicant, averred that a copy of the default award was received on 21 September 2011.

He averred that the Applicant was not in wilful default in that the fax number utilised by the Council (011 472 0236) in notifying the Applicant was incorrect, and that the correct fax number was 011 473 1277. In this regard, a copy of the Applicant's letter head reflecting the correct fax number was attached to the affidavit. To this end, it was submitted that the Applicant was not in wilful default.

Analysis:

4. A notice of set-down as contained in the file was sent to the Applicant/Employer at fax number 011 472 0236. Since it appears that this is indeed not the Applicant's correct fax number, it follows that it cannot be said that the Applicant/Employer was properly notified of the proceedings set-down for 08 September 2011. To the extent that this is the case, and further having regard to Van Druen's submissions that the Respondent/Employee was dismissed for serious acts of misconduct, it is my view that it would not be necessary to deal with all other material aspects pertaining to such applications as the Applicant has shown good cause. Accordingly, the following ruling is made;

Ruling:

- i. The application for rescission is granted.
- ii. This matter should be re-scheduled for arbitration.
- iii. The Applicant/Employer should be notified of the next set-down date at fax number **011 473 1277**

Signed and dated at Johannesburg on the 18th day of October 2011



E. Tlhotlhalenmaje

NBCRFI Panellist:

