THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR 1620/2012
J 1623/2014

In the matter between:

STONE AND ALLIED INDUSTRIES (PTY) LTD **Applicant**

and

THATO SIMON KHABU **First Respondent**

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION **Second Respondent**

SELLO NANISO *N.O.* **Third Respondent**

Heard: **15 August 2022**

Delivered: **25 August 2022**

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 25 August 2022.

JUDGMENT

PRINSLOO, J

Introduction

[1] This matter has a long and unfortunate history and more than ten years after the Applicant had filed a review application, this Court is faced with two rescission applications. The rescission applications are brought under case numbers JR 1620/2012 and J1623/14 and the Applicant seeks an order to consolidate the two rescission applications. The application for consolidation is not opposed. Considering the merits of the consolidation application, it meets the requirements for consolidation and the application to consolidate, is granted.

JR 1620/12

[2] The Applicant had employed the First Respondent (Respondent) with effect from 3 June 1996 as a laboratory assistant. He was dismissed on 2 December 2011, after he was found guilty at an internal disciplinary hearing on the charge of gross insubordination.

[3] The Respondent subsequently referred an unfair dismissal dispute to the Second Respondent (CCMA). The dispute was arbitrated and on 12 June 2012, the Third Respondent (arbitrator) issued an arbitration award wherein he found the Respondent's dismissal procedurally fair, but substantively unfair. The arbitrator concluded that the Respondent was aware of the instruction given to him, it was a reasonable instruction, which he failed to obey, but the sanction of dismissal was not appropriate. The Respondent was reinstated retrospectively and he was to be given a final written warning, valid for a period of twelve months.

[4] On 2 August 2012, the Applicant filed an application to review the arbitration award and H V Jordaan Inc Attorneys represented the Applicant.

[5] On 24 August 2012, the CCMA filed a notice in terms of Rule 7A(3) of the Labour Court Rules[1] (Rules). On 21 September 2012, H V Jordaan Inc Attorneys addressed a letter to the Registrar of this Court, as follows: *"[k]indly forward the uplifted CD from the CCMA to Lom Enterprises to enable them to*

[1] GN 1665 of 1996: Rules for the conduct of proceedings in the Labour Court.

transcribe same. Further kindly request Lom Enterprises to provide our offices with a quotation in regard with the transcription herein".

[6] It is evident from the provisions of Rule 7A(5) and (6) that the Registrar must make the record available to the applicant in a review application and that the applicant must make copies of the record, necessary for purposes of the review application, and furnish the Registrar and the other parties with a copy of the record. It is unexplained on what basis the Applicant's attorneys expected the Registrar to forward the record of the arbitration proceedings to transcribers and request a quotation from the transcribers, on behalf of the attorneys.

[7] It appears from the correspondence attached to the Applicant's founding affidavit that the CD was not available from the Labour Court and that after further correspondence had been sent to the CCMA and that it was filed at the Labour Court on 23 November 2012.

[8] On 25 July 2013 Lovius Block Attorneys corresponded with the transcribers and informed them that they had taken over the matter from H V Jordaan Inc Attorneys and enquiries were made as to the status of the matter, more specifically as to whether the record of the arbitration proceedings had been transcribed as yet. On 25 July 2013, the transcribers advised Lovius Block Attorneys that they could not collect the recording from Court, as it was not filed and the attorneys were advised to contact the CCMA.

[9] The Respondent had filed a notice of intention to oppose on 4 August 2013. On 6 September 2013, the Respondent filed an application in terms of the provisions of Rule 11 (Rule 11 application), seeking the dismissal of the review application on the basis that no further steps were taken to pursue the application and because of the Applicant's tardiness and delay in pursuing the review application.

[10] On 19 November 2013, this Court (per Steenkamp J) granted an order, dismissing the Applicant's review application.

[11] The Applicant seeks the rescission of the Court order of 19 November 2013 on the ground that it was erroneously granted in the absence of the Applicant.

JR 1623/14

[12] On 1 July 2014, the Respondent filed an application in terms of section 158(1)(c) of the Labour Relations Act[2] (LRA) for the arbitration award issued on 12 June 2012 to be made an order of Court.

[13] On 31 October 2014, the Court (per Lallie J) made the arbitration award an order of Court.

