



- (1) Reportable: Yes
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 2560/23

In the matter between:

MELITA ADAMS

Applicant

and

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

First Respondent

NASREEN JAJBHAY N.O

Second Respondent

COEN HAVENGA N.O

Third Respondent

GEARHOUSE SYSTEM SOLUTIONS (PTY) LTD

Fourth Respondent

Heard: 3 February 2026

Delivered: 11 February 2026

This judgment was handed down electronically by consent of the parties' representatives by circulation to them via email. The date for hand-down is deemed to be on 11 February 2026.

JUDGMENT

PRINSLOO, J

Material background facts

- [1] The Applicant was employed by the Fourth Respondent (Respondent) in November 2018 as business development manager. She was dismissed in June 2023 on account of operational requirements. Subsequent to her dismissal, the Applicant referred two separate disputes to the First Respondent (CCMA), one being an unfair dismissal dispute related to retrenchment and the other an unfair labour practice dispute related to a unilateral change to terms and conditions of employment.
- [2] In July 2023, the two disputes were consolidated and conciliated, which resulted in a settlement agreement being concluded between the parties. The Respondent obtained a tax directive from SARS and made a payment to the Applicant at the end of July 2023.
- [3] In August 2023, the Applicant referred another dispute in terms of section 73A of the Basic Conditions of Employment Act¹ to the CCMA. The Respondent raised a point *in limine* challenging the CCMA's jurisdiction to adjudicate the Applicant's claim for monies allegedly owed as all her claims have been resolved in a full and final settlement agreement. The point *in limine* was argued and on 18 August 2023 the Second Respondent issued a ruling (jurisdictional ruling) wherein she found that the Applicant's claim was settled in full and that the CCMA lacked jurisdiction to adjudicate a further claim for monies owed.
- [4] In September 2023 the Applicant applied for the rescission of the jurisdictional ruling. The Third Respondent (arbitrator) issued a rescission ruling on 6 November 2023, dismissing the application for rescission.
- [5] On 19 December 2023 the Applicant filed an application to review and set aside the jurisdictional ruling of 18 August 2023 and the rescission ruling dated 6 November 2023.
- [6] The review application was enrolled for hearing on 3 February 2026 and at the commencement of his argument, I raised the fact that the review

¹ Act No 75 of 1997, as amended.

application in respect of the jurisdictional ruling had been filed outside of the prescribed statutory six week period (by 29 September 2023) with Mr Mokoena, the Applicant's legal representative. The need to apply for condonation was obvious, so was the Court's lack of jurisdiction to deal with that part of the review application, absent an application for condonation. I afforded Mr Mokoena an opportunity to take an instruction from the Applicant as to how she wanted to proceed with the matter. After taking instructions, Mr Mokoena indicated that the Applicant abandoned the review application in respect of the jurisdictional ruling.

- [7] The issue to be decided was narrowed significantly and the review application proceeded only in respect of the rescission ruling.

The rescission application

- [8] In her rescission application, the Applicant dealt with the background of her dispute and the merits of her case comprehensively. The Applicant disputed the fact that the settlement agreement was in full and final settlement of all statutory payments due to her. She submitted that she believed that the CCMA had jurisdiction to adjudicate her section 73A dispute as the jurisdictional ruling was based on false, inaccurate and incomplete information provided by the Respondent. The outcome she argued for was for the matter to be reheard.

The rescission ruling

- [9] The issue to be decided by the arbitrator was whether or not to rescind the jurisdictional ruling of 18 August 2023 in terms of the provisions of section 144 of the Labour Relations Act² (LRA).
- [10] The arbitrator considered the provisions of section 144 of the LRA and found that the jurisdictional ruling was not made erroneously in the absence of any party affected by the ruling, as both parties attended the *in limine* process and made submissions on the issue to be decided. He further found that he could

² Act 66 of 1995, as amended.

find no ambiguity, obvious error or omission in the ruling and it was not granted as a result of a mistake common to the parties.

