



REPUBLIC OF SOUTH AFRICA

LABOUR COURT OF SOUTH AFRICA, DURBAN

JUDGMENT

Not Reportable

Case no: D1001/11

In the matter between:

SAMWU

First Applicant

S NXUMALO

Second Applicant

V MALINGA

Third Applicant

and

UTHUNGULU MUNICIPALITY

First Respondent

**SOUTH AFRICAN LOCAL BARGAINING COUNCIL
(SALGBC)**

**Second
respondent**

COMMISSIONER N E DUBAZANE, NO

Third Respondent

Heard: 20 December 2013

Delivered: 28 May 2015

Summary: Application to review, set aside and substitute arbitration award – no reasonable arbitrator could have made a finding that Second

and Third Respondents' dismissal were substantively fair; Condonation for the late filing of the review application – filed one year and 3 months late owing to inaction of First Applicant's erstwhile attorneys; Application to dismiss review application on basis that first day of evidence not available for transcription – record incomplete. Application to dismiss dismissed; Application for Condonation granted; Review application dismissed - Arbitration award fell within the band of reasonableness enunciated in the '*Sidumo*' test for review.

JUDGMENT

ROCHER, AJ

Introduction

- [1] This is an application to review, set aside and correct the Arbitration Award handed down by the Third Respondent ("the commissioner") on 7 August 2010 under case reference KPD110915 and substitute the Award with one which reads that the dismissal of the Second and Third Applicants was substantively unfair and reinstating Second and Third Applicants in their employment. The review application is prefaced by an application for condonation for the late filing thereof. The First Respondent ("the Municipality") opposes the review application and the condonation application. For good measure, the Municipality has also launched an application to dismiss the review application, which is opposed by Applicants.

Background

- [2] The Municipality is established as such under section 12 of the Local Government: Municipal Structures Act, 1998. The Second and Third Applicants were both employees (henceforth collectively referred to as ("the employees") of the Municipality and shop stewards of the First

Applicant (henceforth referred to as "SAMWU"). The employees were dismissed on 28 October 2009.

- [3] After certain events involving the handing over of a memorandum of grievances to the Speaker of the Municipality's Council and other connected matters, the employees were charged with various allegations of misconduct.
- [4] Because three applications serve before this court, it is instructive at the outset to gain an understanding of the allegations and grounds upon which the employees were dismissed.
- [5] The allegations levelled against the Second and Third Respondent read as follows:

'(1) Acting in such a manner which is not in the best interest of the municipality and acting in such a way that the credibility and the integrity of the municipality was compromised in view of the following actions:

1.1 Leading an unlawful and / or unauthorised procession of employees in a gathering or demonstration in public on the 20th March 2009; and / or

1.2 Making statements and / or participating in the making of statements to the media, in which statements or memorandum contained false and / or misleading information regarding the municipality, on the 20th March 2009;

AND / OR

(2) Insubordination and / or failure to comply with an agreed resolution of the Local Labour Forum in that she failed to refer queries and / or issues pertaining to labour to the Municipal Manager, but rather referred such matter to the Mayor / Deputy Mayor / Speaker and furthermore publicised or contributed to the publication of the alleged queries / disputes / grievances on the 20th March 2009.

ALTERNATIVELY

By acting in a manner which compromised the best interests, credibility and integrity of the municipality; in that she failed and / or refused to follow appropriate and / or agreed processes or internal procedures in respect of raising alleged grievances to the Mayor / Deputy Mayor / Speaker, made public or contributed to publicising of such issues, and / or circulated such issues or correspondence related thereto among employees, without referring to the employees.'

[6] In her award, the Commissioner found the employees guilty of charges 1.1 and 2. The Commissioner did not find the employees guilty of charge 1.2.

[7] The Third Respondent faced 3 additional allegations as follows:

'(3) Insubordination and / or incitement of insubordination in that the accused employees directed co-employees not to abide by a specific instruction and request of the employer; in that the accused employee, on the 23rd March 2009, requested co-employees not to comply with the said instruction and / or requests of the employer to have work attendance registers updated to appropriately reflect the presence or absence of employees from their work stations on the 20th March 2009.

