(1) Reportable: No
(2) Of interest to other Judges: No

28 May 2026
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO: JR2271/19

In the matter between:

POPCRU obo TTV SESELE **Applicant**

and

THE MINISTER OF POLICE **First Respondent**

SAFETY AND SECURITY SECTORAL

BARGAINING COUNCIL **Second Respondent**

MARINA TERBLANCHE N.O **Third Respondent**

E MAREE N.O **Fourth Respondent**

Heard: 11 November 2025

Delivered: 28 May 2026

Summary: An application to review a ruling dismissing an unfair dismissal claim due to the non-appearance of the applicants. The rescission application was

dismissed. The review succeeds as the applicants showed good cause for their non-appearance.

JUDGMENT

GANDIDZE, J

Introduction

[1] The applicant, Mr Thabo Sesele (Sesele), represented by his union, POPCRU (collectively, the applicants), seeks an order reviewing and setting aside two rulings issued on 6 June 2019 and 23 August 2019, respectively, under the auspices of the Safety and Security Sectoral Bargaining Council (Bargaining Council). The first ruling, by panellist Marina Terblanche (Terblanche) and dated 6 June 2019, dismissed Sesele's unfair dismissal claim (the dismissal ruling) because neither Sesele nor his union representative attended the conciliation/arbitration (con/arb) hearing on the set-down date. An application to rescind the dismissal ruling failed before panellist E Maree on 23 August 2019 (the rescission ruling).

[2] If the rulings are set aside, Sesele seeks an order directing the SSSBC to set the matter down for arbitration.

[3] The application was brought in terms of section 145 of the Labour Relations Act[1] 66 of 1995 (LRA), which deals with the review of arbitration awards. Applications to review rulings must be brought in terms of section 158(1)(g) of the LRA. In oral argument, Mr Mutsengi, for the applicants, implored the court to put substance over form and to entertain the application. Without condoning practitioners' conduct in bringing applications under the wrong section of the LRA, the application will be determined on its merits.

[4] A preliminary issue concerns the late filing of the review application. The application to review the dismissal ruling was superfluous, as discussed later.

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[1] Act 66 of 1995, as amended.

The application to review the rescission ruling was filed within six weeks of the rescission ruling, so condonation was not required.

[5] The State Attorney filed a notice of opposition on behalf of the Minister of Police, the executive authority for the South African Police Services (SAPS), the first respondent. However, no answering affidavit was filed. SAPS was represented at the hearing by Mr Mabuyakhulu, who sought a postponement of the matter from the bar. The application was refused, given that the matter had been ongoing since 2018 and that it was in the interests of justice that it be disposed of one way or another.

[6] Mr Mabuyakhulu also raised a preliminary point from the bar that the applicant delayed in filing the record. No further details were provided as to when the record ought to have been filed or how late it was filed. It is not for the court to undertake the calculations. In any event, what is apparent from the file is that the Bargaining Council filed the review record with this Registrar on 11 December 2019. It is unclear when the applicants were informed that the record was available for collection. The applicants filed the record in March 2020. Without knowing when the applicants were informed that the record was available for collection, in a Rule 7A(5) notice, it cannot be determined whether the record was filed late.

[7] SAPS filed a notice of opposition to the review application in June 2020, long after the review record had been filed. It could have, but elected not to file an answering affidavit and to raise this preliminary point. It sought to raise the preliminary point on the date of the hearing, thereby engaging in ambush litigation. This is impermissible. Once again, in the interests of justice, the court refused to entertain the preliminary point, which, in any event, has been found to lack merit.

Background

[8] SAPS employed Sesele as a constable. He was dismissed in June 208 for alleged misconduct involving the theft of diesel. Following his dismissal, he referred an alleged unfair dismissal to the Bargaining Council in September 2018.

[9] The matter was set down for a con/arb on 6 June 2019. The set-down notice was emailed to the parties on 9 May 2009.

[10] Neither Sesele nor his union representative was present on 6 June 2019, and panellist Terblanche issued a dismissal ruling, finding that the applicant had received adequate notice of the hearing. In the absence of an explanation for the non-attendance, even after an hour's grace period, the matter was dismissed in terms of section 138(5)(a) of the LRA.

[11] On receipt of the dismissal ruling, POPCRU filed an application for rescission. The affidavit in support of the application, dated 14 June 2019, states that panellist Terblanche issued the dismissal ruling because Sesele and his union did not attend the proceedings on 6 June 2019, despite having been properly served with the notice of set down. It further explains that neither Sesele nor SAPS had received the set-down notice, and that on 6 June 2019 the SAPS representative present at the arbitration proceedings confirmed this.

