RESCISSION RULING

Case Number: GAEK5406-26
Commissioner: Shannel Arikum
Date of Ruling: 6 August 2026

In the matter between

BCAWU obo Lesabane, Alfrida

(The Applicant)

And

Lothlorien Recycling (Pty) Ltd

(The Respondent)

BACKGROUND

[1] This is a rescission ruling in the matter between BCAWU obo Lesebane and Alfrida Lothlorien Recycling (Pty) Ltd. The applicant referred a S191(5)(a) dispute in terms of the Labour Relations Act 66 of 1995 (hereinafter referred to as the "LRA"). The matter was set down for an unobjected con/arb on 3 June 2026, and the respondent did not attend the process; a default award was issued by Commissioner Nokuthula Langa on 7 June 2026. On 1 July 2026, the respondent submitted a rescission application, along with a condonation for the late filing of the rescission application. The applicant submitted an opposing affidavit.

[2] The in limine was scheduled for 27 July 2026, at the CCMA offices in Benoni. The applicant was represented by Mr Tumelo Kgole, an official from BCAWU, and represented himself, and the respondent was represented by Ms Victoria Ridgard, a legal practitioner from CVN Attorneys. Both parties agreed that the matter be determined on papers as they had no further submissions.

AD CONDONATION

RESPONDENT SUBMISSIONS

[3] The respondent stated that they only became aware of the award on 11 June 2026. The last day to file an application was 25 June 2026; however, the respondent only filed it on 1 July 2026, thus making the application 6 (six) days late.

[4] The respondent submitted that the length of the delay is not excessive and that the reason for the lateness is that there was an administrative burden placed upon the legal representatives and their internal processes.

[5] The respondent further submitted that the respondent enjoys good prospects of success in the matter.

[6] The respondent stated that it would be prejudicial to them not to grant the condonation as the matter needs to be fully ventilated before the CCMA.

APPLICANT SUBMISSIONS

[7] The applicant in its opposing affidavit failed to explicitly oppose and respond to the condonation application but merely stated that the application was out of time and proceeded to respond to the rescission application.

[8] On the premise, I therefore grant the condonation for the late filing of the rescission application. I will now address the rescission application

RESCISSION APPLICATION

RESPONDENT SUBMISSIONS

[9] The respondent submits that they were not in wilful default of the arbitration proceedings and that the reason for non-attendance was due to the representative, Mr Sergio Querios, being unavailable as he was on paternity leave. The respondent further submits that the respondent has excellent prospects of success and that they intend bringing a jurisdictional point in terms of the CCMA's jurisdiction to adjudicate the dispute. The respondent contends that the respondent belongs to the National Bargaining Council for the Wood and Paper Sector. Furthermore, the respondent will suffer substantial prejudice

APPLICANTS SUBMISSIONS

[10] The applicant stated that the respondent could have applied for a postponement and that there was a lack of proactiveness; furthermore, the respondent did not inform the CCMA nor the applicant that they would not be attending the proceedings.

[11] The applicant stated that the respondent does not belong to any bargaining council as there were no bargaining levy deductions being made. Furthermore, the respondent does not enjoy any prospects of success.

ANALYSIS OF EVIDENCE

[12] S144 of the LRA provides that a commissioner acting on their own accord or on application from any affected party may vary or rescind an arbitration award –
(a) erroneously sought or erroneously made in the absence of any party affected by that award.

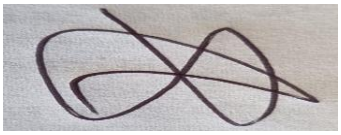
I find that the respondent being absent due to being on paternity leave to be reasonable. It would have been ideal for the respondent to apply for a postponement in this regard; however, in furtherance of the submissions made by the respondent, I find that the jurisdictional point raised by the respondent needs to be addressed before the commissioner. Unfortunately, I was not provided with sufficient submissions or documents to make a ruling on the jurisdiction.

[13] Considering the evidence above, and submissions of the parties, I find that the respondent was not in wilful default of the CCMA process and as such, it would be in the interest of justice for the default award to be rescinded.

RULING

[6] The application for rescission of the default award issued by Commissioner Nokuthula Langa on 7 June 2026 is hereby rescinded.

[7] The CCMA is directed to set the matter down for arbitration.

Signature: 

Commissioner: **Shannel Arikum**