IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 99/2021

In the matter between:

DENROY LEONARD SOLOMONS **Applicant**

and

DINEO PHOKELA N.O **First Respondent**

THE CCMA **Second Respondent**

FOOD LOVERS MARKET KEMPTON PARK **Third Respondent**

Heard: **29 July 2021**

Delivered: **02 August 2021**

Summary: Review – refusal of a rescission application seeking to rescind a "dismissal ruling". Where a matter is dismissed within the contemplation of section 138 (5) (a) of the LRA, a rescission application is not competent. The appropriate relief is to bring a section 158 (1) (g) review. Entertaining and refusing a rescission was not within the competency of the CCMA commissioner. Since the rescission ruling was issued without the necessary competency, the ruling is a nullity and ought to be treated as such. The application seeking to review such a rescission ruling is unnecessary and ought to be dismissed by the Labour

LABOUR COURT

Court. In an instance where a review within the contemplation of section 158 (1) (g), is not brought, this Court is empowered under section 158 (1) (j) of the LRA, to determine a matter necessary or incidental to performing its functions in terms of the LRA. Under the banner of further and or alternative relief, this Court may declare the "dismissal of the matter" as being unlawful and ineffective. In consonant with section 1 (d) (iv) of the LRA this Court is exalted to promote effective resolution of labour disputes. It shall be ineffective resolution of a labour dispute to direct the applicant herein to still bring a section 158 (1) (g) review. Held: (1) The application to review and set aside a rescission ruling is dismissed. (2) It is declared that dismissal of the matter effected by Commissioner Tiyani Makhubela on 24 August 2020 is invalid and ineffectual in law. (3) The CCMA is directed to enrol the unresolved dispute for arbitration. (4) There is no order as to costs.

JUDGMENT

MOSHOANA, J

Introduction

[1] Before me serves an unopposed review application in terms of which, Mr Denroy Leonard Solomons (Solomons) seeks an order reviewing and setting aside a ruling made on 3 December 2020 by Commissioner Dineo Phokela (Phokela). Solomons also seeks an order granting the rescission and directing that the dispute be enrolled for arbitration as well as any further and or alternative reliefs. The application stands unopposed.

Background facts

[2] Solomons is a former employee of Food Lovers Market (Food Lovers) in Kempton Park. Following his dismissal, his attorneys of record Allardyce

LABOUR COURT

and Partners (Allardyce) referred a dispute on his behalf alleging an unfair dismissal. At first, the dispute was referred for conciliation on 16 March 2020. The prescribed 30 day period elapsed without a conciliation meeting being scheduled. On 9 July 2020, Allardyce requested resolution of the dispute through arbitration. The dispute was enrolled for arbitration on 14 August 2020. Two days before the scheduled date, Allardyce received an application for postponement of the arbitration proceedings from Food Lovers' legal representative due to the fact that one of the witnesses had tested positive for Covid-19. Solomons consented to the request for postponement. Owing to that, Solomon did not attend arbitration proceedings on the scheduled date.

[3] On 14 August 2020, both Solomons and Food Lovers made no appearance at the office of the Commission for Conciliation, Mediation and Arbitration (CCMA) at Benoni. The appointed Commissioner Tiyani Maluleke (Maluleke) noted that the postponement agreement was signed by one party and she then refused a postponement and proceeded to exercise powers set out in section 138 (5) (a) of the Labour Relations Act[1] (LRA) and dismissed the dispute referred by Solomons.

[4] Upon learning about the dismissal of the dispute, Solomons resolved, probably as legally advised, to seek a rescission ruling of Maluleke's decision to dismiss the matter. The rescission application was not opposed by Food Lovers. After considering the application on the papers, Phokela refused to rescind the dismissal ruling of Maluleke. Chagrined thereby, Solomons launched the present application.

Evaluation

[5] Given the view I take at the end of this judgment, it is unnecessary to set out the grounds punted for in this review application. The first issue I intend dealing with is whether it was necessary for Solomons to have sought a rescission as opposed to a review. I take a view that seeking a

[1] No. 66 of 1995, as amended.

LABOUR COURT

rescission was an exercise in futility and the CCMA should not have entertained the rescission application. During oral submissions made virtually, Mr Allardyce who appeared on behalf of Solomons argued that a rescission route was appropriate. This Court afforded him an opportunity to obtain an authority that shall support that argument. Later in the day he made supplementary written submissions and placed reliance on the judgment of my late brother Steenkamp J in the matter of *SABC v CCMA and 2 others*[2]*.* Sadly, in the *SABC* matter there was no dismissal within the contemplation of section 138 (5) (a) of the LRA.