[12] The affidavit also refers to POPCRU's fax number and email address, which ought to have been used, and alleges that the set-down notice was not sent to those contact details. The deponent alleged being surprised when informed by Ms Romilla[2] that the set-down notice was sent to Workers Life in Pretoria, not to POPCRU. Therefore, panellist Terblanche was led to believe that the set-down notice was properly served, but neither POPCRU nor the applicant received it, which explains the non-attendance. A plea was made for an opportunity for Sesele to argue the merits of his dismissal, rather than to advantage SAPS (by dismissing the matter due to non-attendance without hearing the merits).

[13] As already noted, the rescission application was dismissed, with panellist Maree finding that she had taken into account the explanation for the default, namely that the set-down notice had been sent to an incorrect number, and the fact that the rescission application did not address Sesele's prospects of succeeding with his dismissal claim.

Applicant's contentions in the review application

[2] This appears to be an employee of the Bargaining Council.

[14] Only those contentions relating to the rescission ruling will be set out.

[15] The founding affidavit submits that panellist Maree (i) ignored the fact that the Bargaining Council did not send the set-down notice to Sesele's appointed fax number or e-mail, (ii) unreasonably and wrongly failed to take into account that Sesele and his representative did not receive the arbitration set-down notice, and therefore they were not in wilful default, (iii) ought to have considered that dismissal was not in dispute, and SAPS had not presented evidence to justify the dismissal, and (iv) acted defectively, unreasonably and objectively wrong by failing to give the applicants an opportunity to present oral argument.

[16] In the supplementary affidavit, some submissions already made in the founding affidavit were repeated, and it also contained new submissions. It is stated that panellist Maree (i) dismissed the matter even though the union representative was in attendance,[3] (ii) ignored the information provided by the SAPS representative that SAPS had not received the set down notice and had learnt of the matter being set down by coincidence, as the SAPS representative happened to be at the Bargaining Council on 6 June 2019 for another matter, and (iii) ignored the information provided to her that, when the email attaching the set down notice was sent on 9 May 2019, the Bargaining Council email system was dysfunctional.

[17] Mr Moikangoa, the POPCRU representative, also deposed to a confirmatory affidavit stating that he never received the arbitration set-down notice. He annexed a copy of the inbox for f[…] for the period 4 to 15 May 2019, showing that no email had been received from the Bargaining Council on 9 May 2019. He also points out that the email address for one Mahlatsi at POPCRU is not the chosen email address for service of documents, and that he investigated Mahlatsi's inbox but could not find the email from the Bargaining Council. Copies of the inboxes are annexed to the confirmatory affidavit. Another addressee of the Bargaining Council email was one Mulutsi, who works for Workers Life, not POPCRU.

[3] This is an obvious error.

The legal principles

Non-appearance on the set down date

[18] Non-appearance at a conciliation meeting has different consequences from non-appearance at arbitration proceedings.

[19] The referral to the Bargaining Council was made on 13 September 2018. In a letter dated 1 October 2018, the Bargaining Council informed the parties that they were required to hold a pre-arbitration meeting and to submit the minutes before the matter could be set down for hearing. There are no pre-arbitration minutes, and it remains unclear why they were not filed.

[20] The next document on file, in sequence, is the con/arb set-down notice dated 7 May 2019, which lists 6 June 2019 as the hearing date. This is the set-down notice the Bargaining Council sent to the parties on 9 May 2019. Sesebele and/or POPCRU did not attend on 6 June 2019. The dismissal ruling records that the matter was set down for arbitration, which is inconsistent with the set-down notice.

[21] If the matter was set down for a con/arb process as stated in the set down notice, the Labour Appeal Court (LAC) held, in *Premier Gauteng & Another v Ramabulana NO & Others*[4] *(Ramabulana),* with reference to sections 191(4) and (5) of the LRA, that the Act does not confer on the CCMA or a bargaining council the power to dismiss an employee's referral of a dismissal dispute merely because the employee failed to attend the conciliation meeting. Therefore, whether a party had a valid reason for not attending the conciliation meeting is irrelevant.

