



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

06 August 2026

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JS 658/23

In the matter between:

GULLAND BELEGGINGS (PTY) LTD

Applicant

and

SELINA KESENOGILE LESOLLE & OTHERS

Respondents

Heard: 26 June 2026

Delivered: 06 August 2026

JUDGMENT

LEKWAPE, AJ

Introduction

[1] This matter concerns an application for rescission of a default judgment brought by the Applicant. The Respondents in the rescission application, Selina Kesenogile Lesolle and others, seek the dismissal of that application on the basis that it has not been prosecuted with diligence and that there has been non-compliance with a Directive issued by the Registrar of this Court.

The Directive and Procedural Compliance

- [2] On 5 February 2025, the Registrar issued a Directive under the heading dealing with heads of argument. In terms of the Directive the Applicant was required to inform the Registrar in writing whether it intended to proceed with the matter, to paginate and index the court file so that the matter could be placed on the roll, and to notify the Registrar once those steps had been completed.
- [3] The Directive was transmitted by email to the Applicant's email address and to the Respondents' attorneys of record. The Applicant's correspondent attorneys, Hannelie Swart Attorneys, were also among the recipients. It follows that the Directive was not merely issued, it was brought to the attention of the legal representatives acting for the Applicant.
- [4] On 5 March 2025, Hannelie Swart Attorneys forwarded the Registrar's email of 5 February 2025 to the Applicant's attorneys of record under the subject line "Directives JS658/23". This correspondence suggests that the Directive came to the attention of the Applicant's attorneys. There is therefore no sustainable basis to suggest that the Applicant, or those acting on its behalf, was unaware of the procedural steps required.
- [5] On 29 April 2025, the Respondents served the Applicant with an application to dismiss the rescission application.
- [6] On 26 May 2025 the Applicant served the Respondents with a notice of intention to oppose the application. That step is significant in that it shows that the Applicant was able to take procedural steps when required to answer the dismissal application, yet no comparable steps were taken to comply with the Registrar's Directive or to advance the rescission application.
- [7] Despite receipt of the Directive, and despite later correspondence confirming that it had been sent to the Applicant's attorneys of record, no meaningful steps were taken to meet the Registrar's requirements. The rescission application remained dormant. The Applicant did not confirm whether it intended to proceed, nor did it complete the procedural steps needed to place

the matter properly before the Court. This omission is material. The Applicant bore the responsibility to prosecute its own rescission application diligently and to comply with directions issued through the Registrar.

The Relationship Between the Instructing and Correspondent Attorneys

- [8] The Applicant seeks to excuse its non-compliance by contending that the correspondent attorney forwarded the Registrar's Directive to an incorrect email address for the instructing attorney. That explanation is not supported by the objective evidence and is, in the circumstances, inadequate.
- [9] No documentary proof has been placed before the Court identifying the alleged incorrect email address or showing that the Directive failed to reach the instructing attorney. The Applicant has produced no email trail, delivery failure notification, server rejection report, confirmatory affidavit from the correspondent attorney, or any other objective evidence to substantiate the alleged miscommunication. Without such evidence, the explanation remains a bare assertion and does not discharge the Applicant's obligation to provide a full, reasonable and acceptable explanation for its failure to comply with the Registrar's Directive.
- [10] The undisputed evidence is that the Registrar's Directive was received by the correspondent attorney and then forwarded to the Applicant's instructing attorney. In our law, the instructing attorney remains the *dominus litis* and bears primary responsibility for the conduct and prosecution of the litigation. The correspondent attorney acts as the agent of the instructing attorney for procedural steps in the matter. Once the Directive had passed through the Applicant's chosen legal representatives, the duty to ensure compliance and to advance the rescission application rested squarely on the instructing attorney.
- [11] It is settled law that a litigant cannot, without more, avoid the consequences of the negligence, remissness or lack of diligence of his or her legal representative. In *Saloojee and Another NNO v Minister of Community*

*Development*¹, the Appellate Division made clear that there is a limit to the extent to which a litigant may be absolved from the consequences of an attorney's failure to discharge professional duties. That principle applies with particular force here, where the Directive was transmitted within the Applicant's own legal team and no objective evidence has been placed before the Court to show that the alleged miscommunication prevented compliance.

- [12] The Applicant failed to provide a satisfactory explanation for the prolonged inactivity after the Directive was issued. It does not explain why no response was sent to the correspondent attorney, why no enquiries were made about the status of the rescission application, or why the procedural steps stipulated by the Court were not taken.
- [13] The silence of the instructing attorney, coupled with the absence of objective evidence supporting the alleged incorrect email address, justifies the inference that the Directive was either ignored or not given the attention reasonably expected of legal practitioners litigating before this Court. This is not a mere administrative omission. It goes directly to whether the Applicant has provided a full, reasonable and acceptable explanation for its failure to prosecute the rescission application.
- [14] Consequently, the Applicant cannot evade the consequences of non-compliance simply by relying on unsubstantiated allegations about communication failures within its own legal team. To allow that would weaken the authority of the Court's case-management directives and undermine the orderly and expeditious determination of disputes. Those directives are not matters of convenience, they are binding procedural mechanisms, and a party who invokes the Court's processes must take responsibility for ensuring compliance with them.