[6] There was a refusal to postpone the arbitration hearing. Following from the refusal to postpone a default award was issued. The SABC faced with a default award, rightly in my view, applied for rescission. Rescission was refused and the SABC launched a review application seeking to challenge the rescission ruling and most importantly also the refusal to postpone the arbitration proceedings. A further distinguishing aspect is that the refusal to postpone the arbitration was challenged in the SABC matter and it is not challenged in *casu*. A point worth making about the postponement finding made in this matter is that, it cannot be said that it was made in the absence of the parties. Rule 31 (10) of the CCMA Rules permits a commissioner to determine an application in any manner it deems fit. Maluleke decided to deal with the postponement application on paper. Therefore, it cannot be said that the application was determined in the absence of the parties to a point that section 144 of the LRA may be invoked. As it shall be demonstrated later in this judgment, absence of a party, particularly the referring party, is actually a jurisdictional fact to invoke the powers in that section.

Was rescission necessary or not?

[7] Of cardinal importance is to note that the primary duty of an arbitrator when faced with an alleged unfair dismissal dispute is to resolve the fairness or otherwise of that dismissal dispute. However, the LRA

[2] (JR232/17) dated 9 November 2018.

LABOUR COURT

provides ancillary powers *en route* resolution of the dismissal dispute. One such ancillary statutory power pertinent in this dispute, is to be found in section 138 (5) (a) of the LRA. Section 138 is captioned '*General provisions for arbitration proceedings'*. Implicitly, a power to dismiss can only arise in arbitration proceedings. It is for that reason that I refer to the power to dismiss a matter as ancillary. Section 138 (5) (a) reads thus:

> "(5) If a party to the dispute fails to appear in person or to be represented at arbitration proceedings and that party –
>
> (a) had referred the dispute to the Commission, the commissioner may dismiss the matter…"

[8] This discretionary power is exercisable only if a referring party fails to appear either in person or through a representative. What one must infer is that the power may be invoked in instances where the failure is willful and/or unexplained. In due course, I shall revert to the question whether the failure to appear in this instance was willful and/or not explained. The situation as it arose in this matter also arose in the matter of *Premier Gauteng and Another v Ramabulana N.O and others*[3]*.* I however hasten to mention that the *Premier Gauteng* matter involved a dismissal of a matter at conciliation stage. It bears mentioning that the LRA does not empower a commissioner to dismiss a matter at a conciliation stage due to failure to appear. Briefly the facts in *Premier Gauteng* were as follows.

[9] Mr Vena was dismissed by the Gauteng Provincial Government. His trade union referred a dispute alleging unfair dismissal within the prescribed 30 day period. Vena and his trade union failed to attend the conciliation meeting convened by the bargaining council. Owing to the absence of Vena and his trade union, the appointed conciliator on the strength of the applicable collective agreement dismissed the matter. As a result, the trade union re-referred the dispute for conciliation. Owing to the fact that the second referral was made outside the prescribed timeframe condonation for the late second referral was sought. The condonation

[3] [2008] 4 BLLR 299 (LAC).

LABOUR COURT

application was opposed on the basis that the bargaining council lacked jurisdiction to entertain the second referral since the first referral was dismissed. Condonation was granted and the employer was displeased thereby and launched an application seeking to review the granting of condonation. The application for review was dismissed by the Labour Court. Revelas J sitting in the Labour Court stated the following:

> "Furthermore, dismissing a matter in the absence of a party is akin to striking a matter from the roll as it would happen in a court. If a court strikes the matter on the roll in error, it may reinstate it. The effect of reinstatement is to rescind the ruling in terms of which the matter was struck off the roll. No rescission application would be necessary, let alone a review application."[4]

[10] The view taken by Revelas J was that a reinstatement of a matter that has been dismissed, which dismissal is akin to a striking off the roll, has the effect of a rescission of the ruling. In her view, there will be no need for a rescission application. The Labour Appeal Court did not approve this view. Jappie AJA had the following to say:

> "[16] The court *a quo* however correctly pointed out that the Dispute Resolution Procedure did not make provision for applications to rescind a conciliator's ruling…In my view section 144 of the Labour Relations Act No 66 of 1995 is not applicable in the present situation.
>
> [18] In my view, the dismissal of the first referral for conciliation had the effect of not resolving the dispute at conciliation…It was an error to treat the application in these circumstances as if it is an application to rescind the earlier ruling of the dismissal…
>
> [19] If the parties had been referred to arbitration there would have been no need …to apply for a second referral of the dispute. This means that there was no need for an application for condonation. What ought to have occurred was that the second referral should have been held to have been incompetent as the

[4] Court *a quo* in the *Premier Gauteng* matter.