[22] If an employee fails to attend a conciliation meeting and 30 days have passed since the matter was referred to the CCMA or the Bargaining Council, the employee acquires the right to request arbitration or to refer the matter to this court for adjudication. The CCMA or the Bargaining Council cannot deprive an employee of that right by dismissing the claim.[5]

[4] (2008) 29 ILJ 1099 (LAC) at para 10.

[5] *Ramabulana* at para 23.

[23] However, in this case, the matter was set down for con/arb, a combined conciliation and arbitration, whereas the legal position set out above concerns conciliations only. Panellist Terblanche approached the matter on the basis that it was set down for arbitration. Panellist Terblanche's approach may well have been correct, given that the referral to the Bargaining Council was made in September 2018. By the time the matter was set down for a con/arb on 6 June 2019, 30 days had already passed since the referral to the Bargaining Council, with the consequence that the matter could be arbitrated immediately following failed conciliation.

[24] Section 138 of the LRA sets out general provisions for arbitration proceedings. Subsection (5)(a) provides as follows:

> '(5) If a party to the dispute fails to appear in person or to be represented at the arbitration proceedings, and that party:
>
> (a) had referred the dispute to the Commission, the commissioner may dismiss the matter.'

[25] Therefore, a panellist exercises discretion. In this case, the panellist dismissed the matter, finding that the parties had received adequate notice of the hearing date and that there was no explanation for Sesele's or POPCRU's non-attendance.

[26] The issue of dismissing a matter at the arbitration stage was addressed by the LAC in *Mohube v Commission for Conciliation Mediation & Arbitration & Others*[6] *(Mohube).* In that matter, a dispute the employee had referred to the CCMA was dismissed because he did not attend on the arbitration set-down date. He sought to have the ruling rescinded, but the application was dismissed. He then approached this court for an order reviewing the ruling refusing rescission, as well as an order reviewing and setting aside the dismissal ruling. This court dismissed the review application.

[27] On appeal, the employee argued that the court a quo failed to consider certain crucial facts recorded in his affidavit in support of the application to rescind the rescission ruling.

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[6] (2023) 44 ILJ 1683 (LAC).

[28] The LAC held that the application to review the dismissal ruling was superfluous[7]. This was because, in that matter, the outcome of the application to review the rescission ruling would render the application to review the dismissal ruling academic.

[29] On the merits, the LAC agreed that, under the reasonableness test, the rescission ruling was reviewable.[8]

[30] The court considered that rescission applications are governed by section 144(d) of the LRA, which provides as follows:

> **'144. Variation and rescission of arbitration awards and rulings**
>
> 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-
>
> *(d)* made in the absence of any party, on good cause shown.'

[31] On what constitutes good cause, the court stated as follows:

> '[25] There is no precise definition of the term 'good cause', but it is accepted that this entails that the applicant for such relief must show at least the following: *(a)* an absence of wilfulness; *(b)* that it has a reasonable explanation for the default; *(c)* that the application for rescission is bona fide and not made with the intention to delay; and that *(d)* (ie as in the case of the appellant here who referred the dispute) that it has a bona fide claim against the other party/ies. All these elements must be considered and weighed and, for example, proof of a bona fide claim may make up for a weaker explanation.'

[32] The question is whether Sesebele showed good cause for rescission of the dismissal ruling.

Evaluation

[7] Ad para 16.

[8] *Mohube* para 3.

[33] In these proceedings, the applicants sought to supplement the 'rescission application' by raising several issues not placed before panellist Maree.[9] Only the issues placed before panellist Maree will be considered in deciding the review application.

[34] The notice of set-down was sent to POPCRU, not to Sesebele. Therefore, Sesebele would not have known the set-down date unless POPCRU had informed him. His account was that POPCRU did not inform him of the set-down date. Accordingly, his non-attendance on 6 June 2019 was not wilful.

[35] Moikangola, Sesebele's POPCRU representative, deposed in the founding affidavit to the rescission application, stating that the applicants' non-appearance on 6 June 2019 was due to their not having been served with the set-down notice. Although the Bargaining Council file contained an e-mail indicating that the notice of set down had been sent to the parties, this, on its own, does not prove that the e-mail was successfully transmitted.

[36] The version stating that the set-down notice was not sent to POPCRU's email address or fax number must be read alongside the version stating that it was not received. Panellist Maree refers only to the latter version in the rescission ruling but fails to have regard to the rest of Moikangoa's affidavit, which repeatedly states that the set-down notice had not been received. Apart from the email indicating that the set-down notice was sent to the parties, nothing before Panellist Maree shows that it was, in fact, received.