[14] The Applicant filed an application on 20 March 2015, seeking rescission of the Court order of 31 October 2014, as well as condonation for the late filing of the application. The Applicant submitted that the order of 31 October 2014 was issued erroneously and if the true facts were available to the Court, the presiding Judge would not have granted the order.

[15] Both rescission applications are opposed.

The applicable legal principles

[16] The variation and rescission of court orders is provided for in terms of section 165 of the LRA and Rule 16A of the Rules.

[17] Section 165 provides as follows:

> 'The Labour Court, acting of its own accord or on the application of any affected party may vary or rescind a decision, judgment or order –
>
> (a) erroneously sought or erroneously granted in the absence of any party affected by that judgment or order;
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> (b) in which there is an ambiguity or an obvious error or omission, but only to the extent of that ambiguity, error or omission;

[2] Act 66 of 1995, as amended.

(c) granted as a result of a mistake common to the parties to the proceedings.'

[18] The wording of Rule 16A(1)(a)(i) – (iii) is identical to section 165 of the LRA and there is no need to set out both.

[19] In *Construction & Allied Workers Union & another v Federale Stene*[3] *(Federale Stene),* it was held that:

> 'Section 165(a) of the LRA is similar in its terms to rule 42(1)(a) of the Uniform Rules of the High Court. Commenting on the High Court rule Erasmus *Superior Court Practice* (Juta original service 1994) at B1-308 states the following:
>
> > "An order or judgment is erroneously granted if there was an irregularity in the proceedings, or if it was not legally competent for the court to have made such an order, or if there existed at the time of its issue a fact of which the judge was unaware, which would have precluded the granting of the judgment and which would have induced the judge, if he had been aware of it, not to grant the judgment…The courts have ... consistently refused rescission where there was no irregularity in the proceedings and the party in default relied on the negligence or physical incapacity of his attorney".'

[20] In short: an order or judgment was granted erroneously, as contemplated in section 165 of the LRA, if, at the time the order was granted, a fact existed of which the presiding judge was unaware but had he or she been aware of it, would have induced him or her not to grant the order or if it was not legally competent for the court to have made such an order.

[21] Rule 16A(1)(b) provides that the Labour Court may, on application of any party affected, rescind any order or judgment granted in the absence of that party. An application in terms of Rule 16A(1)(b) must be made within 15 days after acquiring knowledge of the order or judgment granted in the absence of the applicant party.

[3] (1998) 19 ILJ 642 (LC) at para 4.

[22] The essence of the difference between these two provisions is that in applications in terms of Rule 16A(1)(a)(i), where an order was erroneously granted in the absence of a party, the applicant is not required to show good cause. Apposite in this regard is *Federale Stene* and other authorities where it was found that where a defaulting party is genuinely unaware of the date of set down, granting judgment by default is erroneous and, in these circumstances, it is not necessary to show good cause.[4]

[23] However, the explanation as to why the applicant did not attend at Court on the day on which the matter was set down, obviously, does not change regardless of which legislative rubric the application is brought under or, for that matter, whether it has been brought under the common law.

The rescission applications

[24] It is evident that in both rescission applications the Applicant stated that the orders (of 19 November 2013 and 31 October 2014) were issued erroneously in the absence of the Applicant and if the true facts were available to the Court, the presiding Judge would not have granted.

[25] The applications for rescission are therefore brought in terms of the provisions of Rule 16A(1)(a)(i) of the Rules and the Applicant has to provide a reasonable explanation for its default and has to show that the order was erroneously granted.

[26] It is quite clear from the jurisprudence that where a notice of set down, genuinely, does not come to the attention of a party, any judgment by default would be granted erroneously.[5]

Explanation for the default

[27] In respect of JR 1620/12, the Respondent filed the Rule 11 application to dismiss the Applicant's review application on 6 September 2013. The

[4] See: *Lumka and Associates v Maqubela* (2004) 25 ILJ 2326 (LAC) at para 26 and *Gay Transport (Pty) Limited v SA Transport and Allied Workers Union and Others* (2011) 32 ILJ 1917 (LC) (*Gay Transport*) at para 13.
[5] See: *Federale Stene* (*supra)*, *Gay Transport* (*supra*) and *Roux v City of Cape Town* [2004] 8 BLLR 836 (LC).

Respondent deposed to a service affidavit on 5 September 2013, confirming that the application to dismiss the review application was served on the Applicant by posting the documents by registered post, with slip number RD920594696ZA, to H V Jordaan Inc Attorneys. A copy of the certificate issued by the post office for the posting of the registered letter was also submitted.

