



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

Signature

Date

25 June 2026

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case No: C533/2022

In the matter between:

NORTHERN CAPE GAMBLING BOARD

Applicant

and

CHARLES HENRY FREDERICKS

First Respondent

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Second Respondent

HENDRICK OLIPHANT

Third Respondent

BOITUMELO BODIGELO

Fourth Respondent

LUCKY SELOMI

Fifth Respondent

ITUMELING SELOMI

Sixth Respondent

GAOPALELWE MOTLHABANE

Seventh Respondent

NADINE BERNADO SMITH

Eighth Respondent

Heard: 19 February 2026

Delivered: 25 June 2026

JUDGMENT

MACROBERT, AJ

Introduction

- [1] This is an opposed rescission application in which the Applicant seeks an order rescinding the judgment of my brother, Acting Judge De Kock, handed down on 11 August 2025, in the absence of the Applicant, in accordance with the provisions of section 165 (a) of the Labour Relations Act¹ (LRA) and Rule 16A of the Rules for the Conduct of Proceedings in the Labour Court².
- [2] The application for rescission was filed late, for which the Applicant has sought condonation, which Respondent(s) have not opposed.
- [3] Condonation is duly granted.

Background facts

- [4] De Kock AJ's judgment concerned a review application decided in the Applicant's absence in which he reviewed and set aside the arbitration award issued by the Commission for Conciliation, Mediation and Arbitration (CCMA) on 23 September 2022, and ordered the First Respondent's retrospective promotion of Compliance Inspector with backpay.
- [5] As will be seen below, Applicant contends that the judgment was erroneously sought and granted³ in the absence of the Applicant's legal representative, the State Attorney, Kimberley on 7 August 2025, which was occasioned due to unforeseen flight cancellations and delays of flights due to inclement weather.

¹ Act 66 of 1995, as amended.

² Now Repealed and replaced with the Rules Regulating the Conduct of the Proceedings of the Labour Court. Published 3 May 2024 (GN 50608). Effective 17 July 2024.

³ See section 165 (a) of the LRA

- [6] After the issuance of De Kock AJ's judgment on 11 August 2025, Applicant lodged an urgent application to the Labour Court to stay enforcement of the judgment on review pending the outcome of this application for rescission of that judgment.
- [7] The urgent application was heard by La Grange J on 23 September 2025, and he handed down judgment thereon on 30 September 2025, granting the application, the reasons for which are set out briefly below.
- [8] The reasons for Applicant's representative, Ms Zilwa's, non-appearance on 7 August 2025 are exhaustively set out in Applicant's founding affidavit, some of which were conceded in Respondent's answering affidavit.
- [9] This explanation and the reasons given are contained in detail in La Grange J's judgment in the urgent application, and are set out in full in Applicant's Founding affidavit and in paragraph 36 of Applicant's Heads, all of which do not bear repetition here, save only to record that it is apparent from the judgment of De Kock, AJ, that he was unaware of and had not been informed of all the facts and circumstances surrounding Ms Zilwa's non-appearance at the hearing on 7 August 2025, which I set out in brief below.
- [10] There were two flight delays from Kimberly (where Ms Zilwa is based) on 6 August 2025 which Ms Zilwa had intended to take, ensuring that she would arrive timeously the day before the hearing. These two flights were cancelled due to inclement weather.
- [11] This resulted in Ms Zilwa having to book a flight on 7 August 2025 which would only arrive in Cape Town at 09h55. She advised Respondent's attorney of this and requested that the matter be stood down until 11h00.
- [12] This was agreed to by First Respondent's attorney, confirming that the matter would be stood down until 11h00 that morning. Upon being advised of this De Kock AJ stood the matter down until 11h00. However, as it turns out, it never rains but it pours.

- [13] Ms Zilwa's flight that morning was yet again delayed due to inclement weather and she only landed at Cape Town International at 12h30.
- [14] She immediately informed First Respondent's Attorney of this on landing and that she was on her way to Court, but was advised that the matter had already been heard in her absence, with judgment reserved. Upon her arrival at the Labour Court, this was confirmed by the Registrar.
- [15] The above facts are either admitted, common cause or undisputed by Respondents.
- [16] First Respondent's quarrel is that Ms Zilwa could have done more- eg contacting her office to advise First Respondent's Attorney of her predicament, alternatively the Registrar. Ms Zilwa and her Counsel concede that she did not do this and erred in not so doing. However, she was in a panic driven by her circumstances and has apologised therefor.
- [17] There is no doubt, from the incontrovertible evidence that Ms Zilwa made every reasonable attempt to get to Court well in time, and had endeavoured to keep First Respondent's Attorney informed and abreast of her plight and predicaments as they unfolded.

Analysis, including the law as applied to applications for rescission of judgment

- [18] It is not clear from De Kock AJ's default judgment as to exactly what he was advised, nor in what detail, as to Ms Zilwa's predicament on the date of hearing. The papers before me do not make this clear.
- [19] I can also take judicial notice of the scarcity of flights from Kimberley to Cape Town as I too, have been subject to such delays over time, resulting in late arrivals etc. There are very few flights if one is missed for whatever reason.
- [20] La Grange J's judgment in the urgent application referred to above, shows sympathy for and empathy with, Ms Zilwa's predicament and her attempts to get to Court on time, and hence stayed the execution of De Kock Aj's judgment pending the outcome of the rescission application.

[21] I am convinced that had De Kock AJ been apprised in full of all the facts, set out in detail in the Applicant's founding and replying affidavit, and thus fully aware thereof when he decided the review application in Applicant's absence, that he would not have done so, and would have had understanding of, and empathy for Ms Zilwa's position and circumstances, as Applicant's Attorney of record on the day in question, and the facts and circumstances leading up to it.

[22] As to the law on rescission of judgments, which is trite, I ask the following questions:

23.1 Was there a reasonable explanation as to why Ms Zilwa was not at Court at the stood-down time of 11h00? I believe that there is on all that is before me;

23.2 Had De Kock AJ been advised of the full facts and circumstances and efforts Ms Zilwa made to get to Court on time, I believe that he would not have proceeded as he did;

23.3 The prospect of success on the merits of Applicant's case on review play a role in the Court's decision. This was also considered by La Grange J in his Ruling on the urgent application and dealt with therein, as I have also done, and I do not propose to deal with this in detail here.

23.4 Suffice it to say that after considering the copious authority presented to me in Counsel's respective Heads in relation to the facts, I am of the view that there are at least *prima facie* prospects of success in the review application brought by Applicant and it is in the interests of justice and fairness that the review application be allowed to proceed and that De Kock AJ's default judgement be set aside to allow this to take place.

[23] As to costs, there is no doubt that there was some default on the part of Applicant's attorney as admitted, and therefore I do not believe it to be in the interests of justice and fairness that an adverse order as to costs be made against First Respondent.

[24] In the premises and for the reasons set out above, the following order is made:

Order

1. The default judgment ordered by De Kock AJ in his judgment of 11 August 2025 is hereby set aside;
2. The review application may be set down for hearing by the Registrar for hearing on an opposed basis, on the opposed roll, on the papers and pleadings as they stand;
3. There is no order as to costs made.



JMJ MacRobert

Acting Judge of the Labour Court of South Africa

LABOUR COURT OF SOUTH AFRICA

Appearances:

For the Applicant : Adv Chandré Brown

Instructed by : Ms P. Zilwe of the State Attorney, Kimberley

For the First Respondent : Adv F. Rodrigues

Instructed by : A. Mukkadam of S/A Incorporated Attorneys

LABOUR COURT