The Settlement Agreement

- [15] The dispute between the parties lies on the legal effect of the settlement agreement concluded between them. It is common cause that, on 31 August

¹ 1965 (2) SA 135 (A).

2023, the Applicant and the Respondents signed a settlement agreement described as being in full and final settlement following the Respondents' retrenchment. In terms of that agreement, the Applicant paid the Respondents their final salary, accrued pro rata leave pay and severance pay.

- [16] It is worth noting that the settlement agreement contains no waiver clause precluding the Respondents from referring any dispute against the Applicant to the Commission for Conciliation, Mediation and Arbitration (CCMA) or to any court of law.
- [17] On 1 January 2024, the Respondents launched an application for default judgment in this Court pursuant to their unfair dismissal referral, in which they sought, among other relief, retrospective reinstatement.
- [18] On 14 May 2024, Gandidze AJ granted the default judgment in favour of the Respondents, which included an order for retrospective reinstatement.
- [19] According to the Applicant, the agreement brought all disputes between the parties to an end and therefore bars the Respondents from pursuing the unfair dismissal claim.
- [20] The Respondents, on the other hand, contend that the agreement did not extinguish their right to pursue the unfair dismissal dispute, as the payments made to them were statutory payments to which they were in any event entitled. The issue therefore turns on the proper interpretation of the agreement, having regard to its wording, the circumstances in which it was concluded, and whether it was intended to constitute a full and final settlement of all disputes between the parties.
- [21] That contention must be assessed against the nature of the payments recorded in the agreement. Severance pay, notice pay and accrued leave pay are ordinarily consequences of termination, rather than separate consideration for the abandonment of an unfair dismissal claim. In the absence of clear language to that effect, the payment of those amounts does

not, on its own, amount to a waiver of the Respondents' rights under the Labour Relations Act² (LRA).

- [22] In a dismissal for operational requirements, payment of amounts due under the Basic Conditions of Employment Act³ (BCEA), including severance, notice and accrued leave pay, does not of itself establish that the dismissal was substantively and procedurally fair. Those payments satisfy statutory financial obligations, they do not relieve the employer of the duty to justify the fairness of the retrenchment.
- [23] The settlement agreement between the parties contains no express waiver, abandonment or full-and-final settlement clause in relation to the unfair dismissal dispute. The payments recorded in the agreement appear to be statutory entitlements to which the employee would in any event have been entitled to on termination. In those circumstances, a document recording payment or receipt of legal dues cannot, absent clear and unequivocal language, be construed as a compromise of the employee's right to challenge the fairness of the dismissal. A waiver of statutory labour rights is not lightly inferred, therefore it must be clear, informed and unequivocal.
- [24] A settlement agreement constitutes a compromise, or *transactio*, in South African law. Where parties conclude a valid compromise, the disputed rights and obligations between them are generally settled and replaced by the rights and obligations created by the compromise itself. The legal effect of such an agreement depends on its proper interpretation, having regard to the language used, the context in which it was concluded, and the intention of the parties as objectively manifested in the agreement.
- [25] In *Road Accident Fund v Mothupi*⁴, the Supreme Court of Appeal reaffirmed that waiver is not lightly inferred and that the party alleging waiver bears the onus of proving it. The conduct relied upon must be clear and unequivocal and objectively demonstrate an intention to abandon the right said to have

² Act 66 of 1995.

³ Act 75 of 1997.

⁴ 2000 (4) SA 38 (SCA) paras 15–16

been waived. In the absence of such conduct, a court will not readily conclude that a party has relinquished statutory or contractual rights.

[26] The mere existence of a settlement agreement therefore does not mean that every legal right a party may have is waived. The Court must still be satisfied that the language used by the parties clearly shows an intention to relinquish the right sought to be enforced.

[27] A similar approach was adopted in *Rankoane v Shoprite Checkers (Pty) Ltd*.⁵ In that matter, the employer contended that the employee had accepted an arrangement constituting a full and final settlement and was therefore precluded from referring a dispute to the CCMA. The Court rejected that contention and held that the arrangement did not constitute a full and final settlement of any dispute between the parties, nor did it contain any express waiver of the employee's statutory rights. The Court emphasised that there was no language indicating that the employee had relinquished the right to challenge the fairness of the employer's conduct and that such a waiver could not be inferred from the agreement.

