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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR 86/19

In the matter between:

ATLAS PLANT HIRE (PTY) LTD

Applicant

and

COMMISSIONER JOHAN STAPELBERG N.O.

First Respondent

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

Second Respondent

GEORGE MCLEAN

Third Respondent

Heard: 19 June 2025

Delivered: 30 June 2025

JUDGMENT

LENNOX, AJ

[1] This is an opposed application to rescind an order handed down by this Court on 9 February 2023 which provided:

“The review application under the above case number is dismissed.”

[2] The matter was heard in the absence of the Applicant on 9 February 2023. The reason for such non-attendance was that the email sent by the office of the Registrar was sent to an incorrect email address being [m\[...\]](#) and not [m\[...\]](#).

[3] In response to this submission the Third Respondent states that he has no knowledge of these facts, overlooking the fact that the Applicant had annexed to e-mail reflecting the incorrect email address as annexure “WA4” to the founding affidavit. The Court does not look kindly on this as the Third Respondent has either failed to consider the Founding Affidavit and the annexures or sought to avoid a necessary concession.

[4] In *CAWU v Federale Stene (1991) (Pty) Ltd*¹ the following was held:

“The first applicant had at all times intended to defend the application, that it was through an unfortunate set of circumstances under the false impression that the matter would not be heard on the date on which it had been set down, and that the Court would not have made an award by default if it had not been under the impression that the first applicant had deliberately declined to attend the hearing. Where the defaulting party was genuinely unaware of the date of set-down, granting judgment by default would be erroneous. In these circumstance, it was not necessary for the party applying for rescission to prove good cause.”

¹ [1998] 4 BLLR 374 (LC)

[5] In *Bayete Security Holdings v Mokgadi*² the following was held:

“In the circumstances, it would appear that judgment was erroneously granted in the absence of the applicant on 10 March 1999 and, as such, in applying for rescission, applicant is not bound by the provisions of rule 16A(1)(b) with regard to the showing of good cause, nor by the time limit of 15 days.”

[6] That should be the end of the matter. A seemingly clear and unassailable case was set out in the founding affidavit. The Third Respondent in answer asked that the Court not grant the application and exercise a discretion not to grant the rescission.

[7] The complication which emerged is that the review application has actually lapsed.

[8] Section 11.2.7 of the erstwhile Practice Manual reads as follows:

“A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive.”

[9] There is no dispute that the record was filed out of time and that no application to reinstate the review application has been brought. Given that an application in terms of Rule 11 relied on this fact to support the prayer that the review application be dismissed, it is explicable that the Applicant has done nothing since January 2020 to cure the problem.

² [2000] 9 BLLR 1020 (LC)

[10] The Applicant has changed attorneys at the 11th hour and although Ms Fouchè argued as best she could, she was hamstrung by the facts.

[11] This Court exists as a court of law and equity in terms of section 151(1) of the Labour Relations Act No 66 of 1995 (“the LRA”). It must also give effect to section 1(d)(iv) of the LRA which reads as follows:

“The purpose of this Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act, which are—

. . .

(d) to promote—

. . .

(iv) the effective resolution of labour disputes.”

[12] As this Court held in *Kolobe v Proxenos (Sophia’s Restaurant)*³ the word “*effective*” should be equated with “*speedy*”.

[13] The Court is however mindful that the reason that the Applicant was not present when the matter was heard on 9 February 2023 is as a result of the notice being sent to the incorrect email address.

[14] For this reason the following Order is made:

1. The application to rescind the Order granted by Acting Justice Mathalane on 9 February 2023 is granted.
2. The review application is deemed to have lapsed in terms of the provisions of section 11.2.7 of the erstwhile Practice Manual of this Court.
3. The Registrar is to archive the review application.

³ [2000] 11 BLLR 1291 (LC)

4. The Third Respondent may instruct the Sheriff to execute a writ of execution in respect of the arbitration award issued by Commissioner Johan Stapelberg under the auspices of the Commission for Conciliation, Mediation and Arbitration under case number GAJB16870-18 on 6 December 2018.

5. There is no order as to costs.

M.A. Lennox

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Ms M Fouchè
Melany Fouchè Inc

For the Respondent: Mr D Coetsee
Dirk Coetsee Attorneys