LABOUR COURT

dispute had already been referred to conciliation and the same dispute cannot be referred for a second time…

[20] The conciliator had no jurisdiction to deal with the second referral and the application for condonation, his decision nevertheless did not adversely affect the appellants. For this reason, the bringing of the review application in the Labour Court was an exercise in futility on the part of the appellants. In my view the court *a quo* ought not to have entertained the review application and was correct in dismissing it.'

[11] It is apparent that the LAC took a view in *obiter* that section 144 of the LRA did not find application because the collective agreement was applicable. In addition, it is apparent that the LAC took a view that the dismissal of a dispute did not have the effect of resolving the dispute. Recently, this Court in *Glencore Operations (Pty) Ltd v CCMA and others*[5] reached the following conclusions:

"[29] …Therefore, dismissal in this instance must be akin to a striking off and or a withdrawal of the dispute. Where a party does not appear and had referred a dispute, it is not incongruent to conclude that such a party has withdrawn the dispute. With that possibility, until arbitration is re-requested as it were, the commissioner lacks jurisdiction over a dismissed dispute.

[31] In light of the above, the conclusion this Court reaches is that dismissing a matter in the context of section 138 (5) means that the dispute is withdrawn alternatively that the other party is absolved with the consequence that unless and until arbitration is requested again, the CCMA lacks jurisdiction the same way this Court lacks jurisdiction over a deemed withdrawn review. In my view, an aggrieved party has two options available to it. Either the decision to dismiss the matter is reviewed within the contemplation of section 158 (1) (g) of the LRA, given the fact that a functionary effects the dismissal exercising statutory powers or a re-request for arbitration of the dispute is made. There is no room for *res judicata* because the merits of the dispute could not have been resolved."

[5] (JR 1963/19) [2021] ZALCJHB 164 (28 June 2021)

LABOUR COURT

[12] In my view, the usage of the phrase "*dismiss the matter*" in section 138 (5) (a) is truly unfortunate. The grammatical meaning of the word 'dismiss' in law is to adjudicate (a cause of action) as insufficient to proceed further in Court because of some deficiency in law or fact. There can be no dispute that a dismissal in the context of the section happens without considering the merits and the demerits of a dispute over the alleged unfair dismissal. Cameron JA, as he then was in *Commissioner for SARS v Hawker Air Services (Pty) Ltd*[6] quibbled with an order dismissing an application due to lack of urgency. He held that the appropriate order is ordinarily to strike the application from the roll to enable the applicant to set the matter down again on proper notice. This view was unquestionably accepted by the LAC in *PT Operational Services (Pty) Ltd v Rawu obo Ngwetsane*[7].

[13] The LAC in *PT Operational* approved the view expressed by Jones J in *Vena v Vena*[8] with regard to the consequences of a dismissal. Jones equated a dismissal of a matter with an order of absolution which instance allows a party to set the matter down again.

[14] Given the authorities traversed above, it may be necessary for the legislature to consider amending the section and be categorical and state that the commissioner may strike off the matter as opposed to dismissing the matter. Such legislative intervention will certainly resolve a situation where indigent employees would not have to content with applications be it rescission, if appropriate, or review seeking to put their foot back into the dispute resolution arena. Such a situation is not in keeping with section 1 of the LRA.

[15] The situation contemplated in the section is no different to the situation catered for in rule 15 of the Labour Court Rules. Dismissing a matter without entertaining the merits of the dispute is certainly not in keeping with section 34 of the Constitution of the Republic of South Africa, 1996.

---

[6] 2006 (4) SA 292 (SCA).
[7] [2013] 3 BLLR 225 (LAC).
[8] 2010 (2) SA 148 (ECP).

