



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR 590/23

In the matter between:

JOHANNA MABONA

Applicant

and

EXARRO FERROALLOYS (PTY) LTD

First Respondent

LERATO SIKWANE

Second Respondent

**COMMISSION FOR CONCILIATION, MEDIATION
& ARBITRATION**

Third Respondent

Heard: 19 June 2025

Delivered: 30 July 2025

JUDGMENT

LENNOX, AJ

Introduction

[1] The Applicant seeks to review and set aside an arbitration award issued by the Second Respondent, which was delivered on 14 March 2023, and seeks a finding to be substituted to the effect that her dismissal was both procedurally and substantively unfair. The review application is opposed by the First Respondent.

Background

[2] The Applicant has been dismissed by the First Respondent for contravening the Conflict of Interest Policy of the First Respondent. It is not disputed that members of her family, being her son and husband, conducted a business which was contracted to a company known as Transport Holdings, which in turn contracted to the First Respondent. It is also not disputed that the Applicant has not disclosed this to the First Respondent.

[3] When confronted with this fact, the Applicant does not seem to have denied that her family members did business as suggested, though the crux of the dispute centres around whether she was aware that they did business with a contractor employed by the First Respondent. Complicating this is that the Applicant worked in procurement.

[4] It is against these facts that this review must be considered.

The content of founding affidavit

[5] The First Respondent has taken the point that the Applicant is required to make out her case in the founding affidavit and complains that the present founding affidavit fails to make out a case for review.

[6] It is so that the founding affidavit advances the barest submissions in respect of the grounds of review. It also fails to provide any context to the matter, as it appears to have been prepared in haste and with a view to stopping the clock on the time period for launching the application.

[7] The Applicant did supplement the founding affidavit, expanding on the review grounds, but again failing to set out in any detail the background to the application.

[8] The manner in which the application has been brought may well be criticised; however, the criticism cannot be extended to a dismissal of the application in circumstances where a proper case for review is at least made out in the supplementary affidavit. This is not an open invitation for parties before this Court to bring cases for review without properly considering and setting out the basis for review in the hopes that the record will present some proverbial wagon to hitch the application to for, if that wagon were not to materialise, that party runs the risk of an adverse costs order, even in circumstances where cost do not ordinarily follow the result in this Court.

[9] The review application must therefore be considered in the light of the facts of this matter.

Second ground of review: failure to offer a 'helping hand'

[10] This ground of review deals with the attempt to introduce evidence belatedly into the arbitration proceedings, which would have dealt with whether discipline had been consistently applied.

[11] On the second day of the hearing, Mr Masenamela, being a trade union representative for the Applicant, addressed the Third Respondent as follows:

MR MASENAMELA: We have a document which we want to pose before you. I do not know whether there is a dispute about this document, it is from the company, the respondent in terms of the misconduct schedule of what transpired in 2022. And we would like you to move that point three and four of that particular document. I do not know whether such is permissible or not.

COMMISSIONER: Alright. Mr Kubayi?

MR KUBAYI: Commissioner the, we are almost half way through the; we are more than half way through the arbitration.

COMMISSIONER: Hmm.

MR KUBAYI: We are sitting at say 75, 80% and all documents that we had intended to use for the purposes of this arbitration have been discovered and they form part of the bundle.

COMMISSIONER: Hmm.

MR KUBAYI: Any other document to be introduced, when all of the employer's witnesses have closed their case, would not be acceptable from our side.

COMMISSIONER: Hmm.

MR KUBAYI: Because we will not have an opportunity to deal with that particular document.

COMMISSIONER: Mm.

MR KUBAYI: From, through witnesses.

COMMISSIONER: Mr Masenamela, I mean...

MR MASENAMELA: Commissioner, no problem, we do not want to drag this process, the be delayed.

COMMISSIONER: Hmm.

MR MASENAMELA: But such information we will be utilising in terms of the closing argument, that will guide you to say what the company is dealing in terms of how they operate.

COMMISSIONER: Would that be new evidence?

MR MASENAMELA: No, it is their document in terms of their ...

COMMISSIONER: The evidence was dealt with during the arbitration?

MR MASENAMELA: No, the document came from the system, after the hearing.

COMMISSIONER: Okay, I will see whether it is new evidence or not, but if it is new evidence, I am not going to accept it.

MR MASENAMELA: Alright.'

[12] The categorisation of this ground of review as pertaining to a 'helping hand' is not helpful. The Second Respondent was faced with a request to introduce a new document and failed to establish the nature of the document and the effect that it may have on the conduct of the proceedings. The Second Respondent, in the view of the Court, was enjoined to do more than sit back and watch the debate between the representatives unfold.

[13] In acting as he did, the Second Respondent has tainted the proceedings to a point where they cannot be salvaged. An attack on the inconsistency of a dismissal being applied lies at the heart of this matter, for if the Applicant is guilty on the charge, then the next question must be whether a dismissal was appropriate or not, and the manner in which the First Respondent has dealt with similar transgressions must be considered.

[14] The Second Respondent failed to act as a commissioner ought to have, and as such, the order as set out hereunder is unavoidable. As Acting Justice Wallis (as he then was) observed in *Naraindath v CCMA & Others*¹:

‘A failure to conduct arbitration proceedings in a fair manner, where that has the effect that one of the parties does not receive a fair hearing of their case, will almost inevitably mean either that the Commissioner has committed misconduct in relation to his or her duties as an arbitrator or that the Commissioner has committed a gross irregularity in the conduct of the arbitration proceedings...’

[15] Accordingly, it is not necessary to consider the further grounds of review raised by the Applicant.

Costs

[16] This is a matter where neither party ought to pay costs.

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

Order

1. The arbitration award issued by the Second Respondent on 15 March 2023 under the auspices of the Third Respondent is reviewed and set aside and referred back to the Third Respondent for a hearing *de novo* before a commissioner other than the Second Respondent.

¹ [2000] 6 BLLR 716 (LC) at para 27.

2. There is no order as to costs.

M Lennox

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

T. Ngobeni

TM Ngobeni Attorneys

For the First Respondent: M.G. Maeso

Shepstone & Wylie Attorneys