



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JS673/22

In the matter between:

POLOFIELDS CROSSING SUPER SPAR

Applicant

and

THAPELO ANDREAS SELELA

Respondent

Heard: 04 March 2026.

Delivered: 09 June 2026.

This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date for hand-down is deemed to be 09 June 2026.

VARIATION: JUDGMENT

MALULEKE, AJ

Introduction

[1] In these proceedings, the applicant seeks rescission of the order granted by this Court (per Madam Justice Phehane) on 7 March 2023, which found the employee's dismissal, based on operational requirements, to be substantively unfair. The Court further ordered the employee be reinstated. In addition, the

respondent applies for condonation for the late filing of the rescission application by one day. Both the rescission and condonation applications are opposed by the employee.

[2] The employee commenced employment as a manager. After the matter was conciliated and referred to the labour court, the applicant alleged he had no knowledge of the statement of claim. Therefore, it did not oppose the claim until it received a default judgment only on 14 March 2023. This was the reason of filing the rescission, and he has an interest to proceed to oppose the statement of claim, therefore, seeks the order to rescind the judgement of 7 September 2025.

[3] Rule 16A(2)(b) of the Rules for the Conduct of Proceedings in the Labour Court¹ stipulates that a rescission application, as outlined in rule 16A (1)(b), must be submitted within 15 days of the applicant's awareness of the order intended for rescission. Therefore, based on submission and period the applicant became aware of, there was no need for the condonation application to be filed. Therefore, the court accepts the applicant's explanation.

Analysis of respondent's submission

[4] It is worth stating that the applicant has demonstrated on various occasions that it does not have an interest in this matter, not once but twice. The initial order was granted in default on 7 March 2023. Subsequent to that date it has been three years without litigating the rescission. It is worth noting that at the date of this rescission hearing, the applicant was not in attendance. there is no explanation or notice as to what could have been transpired.

[5] The respondent argued prejudice and lack of interest from the applicant. The court accepts the respondent's frustration.

[6] The applicant has failed to establish good cause for its default. The concept of good cause requires that a party seeking rescission must provide a reasonable and acceptable explanation for the default and must also demonstrate the existence of a *bona fide* defence to the main claim, which carries some prospect of success. In this instance, from the papers, even if not in attendance, the

¹ Repealed and replaced with the Rules Regulating the Conduct of the Proceedings of the Labour Court.

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applicant has not satisfied either requirement. A failure to satisfy either the requirement of providing a reasonable explanation for the default or demonstrating a *bona fide* defence with prospects of success may result in the rescission application being refused.

Conclusion

- [7] On the issue of a *bona fide* defence, the respondent correctly notes that the inquiry centres on whether the defence advanced may, if proven, constitute a valid and acceptable basis for success in the dispute. It is acknowledged that the applicant may have had a substantial reason for the dismissal; however, they are not in court to argue their case. This conduct cannot outweigh the interests of justice in ensuring the speedy resolution of disputes, particularly where the applicant failed to attend to argue its case as a *dominus litis*.
- [8] The applicant's failure to provide a bona fide, reasonable, and acceptable explanation for the default, as evidenced by the papers, renders the application unsustainable. Additionally, this conduct is prejudicial to the employee. Consequently, the rescission application is to be dismissed.
- [9] The court initially was of the view that the applicant deserves an opportunity by striking the matter from the roll. After respondent's argument and submission of the prejudice suffered, the court was persuaded to dismiss the rescission application. The respondent appeared in court twice, on both occasions, the applicant did not show respect to the court's proceedings and the court order.
- [10] In the premises, the following order is made:

Order

1. The applicant's application for rescission is dismissed.
2. The applicant in this application is to pay the agreed or taxed disbursements incurred by the respondent in opposing these rescission applications.

Z. D. Maluleke

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : No Appearance

For the Respondent : Adv Itumeleng Pila

Instructed by : MM Miti.Inc Attorneys