



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 2413/23

In the matter between:

MANHATTAN PROCESS ENGINEERING (PTY) LTD

Applicant

and

CHARLENE NARSH BACHISI

Respondent

Heard: 01 July 2025

Delivered: 01 July 2025

Edited: 16 October 2025

EX TEMPORE JUDGMENT

D VENTER, AJ

- [1] This is a review application in which the applicant seeks the review of an arbitration award in terms of which the commissioner found that the applicant in the CCMA proceedings, Ms Charlene Narsh Bachisi, was constructively dismissed.
- [2] The grounds of review, as pleaded in the founding affidavit in support of the review application have been divided into five grounds.

- [3] The first ground is pleaded as an error of law, in that the commissioner failed to consider that the respondent did not lodge any formal grievances.
- [4] The second ground of review is pleaded as a gross irregularity committed by the commissioner, in that the commissioner took into account the subjective perceptions and feelings of the respondent in order to arrive at the conclusion.
- [5] The third ground is an error of law committed by the commissioner in failing to consider the onus of proof in order to prove a constructive dismissal.
- [6] The fourth ground is pleaded as a gross irregularity by the commissioner failing to remain objective and impartial during the proceedings.
- [7] The fifth ground is in respect of the compensation awarded, where the applicant is taking issue with the amount of compensation awarded to the respondent.
- [8] It is trite that the review test in relation to a constructive dismissal dispute is correctness, as opposed to reasonableness. The grounds of review as to errors of law and gross irregularities are not grounds of review that the Court will take into account in determining whether or not an award by a commissioner in a constructive dismissal dispute is subject to review.
- [9] In *Browns The Diamond Store (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration & Others*; 2023 (10) BLLR 1033 (LC), Nkutha-Nkontwana J, stated as follows:

"Tritely, the review test in relation to constructive dismissal cases is correctness as opposed to reasonableness. The enquiry turns on the jurisdiction of the CCMA, a notion well explained in *Solid Doors (Pty) Ltd Commissioner Theron and Others*, where the Labour Appeal Court (LAC) held that:

'Having established what the requirements are for a constructive dismissal, it is necessary to make the

observation at this stage of the judgment that the question whether the employee was constructively dismissed or not is a jurisdictional fact that - even on review - must be established objectively. That is so because if there was no constructive dismissal, the CCMA would not have the jurisdiction to arbitrate. A tribunal such as the CCMA cannot give itself jurisdiction by wrongly finding that a state of affairs necessary to give it jurisdiction exists when such state of affairs does not exist. Accordingly, the enquiry is not really whether the commissioner's finding that the employee was constructively dismissed was unjustifiable. The question in a case such as this one - even on review - is simply whether or not the employee was constructively dismissed. If I find that he was constructively dismissed, it will be necessary to consider other issues. However, if I find that he was not constructively dismissed, that will be the end of the matter and the commissioner's award will stand to be reviewed and set aside."

[10] At paragraph 17, the learned judge stated as follows:

"That being the case, as stated in *HC Heat Exchangers (Pty) Ltd v Araujo and others*, "the Labour Court is entitled, if not obliged, to determine the issue of jurisdiction on its own accord. In doing so, the Labour Court determines the issue *de novo* in order to decide whether the determination by the arbitrator is right or wrong.'

[11] The test to determine whether there has been a constructive dismissal is also trite, and I am going to quote from the same judgment, paragraph 30:

"In *Gold One Limited v Madalani and Others*, this Court sanctioned the well-established principle that: 'Intolerability is a high threshold, far more than just a difficult, unpleasant or stressful working environment or employment conditions, or for

that matter an obnoxious, rude and uncompromising superior who may treat employees badly. Put otherwise, intolerability entails an unendurable or agonising circumstance marked by the conduct of the employer that must have brought the employee's tolerance to a breaking point.' The principle was recently concretised by the Constitutional Court, albeit in a context of reinstatement, in *Booi v Amathole District Municipality and others*, where it was stated that:

'It is accordingly no surprise that the language, context and purpose of s 193(2)(b) dictate that the bar of intolerability is a high one. The term 'intolerable' implies a level of unbeatability, and must surely require more than the suggestion that the relationship is difficult, fraught or even sour.'

