



**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable  
Case no: JR 508/18

In the matter between:

**MARGARET MMONI LONG**

**Applicant**

and

**SOUTH AFRICAN LOCAL GOVERNMENT  
BARGAINING COUNCIL**

**First Respondent**

**VAN WYK S N. O**

**Second Respondent**

**SOL PLAATJE MUNICIPALITY**

**Third Respondent**

**Heard: 5 May 2020**

**Delivered: 15 May 2020 (This judgment was handed down electronically by emailing a copy to the parties. The 15<sup>th</sup> May 2020 is deemed to be the date of delivery of this judgment).**

**Summary: Due to Covid19 lockdown period this application was decided without oral hearing and the parties agreed to this arrangement. Review application – award falls within the bounds of reasonableness. Held: (1) The application for review is dismissed. (2) No order as to costs.**

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## JUDGMENT

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**MOSHOANA, J**

### Introduction

- [1] This application for review is opposed. Ms Margaret Mmoni Long (Ms Long) was dismissed on allegations of fraud, gross negligence and taking unauthorised steps. Aggrieved by her dismissal she approached the South African Local Government Bargaining Council (the Bargaining Council) with an allegation of unfair dismissal. The second respondent concluded that her dismissal is fair. She was aggrieved thereby and approached this Court with a review application. She contends that the award is reviewable in law.

### Background facts

- [2] Long was a senior employee of the third respondent, she was employed with effect from March 1997. At the time of her dismissal she held a position of Senior Human Resources Officer (SHRO), which position she held since July 2015. Effectively, Ms Long faced two allegations of misconduct, namely fraud and gross negligence. The second respondent cleared her of the allegations of fraud. However, she found that the evidence before her demonstrated gross negligence on the part of Ms Long. Accordingly, for the purposes of this judgment only facts relevant to gross negligence would be recounted.
- [3] On 16 August 2016, Ms Long received a telephone call from one Kilelo, a sectional head, who was responsible for payroll. In the said call Ms Long was requested to change the banking details of one L Koopman. In turn she instructed one Nongalaza to complete the leave application form.

The number of leave days kept changing. Ultimately Nongalaza provided Ms Long with a completed leave form.

- [4] Armed with the completed leave form, Ms Long called Mr Seleke asking him to bring L Koopman to her office for the purposes of signing the leave encashment form that was already completed. At the point of this call, Ms Long was informed by Mr Seleke that L Koopman was not selling his leave days. As a result, the process that would have seen the encashment of leave days was foiled.
- [5] Few days later on 19 August 2016, Ms Long and Seleke discussed the incident. There are two different versions from Seleke and Ms Long as to what was discussed. However nothing much turns on this. Subsequently, Ms Long was suspended. At a subsequent disciplinary hearing she was found guilty and dismissed.

### Evaluation

- [6] In terms of the Labour Relations Act<sup>1</sup> (LRA), particularly section 188 thereof, a dismissal is fair if the reason thereof is misconduct. In this matter, the applicant takes issue with the charges and how they were dealt with at arbitration. For the purposes of this judgment it is unnecessary to entertain any of those issues. If an employee is guilty of a misconduct, that is enough to satisfy the requirements of section 188 of the LRA. It is unnecessary to consider whether an employee was guilty of all the charges if he or she faced a catalogue of charges. One of the misconduct that led to the dismissal of Ms Long was negligence. Therefore upon being challenged to justify the fairness of the dismissal, the third respondent was required to show two things, namely (a) was Ms Long guilty of negligence and if so (b) was dismissal an appropriate sanction for the said misconduct. Negligence and poor work performance are often confused.

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<sup>1</sup> No 66 of 1995, as amended

[7] In *ZA one (Pty) Ltd t/a Naartjie Clothing v Goldman N.O*<sup>2</sup>, this court per Snyman AJ aptly differentiated the two by saying that if an employee tried but could not do the work perfectly, such constitutes poor work performance. However if an employee could but failed to do so, such is a misconduct of negligence. A mistake does not necessarily amount to negligence. The test to determine negligence has been formulated in *Kruger v Coetzee*<sup>3</sup>

[8] In *casu*, the second respondent recorded the following in her award:

'53. Witnesses testified during the arbitration regarding the process of changing banking details and leave encashment and without exception all of them testified that forms must be completed and signed by the employee, whereafter a manager's signature...The applicant (Ms Long) herself testified that when she started as HR Officer the forms were already being used. The procedure therefore clearly exists...The rule is also not seen to be unreasonable as it is in line with accepted HR practices as it acts as a control / security measure to ensure(s) (sic) that vital employee information is not changed without proper authorisation from the employee and management...

57. I therefore find that the applicant (Ms Long) was indeed guilty of negligence and the negligence was so gross as her actions effectively paralyzed all the control / security measures put in place to ensure all changes to the employee profiles are justified.'

[9] This finding is not only one that a reasonable decision maker would reach but it is pure and unsullied. This Court must say, the award is well written, reasoned and actually correct, if correctness was the standard, it would remain unshaken. The second respondent must be commended for a sterling job. Another unshakable finding was the following:

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<sup>2</sup> (2013) 34 ILJ 2347 (LC).

<sup>3</sup> 1966 (2) SA 428 (AD).

'69. In judging the fairness of the dismissal, I must agree that the dismissal was an appropriate sanction as the conduct of the applicant amounted to gross negligence. I also find that the nature of the transgression was of such a serious nature that it severed the trust relationship and no basis exist for me to interfere with the sanction imposed.'

[10] Before she made the above findings she said the following, which resonates well with what was said in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*<sup>4</sup> :

'67. The conduct of the applicant was in my opinion grossly negligent. Even though there was no monetary loss resulting from her actions, a repeat of the incident or allowing such conduct to go unpunished, can have detrimental effect on the business of the respondent. The fact that she was a supervisor was an aggravating factor to me as she was identified as a person entrusted with more responsibility.'

[11] Regard being had to the review grounds, it cannot be correct to submit that the findings that Ms Long is guilty of gross negligence is unreasonable. A misconduct is gross if it is one that is serious. A commissioner does not require evidence to be told that a misconduct is serious. A value judgment based on the circumstances of each case is enough to draw that conclusion. Clearly, had the process not been foiled by the intervention of Mr Seleke, the Municipality could have lost money. In *Kruger supra*, the following was said:

'For the purposes of liability *culpa* arises if –

- (a) a *diligens paterfamilias* in the position of the defendant-
  - (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and
  - (ii) would take reasonable steps to guard against such occurrence; and

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<sup>4</sup> (2007) 28 ILJ 2405 (CC).

(iii) the defendant failed to take such steps.'

[12] With full knowledge of the applicable procedure and its purpose, Ms Long could not have instructed Nongalaza. Having done that nonetheless, Ms Long was *culpa*. Accordingly all the grounds put forward must fail.

[13] In the premises the following order is made:

Order

1. The review application is dismissed.
2. There is no order as to costs.

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G. N. Moshwana

Judge of the Labour Court of South Africa

Appearances:

No appearance.