AND / OR

(4) Acting contrary to the best interest of the municipality and or acting in a manner that is harmful to the credibility of the municipality; in that she transmitted correspondence on the 12th March 2009 to co-employees advising and / or inciting them not to comply with management staff requests and / or instructions; and / or by distributing an internal memorandum with inflammatory contents to co-employees, without addressing the memorandum of the issue therewith in accordance with the proper internal structure or grievance process.

AND / OR

(5) Making defamatory and / or malicious allegations or statements towards or about a co-employee in an email, correspondence of

March 2009 which defamatory and / or malicious statements accused the co-employee of intimidation and insinuate that the co-employee is a racist and / or practitioner of apartheid.'

- [8] The Commissioner found the Third Respondent guilty of charges 4 and 5, but not charge 3. She found the charges serious enough to warrant dismissal of the employees as appropriate in the circumstances and that their dismissals were both procedurally and substantively fair.
- [9] As stated, the Award was issued on 7 August 2010, but received by the Applicants on 16 August 2010. This review application was launched on 4 November 2011 and accordingly, the condonation application was necessitated. The Municipality opposed the condonation application on the basis of the Applicants' version alone.
- [10] The Municipality's application to dismiss the review was launched on 10 October 2013, on grounds that the Applicants had furnished an incomplete and inadequate record. The dismissal application was also opposed. Since, should it be successful, the dismissal application would be dispositive of the entire set of applications, I shall turn to deal with it firstly.

The Application to Dismiss the Review

- [11] The municipality complained that the evidence of its first witness, Bonginkosi Bhekizenzo Biyela ("Biyela") was missing from the transcribed record. This was the evidence led on the first day of the arbitration and accordingly, all but a short portion of his evidence in chief was missing. The Municipality also complained that certain documentary exhibits ("Volume 4") were not provided to its attorneys despite requesting same. It appears that all four volumes were served directly on the Municipality prior to the Municipality appointing its attorneys of record.
- [12] In any event, the issue of Volume 4 was rectified but the Municipality maintained that the evidence of the first day of arbitration, being opening statements and most of Biyela's evidence in chief was missing.

[13] The Applicants opposed the application to dismiss on two main grounds. The first was that the deponent to the founding affidavit, one Frans Marx, had no *locus standi* to launch such an application on behalf of the Municipality as he lacked the necessary authority as none had been specifically delegated to him by the Council of the Municipality or, if duly delegated herself/himself, such powers being conferred on the deponent by the Municipal Manager. Annexure “FM1” attached to the municipality’s replying affidavit and the confirmatory affidavit of its Municipal Manager, Mandla H Nkosi (in the dismissal papers), averred that the deponent had the requisite authority.

[14] While I am inclined to agree that there is insufficient evidence to show that the deponent had standing in law¹ to launch the application for dismissal, even if I am wrong, the dismissal application cannot be sustained because of the Applicants’ attitude towards the evidence of Biyela.

[15] Rule 7A (5) and 7A (6), respectively, of the Rules for the Conduct of Proceedings in the Labour Court (“the Rules”) read as follows:

‘(5) ... The applicant must make such copies of such portions of the record as may be necessary for the purposes of the review and certify each copy as true and correct.

(6) The applicant must furnish the registrar and each of the other parties with a copy of the record or portion of the record, as the case may be, and a copy of the reasons filed by the person or body.’

The Applicants are *dominus litis* in the review and decide what cause of action they wish to rely on and indeed which portions of the record are necessary to sustain their review application.

¹ Based on a sections 30 of the Local Government: Municipal Structures Act, 1998 (as amended); and sections 55 of the Local Government: Municipal Systems Act, 2000 (as amended)

- [16] The Applicants specifically state that the evidence of Biyela does not form the basis upon which the Applicants seek to review the Award and, as such, the Applicants regard such evidence as irrelevant for the purposes of the review application². Furthermore, they argued that the best evidence available of the evidence given by Biyela appears at paragraphs 4.13 to 4.61 of the Award, where the Commissioner summarises his evidence as she understood it³.
- [17] It goes without saying then that the Applicants do not challenge paragraphs 4.13 to 4.61 of the Award, except to the extent that they wish to challenge paragraph 4.52 relating to the issue of the breakdown of the employment relationship. In approaching the review in this manner, the Applicants therefore run the risk that should they be unable sustain their grounds of review for want of a portion of the record which they choose not to rely upon their review application will naturally fail.
- [18] Finally, the Municipality also does not challenge the evidence of Biyela set out in the Award. The dismissal application is therefore not successful and stands to be dismissed.