[37] In addition, Moikangola's version that SAPS did not receive the set-down notice, and that this was conveyed to panellist Terblanche by the SAPS representative present on 6 June 2019, was not disputed. The dismissal ruling records that Col BB Mndlovu was present on 6 June 2019 but is silent on what, if anything, he informed panellist Terblanche about whether SAPS had received the set-down notice. SAPS did not oppose the rescission application, and Col NN Ndlovu did not file an affidavit disputing Moikangola's version. In the absence of opposition to the rescission application, it is difficult to understand the basis on which panellist Maree rejected Moikangola's version

[9] Submissions that the Bargaining Council's email was dysfunctional on 9 May 2019 and the copies of the POPCRU and Mahlatsi's inboxes.

that SAPS had not received the set-down notice. If SAPS did not receive the set-down notice, it was more probable that POPCRU also did not receive it.

[38] Moikangola's affidavit also records that Ms Romilla of the Bargaining Council informed him that the set-down notice was sent to an email address belonging to Workers Life. The email shows it was sent to a Workers Life address, but it also indicates it was sent to a POPCRU address. Notably, Ms Romilla's version was not placed before panellist Maree. As a result, only Moikangola's version, that Ms Romilla informed him that the set-down notice was sent to Workers Life, was not disputed. Panellist Maree does not address this in the rescission ruling.

[39] Based on the above analysis, the applicant's non-attendance was not wilful, and they provided a reasonable explanation. Because the applicants referred the matter to the Bargaining Council, it cannot be said that they sought to delay its finalisation. They had nothing to gain and everything to lose by doing so. In fact, as soon as they learned of the dismissal ruling, they filed a rescission application within days. Therefore, the application for rescission was bona fide.

[40] Regarding whether Sesebele had a bona fide claim against SAPS, panellist Maree held that no 'arguments were raised regarding the merits of the matter'. It is correct that the founding affidavit did not address Sesebele's prospects of success, except to state that Sesebele would be prejudiced if he were not granted an opportunity to argue the merits of his dismissal, and that the dismissal without hearing the merits advantaged SAPS. However, the referral form to the Bargaining Council was before panellist Maree and could not simply be ignored.

[41] The referral form records the dispute as an alleged unfair dismissal for misconduct. It also records that Sesele followed the internal grievance procedures before approaching the Bargaining Council. The process followed is described as follows:

> 'The employee was subjected to a disciplinary hearing on allegations that he took part during the theft of diesel in one of the hospitals in Qwaqwa. He

was then dismissed from his service by the chairperson of the trial without checking if the employee was involved or not.'

[42] The referral summarises the dispute as follows:

'Substantive issue

1. The evidence that was led by the employer could not link the employee with the misconduct which the employer is alleging.
2. Witnesses of employer contradicted one another when they were giving evidence.
3. The appeals authority took more than the prescribed time to give their final outcomes as required by the regulations.'

[43] The allegation that Sesele had not been linked to the misconduct was repeated on *Form B: Additional Form for Dismissal Disputes only.*

[44] Therefore, panellist Maree was not left in the dark about Sesebele's case. She had sufficient information to determine whether Sesebele had a bona fide claim against SAPS. In dismissal cases, the employer bears the onus of proving that the dismissal was fair. The information before panellist Maree showed a prima facie bona fide claim, which was sufficient to rescind the dismissal ruling.

[45] The court is satisfied that the refusal to rescind the rescission ruling was unreasonable and therefore reviewable.

Costs

[46] The applicants sought a costs order because the matter was opposed. On behalf of SAPS, it was submitted that SAPS could not be blamed for the dismissal and rescission rulings sought to be reviewed. There is merit in SAPS's submission. An appropriate order is for each party to pay its own costs.

[47] In the premise, I make the following order:

Order

1. The rescission ruling by panellist Maree under case number PSSS458-18/19, dated 23 August 2019, is hereby reviewed and set aside.

2. It is substituted with the following order:

    1. The dismissal ruling by panellist Terblanche under the same case number dated 6 June 2019 is rescinded.

    2. The matter is to be set down afresh for arbitration before a panellist other than Terblanche and Maree.

3. There is no order as to costs.

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T. Gandidze

Judge of the Labour Court of South Africa

Appearances

For the Applicant:	Mr Mutsengi
Instructed by:	Ntshebe Attorneys
For the Respondent:	Advocate T.E Mabuyakhulu
Instructed by:	The State Attorney