[11] The arbitrator ultimately dismissed the rescission application as there were no grounds to justify the rescission of the jurisdictional ruling and he observed that the rescission application was rather a review application under the guise of a rescission application.

[12] Section 144 of the LRA provides for the variation and rescission of arbitration awards and rulings as follows:

‘Any commissioner who has issued an arbitration award or ruling, or any other commissioner appointed by the *director* for that purpose, may on that commissioner’s own accord or, on the application of any affected party, vary or rescind an arbitration award or ruling –

- (a) erroneously sought or erroneously made in the absence of any party affected by that award;
- (b) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission;
- (c) granted as a result of a mistake common to the parties to the proceedings; or
- (d) made in the absence of any party, on good cause shown.

[13] *In casu* section 144(a) and (d) do not apply because the jurisdictional ruling did not come about in the absence of a party. The ruling was made after both parties attended and made submissions. The Applicant’s case is not that there was a mistake common to the parties and thus section 144(c) does not apply.

[14] The Applicant’s case is premised on section 144(b). The said section relates to variation due to an obvious error and then only to the extent of correcting the error.

Grounds for review

- [15] The Applicant's case is that the arbitrator misconducted himself in that he had committed an irregularity in finding that there was no error or omission in the ruling of the Second Respondent and that the ruling was not made erroneously. According to the Applicant, it is irrelevant that the parties were present during the proceedings before the Second Respondent, as the fact remains that an erroneous decision was made which must be remedied.
- [16] The Applicant made a vague and unsubstantiated statement that the Second Respondent made an obvious error.
- [17] The Respondent opposed the application and submitted that the Applicant has not pleaded how the jurisdictional ruling falls within the ambit of section 144 of the LRA or how the refusal to rescind it was unreasonable.

Analysis

- [18] In argument, Mr Mokoena submitted that the Applicant's case is premised on the fact that an obvious error was made. In *Ekurhuleni Metropolitan Municipality v Spies & others*³ the court dealt with section 144(b) as follows:

'[T]he rule is a procedural step designed to correct quickly or expeditiously an obvious wrong, a mistake or ambiguity in the judgment.

Where an arbitration award expresses the true intention and the decision of the commissioner, ordinarily, there would be no mistake, inadvertent omission or any oversight on the part of the commissioner or in the award that was made. In the ordinary course of things, an application for variation of the order is limited to a clarification of or the removal of any ambiguous language, patent error or omission in the award.'

- [19] An 'error' contemplated in section 144(b) refers to a non-substantive mistake, which is obvious from the face of the order and which does not require further or new evidence. Such an error may include a calculation error, incorrect citation of the parties or mere clerical errors. Nothing more than a correction of obvious mistakes is intended by section 144(b). The correction cannot

³ (2014) 35 ILJ 1283 (LC) at paras 11-12.

change the substantive findings made by the decision maker and it is certainly not a reconsideration of the merits.

[20] In *Seattle v Protea Assurance Co Ltd*⁴ the Court reaffirmed that a patent error or omission must be one that causes the judgment to fail to reflect the judicial officer's true intention at the time of pronouncement. Furthermore, if a judgment is clear and unambiguous, it cannot be varied simply because new evidence or different calculations later become available. Once a court has issued a final judgment, it becomes *functus officio*. It cannot revisit its decision unless it falls within a recognised exception, such as an ambiguity, clerical mistake, or omission⁵.

[21] In *PT Operational Services (Pty) Ltd v Retail & Allied Workers Union on behalf of Ngweletsana*⁶ the court summarised the *functus officio* doctrine as follows:

'Pretorius explains the *functus officio* doctrine as follows:

"The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter. This rule applies with particular force, but not only, in circumstances where the exercise of such adjudicative or decision-making powers has the effect of determining a person's legal rights or of conferring rights or benefits of a legally cognisable nature on a person. The result is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker. However, this is not an absolute rule. The instrument from which the decision-maker derives his adjudicative powers may empower him to interfere with his own decision. Furthermore, it is permitted to make variations necessary to explain ambiguities or to correct errors of expression in an order, or to deal with accessory matters which were inadvertently overlooked when the order was made, or to correct costs orders made without having heard argument on costs. This list of exceptions might not be exhaustive and a court might have discretionary power to vary its

⁴ 1984 (2) SA 537 (C).