The Application for Condonation

- [19] Case law abounds on the question of condonation. The test for condonation was set out in the landmark case of Melane v Santam Insurance Company Limited⁴ at paragraph 532 C – F, per Judge of Appeal Holmes:

‘In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefore, the prospects of success, and the

² Dismissal papers: page 33; paragraph 10

³ Dismissal papers: page 34; paragraph 16

⁴ 1962 (4) SA 531 (A)

importance of the case. Ordinarily these facts are interrelated; they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve the arteries of what should be a flexible discretion. What is needed is an objective *conspectus* of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the Respondent's interest in finality must not be overlooked. I would add that discursiveness should be discouraged in canvassing the prospects of success in the affidavit.'

[20] In NUMSA and Another v Hillside Aluminum⁵ at paragraph 11 and 12, Judge Murphy said the following:

'The explanation must be sufficient to enable the Court to determine how the delay came about, and to allow an assessment of the Applicant's motives and conduct for the purpose of making a finding of reasonableness. Additionally, there should be an acceptable explanation tendered in respect of each period of delay.'

[21] In NUM v Council for Mineral Technology⁶, it was stated as follows:

'...There is a further principle which is applied and that is that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for delay, Application for Condonation should be refused.'

[22] The Municipality chose not to file an answering affidavit in the condonation application and accordingly, left the issue of prospects of success in the review undisputed in the application for condonation. The condonation application is therefore decided on the Applicants' founding affidavit alone, together with such submissions as were made concerning

⁵ (2005) 6 BLLR 601 (LC)

⁶ (1999) 3 BLLR 209 (LAC) at para 10.

the condonation application. The Municipality chose only to address the length and reasons for delay in its heads of argument.⁷

- [23] On this basis, I will turn to deal with the length of the delay and explanation thereof first. The delay in filing the review application is one year and three months. On any consideration this is a very lengthy delay, but for the reasons given, not inordinate. On 13 October 2010, an official of SAMWU, Mr Sbu Biyela, and Third Applicant consulted their attorneys and gave instructions to immediately launch the review application. At that stage the Applicants were 11 court days late. On her version, Third Applicant and Mr Biyela regularly followed up with their attorneys and were assured that the matter was being dealt with. Inexplicably (on the part of the attorney concerned) their attorney wrote to SAMWU in March 2011 querying the reason for SAMWU's delay (of 11 days) prior to instructing her in the review application. SAMWU responded on 15 March 2011. Some five months had passed by that stage.
- [24] After the letter referred to above had been transmitted to their attorneys, Third Applicant 'on a few occasions' tried to contact their attorneys but was unable to speak directly with her since she was 'unavailable as she was either on leave, as she was pregnant or that she was in other consultations or busy with other matters'. Contact was made with another attorney of the firm who gave assurance that the matter was being dealt with, but would take time to complete. Finally, in July 2011, the Third Applicant was advised that their attorneys, with whom they had consulted and had given instruction to launch the review application, would be closing at the end of August 2011. All files would be handed over to new attorneys.
- [25] On 6 October 2011, almost a year to the date since consulting with their erstwhile attorneys, the employees' files were handed over to their present attorneys of record, Tomlinson Mnguni James. Tomlinson

⁷ First Respondent's Heads of Argument: page1 and 2.

Mnguni James received more than fifteen files. According to the Third Applicant, because of the volume of files handed over to Tomlinson Mnguni James, SAMWU and Third Applicant were only able to consult on 2 November 2011 whereupon they were advised that no review application had ever been launched. The review application was launched with haste on 4 November 2011.

[26] Applicants argue that the employees will suffer severe prejudice in the event that condonation is refused and will result in a failure of justice.