[28] As is in the present matter the agreement records no express waiver, abandonment or compromise of the Respondents' unfair dismissal claim. The payments reflected therein comprise severance pay, notice pay and accrued leave pay, being amounts ordinarily payable upon termination of employment. In the absence of clear and unequivocal language demonstrating an intention to relinquish the right to challenge the fairness of the dismissal, the agreement cannot be construed as barring the Respondents from pursuing the unfair dismissal dispute.

Failure to Prosecute

[29] The decisive issue is the Applicant's failure to prosecute the rescission application with the required diligence. The non-compliance in this matter is more than a procedural irregularity. The Applicant failed to comply with the Registrar's Directive, failed to file the record necessary for the determination

⁵ *Rankoane v Shoprite Checkers (Pty) Ltd* (JS921/13) [2014] ZALCJHB 312 (15 August 2014) at para 11.

of the application, failed properly to prepare the court file, and ultimately failed to place the matter in a state of readiness for adjudication.

- [30] The Labour Court is enjoined to ensure that labour disputes are resolved expeditiously and that its processes are not undermined by dilatory conduct. In *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*⁶, the Constitutional Court emphasised that the LRA was enacted to facilitate the expeditious resolution of labour disputes and that any delay in their resolution undermines one of the primary objects of the LRA.
- [31] The same principle is reflected in *Rankoane*, where the Court emphasised that a party who initiates proceedings must take the steps necessary to bring the matter to finality. Unexplained delay or inactivity may justify dismissal where it undermines the expeditious resolution of labour disputes. That authority supports the view that the Applicant was required to comply with the Registrar's Directive and to advance its rescission application with reasonable diligence.
- [32] A party who initiates proceedings cannot then remain passive while the matter lies dormant. It must take the procedural steps necessary to move the matter towards finality within a reasonable time. The Labour Court has consistently recognised that a failure to prosecute proceedings diligently, particularly where it causes undue delay, may justify dismissal. That approach is consistent with the statutory imperative that labour disputes be resolved expeditiously and without unnecessary delay.
- [33] The Applicant's conduct after the Registrar's Directive was issued does not show a genuine intention to prosecute the rescission application. Although given an opportunity to regularise the matter and place it in a state of readiness for adjudication, the Applicant did not comply with the Directive, file the required record, or take the procedural steps needed to advance the

⁶ (2016) 37 ILJ 313 (CC) at para 1.

application. No satisfactory explanation has been given for this continued inaction.

[34] The Applicant's non-compliance cannot be treated as a mere oversight. It amounts to a sustained failure to prosecute the application and is inconsistent with the obligations of a litigant who invokes the jurisdiction of this Court. The delay has also prejudiced the Respondents' entitlement to finality. In these circumstances, the interests of justice do not favour allowing the application to remain pending when the Applicant has made no meaningful effort to move it towards adjudication.

[35] Having regard to the totality of the circumstances, the Court is satisfied that the Respondents have established a proper basis for the dismissal of the rescission application for want of prosecution. The Applicant did not prosecute the application with the diligence and expedition expected of a litigant who invokes this Court's jurisdiction. Its non-compliance with the Registrar's Directive has not been adequately explained or remedied, despite the opportunity afforded to regularise the matter. To allow the application to remain pending would be inconsistent with the effective administration of justice, the principle of finality in litigation, and the statutory imperative that labour disputes be resolved expeditiously. The rescission application must therefore be dismissed for want of prosecution.

Conclusion

[36] In all the circumstances, there is no justification for permitting the rescission application to remain pending indefinitely. The Applicant's continued failure to take the necessary procedural steps warrants the dismissal of the application, and the interests of justice require that the Applicant bear the consequences of its omission.

[37] The objective evidence indicates that, although the Registrar's Directive may initially have been transmitted to an incorrect email address for the Applicant's legal representatives, it was subsequently forwarded by the correspondent attorneys to the attorneys of record. There is no evidence before the Court that the correspondent attorneys also used an incorrect email address, or that

the Directive did not reach the Applicant's attorneys of record. In these circumstances, it cannot fairly be accepted that the Applicant, or those acting on its behalf, was unaware of the procedural steps required by the Court. The Applicant's failure to comply with the Directive is therefore not satisfactorily explained and remains an inadequately accounted-for failure to take the steps necessary to prosecute the rescission application.

[38] As to costs, the Respondents were compelled to incur the costs of this application because of the Applicant's failure to prosecute the rescission application diligently and to comply with the Registrar's Directive. In the circumstances, considerations of law and fairness support an order that the Applicant pay the costs occasioned by that failure.

[39] In the result, the following order is made:

Order

1. The Respondents' application to dismiss the Applicant's rescission application for want of prosecution is granted.
2. The Applicant's application for rescission under case number JS 658/23 is dismissed.
3. The Applicant is ordered to pay the costs of the Respondents' this application.

M. J. Lekwape

Acting Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the Applicant : Advocate Wijnibeek

Instructed by : A Peens Attorneys

For the Respondents : Mr Kgalegi

Instructed by : National Enterprise Workers Union

LABOUR COURT