



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: J3211/2011

In the matter between:

SESINYANA PRECIOUS LEOTLELA

Applicant

and

CCMA GAUTENG

First Respondent

COMMISSIONER DANIEL MATJIE

Second Respondent

CAPITEC BANK

Third Respondent

Heard: 28 February 2014

Delivered: 11 June 2014

Summary: Review application, Second Respondent coming to a conclusion which was well within the band of decisions to which a reasonable decision maker could come given the material before him. Application dismissed.

JUDGMENT

SNIDER, AJ

[1] This is an application to review the award of the Second Respondent (“the Commissioner”) made in an arbitration between the Applicant (“the Employee”) on the one hand and the Third Respondent (“The Bank”) on the other hand. The award is dated 10 November 2011 and the CCMA case number is GATW8883-11.¹

[2] Briefly the facts of this matter are that:

- 2.1. the employee was employed by the bank as a sales consultant on 4 August 2003 and was later promoted to the position of administration controller;
- 2.2. at the time of her dismissal, on 18 July 2011, she was earning R9 500 per month;²
- 2.3. it was alleged on behalf of the bank that on 31 August 2009, the employee, contrary to the Bank’s policy, which is common cause between the parties, made a loan, on behalf of the Bank, to one Mabuti Simon Ndlovu (“Ndlovu”) in the amount of R25 000.00;
- 2.4. the employer, having then made the loan to Ndlovu arranged for R20 000 of the R25 000 loan to be paid into her account;
- 2.5. on the banks version a complaint was subsequently made by Ndlovu that the employee, contrary to her obligations in terms of the loan made by Ndlovu to her, was not making repayments in respect of the loan;

¹ The award appears at page 11 of the record.

² Record page 12 at para 6.

2.6. this led to an investigation of the conduct of the employee which investigation was conducted by employees of the Bank including a forensic inspector, one Riaan Strydom; and

2.7. the employee's defence to the charge was that the money paid into her account, which transaction was common cause, was not in respect of a loan³ but was in respect of a sale of land by Mr Aran Tebogo Leotlela⁴ to Ndlovu.

[3] A central difficulty that I have with this matter is that the employee does not articulate any grounds for review in her founding affidavit.⁵ The affidavit is a pro-forma one. I repeat the portion of the affidavit under grounds for review:

'I am asking to be given a chance to review my case because I am not satisfied about Commissioner's ruling as I did not do anything wrong to my company, even the money that they say I borrowed from the client is not true, my testimony is true, and also client is my witness as he did not open the case he said. The problem is that somebody is making allegations about something I didn't do I am asking for my job from my company or compensation, because I am heartbroken and you know it is so very painful to be accused about something you didn't do. I am pleading that this case of mine to be looked – into or heard again because there is something wrong and fishing which I don't know what and who is going to help me please I am asking the Labour court to help me in this situation!!!'

[4] The one aspect, which I regard as being the key issue in this arbitration is not addressed by the employee in her review application, however, she does allude to it in the aforesaid founding affidavit when she says, under the heading "the arbitration proceedings"⁶ that:

'Riaan Strydom from foreinsic also fabricated his statement when he said that the policeman which he attached the police stamp on the affidavit or

³ Applicant's translating founding affidavit page 626 of the record.

⁴ Purported agreement of sale page 565 of the record.

⁵ The founding affidavit commences at page 623 of the record and carries on until page 628 of the record.

⁶ Page 626 onto 627 of the record.

Deed of Sale agreement he does not work at the police station, but then who put that stamp on the affidavit that was produced before him as he managed to put those stamp of oath on my affidavit is that my fault if the police officer made a mistake? Commissioner couldn't answer this question but he went on and found me guilty. He is not judging my case but judging the SAPS officer for making mistakes.'

- [5] I take this to mean that the employee is of the view that the manner in which the Commissioner assessed the affidavit/agreement in respect of the sale of land somehow constituted a ground for review.
- [6] In my view, on the contrary, the Commissioner, with respect, produced an excellent, well written and well reasoned award. Although there are other compelling findings against the employee, such as how the matter came to the attention of the bank,⁷ the Commissioner correctly determines⁸ what the prime issue between the parties is, which he expresses by saying "whether there was a *iusta causa*" for the transfer of the relevant amount. The Commissioner then deals extensively with the evidence of a police woman, Captain Lydia Tiny Ditinti who testified in respect of the affidavit/agreement and gave convincing evidence that it was a forgery.
- [7] On the basis of these findings, the Commissioner came to a conclusion which clearly another Commissioner could reasonably come to that the employee had perpetrated the misconduct that she was accused of and, accordingly, dismissed her case.
- [8] The principles surrounding the test for reviewability are now notoriously well known and can be gleamed from *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*;⁹ *Herholdt v Nedbank Limited (Congress of South African Trade Unions as Amicus Curiae)*¹⁰ and *Goldfields Mining (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and*

⁷ Record page 22 at para 62.

⁸ Ibid at page 23, para 64.

⁹ [2007] 12 BLLR 1097 (CC).

¹⁰ (2012) 33 ILJ 1789 (LAC).

Arbitration and Others).¹¹

- [9] The following is, with respect, a useful exposition of the test from the judgment of Waglay JP in the *Kloof* decision:¹²

'*Sidumo* does not postulate a test that requires a simple evaluation of the evidence presented to the arbitrator and based on that evaluation, determination of the reasonableness of the decision arrived at by the arbitrator. The court in *Sidumo* was at pains to state that arbitration awards made under the Labour Relations Act ("the LRA") continued to be determined in terms of section 145 of the LRA but that the constitutional standard of reasonableness is "suffused" in the application of section 145 of the LRA. This implies that the application for review sought on the grounds of misconduct, gross irregularity in the conduct of the arbitration proceedings, and/or excess of powers will not lead automatically to setting aside of the award if any of the above grounds are found to be present. In other words, in the case such as the present where a gross irregularity in the proceedings is alleged, enquiry is not confined to whether the arbitrator misconceived the nature of the proceedings, but extends to whether the result was unreasonable, or put another way, whether the decision that the arbitrator arrived at is one that falls in a band of decisions to which a reasonable decision maker could come on the available material.'

- [10] This decision is one which manifestly falls in a band of decisions to which a reasonable decision maker could come to on the available material.

- [11] In the circumstances, I make the following order:

11.1. The review application is dismissed;

11.2. There is no order as to costs

¹¹ (2014) 35 *ILJ* 943 (LAC) at para 14.

SNIDER, A J

Acting Judge of the Labour Court

Appearances

For the Applicant: M P Malesa of Kgatla Attorneys

For the Third Respondent: Arnold Nel of Faiza Viljoen and Associates,
Cape Town

¹² *Kloof (supra)* at para 14.