⁵ As outlined in *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A).

⁶ (2013) 34 ILJ 1138 (LAC) at para 24.

orders in other cases. However, this power is exercised very sparingly, for public policy demands that the principle of finality in litigation should generally be preserved rather than eroded.”

- [22] The same principles apply to arbitration proceedings. Once an arbitrator has issued a ruling or arbitration award, he/she becomes *functus officio* and the decision cannot be revoked or varied by the decisionmaker, nor can the merits or outcome be reconsidered. Section 144(b) of the LRA allows only for variation due to an obvious error and then only to the extent of correcting the error.
- [23] Where the arbitrator has not made a patent error or omission and where the order made was the considered decision of the arbitrator, whose true intention was to make the finding or order as reflected in a ruling or arbitration award, there is no scope for an application in terms of section 144(b).
- [24] Section 144(b) cannot be used to introduce new evidence or re-argue a case that has already been adjudicated. In *First Consolidated Leasing Corporation Ltd v McMullin*⁷, the Court stated that a patent error causes the judgment to depart from the Court’s real intention—it does not cover situations where a party failed to present all relevant evidence at the hearing.
- [25] *In casu* the Applicant sought the rescission of a jurisdictional ruling to the effect that the merits of her case could be reconsidered. This is not permissible in terms of section 144(b) and the arbitrator quite correctly observed that her application is in fact a review application disguised as a rescission application.
- [26] The applicant did not meet any of the criteria to succeed with an application in terms of section 144(b) and the arbitrator’s finding to that effect was reasonable. In fact, the Applicant’s reliance on section 144(b) was misplaced. Section 144 does not permit a party to circumvent the principle of finality in litigation nor does it serve as an appeal mechanism or an alternative to a review application to the Labour Court.

⁷ 1975 (3) SA 606 (T).

Costs

- [27] In so far as costs are concerned, this Court has a broad discretion in terms of the provisions of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness.
- [28] In *Zungu v Premier of KwaZulu-Natal & others*⁸ the Constitutional Court confirmed that the rule that costs follow the result does not apply in labour matters. The Court should rather seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing those parties to bring to this Court cases that ought not have been brought to Court in the first place.
- [29] This is a case where the Court must strike a balance, considering the requirements of law and fairness.
- [30] Mr Mokoena submitted that the cost should follow the cause. Ms York, for the Fourth Respondent, argued that there was no merit in this application and that it was to be dismissed with costs.
- [31] In my view this is a case where it is appropriate to make a cost order. A cost order is a method of ensuring that decisions to initiate litigation in this Court are taken with due consideration of the law and the prospects of success.
- [32] The conduct of the Applicant warrants a cost order. Instead of reviewing the jurisdictional ruling, she took the odd step of a rescission application and when that misdirected action failed, she proceeded with a meritless application for review. To make matters worse, the Applicant was legally represented and did not approach this court as an unrepresented layperson. This application was stillborn and constituted a waste of scarce judicial resources. It would be unfair to saddle the Respondent with costs to oppose an application that should not have been brought in the first place.

⁸ (2018) 39 ILJ 523 (CC) at para 24.

[33] In the premises, I make the following order:

Order

1. The review application is dismissed;
2. The Applicant is to pay the Fourth Respondent's taxed costs on a party and party scale.

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mr T Mokoena from TGM Attorneys Inc

For the Fourth Respondent:

Ms T York from Cliffe Dekker Hofmeyr Inc

LABOUR COURT