



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

Case no: JR 2714/10

In the matter between -

GUMEDE HLENGIWE

Applicant

And

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION (“the CCMA”)**

First Respondent

FAIZEL MOOI N.O

Second Respondent

MARYANA GUEST HOUSE

Third Respondent

Date heard: 22 April 2014

Date of judgment: 08 May 2014

Summary: Review application. Resolving the issue of conflicting versions on the basis of credibility and the probabilities.

JUDGMENT

MOLAHLEHI J

Introduction

- [1] This is an application to review and set aside the arbitration award made under case number GAJB 35881 – 09, in terms of which the second respondent (the Commissioner) found the dismissal of the applicant to have been substantively fair but procedurally unfair. It was for this reason that the Commissioner awarded compensation only.

Background facts

- [2] The applicant together with her boyfriend, are former employees of the respondent. The two were employed at the guesthouse. The applicant was dismissed for defrauding the third respondent by collecting money from guests of the applicant and issuing them with the forged receipts.
- [3] The owner of the guesthouse testified during the arbitration proceedings that she received a call from one of her guests who informed her that she had paid, R33.400.00 to a certain Mr Kutchona. After receiving this information she went to the guest-house to investigate. In her investigation she discovered that there were three types of receipts which were given to guests.
- [4] According to the owner the receipts were given to the guests were not official guest-house receipts. She received an amount of R17.000 only from Mr Kutchona, which was not reflected in the official receipt book.
- [5] The employee on the other hand testified that she was not responsible for collecting money from guests and that her responsibility was to record money in the receipt book.

- [6] Mr Kuchona testified on behalf of the applicant and stated that he collected money from the guests and that the applicant knew about these as she had asked him to do it. He disputed the version of the applicant that she did not know that he was collecting money from guests.
- [7] The test to apply when considering whether to interfere with an arbitration award in review is the reasonable decision maker's test as set out in *Sidumo v Rustenburg Platinum Mines*.¹
- [8] In my view the conclusion reached by the Commissioner cannot be faulted for unreasonableness. It is apparent from the arbitration award that the Commissioner was confronted with two conflicting versions.
- [9] In resolving the conflicting versions the Commissioner resorted to the assessment of credibility. She correctly, in my view, found that the version of the applicant lacked credibility. She also found the version of the applicant that she did not know that her boyfriend was collecting money from the guests was improbable because that version was contradicted by her own witness. It was for this reason that, she found that the applicant was guilty of gross negligence.
- [10] The credibility findings made by the Commissioner cannot be questioned when regard is had to the evidence that was properly before the Commissioner. The inherent probabilities also support the conclusion reached by the Commissioner. It is highly improbable from the facts as they stand that the applicant did not know that her boyfriend was collecting money from the customers when on his version the boyfriend confirmed that she knew about that fact.
- [11] In the circumstances, I am unable to fault the Commissioner for unreasonableness. I am also not persuaded that the Commissioner in conducting

¹ *Sidumo v Rustenburg Platinum Mines*¹ (2007) BLLR 1027 (LC)

the arbitration proceedings committed any of the defects envisaged in section 145 of the Labour Relations Act.

[12] Accordingly the applicant's application stands to fail.

Order

[13] In the circumstances, the applicant's review application is dismissed with no order as to costs.

E Molahlehi

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

For the Respondent:

LABOUR COURT