



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C156/2023

In the matter between:

GIVEMORE TAFADZWA MUGWAGWA

Applicant

and

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

First Respondent

I DE VLIAGER- SEYNHAEVE N.O

Second Respondent

BOTMA FAMILIE TRUST

Third Respondent

Heard: 15 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, and by publication on Caselines. The date for hand-down is deemed to be 16 October 2025.

Summary: An application in terms of section 145 of the Labour Relations Act No 66 of 1995 to review an award on the sole ground that an applicant was not pleased with how the case was handled at the arbitration stage. Application dismissed.

JUDGMENT

GANDIDZE, J

Introduction

- [1] The applicant, an unrepresented litigant, seeks an order reviewing and setting aside an arbitration award dated 18 March 2023, issued under the auspices of the Commission for Conciliation, Mediation and Arbitration in case number WECT16491-22, which found that his dismissal by the Botma Familie Trust, the third respondent herein, was substantively fair.
- [2] The review application was filed 18 days late, and the applicant sought condonation for the late filing. He states that he had to leave the country to get another passport. No details are given about when the applicant left the country to obtain a new passport or when he returned. These details were required to assess the bona fides of the applicant's explanation for the delay; without that information, it cannot be said that the applicant has shown good cause for filing the review application late. Therefore, I would refuse condonation, and that would be the end of the matter.
- [3] However, for completeness, I will now address the merits of the review application.

No grounds of review

- [4] The applicant submitted that he sought to have the arbitration award reviewed, *'as I was not so pleased with how the case was handled'*. There is nothing else in the founding affidavit on why the award is reviewable, other than this quoted statement. While it is understandable that the founding affidavit does not refer to any grounds for review as required by section 145 of the LRA because the applicant was unrepresented, it is not for this Court, in a review application, to formulate grounds for review for an applicant. The applicant was requesting that the Court to consider the entire record in the matter and determine why an award should be set aside in the applicant's favour. This the Court cannot do. It is for an applicant to specify, with

reference to the grounds for review set out in section 145 of the LRA, why an award is susceptible to be reviewed and set aside, and for the Court to then assess whether a case has been made out to review and set aside an award. Unfortunately, that did not happen in this case.

- [5] Without knowing the grounds upon which an award in its favour is being attacked, it is not possible to prepare and file an answering affidavit. This is the predicament that the third respondent was put in, even though it filed an answering affidavit raising the preliminary points that no case had been made out for condonation or for the reviewing or setting aside of the award, and that the award is not one that no reasonable decision maker could arrive at. The third respondent could not say any more, as it was unclear what issues the applicant had with the arbitration award.
- [6] In oral argument, Mr Mugwagwa sought to specify what it is that he was complaining about regarding the award. The challenge for Mr Mugwagwa is that the third respondent had a right to be forewarned of the case it was required to answer, and this did not happen. An applicant is not allowed to argue a review based on grounds or complaints that were not pleaded.
- [7] On that further basis, the review application falls to be dismissed.

The evidence

- [8] Even if the Court considers the evidence presented during the arbitration proceedings and the award, it is difficult to find a reason to criticise the commissioner for the conclusion he reached.
- [9] During the arbitration proceedings, the applicant was represented by his union, the National Union of Food, Beverage, Wine, Spirit and Allied Workers Union (NUFBWSAW), and the third respondent was represented by an employer's organisation, the South African United Commercial and Allied Employers' Organisation.
- [10] The background to the applicant's dismissal is that the third respondent operates a poultry farm. The applicant had been employed by the third

respondent since 2008, and at the time of his dismissal, he was a Supervisor. He was dismissed for sabotage and inciting staff after what the applicant described as a misunderstanding with Mr. Botma Senior regarding his work. The applicant was alleged to have incited the casual employees he had transported to work that day to leave the third respondent's premises, leaving the third respondent with no staff to clean the chicken houses in preparation for the arrival of a batch of chicks the following day. The third respondent had to find other people to do the work that the casual employees were meant to do.

- [11] At the arbitration proceedings, Botma Senior, a trustee of the third respondent, testified that on 7 October 2022, the applicant was issued with a written warning for leaving work early but then claiming payment for a full shift.¹ This upset the applicant, who then aggressively instructed the casual employees preparing the houses where the expected 40,000 chicks would have been kept to leave with him. They got into his bakkie and left.
- [12] During cross-examination, the applicant put it to Bothma Senior that he informed the casuals that he was leaving, and they chose to go with him as they did not have transport. Botma Senior disputed this, stating that the third respondent provided transport to the casual employees and they were not dependent on the applicant for transport.
- [13] Mr. Botma (Botma Junior), who is also a trustee and manager, testified about the written warning issued to the applicant. He said he expected this warning to upset the applicant and cause him to leave the premises to cool down. However, he did not foresee that the applicant would persuade the casual workers to leave with him. He tried to stop the casual workers from leaving with the applicant, but some of them got into the applicant's car. Then, the applicant instructed the other two casual workers outside his car to get in so they could leave. Sometimes, the third respondent transports the casual workers, and on that day, that arrangement had been made. They needed to

¹ In oral submissions, the applicant submitted that what upset him is that he was told that he would no longer be working night shift and would be cleaning the chicken houses instead.

find other casual workers to complete the work, as they were at risk of losing the chicks.

