



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO.: 5484/2022

Reportable	No
-------------------	-----------

In the matter between:

BUKELWA SITUNDA

Applicant

and

MINISTER OF HIGHER EDUCATION & TRAINING
KSD TVET COLLEGE

First Respondent

Second Respondent

IN RE:

KSD TVET COLLEGE

Applicant

and

BUKELWA SITUNDA

Respondent

ORDER

In the result, the following order shall issue:

1. The application for rescission of the order dated **4 April 2023** is dismissed;
2. The second Respondent (KSD TVET College) is ordered to pay costs of the application, including costs of counsel according to Scale C of the tariff.

REASONS FOR THE JUDGMENT

NOTYESI AJ

Introduction

[1] On 5 March 2026, following the hearing of a rescission application in respect of an order granted on 4 April 2023 in favour of the Applicant, this Court delivered an *ex tempore* judgment dismissing the application with costs on Scale C of the High Court tariff. The rescission application was brought by KSD TVET College, and the Minister was not a party thereto. Although the Court furnished substantive reasons at the time of delivering judgment, KSD TVET College has since requested written reasons. These are the reasons for the order.

[2] The background facts giving rise to the rescission application may be summarised as follows. On or about 4 November 2022, Ms Bukelwa Situnda instituted an application against KSD TVET College and the Minister of Higher Education seeking an adjustment of her salary from level M+3 to level M+4. The notice of motion and founding affidavit were duly served on both respondents, who elected not to oppose the application.

[3] On 4 April 2023, Rusi J, on application by Ms Situnda, granted an order in terms of the notice of motion. The terms of the order were as follows:

- 3.1 The Respondents are directed to adjust the Applicant's salary from level Mplus3 to level Mplus4 within ten (10) days of this order.
- 3.2 The Respondents are directed to pay the Applicant back pay from January 2020 to date of compliance with this order in line with the adjustment in paragraph 3.1 above.
- 3.3 The Respondents are directed to pay costs of this application.

[4] Following the grant of the order, Ms Situnda invoked enforcement mechanisms after realising that the Respondents were not complying with its terms. She further threatened to institute contempt of court proceedings in the event of continued non-compliance. It was in response to this threat that KSD TVET College launched the rescission application.

[5] In the rescission application, the deponent to the founding affidavit on behalf of the college confirmed that the notice of motion and founding affidavit in the main application had been received. The deponent further confirmed that the college had

elected not to oppose the application in order to avoid incurring unnecessary costs. The college also confirmed that the court order was served on 23 April 2023.

[6] On 14 September 2023, Ms Situnda served the college with contempt of court proceedings seeking to have the Respondents declared to be in contempt of the court order. Thereafter, on 27 September 2023, the college launched the present rescission application, approximately six months after the granting of the order.

[7] The principal ground advanced by KSD TVET College is that it is not the employer of Ms Situnda, and that the Minister is her employer. On this basis, the college contends that it was misjoined in the main application and that the order granted on 4 April 2023 ought to be rescinded. The application is brought under the common law.

[8] Ms Situnda opposes the application on the basis that the college has failed to provide an adequate explanation for its inaction at the time the order was granted. The gravamen of her contention is that the rescission application lacks the requisite good cause to justify rescission.

The parties

[9] The parties in this rescission application shall be referred to as follows:

9.1 The Applicant shall be referred to as the KSD TVET College or the college.

9.2 The Respondent shall be referred to as Ms Situnda.

Issue before court

[10] The issue before court was:

10.1 Whether the TVET College has made out a case for the rescission of the order.

10.2 Appropriate order of costs.

Contentions of the parties

[11] Mr Nkele, counsel for the college, submitted that the rescission application is brought under the common law. He correctly conceded that, in order to succeed, the college must demonstrate good cause. He submitted that the college has a bona fide defence on the merits, namely that it is not Ms Situnda's employer and that the order was erroneously granted against it.

[12] When pressed on the absence of any explanation for the college's failure to oppose the main application, Mr Nkele conceded that no explanation had been provided beyond the college's stated intention to avoid unnecessary costs. He submitted that the strength of the college's defence should compensate for the lack of explanation.

[13] During his submissions, Mr *Nkele*, handed up a document described as a "*Delegation of Authority*".

[14] Mr Mzileni, who appeared for Ms Situnda, urged the Court to dismiss the application, contending that it constitutes an abuse of process. He submitted that the college had been delegated the authority to recruit and appoint Ms Situnda and therefore had a direct and substantial interest in the main proceedings. Accordingly, the contention of misjoinder is without merit.

[15] Mr Mzileni further contended that the college ought to have placed its position before the Court in the main application by way of affidavit, which it failed to do. He contended that it is insufficient for the college to rely on internal decisions not to oppose the application where such reasons were neither communicated to the Applicant nor placed before the Court. He also pointed to the unexplained delay of approximately six months in launching the rescission application, submitting that good cause requires both a satisfactory explanation for the default and a bona fide defence on the merits.

