

**THE ISSUE**

1. This is an application in terms of Section 144 of act no 66 of 1995, as amended, The Act.
2. The applicant sought the Rescission of my award dated 7 December 2009.
3. The application was considered on written submissions in terms of Section 138 (10).
4. Both parties filed submissions and were considered.

**APPLICANT'S SUBMISSION**

5. The applicant submitted that it was in fact common cause that the applicant was an employee.
6. She argued that I had found that the applicant was an independent contractor and not an employee.
7. She contended that I had failed to consider section 200A and that a person who rendered services was deemed an employee should any of the seven criteria were present unless proved to the contrary.

**RESPONDENT'S SUBMISSION**

8. The respondent submitted that the applicant was appointed on a sessional contract and was therefore not entitled to certain rights and privileges afforded to employees of the state.
9. He submitted that Clause 8 provided that the service provider will arrange for the service to continue with no additional cost to the employer.
10. He submitted that my findings were based on the deliberations of the contract entered into the applicant and the respondent.

**ANALYSIS OF SUBMISSIONS**

11. I am of the opinion that there was no error or ambiguity in the award rendered by myself dated 7 December 2009 and therefore does not fall within the ambit of the provisions for Rescission in terms of section 144.
12. Further to the above I am not inclined to find that I had indeed decided that the applicant was not an employee.
13. It is clear in the award that I found that in terms of the contract between the applicant and the

respondent the applicant was not entitled to leave as per Clause 7 of Resolution 2000.

14. I find no grounds to rescind the award.

**FINDING**

15. The application for Rescission of the award dated 7 December 2009 is denied.

16. There is no order as to costs.

**Signed at Kimberley on this 2<sup>nd</sup> day of May 2010**

A handwritten signature in blue ink, appearing to read "Shiraz Mahomed Osman".

**PSCBC COMMISSIONER  
SHIRAZ MAHOMED OSMAN**