[28] It is evident from the affidavit of service and the certificate issued by the post office that the application was sent to H V Jordaan Inc Attorneys, P O Box 2175, Welkom, 9460.

[29] The Applicant's case is that the Rule 11 application was not served on nor received by the Applicant.

[30] The Respondent's case is that at the time of service of the said application and the subsequent notice of set down, the available records in the Registrar's office and the Court file indicated that H V Jordaan Inc Attorneys was the Applicant's attorney of record. Upon granting the order to dismiss the review application, the Court was satisfied that proper service was duly effected on the Applicant's attorney of record, H V Jordaan Inc Attorneys. The Respondent further submitted that the Applicant failed to serve and file any notice informing either the Registrar or the Respondent that its previous attorneys had withdrawn as attorney of record and that it had appointed new attorneys. There was no notice in the Court file indicating that Lovius Block Attorneys were appointed as attorneys of record for the Applicant and that all documents must be served on them.

[31] The Applicant did not file a replying affidavit.

[32] In respect of JR 1623/14, the Respondent filed the section 158(1)(c) application to make the arbitration award an order of Court on 1 July 2014. The Respondent deposed to a service affidavit on 1 July 2014, confirming that the application was served on the Applicant by posting the documents by registered post, with slip number RD904229439ZA. A copy of the certificate issued by the post office for the posting of the registered letter was also submitted.

[33] It is evident from the affidavit of service and the certificate issued by the post office that the application was sent to Stone and Allied (Pty), P O Box 104, Welkom, 9460.

[34] The Applicant's case is that after the filing of the rescission application on 10 December 2013, under case number JR 1620/12, it was awaiting a directive and a set down from the Registrar. However, on 31 October 2014, the Court issued an order wherein the arbitration award was made an order of Court. The Applicant submitted that no section 158(1)(c) application was served on it and that the Applicant was unaware of the application, but was instead awaiting a Court date from the Registrar. Furthermore, during this period, the Respondent was represented by Adendorf Attorneys and the attorneys were involved in discussions to settle the matter and they were *ad idem* that they were awaiting a Court date from the Registrar. The Applicant was astonished to learn that the arbitration award was made an order of Court in circumstances where the attorneys were engaging in discussions and the application was not served on the Respondent.

[35] The Applicant's case is that the order of 31 October 2014 was issued erroneously and would not have been issued had the Court been aware that the parties were awaiting a date from the Registrar in respect of the first rescission application.

[36] The Respondent's case is that the section 158(1)(c) application was served by registered post on the Applicant's appointed address and the post office record shows that it was collected at the post office by the Applicant's messenger, Ishmael on 11 July 2014.

[37] The Respondent further submitted a document which purports to be on the letterhead of the Applicant, indicating that correspondence is to be addressed to P.O. Box 104, Welkom, 9460, which was the address the documents were sent to and collected from. The Respondent further disputed that Adendorf Attorneys ever came on record as his attorney at the Labour Court.

[38] The Applicant did not file a replying affidavit. Instead, a supplementary affidavit, deposed to by Ms Louw, an employee of Lovius Block Attorneys, was filed,

wherein Ms Louw stated that certain issues need to be "*brought to the Court's attention*".

[39] The ordinary rule is that three sets of affidavits are allowed, namely a founding, answering and replying affidavit. The Court may in its discretion permit the filing of further affidavits and the relevant authorities indicate that leave will be granted for filing further affidavits only in 'exceptional circumstances'[6] or in 'special circumstances'[7] or if the court considers it advisable.[8]

[40] In *James Brown & Hamer (Pty) Ltd (previously named Gilbert Hamer & Co Ltd) v Simmons NO,*[9] the Appellate Division held as follows:

> 'It is in the interests of the administration of justice that the wellknown and well established general rules regarding the number of sets and the proper sequence of affidavits in motion proceedings should ordinarily be observed. That is not to say that those general rules must always be rigidly applied: some flexibility, controlled by the presiding Judge exercising his discretion in relation to the facts of the case before him, must necessarily also be permitted.'

