



IN THE LABOUR COURT OF SOUTH AFRICA

(HELD IN JOHANNESBURG)

Case NO: JR 1689/20

Not Reportable

In the matter between:

SAMWU OBO LILLIAN KOMAPE

Applicant

and

SALGBC

First Respondent

THE CITY OF JOHANNESBURG

Second Respondent

TIMOTHY BOYCE N.O.

Third Respondent

Heard: 12 June 2025

Judgment delivered: 6 October 2025

JUDGMENT

WHITCHER J

- [1] This is a review application in terms of section 145 of the Labour Relations Act, 1995. The applicant also seeks condonation for the late filing of the review application. Given the extent of the delay, which was not excessive, the matter falls to be determined on the merits of the review.

[2] The applicant was employed as a Fire Fighter Emergency Technician by the second respondent (the respondent). She was dismissed for failing to conduct herself with honesty and integrity. The particulars of the charges are that she “intended to sell fraudulent qualifications to a friend and/or associate for her personal gain” and “took a decision to offer and/or influence other staff members to obtain employment for a friend and/or associate for fiscal benefit.”

[3] The matter went to arbitration whereupon an award was issued upholding the fairness of the dismissal. The arbitrator found that:

The essence of the second part of the applicant’s alleged misconduct was that she solicited a bribe of R3000 from [Phumzile Khoza] in return for promising her a job as a firefighter at the City. The applicant admitted that, when she attended her disciplinary hearing and when she attended the arbitration, she was well aware that her alleged misconduct was promising [Phumzile Khoza] a job in return for a bribe of R3000.

[4] After considering the evidence in detail, the arbitrator concluded:

In the circumstances, it is abundantly clear that the applicant did, indeed, solicit a bribe of R3000 from [Phumzile Khoza] in return for undertaking to making arrangements for her to be given a job as a firefighter at the City. The applicant’s conduct was thoroughly dishonest and she can consider herself fortunate that she has not been criminally prosecuted for her nefarious activities. The applicant’s aforementioned dishonesty has completely destroyed the relationship of confidence and trust which ought to exist between an employer and an employee. The respondent, consequently, discharged the onus on it to prove that there was a fair reason for the applicant’s dismissal.

[5] The review lies against that finding.

[6] The test in Sidumo dictates the resolution of the controversy, i.e. (is) was the arbitrator’s decision one to which no reasonable arbitrator could come.¹

[7] In delivering his minority judgment, Ngcobo J held:

It follows, therefore, that where a commissioner fails to have regard to material facts, the arbitration proceedings cannot, in principle, be said to be fair because the

¹ Whether the commissioner’s conclusion was one that a reasonable decision-maker could not reach; whether the decision reached by a commissioner is one which a reasonable decision-maker could not reach.

commissioner fails to perform his or her mandate. In doing so, in the words of Ellis², 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 in section 145(2)(a)(ii) of the LRA. And the ensuring award falls to be set aside not because the result is wrong but because the commissioner has committed a gross irregularity in the conduct of the arbitration proceedings.

- [8] Ngcobo J's gross irregularity *dictum* accordingly, sets a lower threshold for review than *Sidumo*, by defining gross irregularity as the failure by a commissioner to apply his mind to a material fact, which would warrant the setting aside of the order.
- [9] However, in the subsequent Labour Appeal Court judgment in *Fidelity Cash Management Service v CCMA & Others*³, Zondo JP held that the *Sidumo* test "is a stringent test that will ensure that...awards are not lightly interfered with." The court went on to hold that, as per *Sidumo*, in order to succeed with a review, the applicant must demonstrate that the award is incapable of justification on all the material before the commissioner, including for reasons that were not considered by the commissioner. The Court put it as follows:

Whether or not an arbitration award or decision or finding of a CCMA commissioner is reasonable must be determined objectively with due regard to all the evidence that was before the commissioner and what the issues were that were before him or her. There is no reason why an arbitration award or a finding or decision that, viewed objectively, is reasonable should be held to be unreasonable and set aside simply because the commissioner failed to identify good reasons that existed which could demonstrate the reasonableness of the decision or finding or arbitration award.

- [10] The Labour Appeal Court in *Khambule v National Union of Mine Workers and others* (2019) 40 ILJ 2505 (LAC) (24 July 2019) similarly held:

It needs to be restated that when considering a review, the reasoning of a commissioner is no guiding light in determining whether the decision or more particularly the "order" handed down is reasonable. Put differently, a court reviewing an award need not consider the commissioner's reasoning to determine whether or not his/her reasoning justifies the award. The reviewing court, as has been

² Ellis v Morgan: Ellis v Desai 1909 TS 576.