[27] It is clear that the period of delay can be ascribed to their erstwhile attorneys of record. While an explanation has not been obtained for the delay during the period 13 October 2010 to 6 October 2011 from Applicants' erstwhile attorneys, it is obvious that the reason is the simple inaction on the part of the attorneys to launch the review application. Should the Applicants be prejudiced by the negligence of their attorney? The Municipality argues that:

- (i) SAMWU is not a lay person and is fully aware of time limits pertaining to reviews;
- (ii) The explanation for the delay does not explain why SAMWU was not more proactive in appointing attorneys earlier and merely accepted their erstwhile attorneys excuses as to why the review was not launched;
- (iii) The combined dilatoriness of the erstwhile attorneys and the failure of SAMWU to follow up and address the situation, does not constitute an adequate explanation for a delay of one year and three months.
- (iv) In conclusion the application for condonation ought to be dismissed on these grounds alone.

[28] The undisputed evidence is that the Applicants' erstwhile attorneys of record did not make excuses for not launching the review application during the period of one year, but that rather they mislead SAMWU and Third Applicant into believing that all was in order when it was not. That

is a very different proposition to SAMWU having knowledge that their erstwhile attorneys had not in fact launched a review application but continued to leave their faith and trust in their attorneys.

- [29] The Municipality did not file an answering affidavit in the condonation application and at face value in the founding affidavit some prospects of success are introduced into the matrix of issues to be considered. Ultimately, there would be a failure of justice if Applicants were refused condonation and their review application not dealt with on its merits.
- [30] For these reasons, condonation ought to be granted to the Applicants for the late delivery of their review application.

Grounds of Review

- [31] The Applicants' grounds of review are simply that: 'No reasonable arbitrator would have made a finding that [employees'] dismissals were fair'⁸; and that: 'No reasonable arbitrator would have made a finding that the Third Applicants and [Second Applicant's] dismissals were fair in light of the evidence presented'⁹.
- [32] In the supplementary affidavit, the Applicants set out a number of instances in which they allege that the Commissioner failed to apply her mind; she failed to take certain evidence into account; that in assessing the evidence, the Commissioner made a number of errors; and finally that: 'It is submitted that the [Commissioner] did not apply her mind to the facts before her. The [Commissioner's] decision is further not a decision which a reasonable Commissioner would have reached considering the facts placed before her'¹⁰.
- [33] The Applicants allege that with respect to Charge 1.1 that the commissioner failed to take into consideration or to appreciate that the

⁸ Review Application: page 12; paragraph 21

⁹ Review Application: page 15; paragraph 22

¹⁰ Review Application: page 58; paragraph 8

employees were, at all material times, acting upon the instructions of SAMWU's members.

- [34] The Applicants allege that with respect to Charge 2, the Commissioner failed to apply her mind at all to the fact that the employees had previously sought and been granted permission from the Municipal Manager to hand over the memorandum in question to the Mayor or the Speaker, of which there was evidence before her.
- [35] The Third Applicant alleges that with respect to Charge 4, that there was no proper basis for the Commissioner to conclude that Third Applicant's forwarding of the email memorandum to members of SAMWU which had been transmitted to her in her capacity as secretary of SAMWU (and she had a duty to forward the email constituted 'acting contrary to the best interests' of the municipality or in any way harmed and damaged the credibility of the municipality.
- [36] The Third Applicant alleges that with respect to Charge 5, the Commissioner failed to consider the content of the email in question in its entirety; and that the email was only sent to Mr Bhajun and he could have replied to it; and that the email records Third Respondent's belief that SAMWU's members were being intimidated and that the email could not be construed as inferring that Mr Bhajun was racist.
- [37] The Applicants further allege that, notwithstanding her findings of guilt, the Commissioner failed to consider the issue of whether there was a breakdown of the trust relationship.
- [38] The Applicants further allege that the Commissioner failed to apply the factors enunciated in *Sidumo*¹¹ in considering whether or not the dismissal was substantively fair and instead applied an incorrect

¹¹ *Sidumo and Another v Rustenburg Platinum Mines Limited and Others* (2007) 28 ILJ 2405

assessment, namely that: 'a commissioner will only interfere with a sanction if it is so excessive as to shock one's sense of fairness'¹².

- [39] It is apparent that the test to be applied to the Award is whether in the totality of these alleged irregularities (my wording, since the Applicants have not identified which aspect of section 145 they rely upon), the Commissioner reached a decision that no reasonable decision maker could reach.

The legal principles applicable to review

- [40] The test for review enunciated by the Constitutional Court in *Sidumo and Another v Rustenburg Platinum Mines Limited and Others*¹³ is whether the decision made by the arbitrator is one that a reasonable decision-maker could not reach on all the available material.