- [14] During cross-examination, the applicant maintained that the casual workers left the premises of their own free will, while the witness disagreed, stating they wanted to work and earn money. The witness also mentioned that the applicant had visited all the houses where the casual workers were cleaning and that they heard the applicant instruct the casual workers to get in the bakkie. Furthermore, the witness stated that the applicant said 'they were leaving now', directed at the casuals who were still outside the vehicle.
- [15] The applicant testified in support of his own case and called one of the casuals as a witness.
- [16] He testified that he had worked for the third respondent for 15 years. The award records that the applicant received a warning, which upset him and prompted him to decide to go home.² He was upset because he often worked the night shift and was not given days off.
- [17] The practice was for him to bring in casual workers whenever they needed to clean the chicken houses. That day, he brought in about five or six casual workers. After informing Botma Senior that he was leaving, he went to the houses where the casual workers were cleaning and told them he was leaving due to a misunderstanding with Botma Senior, and that they could stay and get paid. He did not deny that Botma Junior, the manager, pleaded with the casual workers to stay, but that they jumped into his car, and he could not force them to remain. He also stated that they were scared of the boss, who was shouting.
- [18] A casual employee, Mr Rauziwi, confirmed that the applicant told him he was leaving and that he could stay, but he chose to go with the applicant because he had no transport. He would have stayed if there had been alternative transport. After leaving the third respondent's premises, he went to another casual job.

The award

² Above I have already noted that the applicant gave a different version about what upset him.

- [19] Assessing the evidence before him, the Commissioner stated that sabotage involves deliberately causing damage to disrupt operations, and that incitement is persuading another person to act in a specific way.
- [20] Thereafter, the Commissioner referred to the fact that he had conflicting versions about what had transpired and therefore would apply the test set out in *Stellenbosch Farmers Winery Group Pty Ltd and Another v Martell et Cie SA and Others*³, and make findings on the credibility of the witnesses, their reliability and the probabilities.
- [21] The Commissioner concluded that the casual workers would not have followed the applicant outside after he instructed them to stay. He reasoned that the casual workers might have left when the applicant announced he was departing, as he was the one who had brought them to the premises; otherwise, they would not have had transport home. He also found that the applicant should have informed the casual workers that the third respondent would provide them with transport. Instead, he left with the casual workers, despite Botma's pleas for him not to go.
- [22] The Commissioner also referred to an affidavit by one of the casual workers who was not available to testify. It recorded that the applicant was forceful and told them they were leaving with him. However, the Commissioner acknowledged that the affidavit could not carry much weight since the casual worker in question had not testified.
- [23] Finally, the Commissioner reasoned that, having worked for the third respondent for as long as he had, the applicant understood the importance of preparing the poultry houses for the chicks' arrival, and he was aware that failing to clean the houses could cause serious harm. He found the respondent's version more probable and concluded that the applicant was guilty of the charge he faced.

³ 2003 (1) SA 11 (SCA).

- [24] On sanction, the commissioner referred to the Constitutional Court decision in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*⁴, which required him to consider relevant factors when determining an appropriate sanction. He considered the fact that the misconduct committed by the applicant went to the heart of the employment relationship and affected the trust relationship, as he was required to act in the best interests of the employer, and that the misconduct was such that dismissal was justified. In this regard, the commissioner referred to the relevant case authorities on the issue.
- [25] The commissioner also took into account that the applicant did not accept responsibility for his actions and showed no contrition.
- [26] For those reasons, he found that dismissal was an appropriate sanction.

Analysis

- [27] As the applicant did not, in his founding affidavit, specify the aspects in which the award failed to 'please' him, the only issue the Court needs to determine is whether the award is one that no reasonable decision-maker could have reached, which is the test set out in the *Sidumo* judgment I have referred to above. Based on the facts of this case, the conclusions reached by the Commissioner are the only ones that could have been made, given the evidence before him. There is nothing more for this Court to add to the Commissioner's award. It stands.
- [28] In the premise, the following order is made:

Order

1. Condonation for the late filing of the review application is refused.
2. The review application is dismissed.
3. There is no order as to costs.

⁴ [2007] 12 BLLR 1097 (CC).



T Gandidze

Judge of the Labour Court of South Africa

Appearances

For the Applicant: In person

For the Respondent: Mr Bell

Instructed by: C & A Friedlander Attorneys