[41] *In casu,* the Applicant was to file a replying affidavit, if it wanted to dispute the averments made by the Respondent in his answering affidavit or if it intended to provide this Court with a different version. Instead, a supplementary affidavit was filed, which does not purport to answer *ad seriatim* to the averments made by the Respondent, but clearly stated that the purpose was to bring certain facts to the Court's attention. Not only was the supplementary affidavit filed out of proper sequences of affidavits in motion proceedings, there was also no effort made to seek leave from this Court to permit a supplementary affidavit or explain why the filing of a supplementary affidavit, in the absence of a replying affidavit, should be permitted.

[42] The Applicant has not filed replying affidavits in any one of the rescission applications before Court. The proper approach to determining the facts was

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[6] See: *Kasiyambhuru v Minister of Home Affairs* 1991(1) SA 643 (W) at 649-650 applying *Transvaal Racing Club v Jockey Club of South Africa* 1958 (3) SA 599 (W) at 604.
[7] See: *Joseph & Jeans v Spitz and others* 1931 WLD 48.
[8] See: *Riesenberg v Riesenberg* 1926 WLD 59.
[9] 1963 (4) SA 656 (A) at 660 D-F.

authoritatively set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*[10]. Thus, when factual disputes arise in circumstances where the applicant seeks final relief, the relief should be granted in favour of the applicant only if the facts alleged by the respondent in its answering affidavit, read with the facts it has admitted to, justify the order prayed for.

[43] This application should be decided by applying the *Plascon-Evans* rule.

Erroneously granted

[44] In short, the Applicant's case is that it was not served with the two applications, which are the subject of the rescission applications and that the orders granted on 19 November 2013 and 31 October 2014 were erroneously granted in its absence. This is so because at the time the orders were granted, the Court was not made aware of the fact that the applications were not properly served on the Applicant. Had the Court been aware of the fact that there was no proper service, the Court would not have issued the orders.

Analysis

[45] It is trite that a judgment has been erroneously granted if there existed, at the time of its issue, a fact of which the judge was unaware, which would have precluded the granting of the judgment and which would have induced the judge, if aware of it, not to grant the judgment[11].

[10] 1984 (3) SA 623 (A) at 634H-635C, where it was held:
'It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact... If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6(5)(g) of the Uniform Rules of Court... and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks... Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers...'

[11] A C Cilliers, C Loots and H C Nel, 'Herbstein & Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa', 5ed, Vol 1, at pp 931 - 934.

[46] The Court held in *Nyingwa v Moolman NO,*[12] that:

> 'It therefore seems that a judgment has been erroneously granted if there existed at the time of its issue a fact of which the Judge was unaware, which would have precluded thegranting of the judgment and which would have induced the Judge, if he had been aware of it, not to grant the judgment.'

[47] The gist of the Applicant's explanation for its default is that it was not served with the papers and as a result, was unaware of the litigation instituted by the Respondent.

[48] Rule 4(2) of the Rules provides for an application to be delivered.

[49] Rule 1 sets out the definition of 'deliver' to mean: "*serve on other parties and file with the Registrar of the Labour Court*".

[50] Rule 4(1)(a) of the Rules provides for service on a party as follows:

> '(i) by handing a copy of the document to the person;
>
> (ii) by leaving a copy of the document at the person's place of residence or business with any other person who is apparently at least 16 years old and in charge of the premises at the time;
>
> (iii) by leaving a copy of the document at the person's place of employment with any person who is apparently at least 16 years old and apparently in authority;
>
> (iv) by faxing a copy of the document to the person, if the person has a fax number;
>
> (v) by handing a copy of the document to any representative authorised in writing to accept service on behalf of the person;
>
> (vi) if the person has chosen an address or fax number for service, by leaving a copy of the document at that address or by faxing it to that fax number;

[12] 1993 (2) SA 508 Tk GD.

(vii) by sending a copy of the document by registered post to the last-known address of the party concerned, and, unless the contrary is proved, it will be presumed that service was effected on the seventh day following the day on which the document was posted.'

[51] *In casu,* the Respondent served the applications by registered post.

[52] Rule 21 provides for the representation of parties as follows:

'(1) A representative who acts on behalf of any party in any proceedings, must notify the registrar and all other parties, advising them of the following particulars:

(a) The representative's name;

(b) the postal address and place of employment or business; and

(c) if a fax number and telephone number are available, those numbers.

(2) Any party who terminates a representative's authority to act and then acts in person or appoints another representative, must give notice to the registrar and all other parties concerned of that termination, and of the appointment of any other representative, and include the representative's particulars, as referred to in subrule (1).