- [41] As to what constitutes gross irregularity, the Court in *Sidumo* stated the following:

'[268] ...where a commissioner fails to have regard to the material facts, arbitration proceedings cannot in principle be said to be fair because the commissioner fails to perform his or her mandate. In doing so, in the words of Ellis, the commissioner's action prevents the aggrieved party from having its case fully and fairly determined. This constitutes a gross irregularity in the conduct of the arbitration proceedings as contemplated by section 145(2)(a)(ii) of the LRA. And the ensuing award falls to be set aside not because the result is wrong but because the commissioner had committed a gross irregularity in the arbitration proceedings'.

- [42] The *Sidumo* test has been restated by the Labour Appeal Court¹⁴ in the case of *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v CCMA and Others* as follows:

¹² A principle enunciated in *County Fair Foods (Pty) Ltd v CCMA and Others* (1999) 20 ILJ 1701 (LAC)

¹³ [2007] 28 ILJ 2405 (CC)

¹⁴ (2014) 35 ILJ 943 (LAC); also [2014] 1 BLLR 20 (LAC) at paras 14, 15 and 16.

[14] *Sidumo* does not postulate a test that requires a simple evaluation of the evidence presented to the arbitrator and based on that evaluation, a 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 (LRA) continue to be determined in terms of s 145 of the LRA but that the constitutional standard of reasonableness is 'suffused' in the application of s 145 of the LRA. This implies that an 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 a setting aside of the award if any of the above grounds are found to be present. In other words, in a case such as the present, where a gross irregularity in the proceedings is alleged, the 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.

[15] A 'process-related review' suggests an extended standard of review, one that admits the review of an award on grounds of a failure by the arbitrator to take material facts into account, or by taking into account facts that are irrelevant, and the like. The emphasis here is on process, and not result. Proponents of this view argue that where an arbitrator has committed a gross irregularity in the conduct of the arbitration as contemplated by s 145(2), it remains open for the award to be reviewed and set aside irrespective of the fact that the decision arrived at by the arbitrator survives the *Sidumo* test. I disagree. What is required is first to consider the gross irregularity that the arbitrator is said to have committed and then to apply the reasonableness test established by *Sidumo*. The gross irregularity is not a self-standing ground insulated from or standing independent of the *Sidumo* test...

[16] In short: A review court must ascertain whether the arbitrator considered the principle issue before him/her; evaluated the facts presented at the hearing and came to a conclusion which was reasonable to justify the decisions he/she arrived at'.

Analysis

[43] The Award is some 33 pages in length and the arbitration took place over 8 February 2010, 13 April 2010, 8 and 9 June 2010, and 10 and 12 July 2010.

[44] It is apparent that the Commissioner identified that the issue in dispute was whether the dismissal of the employees, on the charges set out in their charge sheets¹⁵, was procedurally and substantively fair. I mention this because of the following submission set out in the Municipality's heads of argument¹⁶:

‘The golden thread of the applicant's grounds for review is that the [employees] were acting as shop stewards and not as employees and accordingly should not have been dismissed.

The [commissioner] considered their conduct with reference to the collective agreement, a resolution of the Local Labour Forum, their duties as shop stewards and her finding is in tune with the authorities which stipulate that the employer is entitled to discipline shop stewards should they not act bona fide and commit misconduct as an employee¹⁷.

[45] To the extent that the Applicants have challenged the Award on specific issues or points of evidence, set out above, there is every indication that the Commissioner applied her mind to such evidentiary factors in her Award. The type of in depth factual analysis required to sustain the specific issues the Applicants raise (unless the Commissioner misconstrued the whole nature of the enquiry¹⁸ or arrived at a decision which no reasonable decision maker could reach) fell away after *Herholdt*

¹⁵ Repeated at paragraphs 5 and 7, *supra*

¹⁶ First Respondent's Heads of Argument: paragraphs 35 to 36, including footnote 31

¹⁷ Footnote 31: *NUM and Others v Black Mountain Mining (Pty) Ltd* [2010] 3 BLLR 281: Paragraphs [33] to [47]

¹⁸ *Andre Herholdt v Nedbank Limited* [2013] 11 BLLR 1074 (SCA); (2013) 34 ILJ 2795 (SCA); 2013 (6) SA 224 (SCA);

v Nedbank Limited. It also cannot be said that the Award is 'entirely disconnected with the evidence' or is 'unsupported by any evidence'¹⁹.

