



**THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

Not Reportable
Case no: JR28/23

In the matter between:

SIPHO GOODWILL VILAKAZI

Applicant

and

**NATIONAL BARGAINING COUNCIL FOR THE
CHEMICAL INDUSTRY**

First Respondent

P MBATSANA N.O.

Second Respondent

AFRICAN OXYGEN (PTY) LTD t/a AFROX

Third Respondent

Heard: 18 FEBRUARY 2025

Delivered: 11 March 2025 (This judgment was handed down electronically by emailing a copy to the parties. The 11 March 2025 is deemed to be the date of delivery of this judgment).

Summary: The applicant was dismissed for promoting disharmony in the workplace. He claimed that on the relevant date he was investigating theft of products and this resulted in a conspiracy against him by his subordinates. Held that the second respondent did not analyse the evidence, consider the probabilities of the two versions and come to a decision that a reasonable

decision maker would make. The matter is remitted to the first respondent to be heard before another commissioner.

JUDGMENT

SEEDAT AJ

Introduction

[1] The applicant (Mr Vilakazi), an operations supervisor employed by the third respondent (Afrox) at its Trichardt site in Mpumalanga, was dismissed on 16 August 2022 for 'promoting disharmony in the workplace'.

[2] He referred a claim of an unfair dismissal to the first respondent and on 30 November 2022, the second respondent (the commissioner) issued an award upholding the dismissal.

[3] Mr Vilakazi now seeks to review and set aside the award. Afrox opposes this application.

The third respondent's version

[4] Afrox avers that on 19 July 2022, Mr Vilakazi had an argument with Ms Bukula, a sales counter representative. He then instructed the yard assistants who are tasked with helping customers to load and offload gas cylinders, not to assist customers.

The applicant's version

[5] Mr Vilakazi categorically denies the incidents of 19 July 2022, saying that on this day he was involved in an investigation relating to theft of stock from the depot

on the previous day. He claimed that the implicated employees had turned against him.

The award

[6] The commissioner found that Afrox had established a prima facie case against Mr Vilakazi and his attempt to claim that his subordinates had conspired against him because he was investigating their “wrongdoings” remain unsubstantiated. He held the dismissal to be fair.

Grounds of review

[7] Mr Vilakazi says that the commissioner committed a gross irregularity or misconduct in relation to his duties as commissioner or his decision is not one which a reasonable decision maker could reach in that –

- he failed to apply his mind to the issues placed before him and thereby failed to identify the true nature of the dispute before him;
- he concluded that Mr Vilakazi raised a “conspiracy theory” when he was investigating several employees, including Ms Bukula, for theft;
- he failed to appreciate that Mr Vilakazi did not have to prove the unfairness of his dismissal;
- Ms Buluka was not called as a witness to confirm her email of 31 May 2022.

The test for review

[8] The test that the Labour Court has to apply in an application for review of an arbitrator’s award is whether “*the decision reached by the commissioner is one that a reasonable decision maker could not reach?*”¹ In applying this test, the court must

¹ *Sidumo & others v Rustenburg Platinum Mines Ltd & others* (2007) 28 ILJ 2405 (CC)

enquire into the merits of the matter and all the evidence on record in deciding what is reasonable.²

[9] Tlhotlhemaje J in *Penbro Kelnick (Pty) Ltd v Commission for Conciliation Mediation and Arbitration*³ cited the Constitutional Court in *Duncanmec (Pty) Ltd v Gaylard NO*⁴ that the “*principal enquiry is whether the award itself meets the requirements of reasonableness, in the sense that there are reasons supporting its conclusions*”.

Analysis of the award

[10] The commissioner’s award is disturbingly deficient in a cogent summation of the facts and a trenchant analysis of the evidence. In a few words, the commissioner recounts the evidence of Ms Madi⁵ and Ms Nkcengani,⁶ briefly regurgitates the testimony of Mr Monnamontso⁷ and comes to the conclusion that the “*testimonies from these witnesses successfully established a prima facie case against the Applicant*”.

[11] There were disputes of fact between the versions of Afrox and Mr Vilakazi and the commissioner was impelled to decide between the two versions before him.⁸

[12] The commissioner was obligated to consider the probabilities of the conflicting versions. The credibility of the witnesses would have been an aid in weighing up the probabilities and coming to a conclusion that would be reasonable in the factual

² *CUSA v Tao Ying Metal Industries & others* (2008) 29 ILJ 2461 (CC); *Herholdt v Nedbank Ltd (Congress of SA Trade Unions as Amicus Curiae)* (2013) 34 ILJ 2795 (SCA); *Southern Sun Hotel Interests (Pty) Ltd v Commission for Conciliation, Mediation & Arbitration & others* (2010) 31 ILJ 452 (LC)

³ [2024] 7 BLLR 706 (LC)

⁴ (2018) 39 ILJ 2633 (CC) at para 43

⁵ A stores and warehouse learner under Mr Vilakazi’s supervision

⁶ A cleaner based at Afrox

⁷ A forklift driver at the site in Trichardt

⁸ *SFW Group Ltd & another v Martell et Cie & others* 2003 (1) SA 11 (SCA) at para 5

context. This the commissioner did not do. He also ignored the fact that Mr Vilakazi's version was not put to Afrox's witnesses.⁹

[13] Because the commissioner arrived at his decision without properly considering the evidence, his conclusion was not justifiable in relation to the evidence presented at the arbitration. The commissioner did not apply his mind to all the material issues before him and as a result he committed gross irregularities in the conduct of the arbitration. I must find that that the award is not one which a reasonable decision maker could have made.

[14] Because there are issues of fact that were not considered in the award and can only be articulated on evidence, the appropriate relief is to set aside the award and refer it back to the first respondent to be heard *de novo* by another commissioner.

[15] This is not a matter that calls for the awarding of costs

[16] In the circumstances, the following order is made:

Order

1. The arbitration award of the second respondent given under case number CHEM40-22/23 dated 22 November 2022 is reviewed and set aside in its entirety and remitted to the first respondent to be heard *de novo* by another commissioner.
2. There is no order as to costs.

S Seedat

Acting Judge of the Labour Court of South Africa

Appearances:

Applicant:

Attorney MM Baloyi

Instructed by:

MM Baloyi Attorneys

⁹ *President of the Republic of South Africa v South African Rugby Football Union* 2000 (1) SA 1 (CC)

First Respondent:

J Baloyi

Instructed by:

Baloyi Attorneys Inc

LABOUR COURT