(3) On receipt of a notice in terms of subrule (1) or (2), the address of the representative or the party, as the case may be, will become the address for notices to and for service on that party of all documents in the proceedings, but any notice duly sent or any service duly effected elsewhere before receipt of that notice will, notwithstanding that change, for all purposes be valid, unless the court orders otherwise.

(4) (a) A representative in any proceedings who ceases to act for a party must deliver a notice to that effect to that party and all other parties concerned.

(b) A notice delivered in terms of paragraph (a) must state the names and addresses of the parties that are notified.

(c) After receipt of a notice referred to in paragraph (a), the address of the party formerly represented becomes the address for notices to and for service on that party of all documents in the proceedings, unless a new address is furnished for that purpose.'

[53] Rule 21(3) provides that the address of the representative will become the address for notices to and for service on that party of all documents in the proceedings.

JR 1620/12

[54] It is common cause that the Applicant had filed a review application under case number JR 1620/12. In the notice of motion, it was made clear that H V Jordaan Inc Attorneys were appointed as the attorneys representing the Applicant and that the address of H V Jordaan Inc Attorneys was appointed as the *"place where service of all documents in these proceedings will be accepted".*

[55] The Respondent's Rule 11 application, for the dismissal of the review application, is to be regarded as "documents in these proceedings" and as such, the Respondent was entitled to use the address of H V Jordaan Inc Attorneys as the place of service. It is common cause that the Respondent served the Rule 11 application, by way of registered post, on H V Jordaan Inc Attorneys.

[56] The Applicant's case is that the Rule 11 application was not served on nor received by the Applicant. Considering the provisions of Rule 23 and the fact that H V Jordaan Inc Attorneys was placed on record as the address for service, there was no obligation on the Respondent to serve the Applicant with documents in the review application.

[57] The Respondent's version that at the time of service of the said application and the subsequent notice of set down, the available records in the Registrar's office and the Court file indicated that H V Jordaan Inc Attorneys was the Applicant's attorney of record, is not disputed. There is also no averment or evidence to show that H V Jordaan Inc Attorneys filed a notice of withdrawal or that Lovius

Block Attorneys had filed a notice to inform the Respondent or the Registrar that they had been appointed as attorneys of record for the Applicant and in which their address had been provided for service of documents.

[58] In *Pugin v Pugin,*[13] the High Court considered the Uniform Rules and held that "*[o]bviously, therefore, if documents like a notice of bar and notice of set down are served on the party's attorney or left at his office, that will be valid and effectual service as if it had been delivered to the party himself*."

[59] In *Day and Night Investigators CC v Ngoasheng and others,*[14] the applicant applied for rescission of an arbitration award claiming that it had not been notified of the arbitration hearing. The application for rescission of the award was dismissed and the applicant launched an application for review in the Labour Court. The applicant argued that it was not notified of the arbitration as the notice had been telefaxed to the incorrect fax number, the applicant's fax number had changed prior to the issuing of the notice of set down. The Court, with reference to rescission applications, held that:

> 'The approach of the High Court in circumstances of the nature this case presents may be summarised as follows:
>
> (a) Where service of the papers has not been effected on a litigant in terms of the rules governing service, and judgment is granted in the belief that there has been proper service, the judgment is granted "erroneously" as contemplated in rule 42(1)(a) (*Fraind v Nothmann* 1991 (3) SA 837 (W) at 839H–I. See also *Topol and others v LS Group Management Services (Pty) Ltd* 1988 (1) SA 639 (W) at 648D–649F; *Custom Credit Corporation (Pty) Ltd v Bruwer and others* 1969 (4) SA 564 (D) at 566B).
>
> (b) However, where there has been proper service in the sense that service is effected in terms of the applicable statutory provisions, but the papers do not in fact reach the litigant, the order is neither sought nor granted "erroneously". This would be the case, for example, if service is effected on the registered

[13] [1963] 1 All SA 791 (W) at 793.
[14] [2000] 4 BLLR 398 (LC).

> office of a company even where the registrar of companies had been notified that the registered office was no longer situated on those premises but had not been advised of the new address (*Geldenhuis Deep Ltd v Superior Trading Co (Pty) Ltd* 1934 WLD 117 at 119. See also *Hardroad (Pty) Ltd v Oribi Motors (Pty) Ltd* 1977 (2) SA 576 (W) at 578H–579E).'