Legal framework

[16] The rescission application is brought under the common law. In terms thereof, the applicant must demonstrate sufficient or good cause. The requirements for rescission of a default judgment were articulated in in *Chetty v Law Society, Transvaal*¹, namely that the applicant must: (a) provide a reasonable and satisfactory explanation for the default; and (b) show that it has a bona fide defence which prima

¹ *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 765 A-E

facie carries some prospect of success. Failure to satisfy either requirement may justify refusal of the application.

[17] The discretion to rescind a judgment must be exercised judicially, with the primary aim of achieving justice between the parties. “Good cause” generally entails that:

- (a) The defendant has a reasonable explanation for the default. Wilful default is ordinarily fatal, although gross negligence may, in appropriate circumstances, be condoned. Wilful default implies knowledge of the proceedings and their consequences, coupled with a conscious decision not to act.
- (b) The application is bona fide and not brought merely to delay the plaintiff’s claim.
- (c) The defendant has a bona fide defence and a genuine intention to pursue it if rescission is granted. The Court may also consider prejudice to the parties.

[18] A bona fide defence need only be established *prima facie*. It is not necessary to prove the defence in full; it suffices to set out facts which, if established at trial, would constitute a valid defence. The defence must have existed at the time judgment was granted. The Court retains a wide discretion in assessing “good cause” to ensure that justice is done. In appropriate cases, a strong defence may compensate for a weak explanation, and vice versa.

Evaluation and analysis

[19] The rescission application is without merit and was defective from the outset. It is devoid of any meaningful detail or explanation. The college accepts that it was served with the notice of motion, which clearly set out the relief sought. With full knowledge of the proceedings and their consequences, the college deliberately elected not to oppose the application. In its founding affidavit, the deponent stated:

‘The 2nd Respondent did not oppose the application because it did not want to unnecessarily escalate costs by opposing what it regarded as a simple and straight forward matter that is capable of being dealt with swiftly. Consequently, it provided the national department with all documentation that demonstrate that the applicant qualifies to be compensated, salary wise, on the basis of Mplus 4. In fact the College understood the Applicant’s case and the of time reasons behind, hence the discussion not to oppose the Application and at the sometime it had hope that the department will comply.’

[20] There can be no doubt that the college was a necessary party to the main proceedings and was properly joined. Ms Situnda was recruited by the college, which was in possession of her employment records. Any information relevant to salary adjustments was therefore within its knowledge. Even if the Minister bore ultimate responsibility, the college had a direct and substantial interest in the proceedings. The contention of misjoinder is accordingly without merit.

[21] The central submission advanced on behalf of the college—that it is not the employer and therefore bears no responsibility—is misconceived. The relevant

enquiry is whether the college had an interest in the proceedings, which it plainly did. Having been served with the application, the college ought to have placed its position before the Court or, at the very least, communicated it to the Applicant. It failed to do so.

[22] The college's explanation that it elected not to oppose the application to avoid costs is inadequate. This position was never communicated to the Applicant. The college was aware of the hearing date yet chose not to attend court. It was subsequently served with the order, which it simply ignored until threatened with contempt proceedings. Its prolonged inaction—spanning approximately six months—remains unexplained. The college is the author of its own misfortune.

[23] There is a complete absence of a satisfactory explanation for the delay in launching the rescission application. The inference is inescapable that the application was brought as a stratagem to avoid contempt proceedings. It is therefore not bona fide but motivated by an ulterior purpose, namely to frustrate the enforcement of the court order. Undeniably, the delay in launching the rescission application is excessively long. There is no account for the delay except for the spurious excuses. This conduct, self-evidently is an abuse of court procedures. It should be discouraged.

[24] The college has failed to satisfy the requirements for rescission as set out in *Chetty v Law Society, Transvaal*². It has neither provided a reasonable explanation for

² *Supra*

its default nor established a bona fide defence with prospects of success. Its failure on both requirements is fatal to the application.

[25] In the circumstances, this Court found no basis upon which to exercise its discretion in favour of rescission.

Costs

[26] The Court considered the abuse of process inherent in the application. The rescission proceedings were instituted only after contempt proceedings had been initiated, and approximately six months after the granting of the original order. The timing strongly suggests that the application was intended to circumvent compliance. The Court also took into account the nature and importance of the matter, as well as the prejudice suffered by Ms Situnda since 2022. In these circumstances, an award of costs on Scale C of the High Court tariff was appropriate.

Conclusion

[27] In the result, the Court found that the rescission application constituted an abuse of process and lacked merit. The application was accordingly dismissed with costs.

Order

[28] In the result, the following order shall issue:

1. The application for rescission of the order dated **4 April 2023** is dismissed.
2. The second Respondent (KSD TVET College) is ordered to pay costs of the application, including costs of counsel according to Scale C of the tariff.

M NOTYESI

ACTING JUDGE OF THE HIGH COURT, EASTERN CAPE DIVISION

APPEARANCES:

Attorney for the Applicant	:	Mr Nkele
	:	T A Nkele & Sons
		Mthatha
Counsel for the Respondent	:	Mr Mzileni
Instructed by	:	M Nogumbe Incorporated
		Mthatha
Heard on	:	5 March 2026
Reasons for Judgment Delivered on	:	14 April 2026