- [12] As the Court on review, I am required to determine *de novo* whether or not a constructive dismissal has been established. What is the approach in a constructive dismissal? The approach is also trite, and I quote from another judgment, *Sanlam Life Insurance v Mogomatsi & Others*; 2023 (11) BLLR 1166 (LAC):

"In constructive dismissal disputes, a two-stage approach is normally followed. First, the employee must prove that the employer effectively dismissed him or her by making her or his continued employment intolerable. It is an objective test. The employee need not prove that he had no choice but to resign. All that is required is to prove that the employer made continued employment intolerable. The conduct of the employer towards the employee and the cumulative impact thereof must be such that, viewed objectively, the employee could not reasonably be expected to cope with it. Second, after the dismissal had been established, the Court will then evaluate whether the dismissal was unfair. The two stages may overlap and be interrelated."

- [13] In the present case, the evidence that was before the commissioner was the undisputed and unchallenged evidence by the respondent. I

will go through certain parts of the record which demonstrates the respondent's unchallenged and undisputed evidence.

- [14] The respondent led evidence before the commissioner that she was subjected to unfair treatment. In this regard I quote at page 142 of the record:

"Okay, what led to my resignation like what I was saying before is, the company was treating me unfairly, the company was accusing me falsely. This all started when the supplier gave me a bottle of wine as a Christmas present."

- [15] The respondent confirms that this was the incident that led her to resign, she testified that this is "When I had the last of it".

- [16] The respondent was "painting a picture" of the resignation, the incident that led to her resignation, however, there was a history behind the act that led to her resignation. The respondent's evidence was that she had been subjected to unfair treatment, that there were false allegations made against her.

- [17] The respondent led evidence that she received gifts from a supplier, and the accusations then started that she had received bribes. At line 41 on page 143 of the record, the respondent testified as follows:

"So a lot of abusive languages would be used on me. Ever since I got these presents, I was suspected of taking bribes from suppliers. I was taken to endless polygraphs, and on all those polygraphs I would be asked if I am taking bribes from suppliers, and there is even one time that, like I am saying, I miscarried because of stress. At one time I was made to write a statement in duress by the polygraphist."

- [18] This evidence of the respondent was unchallenged and remained undisputed. On page 145 of the record the respondent led evidence, and I am not going to read it into the record, it is on the record, she leads evidence that she made an error, she rectified the error, which then led to a polygraph, where more accusations were made against

her. She leads evidence that she was called "useless" by her boss, I quote:

"Those accusations, they were just becoming too much for me. On the other side the boss will be shouting at you using abusive language. You can go to bundle 5, I put all the messages, the abusive messages the boss would use on me. He would use words like "nonsense", "silly". Imagine how much I was making just for a mere salary of R8 000. I was multi-tasking, bringing a lot of weight, which R8 000 was not even enough salary for the amount of work I was doing because I was flooded with work. I would be given more responsibilities too, which were out of my job description...."

- [19] The respondent led further evidence that she was called on public holidays and early in the mornings. On page 145 of the transcript the respondent testified as follows:

"The boss would even send me a message at nine in the evening. Go to page 2, bundle number. I want you to see the times when the boss would send me messages at night. Even if I would take leave and people standing in for me made mistakes, I would be asked to be responsible for those mistakes. If you go to bundle 2, on the 10 April, it was a public holiday, the boss woke me up with a call at 06:00 about work issues, asking me to source sales for the company. Supplier report, Bundle No 2. Yes. On the 10th April. That is the one, page on top. He called me at 06:00 in the morning asking me to get sales for the company at 06:00 in the morning. I didn't even have time to rest even when I got home. If the boss sent you a message and you just spent five minutes without answering it, maybe you are busy attending to people, the abusive language he would use on you. You will see all that, if your refer to Bundle 5 number 5. You will see all the abusive languages I received from the boss. So since I was now labelled a "fraudster, who is taking bribes from suppliers", even other

people from other departments were now abusing me. I laid grievances with the manager, Mr Savas. You will see them on Bundle number 4. I told Mr Savvas, I'm not happy with the way I am being treated here."

[20] As to the grievances, I just want to refer to them, they are at volume 1, pages 95 to 98 of the record of proceedings This is the evidence of the respondent's grievances, where she was bringing to the attention of her employer that she was being ill-treated, and that she was overworked. I am not going to read those messages into the record, they are on record.