- [46] The applicant submitted that the Award was susceptible to being reviewed and set aside because no reasonable arbitrator would have found the employees' dismissals to be fair. Under the *Sidumo* test, there is a band of reasonableness within which a commissioner's decision will be insulated from 'incorrectness', if indeed the result was incorrect, so long as it was reasonable. In this matter, for the reasons which follow, not only do I regard the commissioner as having applied her mind to the issues that were put in dispute correctly, but at the very least, having considered the issues, she arrived at a result which comfortably falls within the band of reasonableness deriving from *Sidumo* and *Goldfields Mining South Africa* and other notable decisions of the Labour Appeal Court²⁰.
- [47] The Commissioner applied her mind to the issue on charge 1.1 of acting under instructions from members of SAMWU and rejected it at paragraph 5.4 and 5.5 of the Award.
- [48] The Commissioner considered the evidence on charge 2 of permission having been granted to hand over the memorandum to the Mayor or Speaker in paragraph 5.7 and 5.8 of the Award.
- [49] The Commissioner considered the evidence relating to charge 4 relating to the email memorandum having been forwarded on in her capacity as Secretary of SAMWU in paragraphs 5.11 and 5.12 of the Award.
- [50] The Commissioner applied her mind relating to charge 5 relating to the email sent to Bhajun at paragraph 5.13 of the Award and reasonably decided that the email inferred that Bhajun was racist.
- [51] The Municipality's 'golden thread' argument holds weight in law, in that an employer is entitled to discipline an employee even though they may

¹⁹ *Ibid* at para 13

²⁰ *Afrox Healthcare Limited v CCMA and Others* [2012] 7 BLLR 649 (LAC).

be a shop steward, purportedly acting under protection of such²¹. As an aside, perhaps the Applicants ought to have sought relief under section 5 of the LRA in the Labour Court. Their decision not to do so only fortifies the Commissioner's understanding of the nature of the enquiry before her.

- [52] Despite the unfortunate reference to *County Fair Foods (Pty) Ltd v CCMA and Others*, it is clear that the Award is not narrowly confined to that test which deferred to the employer.
- [53] Finally, on the question of breakdown of the employment relationship, the Applicants sought to enter facts that occurred after the dismissals and which were never before the Commissioner²² when making her Award.
- [54] The Constitutional Court²³ has held that arguments that flow from facts deriving after the dismissal cannot impact on the ultimate decision of the tribunal or court that decides the fairness and relief in such dismissals.
- [55] In my view, on a *conspectus* of all the evidence and issues raised, the Award is reasonable and the Applicants' contentions that it is one which no reasonable arbitrator would have made, must fail.
- [56] In relation to costs, taking into account the requirements of law and equity, I do not believe that any costs order should follow the result in the application to dismiss and in the condonation application, however, it is my view that this matter was pursued by a large trade union in the interests of its members and there is no reason why the costs should not follow the result in the review application.

²¹ *BIFAWU and Another v Mutual and Federal Insurance Company Limited* (JA15/2003) [2005] ZALAC 10 (9 December 2005)

²² Dismissal Application: Page 34; Paragraph 20 and 21

²³ *Billiton Aluminium SA Ltd t/a Hillside Aluminium v Khanyile and Others* (CCT 72/09) [2010] ZACC 3; 2010 (5) BCLR 422 (CC) ; (2010) 31 *ILJ* 273 (CC) ; [2010] 5 BLLR 465 (CC) (18 February 2010)

Order

[57] In the premise, I make the following order:

1. The application to dismiss the review application is dismissed with no order as to costs.
2. The late filing of the review application dated 4 November 2011 is condoned with no order as to costs.
3. The application to review, set aside and correct the Arbitration Award handed down by the Third Respondent on 7 August 2010 under case reference KPD110915 is refused with costs.

Rocher, AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:	Advocate Kelsey Allen
Instructed by:	Tomlinson Mnguni James
For the Third Respondent:	Advocate R G Ungerer
Instructed by:	Kloppers Inc