LABOUR COURT

[16] I now pertinently return to the question, was application for rescission necessary? In the circumstances of section 138 (5) (a) rescission is not necessary. The statutory power of the CCMA to rescind emanates from section 144 of the LRA. In a section 138 (5) (a) situation there can never be an arbitration award issued. In *Glencore*, this Court concluded thus:

> "[21] Section 144 is specifically reserved for arbitration awards and rulings. At first blush, it can be argued that a dismissal decision is a ruling. In my view its appropriate label should be a statutory function. A ruling is defined as an authoritative pronouncement especially a judicial decision[9]. In my view a ruling would arise where a pronouncement is made on a dispute presented to an arbiter. However, where a decision obtains fortification from the provisions of a specific section of the law that is an exercise of a statutory power. As evidence that a statutory power was exercised, one simply has regard to the jurisdictional facts to enable the exercise of that power. Whereas a pronouncement in a form of a ruling may require something more. In order to dismiss the matter – a jurisdictional power – a commissioner requires the following jurisdictional facts: (a) failure to appear or to be represented at the arbitration proceedings; and (b) the party having referred the dispute. Once those facts emerge, a commissioner may at his or her discretion dismiss the matter. This in my mind, although at first blush has the hallmarks of a ruling, does not amount to a ruling within the context of the LRA. If it is, one observes a clash for turf between the CCMA acting under section 144 and the Labour Court acting under section 158 (1) (g) of the LRA. The proper approach is to have statutory exercise of functions reserved for the Labour Court and the pronouncement, which are ordinarily administrative in nature, to be tackled by the CCMA.

[17] In this judgment I repeat the sentiments expressed above. In addition, the Court in *Glencore* stated the following:

---

[9] Shorter Oxford English Dictionary 6th Edition volume 2 2007.

LABOUR COURT

> "[24] In terms of the CCMA rules, a party requests arbitration by completing prescribed forms. For the requesting party, a dispute shall be resolved if a finding is made on the disagreement about the fairness of the dispute. It is worth repeating at this stage that when a commissioner dismisses a matter he or she does not resolve the disagreement. Thus there can be no award issued nor a ruling issued but a statutory decision made. For the purpose of records and posterity, such an exercise of statutory power in terms of the CCMA rules must be recorded in a written ruling. Naming it a ruling is, in my view, a measure of convenience. The enabling section does not mention a ruling but simply states: '*commissioner may dismiss the matter*'.

[18] Since there is no ruling within the contemplation of section 144, as interpreted by this Court, it was not competent for Phokela to entertain the rescission application. Just to buttress the point, when the Labour Court strikes a matter from the roll, it does so by issuing an order. However, a party affected by that order – striking the matter off the roll - cannot employ the provisions of section 165 of the LRA simply because the section refers to an '*order'*. Likewise, the order contemplated in section 165 is one that entertains the merits of a particular dispute. The LAC in *PT Operations* stated the following, which apply with equal vigour in this matter:

> "[37] To sum up. The commissioner could not consider the rescission application that was out of time without an application for condonation…His order dismissing the application was just another way of saying I cannot consider the application at this stage because there is no application for condonation. Without such application, I have no jurisdiction to exercise my powers in terms of section 144 of the LRA.
>
> [38] I conclude that Cellier did not finally perform his statutory function or duty in relation to the merits of the rescission application…"

LABOUR COURT

[19] I do state that the statutory function to have been performed by Maluleke was to arbitrate the alleged unfair dismissal dispute. That was not done. Having not been done, rescission was not an available remedy. I immediately distinguish this situation with a default award. In a default award situation resolution of the unfair dismissal dispute happens *albeit* in the absence of the other party. It can hardly be said that the dismissal of the matter was made in error. It can never be. It is either the jurisdictional facts are present or not.[10] Since the jurisdictional requirements to exercise the statutory power were present, notionally Maluleke was empowered to exercise that statutory power. Mr Allardyce argued that an error arose because had Maluleke known that the postponement consent was signed she would have granted a postponement and not dismiss the matter. This argument is oblivious of the fact that Maluleke did not act in complete ignorance of the quest to postpone. She was aware of it and had decided to refuse it. Whether it was for a good or bad reason is neither here nor there. The exercise of section 138 (5) (a) powers is separate and distinct from an application for postponement of the arbitration proceedings. As indicated above, the refusal of the postponement application was not done in error and may be set aside on review under the selfsame section 158 (1) (g) of the LRA. In order to exercise the section 138 (5) (a) powers, Maluleke did not need to refuse a postponement application first. In actual fact she could have simply ignored the postponement application since the jurisdictional facts to exercise the power were present.