³ [2008] 3 BLLR 197 (LAC).

repeatedly held, must consider all the evidence led at the arbitration and in the light of that evidence determine whether the award is one which any commissioner in the position of the commissioner, who determined the arbitration, could reasonably make. If the answer is in the positive, then there must be no interference with the award.

[11] And, in *Makuleni v Standard Bank of South Africa Ltd and Others*⁴ that:

...At the heart of the exercise is a fair reading of the award, in the context of the body of evidence adduced and an even-handed assessment of whether such conclusions are untenable. Only if the conclusion is untenable is a review and setting aside warranted.

[12] The applicant has dismally failed to demonstrate that the award falls to be set aside in terms of the *Sidumo* test.

[13] The pleadings amount to allegations that the arbitrator failed to apply his mind to the applicant's version and ignored contradictions in the respondent's evidence. The allegations are based variously on bald statements, unsubstantiated versions of the evidence adduced during the proceedings, selective and irrelevant threads of the evidence and a misrepresentation of the evidence.

[14] The pleadings also refer to evidence not placed before the arbitration in relation to the applicant's allegation that the executive head of the department (Emergency Management Services) had no authority to institute disciplinary action against her.

[15] The pleadings also claim the applicant was unlawfully entrapped (entrapment), when no admissibility issue in this regard was raised during the arbitration proceedings. In any event the alleged facts relied upon did not amount to the police or the employer inducing the applicant into carrying out misconduct that she would not have carried out but for the ensnaring methods of the police or employer. Moreover, the applicant denied she committed the misconduct in question.

⁴ (2023) 44 ILJ 1005 (LAC).

- [16] As to the arbitrator's findings, the record reveals that Khoza tendered a straightforward consistent version which was subjected to a sterile cross-examination.
- [17] The essential features of her evidence were that she desired employment as a firefighter but did not have all the required certificates. She did not have a Hazmat certificate.
- [18] In conversation about this with Patrick Modaga who she knows from her neighbourhood, he gave her the contact number of the applicant and advised her that the applicant could assist with the outstanding certificate and employment.
- [19] She contacted the applicant who told her to deposit R1000 into an ABSA bank account, which she did. This was in late 2014.
- [20] Thereafter she heard nothing from the applicant.
- [21] However, on or about 29 May 2015, the applicant called her. The applicant advised her that posts for firefighters have been advertised and that Khoza must meet her and bring with her a CV, certificates she has, a copy of her ID and R3000 cash.
- [22] Khoza asked her 'sister'⁵ to accompany her because she was growing suspicious of the applicant because she had already given her R1000 but with no results and now she was asking for R3000.
- [23] The applicant arranged to meet her at a post office in Small Street, but when they met the applicant there, the meeting was moved to a KFC.
- [24] During the meeting at a KFC, her sister questioned the applicant about the request for a further R3000 and asked whether Khoza will get the promised certificate. The applicant told them Yes, "Meneer" will fix it. She did not explain who "Meneer" is.
- [25] Her sister excused herself to purportedly make copies of Khoza's ID because the applicant asked for a copy.

⁵ Sister in the sense that they grew up together.

[26] When her sister returned, they counted out the money, placed it in an envelope with the certificates she had brought with her and handed the envelope to the applicant, who put it inside her jacket.

[27] Thereafter they were approached by police who retrieved the envelope from the applicant and arrested her.

[28] It turned out that Khoza's sister had called the anti-corruption unit who in turn had dispatched the police to the scene. According to Khoza, her sister did not bring this into her confidence before the events of 1 June.

[29] Crucially, it was put to Khoza that she was giving evidence against the applicant because she "was bitter about the R1000.00". The adverse implication of this for the applicant is self-evident

[30] It was also put to Khoza, with no explanation, that she was "used to set [the applicant] up so she can lose her job".

[31] It was also put to Khoza that a witness will testify that Patrick [Modaga] gave Khoza R3000 to pass to the applicant for stokvel, to which Khoza replied:

That is not true. I need to ask a question: would they give me money to hand over to Lillian whilst I did not know her?"

[32] Khoza indicated (essentially) that she would be glad to challenge Patrick on that. She stated: "I would be glad if I can speak to Patrick whilst he is present".

[33] Under cross-examination, Khoza explained why she had not brought proof of the R1000 deposit. She said the transaction was in 2014, and she did not think of keeping the receipt. She said the police later told her that they could only get proof of it if the applicant allows them access to her bank account. She expressed it so: "They said they do not have proof until she agrees that she allows them to go to the bank". When applicant's counsel again brought up the matter, she said: "Let her [the applicant] allow us to go to her bank which is ABSA."