[60] I re-iterate: the Applicant did not serve and file any notice informing either the Registrar or the Respondent that H V Jordaan Inc Attorneys had withdrawn as attorney of record or that it had appointed Lovius Block Attorneys as attorneys of record and that all documents must be served on them as the new representatives, as required in Rule 21(2).

[61] The Applicant did not file an affidavit, deposed to by H V Jordaan Inc Attorneys, to confirm that the Rule 11 application was not served on them or that they had no knowledge of the Rule 11 application and this Court has no reason to accept that service was not effected on the Applicant's attorneys of record at the time.

[62] Mr Nel for the Respondent submitted that this Court should consider the fact that the Applicant has no *bona fide* defence against the Respondent's Rule 11 application, as the record was only filed in 2015. As this application is brought in terms of Rule 16A(1)(a)(i), the Applicant is not required to show good cause. Equally so is this Court not required to consider whether a *bona fide* defence exists or not in determining whether the order granted in the absence of the Applicant, is to be rescinded.

[63] The Court order of 19 November 2013 could be rescinded on the basis of improper service only if service was not effected in accordance with the rules of service, however where service is effected in accordance with the rules and the application did not reach the Applicant for another reason, the Court order cannot be said to have been granted erroneously.

[64] Upon granting the order to dismiss the review application, the Court was satisfied that proper service was duly effected on the Applicant's attorney of record, H V Jordaan Inc Attorneys. There was a service affidavit filed to the effect that the application was served on the attorneys and absent any

confirmation as to the contrary from H V Jordaan Inc Attorneys, this Court cannot find that the service of the Rule 11 application was not effected in accordance with the Rules and therefore the order granted on 19 November 2013 was not granted erroneously.

J 1623/14

[65] The Respondent filed the section 158(1)(c) application to make the arbitration award an order of Court on 1 July 2014. The application was filed under a new case number. Rule 7 provides that an application must be served on all persons who have an interest in the application. The Respondent deposed to a service affidavit on 1 July 2014, confirming that the application was served on the Applicant by posting the documents by registered post. The application was sent to Stone and Allied (Pty), P O Box 104, Welkom, 9460.

[66] The Respondent submitted a document which purports to be on the letterhead of the Applicant, indicating that correspondence is to be addressed to P.O. Box 104, Welkom, 9460, which was the address the documents were sent to and collected from. The Applicant did not file a replying affidavit wherein it was disputed that the address used by the Respondent was incorrect or that the document was not collected.

[67] The Applicant's case is that it was unaware of the application but was instead awaiting a Court date from the Registrar in respect of the rescission application under case number JR 1620/12.

[68] The Applicant's case is that the order of 31 October 2014 was issued erroneously and would not have been issued had the Court been aware that the parties were awaiting a date from the Registrar in respect of the first rescission application.

[69] It may be so that the Court would not have issued the order on 31 October 2014, had it been aware of the pending rescission application. However, in my

view, the relief sought in respect of the rescission of the order granted on 31 October 2014, became moot and academic.

[70] The order of 19 November 2013, dismissing the review application, is not rescinded and thus the position remains that there is no review application pending before this Court. As there is no review pending, there is no legitimate bar to make the arbitration award an order of Court. The position would obviously be different had the order of 19 November 2013 been rescinded.

[71] In summary: It would serve no purpose to rescind the order of 31 October 2014 in circumstances where the order dismissing the review application is not rescinded. To grant such an order, will be academic, considering the nature and the extent of the practical effect of rescinding the order that made the arbitration award an order of Court.

Costs

[72] In so far as costs are concerned, this Court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness. Counsel for both parties argued that costs should follow the result. It is trite that the general rule that costs should follow the result does not apply in labour matters. However, in this case, the Respondent, as an individual, was successful in opposing both rescission applications and there is no reason to find that he is not entitled to a cost order. There is however no reason to award a punitive cost order.

[73] In the premises I make the following order:

Order

1. The rescission applications filed under case number JR 1620/12 and J 1623/14 are consolidated;

2. The rescission applications are dismissed;

3. The Applicant is to pay the First Respondent's costs.

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Connie Prinsloo

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	A Roux
Instructed by:	Lovius Block Attorneys
For the First Respondent:	A J Nel
Instructed by:	Goldberg Attorneys