[20] Since I come to the conclusion that bringing and entertaining a rescission application was not legally competent, it follows axiomatically that the rescission ruling is a nullity in law. Seeking to review a nullity in law is an exercise in futility. Zondo JP, as he then was in *Premier Gauteng* stated the law as follows:

---

[10] *MEC for Health, Easter Cape and Another v Kirkland Investments (Pty) Ltd* [2014] ZACC 6 (25 March 2014) where the Court stated that jurisdictional facts refer broadly to preconditions or conditions precedent that must exist before the exercise of power.

LABOUR COURT

> "[25] Although the conciliator had no jurisdiction to deal with such referral and such condonation application, his decision granting the condonation did not adversely affect any of the employer party's rights or interest….That being the case, the employer party should not have brought the review application to set aside the decision condoning the so-called "late referral"…For this reason, the bringing of the review application by the employer party was moot and was an exercise in futility that would have brought the employer party any practical benefit. For that reason, it should not have been brought. It could, and should, have been dismissed by the Labour Court on that ground alone.'

[21] To sum up, dismissal of a matter is an exercise of a statutory function and not a ruling within the contemplation of section 144 of the LRA. The bringing of a rescission application was not necessary since Solomons can still re-refer the matter for arbitration as the merits of the referred dispute of unfair dismissal have not been entertained. Put differently, the CCMA has not performed its statutory function contemplated in section 136 (1) read with section 191(5) (a) of the LRA. The dismissal of the matter was nothing but a striking off or withdrawal of the dispute.

What then happens to this review application?

[22] With regard to the prayer to review and set aside the rescission ruling, I take the approach suggested in *Premier Gauteng* and dismiss the application on the grounds of mootness. Accordingly, the application seeking to review the rescission ruling ought to be refused.

What then becomes of the ruling of Maluleke?

[23] I take a view that the "ruling" of Maluleke is an exercise of statutory function. On the authority of *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others*[11] the exercise of the function or decision emanating from the exercise of statutory power factually remain with consequences

[11] 2004 (6) SA 222 (SCA).

LABOUR COURT

until set aside by a Court with competent jurisdiction. The veritable question is what legal consequences flow from this decision to dismiss the matter? Given the view espoused above the decision has no tangible legal consequences. Solomons is not as a result thereof prevented from having his alleged unfair dismissal dispute entertained by the CCMA. Therefore, Solomons is not adversely affected by the decision and reviewing it shall not bring Solomons any practical effect.

[24] However, in the event that I am wrong in this regard, the procedural hurdle that Solomons face is that he has not prayed for the review and setting aside of the decision of Maluleke. Probably he should have. If this Court is to adopt a formalistic and technical approach then the Court would do nothing about the Maluleke decision. Solomons prayed for further and alternative reliefs. In the founding affidavit Solomons alleges that the conduct of Maluleke was patently unreasonable and unfair and it flies in the face of his constitutional right to fair labour practice, particularly in an instance where he and Food Lovers agreed to postpone the arbitration. The law is such that any exercise of statutory power must be rational. In *Geza v Minister of Home Affairs and Another*[12], the following was said:

> "Whatever the ambit of a prayer for further or alternative relief, such relief may only be granted if it is consistent with the case made out by the applicant in her founding affidavit and is consistent with the primary relief claimed. In *Johannesburg City Council v Bruma Thirty-Two (Pty) Ltd*, Coetzee J described the prayer for alternative relief as being 'redundant and mere verbiage' in modern practice adding that whatever a court 'can vividly be asked to order on papers as framed, can still be asked without its presence' and that it 'does not enlarge in any way "the terms of the express claim" as pointed out by Tindall JA'…[13]

[12] [2010] ZAECGHC 15 (22 February 2010) at para 12
[13] See also *Elefu v Lovedale Public Further Education and others* [2016] ZAECBHC 10 (11 October 2016) and *National Stadium South Africa (Pty) Ltd and others v FirstRand Bank Ltd* 2011 (2) SA 157 (SCA)

LABOUR COURT

[25] I take a view that the allegations made by Solomons in this regard entitles him to a declaratory relief, declaring the decision of Maluleke to be irrational. It is true that in dismissing the matter Maluleke exercised discretion. Ngcobo J in *Affordable Medicines Trust v Minister of Health*[14] stated that where broad discretionary powers are conferred, such powers must be constrained by the empowering statute as well as the policies and objectives of the empowering statute. Recently, the Constitutional Court in *Minister of Water and Sanitation v Sembcorp Siza Water (Pty) Ltd and Another*[15] explained that rationality as a legality requirement includes procedural rationality. As a point of departure the Court confirmed its earlier decision of *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others*[16] which held that for the exercise of public power to be valid, a decision taken must be rationally connected to the purpose the power was conferred. Procedural rationality involves the means used to arrive at a decision. It has nothing to do with procedural fairness – pre-hearing.