[34] The fact that Khoza did not corroborate her version with a bank receipt did not render her evidence unsafe. The absence of corroboration does not justify rejecting the evidence of a good witness. Corroborating evidence merely adds weight to the evidence of a witness.

- [35] Khoza was a good witness, as accounted for above and her version of the crucial events of 1 June was corroborated by her sister, who also was a good witness for the reasons discussed further on. The fact that Khoza implicated herself in the matter with no attempt to downplay or excuse her conduct underscored her credibility.
- [36] Regarding the events of 1 June, Khoza's 'sister'⁶, Nziyne adduced similar evidence. At the time she was a chief supervisor at AFCSA.
- [37] She informed the hearing that she had caused the police raid. When Khoza asked her to accompany her and explained why, she called the 'anti-corruption' unit on 30 May, who in turn alerted the police that arrested the applicant. On 1 June, as directed by them, she kept them abreast with where her sister was to meet the applicant and when.
- [38] She said she questioned the applicant when they met up at the KFC. The applicant told her that there were posts at the airport and she had a connection there by the name of Clive Naidoo. She suspected the applicant was lying and merely extorting money because she worked at the airport and had no knowledge of the posts.
- [39] Before they handed over the money, she excused herself to make copies of the money because the applicant obviously was not going to give Khoza a receipt. She also asked the applicant to count the money because she noticed a camera where they were seated. She did this because she was concerned the police would not arrive.
- [40] Cross-examination also failed to impeach Nziyane's testimony.
- [41] Two police officers testified, one De Beer and one Mabekebeke. Their evidence essentially was that the applicant was found in possession of a brown envelope with R3000 which envelope she had under her right armpit and that during questioning she admitted that she "received money in exchange of documents".
- [42] In contrast to the respondent's witnesses, the applicant's testimony and that of her witness, Patrick were littered with implausible statements, contradictions,

⁶ 'Sisters' as in two persons who grew up together.

prior inconsistent statements and material claims not put to the respondent's witnesses.

- [43] The applicant claimed that Patrick was supposed to meet her on 1 June to hand over stokvel money. But on 1 June, he called her and said his neighbour, one Phumzile [Khoza), will be in town and he will give her the money to give to her (the applicant).
- [44] When Patrick called her, Khoza was with him because she [Khoza] confirmed the arrangement with her on Patrick's phone. Crucially, this claim was not put to Khoza. All that was put to Khoza was a vague statement that a witness will testify that Patrick [Modaga] gave her R3000 to pass to the applicant for stokvel."
- [45] As to why the amount was R3000, when it turned out in evidence that the stokvel contributions were R1000, the applicant gave a convoluted often incomprehensible explanation.
- [46] She also failed to properly explain why Patrick could not have deposited the money into her bank account or sent it via other commonly used electronic means or given her the money at work; why for a simple transaction of handing over money from Patrick which needed no discussion, a sit down at a KFC was necessary and why was she was happy for Patrick to entrust a stranger to her to deliver R3000 cash to her.
- [47] She testified that the police asked her "where the certificates came from", inadvertently admitting that Khoza handed over certificates to her.
- [48] She was unable to explain various prior inconsistent statements, including claims to the effect that the money was for money she had borrowed Patrick, that no money was handed to her and she had no idea what was in the envelop when she agreed at arbitration that the money was handed to her.
- [49] Patrick, in a signed statement admitted that he phoned the applicant "to get her [Khoza] employment" and further stated that Khoza had reported to him that she would be meeting the applicant on 1 June *in this regard* and that Khoza would be giving the applicant her certificates and money. He, however, implausible claimed that he made these statements under threat of losing his job.

[50] Finally, the applicant persisted in this review with her unsubstantiated claim at the arbitration that the executive head of the department (Emergency Management Services) had no authority to institute disciplinary action against her, despite written evidence adduced at the arbitration to the effect the City Manager had sub-delegated that task to the executive head of the department (Emergency Management Services).

[51] For all the reasons *supra*, it cannot be said that the findings and conclusion of the arbitrator were untenable. As to costs, the second respondent was forced to incur costs to oppose a review application that was obviously an abuse of process.

[52] I accordingly make the following order:

The review application is dismissed with costs.

Benita Whitcher

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: Phakedi Attorneys Inc

For the Second Respondent: Mncedisi Ndlovu & Sedumedi Inc. Attorneys