



PHSDSBC

Public Health and Social Development  
Sectoral Bargaining Council

# RESCISSION RULING

Commissioner: James Matshekga

Case No: PSHS431-20/21

Date of ruling: 3 March 2021

In the matter between:

**DEPARTMENT OF HEALTH- MPUMALANGA**

**THE APPLICANT**

and

**PSA OBO SEBOGISILE BLESSING FORTUNATE VILAKAZI**

**THE RESPONDENT**

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1. This is a ruling in respect of an application for rescission of a jurisdictional ruling made by the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC) ("the Council") on 26 January 2021 under the hand of Commissioner Victor Madula.
  2. The application is brought by Mr. Maxwell Sithole on behalf of Department of Health-Mpumalanga ("the applicant").
  3. The registered trade union Public Servants Association of South Africa (PSA) acting on behalf of Mr. Sibogisile Blessing Fortunate Mahlangu ("the respondent") submitted a response in opposition to the application.

4. The respondent referred a dispute to the Council alleging that the applicant subjected him to an unfair labour practice involving promotion within the meaning of section 186(2)(a) of the LRA. The Council scheduled the dispute for arbitration that took place on 15 December 2020 before Commissioner Madula. Both parties were present and duly represented. The applicant challenged the jurisdiction of the Council to arbitrate the matter and on 26 January 2021, Commissioner Madula issued a jurisdictional ruling in which he made the findings set out therein.
  
5. The applicant has now brought an application for rescission of the jurisdictional ruling, the essence of which is that the applicant disagrees with the findings made by Commissioner Madula
  
6. The applicant alleges that the rescission application is brought in terms of the provisions of section 144(c) of the LRA, which states that a ruling may be rescinded if it was "granted as a result of a mistake common to the parties to the proceedings".
  
7. Section 144(c) finds no application in this matter. Commissioner Madula is not a party to the proceedings. Parties to the proceedings are the applicant and the respondent. That there is no "mistake common to the parties to the proceedings" in this matter is self-evident from the fact that the respondent opposed the applicant's objection to the Council's jurisdiction and also opposes the rescission application. If there is any mistake, the mistake is that of Commissioner Madula alone. Rescission is impermissible in those circumstances (see in this regard *Department of Health v Naidoo & another* [2004] 9 BLLR 890 (LC), *Builders Trade Depot v Commission for Conciliation Mediation and Arbitration and Others* [2012] 4 BLLR 343 (LC) and *Bidvest TMS Group Industrial Services (Pty) Limited and Another v Commission for Conciliation, Mediation and Arbitration and Others* [2020] 4 BLLR 381 (LC)).

8. The purpose of section 144 of the LRA is not to deal with situations where an applicant disagrees with a commissioner's findings/ and or where a commissioner makes incorrect findings. The appropriate and correct process for correcting incorrect and/or wrong findings by a Commissioner is through review at the Labour Court. Mr. Sithole and/or the applicant are aware and/or reasonably expected to be aware that the LRA does not give the Council or its Commissioners powers to review their own decisions. That power is given to the Labour Court. Accordingly, the applicant may approach the Labour Court to have the jurisdictional ruling reviewed and/or set aside.
9. The applicant's rescission application has no standing in law and therefore fails and is hereby dismissed accordingly.
10. It is worth remarking that Mr. Sithole cited the Council and Commissioner Madula as respondents in the rescission application. The Council and Commissioner Madula cannot be cited as respondents in any proceedings before the Council and/or applications brought the Council. The Council and Commissioner Madula are not parties to the proceedings of the Council. The citation of the Council and Commissioner Madula as respondents makes a mockery of the natural justice legal principle that "no one should be a judge in his/her own cause".



Adv JN Matshekga

PHSDSBC Part-time Resident Panelist