[26] In my view, the failure to appear must be one that is willful. At the time of reaching her decision to dismiss, Maluleke was aware of the postponement agreement between the parties. By failing to take into account the agreement to postpone, Maluleke committed a procedural irrationality. As expressed in *Affordable Medicines* a duty to act according to minimum standards of legality and good administration is implied in discretionary powers. Owing to the fact that arbitrators are appointed to arbitrate disputes, it is irrational to invoke dismissal powers even in an instance where for a valid reason, which reason took into account the health and safety of all concerned, parties agreed to postpone the arbitration proceedings. The power to dismiss is aimed at achieving the overall purpose set out in section 1 (d) (iv) of the LRA. The discretionary power to dismiss is, by its very nature, drastic and in my

[14] 2006 (3) SA 247 (CC).

[15] (CCT300/19) [2021] ZACC 21 (23 July 2021).
[16] 2000 (3) BCLR 241 (CC).

LABOUR COURT

view is at odds with section 34 of the Constitution. It must indeed be used sparingly. There are other available means that could have achieved the overall purpose in section 1 of the LRA. One such available means, which is less drastic, was to adjourn the proceedings as agreed to by the parties. Rule 23 (1) of the CCMA Rules provides that an arbitration may be postponed by written agreement between the parties. The following reasoning by Maluleke is not endowed with rationality.

> "5. The application for postponement was not filed timeously in accidence (sic) with the rules of the Commission. The consent to an agreement to postponement (sic) the matter was only signed by the Respondent. The Applicant did not sign the consent to an agreement to postponement which leaves one to draw a conclusion that there was no agreement to postpone the matter. Furthermore the consent was sent to the Commission after I have called the parties."

[27] The conclusion drawn by Maluleke is bereft of any legal basis. Rule 23 does not call for a signed agreement. It simply requires a written agreement. In law an unsigned agreement is valid unless there is a statutory requirement for a signature. The seven day requirement in subrule 23 (2) (b) finds application in instances where the parties do not appear and present an agreement. In this particular instance what prompted the postponement agreement was an unplanned incident of a witness testing positive for Covid-19, which incident only emerged on 12 August 2020. That was barely two days before the scheduled hearing. The seven days is not cast in stone. The subrule states that at the least seven days. In the circumstances of this case two days' notice was sufficient. No party raised any prejudice. One wonders what prejudice, if any, the commission suffered. Besides, Maluleke was fully aware that there was a rule 31 application for postponement. Subrule 23 (3) provides for a different process if subrule (2) is not met. There is no evidence that Maluleke considered the application for postponement. She simply, without giving reasons, declined the application.

LABOUR COURT

[28] For all the above reasons, I reach a conclusion that the decision is irrational and ought to be declared to be invalid on application of the principle of legality.

[29] Assuming that the Court is wrong in its conclusion to grant an alternative relief of a declaratory nature, I take a view that section 1 (d) (iv) envisions the speedy resolution of labour disputes. In line with the section it is appropriate to invoke the powers in section 158 (1) (j) of the LRA. In my view it is necessary to deal with the legality of the decision of Maluleke. Allowing it to exist untouched offends the very purpose of the LRA which is to promote the effective resolution of labour disputes.

Conclusions

[30] For all the above reasons, the application to review is refused and the decision of Maluleke is declared invalid and ineffectual in law. Accordingly the CCMA must be directed to enroll the matter for arbitration as soon as is practicably possible.

[31] In the results, the following order is made:

Order

1. The application to review the rescission ruling dated 3 December 2020 issued by Dineo Phokela is hereby refused.
2. It is declared that dismissal of the matter effected by Commissioner Tiyani Maluleke recorded in a written ruling dated 24 August 2020 under case number GAJB6868-20 is irrational, invalid and ineffective in law.
3. It is declared that the ruling issued by Dineo Phokela under the same case number is a nullity in law.

LABOUR COURT

4. There is no order as to costs.

_____

G. N. Moshoana

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Mr Allardyce of Allardyce & Partners Attorneys, Midrand.

LABOUR COURT