



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR1605-19

In the matter between:

BIDSERVE INDUSTRIAL PRODUCTS (PTY)

LTD T/A GFOX AND CO

Applicants

and

THE COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

First Respondent

BEN MTHUTHULEXI TAFANE N.O.

Second Respondent

SIBUSISO CYNTHIA XABA

Third Respondent

Heard: 14 May 2026

Delivered: 7 September 2026

Judgment

MOLOTSI, AJ

Introduction

- [1] This is an application for rescission in terms of section 165(a) of the Labour Relations Act¹. The application was launched on 18 September 2024 to rescind and set aside the Court order issued on 7 August 2024. The Applicant is, Bidserve Industrial Products (Pty) Ltd t/a Gfox and co, a private company duly registered and incorporated in accordance with the Company Laws of the Republic of South Africa. The First Respondent is the Commission for Conciliation, Mediation and Arbitration (CCMA). The Second respondent is Ben Mthuthulezi Tafane, a Commissioner appointed by the CCMA to arbitrate the unfair dismissal dispute, which was lodged by the third respondent, Sibusiso Cynthia Xaba.
- [2] The Commissioner made a finding that the dismissal of the Third respondent was substantively unfair and ordered the Applicant to compensate the Third respondent with an amount of R107 523.00. The Applicant aggrieved with the arbitration award, launched a review application.
- [3] The review application was set down on 7 August 2024. The Applicant failed to attend the proceedings. The Court on 7 August 2024 made the following order:
- '1. The condonation for the late filing of the answering affidavit is granted.
 2. The review application is dismissed for having no merit.
 3. Applicant in the main review application, is ordered to pay costs of the respondent, for this application.'
- [4] The Applicant became aware of the date of the review hearing and the Court order on 29 August 2024 after having received a letter of correspondence from the attorneys of the Third respondent advising that

¹ Act 66 of 1995 as amended.

an order had been granted and seeking payment of the compensation awarded in the arbitration award.

Grounds for rescission

- [5] On 8 May 2024, this Court delivered a notice of set down for the hearing scheduled for 7 August 2024.
- [6] The email attaching the notice of set down was correctly delivered to the attorneys of the third respondent at [i\[...\]](#). However, this Court used an incorrect email address to notify the Applicant of the hearing date.
- [7] The correct email is [p\[...\]](#), whereas the set down notice had been delivered to [p\[...\]](#). The email address [p\[...\]](#), belongs to Ms. Petra Cooper, a Director of Soldatos Cooper Incorporated Attorneys. The Applicant was unaware of the fact that the hearing was set down on 7 August 2024 and submitted that the Order issued on 7 August 2024 was erroneously made by this Court.

Submission by the parties

- [8] The Applicant submitted that the notice of set down was sent to a wrong email address. The Applicant had no idea that the review was set down on 7 August 2024. All the authorities relied upon by the Third respondent support the Applicant's case.
- [9] The Third Respondent submitted that the Applicant failed to explain in what respect this Court on 7 August 2024 erred. The review application was dismissed on the merits. It is not enough for the Applicant to say that the order was erroneously made in its absence. The Applicant is required to demonstrate the absence and error. There was no error committed by this Court on 7 August 2024. Matters cannot be rescinded merely because of absence. The Third respondent conceded that the Applicant did not receive the notice for the hearing.

Evaluation

- [10] It is common cause that the Applicant did not receive the notice of set down and therefore it was absent on 7 August 2024. Consequently, the order issued on 7 August 2024 was erroneously made in the absence of the Applicant.
- [11] Much was made by the Third Respondent that the Applicant failed to show the error committed by the Court on 7 August 2024. It is simple, the Court erroneously made an order in the absence of the Applicant. The Applicant was unaware of the hearing as it did not receive the notice of set down. The Third Respondent's submission that the Applicant was required to show both absence and error and that was not proven is with respect without merits.
- [12] The rescission application must therefore be granted.
- [13] In the premises, the following order is made:

Order

1. The application for rescission is granted.
2. There is no order as to costs.

H Molotsi

Acting Judge of the Labour Court of South Africa.

Appearances:

For the Applicant: Mr Hutchison

Instructed by: SCI Attorneys Inc

For the Respondent: B Lukhele

Instructed by: Chelli Attorneys

LABOUR COURT