[21] At page 149 of the bundle the respondent testifies that she was tired of the abuse. I am going to read the following into the record, from page 148, page, sorry, line 206. This is the respondent testifying:

"Let me show you, I think it is on the other side. Where he wrote procurement office changes when I was about to leave the company. Because I gave the company one month's notice. I told them, in the one month that I am going to serve the notice. I want you to gather all the information since you are accusing me of taking bribes from suppliers. Can you please gather all the information? I am not running away. Put them on the table for me before this month ends. And hand me over to the police. Why been you've treating me so bad? Interrogating me, victimising me with polygraphs. Just because I made a simple mistake, go to polygraph. And when you go to polygraph, you are interrogated, you are forced to make a statement on something you did not even do. I was just tired of the abuse. Extra workloads which are out of your job description, when you are at home, you do not rest, it is phone calls, its messages, weak messages, even if it is a public holiday. When you come back to work, the boss is abusing you.

Workload, there is a lot of people coming in the office, I cannot manage. I even told them that please, sometimes I do'nt

answer the phone, not because I am not responding to the messages. There will be people who I will be serving."

- [22] I have to emphasise that this evidence of the respondent was unchallenged. On page 150 of the transcript the respondent goes further and testifies as to the abuse she was subjected to by her boss if she was not answering a phone, how she was told to answer the phone even after knock-off time when she was at home. I am going to read this into the record, it is page 150, line 250:

"I couldn't take it anymore. This was after knock-off time. Bundle 5. And the boss was saying, 'Answer your phone'. It was after four, I'm already at home, forcing me to answer my phone., It's past working hours. I am forced to answer my phone. It's a public holiday, I'm called at 06:00 in the morning. Even if it is at 9h00 in the evening, I'm forced to give answers, for mistakes that happened when I was on leave. People who didn't order their things in time from the shelves. It was all on me."

- [23] That is the respondent's evidence. The respondent's evidence was that she did not lodge an internal grievance. She gave evidence why she did not lodge an internal grievance. Although that evidence was challenged, it is not a requirement for a constructive dismissal that a formal grievance be lodged.

- [24] At page 162 of the record, the respondent under cross-examination gave further evidence that she was being taken advantage of because she is a foreigner. The respondent testified as follows:

"Let me tell you one thing, sir. The money that was paid and the job that I was doing, if you can Google now and check how much Procurement Officers are paid, there is no one who can stoop to the salary that I was getting. By taking the advantage that I'm a foreigner, I am desperate for the job. Why is it that the boss tells me that I cannot find a replacement for you, because

there is no one who is willing to do my job with that amount of money."

[25] What is further concerning in this matter is the response by the applicant's own witness, who is an HR officer, her name is Sharon Pretorius. Sharon Pretorius is the HR manager for the applicant.

[26] Sharon Pretorius admits or concedes in cross-examination that the applicant did raise issues with her, did raise grievances with her specifically as to the fact that she was overworked. What is worrying is her response, and I am going to read from the record, page 165. Stephan Hoffman asks Sharon Pretorius:

"Q: Did the applicant ever approach you in an informal way and said she is flooded and she cannot do this work and she is stressed?

A: She did, yes.

Q: And your answer to her, how did you, what did you reply to her?

A: I do not think we had a conversation where she said that she is overworked. I cannot remember verbatim, but yes, it was the conversation."

[27] I do not quite understand Ms Pretorius' evidence here, she appears to contradict herself, but she has conceded that there was a conversation at least. Mr Hoffman then says:

"Sure, but I mean, what was your guidance in that sense?"

[28] And this is the response Ms Pretorius gives:

"We are all under a lot of pressure. I do not know if it was on that occasion where I said: 'Get your CV out there, start looking if you are not happy'."

[29] The approach of the applicant from its own HR manager was if you are not happy, leave. There was no attempt by the applicant to deal with the grievances lodged by the respondent, or at least the

grievances that Ms Pretorius was aware of. Her attitude was: if you do not like it, you can leave.

[30] Under the circumstances of this matter, specifically where the evidence of the respondent was unchallenged and undisputed and further considering the record, I am of the view that the commissioner's decision that there was constructive dismissal is correct, and that the award is not subject to review and being set aside.

[31] On the issue of costs, the applicant came to Court on the incorrect test. Under those circumstances, I am inclined to award the respondent costs.

Therefore, the order I make is the following:

Order

1. The review application is dismissed.
2. The applicant is ordered to pay the first respondent's costs on a party and party scale.

Deirde Venter
Acting Judge of the Labour Court of South Africa

Appearances

For the applicant : Mr C Higgs of Higgs Attorneys

For the respondent : Mr T Magoma of Sato Attorneys

LABOUR COURT